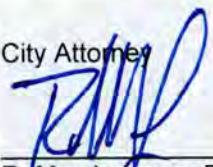

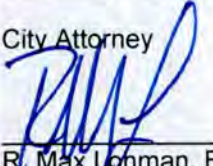



**CITY OF PALM BEACH GARDENS
CITY COUNCIL
Agenda Cover Memorandum**

**Meeting Date: October 4, 2018
Resolution 66, 2018**

Subject/Agenda Item: Delegating full settlement authority in the matter of Sears, Roebuck and Co. vs. Forbes/Cohen Florida Properties, L.P. and City of Palm Beach Gardens

- Recommendation to APPROVE**
 Recommendation to DENY

<p>Reviewed by:</p> <p>City Attorney</p>  <p>R. Max Lohman, Esq.</p>	<p>Originating Dept.: City Attorney</p>  <p>R. Max Lohman, Esq. City Attorney</p>	<p>Costs: \$0</p> <p>\$ _____ Current FY</p>	<p>Council Action:</p> <p><input type="checkbox"/> Approved</p> <p><input type="checkbox"/> Approved w/ Conditions</p> <p><input type="checkbox"/> Denied</p> <p><input type="checkbox"/> Continued to:</p>
<p>Submitted by:</p> <p>City Attorney</p>  <p>R. Max Lohman, Esq.</p>	<p>Advertised: NA</p> <p>Date:</p> <p>Paper:</p> <p><input checked="" type="checkbox"/> Not Required</p>	<p>Funding Source:</p> <p><input type="checkbox"/> Operating</p> <p><input type="checkbox"/> Other</p> <p>-----</p> <p>Contract/Agreement: Effective Date: N/A</p> <p>Expiration Date: N/A</p>	<p>Attachments:</p> <ul style="list-style-type: none"> • Resolution 66, 2018
<p>Approved by:</p> <p>City Manager</p>  <p>Ronald M. Ferris</p>	<p>Affected parties</p> <p><input type="checkbox"/> Notified</p> <p><input checked="" type="checkbox"/> Not required</p>	<p>Budget Acct.#:</p>	

BACKGROUND: Sears, Roebuck and Co. (Sears) sued the City of Palm Beach Gardens on or about May 18, 2015, alleging a violation of 42 U.S. § 1983/1988; and the City Council of the City of Palm Beach Gardens recognizes the limitations, challenges, and disadvantages that local governments face when attempting to negotiate settlements within the legal strictures of Section 286.011, *Florida Statutes*. The City successfully defended against the claims asserted by Sears at trial, but reversed on appeal; subsequently giving rise to Sears' right to seek its attorneys' fees. Sears has expressed a desire to engage in settlement discussions regarding the amount of its claim to attorneys' fees, and the City Council has determined that due to and in consideration of the foregoing it is in the best interests of the City and its taxpayers to delegate full settlement authority to the City Manager and City Attorney, jointly.

STAFF RECOMMENDATION: Staff is recommending approval of Resolution 66, 2018 as presented.

RESOLUTION 66, 2018

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4 **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM**
5 **BEACH GARDENS, FLORIDA, DELEGATING FULL SETTLEMENT**
6 **AUTHORITY IN THE MATTER OF SEARS, ROEBUCK AND CO. VS.**
7 **FORBES/COHEN FLORIDA PROPERTIES, L.P. AND CITY OF PALM**
8 **BEACH GARDENS (502014CA0114945XXXMB-AG) TO THE CITY**
9 **MANAGER AND THE CITY ATTORNEY, JOINTLY; FURTHER**
10 **AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO DO**
11 **ALL THINGS DEEMED NECESSARY AND PRUDENT TO**
12 **EFFECTUATE SETTLEMENT, AND SPECIFICALLY AUTHORIZING**
13 **THE CITY MANAGER AND CITY ATTORNEY TO EXECUTE ANY**
14 **AND ALL DOCUMENTS AND/OR INSTRUMENTS NECESSARY TO**
15 **EFFECTUATE SETTLEMENT OF THE DISPUTE BETWEEN THE**
16 **PARTIES RELATING TO THE AMOUNT OF ATTORNEYS' FEES**
17 **SEARS IS SEEKING TO RECOVER FROM THE CITY; THIS**
18 **DELEGATION OF AUTHORITY TO SETTLE THE SUBJECT DISPUTE**
19 **SHALL NOT CONSTITUTE AND IS IN NO MANNER DIRECTION TO**
20 **SETTLE; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER**
21 **PURPOSES.**
22
23

24 **WHEREAS,** Sears, Roebuck and Co. (Sears) sued the City of Palm Beach
25 Gardens on or about May 18, 2015; and the City Council of the City of Palm Beach
26 Gardens recognizes the limitations, challenges, and disadvantages that local
27 governments face when attempting to negotiate settlements within the legal strictures of
28 Section 286.011, *Florida Statutes*; and
29

30 **WHEREAS,** the subject lawsuit alleged a violation of 42 U.S. § 1983/1988; and
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32 **WHEREAS,** the City successfully defended against the claims asserted by Sears
33 at trial, but reversed on appeal; subsequently giving rise to Sears' right to seek its
34 attorneys' fees; and
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36 **WHEREAS,** Sears has expressed a desire to engage in settlement discussions
37 regarding the amount of its claim to attorneys' fees, and the City Council has determined
38 that due to and in consideration of the foregoing it is in the best interests of the City and
39 its taxpayers to delegate full settlement authority to the City Manager and City Attorney,
40 jointly; and
41

42 **WHEREAS,** the City Council deems approval of this Resolution to be in the best
43 interests of the health, safety, and welfare of the taxpayers, residents, and citizens of the
44 City of Palm Beach Gardens and the public at large.
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1 **NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY**
2 **OF PALM BEACH GARDENS, FLORIDA, that:**

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4 **SECTION 1.** The foregoing recitals are hereby affirmed and ratified.

5
6 **SECTION 2.** The City Council hereby authorizes and delegates full settlement
7 authority in the matter of Sears, Roebuck and Co. vs. Forbes/Cohen Florida Properties,
8 L.P. and City of Palm Beach Gardens (502014CA0114945XXXMB-AG) to the City
9 Manager and the City Attorney, jointly.

10
11 **SECTION 3.** The City Manager and City Attorney are further authorized to do all
12 things deemed necessary and prudent to effectuate settlement, and specifically
13 authorizing the City Manager and City Attorney to execute all documents and/or
14 instruments necessary to effectuate settlement of the dispute between the parties relating
15 to the amount of attorneys' fees Sears is seeking to recover from the City.

16
17 **SECTION 4.** This delegation of authority to negotiate and effectuate settlement of
18 the subject dispute shall not constitute and is in no manner direction to settle the dispute
19 but is merely delegation of the authority to do so if deemed to be in the City's best interests
20 by the City Manager and City Attorney.

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22 **SECTION 5.** This Resolution shall become effective immediately upon adoption.

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24 (The remainder of this page intentionally left blank.)
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PASSED AND ADOPTED this _____ day of _____, 2018.

CITY OF PALM BEACH GARDENS, FLORIDA

BY: _____
Maria G. Marino, Mayor

ATTEST:

BY: _____
Patricia Snider, CMC, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

BY: _____
R. Max Lohman, City Attorney

<u>VOTE:</u>	<u>AYE</u>	<u>NAY</u>	<u>ABSENT</u>
MAYOR MARINO	_____	_____	_____
VICE MAYOR WOODS	_____	_____	_____
COUNCILMEMBER MARCIANO	_____	_____	_____
COUNCILMEMBER LANE	_____	_____	_____
COUNCILMEMBER LITT	_____	_____	_____