

MEMORANDUM

Agenda Item No. 8(O)(1)

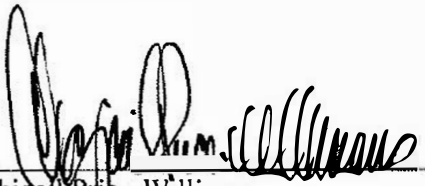
TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE: May 19, 2020

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution approving Settlement Agreement between Miami-Dade County and The Grand Condominium Association, Inc. in the amount of \$1,450,000.00 to be paid to the County and authorizing the County Mayor to execute the Settlement Agreement and exercise all rights contained therein

The accompanying resolution was prepared by the Water and Sewer Department and placed on the agenda at the request of Prime Sponsor Chairwoman Audrey M. Edmonson.



Abigail Price-Williams
County Attorney

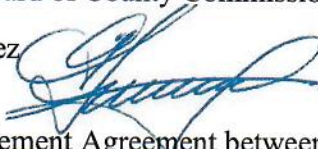
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Memorandum



Date: May 19, 2020

To: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

From: Carlos A. Gimenez 
Mayor

Subject: Approval of Settlement Agreement between The Grand Condominium Association, Inc.
and Miami-Dade County Regarding Outstanding Water and Sewer Charges

Recommendation

It is recommended that the Board of County Commissioners (Board) approve the attached resolution approving a Settlement Agreement between Miami-Dade County (County), through its Water and Sewer Department (WASD), and The Grand Condominium Association, Inc. (The Grand), resolving a dispute arising from nonpayment of water and sewer fees due for services provided by WASD to The Grand.

Scope

The impact of this Settlement agreement is a benefit to the retail and wholesale customers of WASD. The property subject to this Settlement Agreement is in District 3, which is represented by Commissioner Audrey M. Edmonson.

Fiscal Impact/Funding Source

Under the terms of the Settlement, The Grand will pay the County \$1,450,000.00 as full and final settlement of all disputes regarding outstanding water and sewer charges between the County and The Grand.

Track Recorder/Monitor

WASD's Chief Financial Officer Frances G. Morris will oversee implementation of the settlement agreement.

Background

The Grand is a mixed-use residential and commercial building located at 1717 North Bayshore Drive in Miami. It was constructed in the mid-1980s and contains 810 condominium units, 152 hotel rooms, 8 restaurants, and thousands of feet for commercial businesses. The building is served by a single-metered water connection for the entire complex. In 2008, the WASD rate structure as provided in the Schedule of Rates, Fees and Charges was modified by the Board to include residential, multi-family residential, and non-residential categories, at which time The Grand was billed as a multi-family residential customer. In 2012, the rate structure was clarified to include mixed-use developments with a single meter such as The Grand to be billed in the non-residential category. In October 2014, a routine WASD audit of customer billing classifications revealed that The Grand was erroneously billed as a multi-family development instead of a non-residential development as prescribed in the Schedule of Rates, Fees and Charges.

The Grand disputed the charges and requested time to determine the feasibility of changing the plumbing within the building to provide a separate metered service for the commercial parts of the development, which would enable the residential units to be billed at the multi-family residential rate. During this time, the WASD Director authorized accepting monthly payments of \$75,000.00, which

Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners
Page 2

was more than the monthly amount using the multi-family residential rate, but less than the monthly amount using the non-residential rate. This temporary solution was in lieu of termination of the water service. An engineering study performed by The Grand concluded that it was not financially feasible to make the substantial changes necessary to isolate the commercial uses.

In the meantime, WASD conducted further rate system reviews, and the Board approved a new mixed-use rate for combined residential and commercial uses with a single water meter that became effective in January of 2018. Although The Grand has been making regular payments under the mixed-use rate schedule, The Grand would not agree to a payment plan proposed by WASD in June 2019 for payment of the outstanding balance of \$1,475,446.42, which included late fees, for billing amounts at the non-residential rate that accumulated from October 2014 to January 2018.

In October 2019, the County filed a lawsuit in Circuit Court to recover the past due balance. WASD's Rules and Regulations authorizes the Director to enter into payment arrangements with customers for the payment of outstanding accounts and provides the Director with the authority to waive late penalty charges.

Representatives of the Grand recently met with the Department's representatives to negotiate a settlement. The attached Settlement Agreement requires a total payment of \$1,450,000.00 for the full amount of the water and sewer charges, and a reduction in the late penalty fees with an initial payment of \$250,000.00, followed by monthly payments of \$8,333.33 until the outstanding balance is fully paid. If The Grand fails to make a payment and does not timely cure the default the court will enter a judgment for the outstanding balance. The Grand's Board of Directors approved the settlement agreement on February 12, 2020.

Since the County will receive the full amount of delinquent water and sewer charges and the settlement avoids the cost and uncertainty of further litigation, WASD recommends approval of the Settlement Agreement as being in the best interest of the County.



Jack Osterholt
Deputy Mayor

Exhibit A

IN THE CIRCUIT COURT OF THE ELEVENTH
JUDICIAL CIRCUIT IN AND FOR MIAMI
DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

MIAMI-DADE COUNTY, a
political subdivision of the State of Florida,

CASE NO. 2019-029806-CA-01

Plaintiff,

vs.

THE GRAND CONDOMINIUM
ASSOCIATION, INC., a Florida Not for
Profit Corporation,

Defendant,
_____ /

**STIPULATION OF SETTLEMENT AND ORDER APPROVING STIPULATION OF
SETTLEMENT**

This Stipulation of Settlement (also referred to herein as "Agreement") is made between Plaintiff, Miami-Dade County ("Miami-Dade") and Defendant, The Grand Condominium Association, Inc ("The Grand") to completely and fully settle all issues that were raised or could have been raised in the lawsuit styled *Miami-Dade County v. The Grand Condominium Association, Inc.*, Case No.: 2019-029806 CA 01 in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida as follows:

1. **Payment Terms.** The Grand shall pay the total amount of \$1,450,000.00 as follows:

(a) \$250,000 to Miami-Dade within ten (10) days of the Effective Date of this Agreement;

(b) \$100,000 to Miami-Dade for the year 2021 paid in 12 monthly installments of \$8,333.33 due by the fifth day of each month in 2021;

(c) \$100,000 to Miami-Dade for the year 2022 paid in 12 monthly installments of \$8,333.33 due by the fifth day of each month in 2022;

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(d) \$100,000 to Miami-Dade for the year 2023 paid in 12 monthly installments of \$8,333.33 due by the fifth day of each month in 2023;

(e) \$100,000 to Miami-Dade for the year 2024 paid in 12 monthly installments of \$8,333.33 due by the fifth day of each month in 2024;

(f) \$100,000 to Miami-Dade for the year 2025 paid in 12 monthly installments of \$8,333.33 due by the fifth day of each month in 2025;

(g) \$100,000 to Miami-Dade for the year 2026 paid in 12 monthly installments of \$8,333.33 due by the fifth day of each month in 2026;

(h) \$100,000 to Miami-Dade for the year 2027 paid in 12 monthly installments of \$8,333.33 due by the fifth day of each month in 2027;

(i) \$100,000 to Miami-Dade for the year 2028 paid in 12 monthly installments of \$8,333.33 due by the fifth day of each month in 2028;

(j) \$100,000 to Miami-Dade for the year 2029 paid in 12 monthly installments of \$8,333.33 due by the fifth day of each month in 2029;

(k) \$100,000 to Miami-Dade for the year 2030 paid in 12 monthly installments of \$8,333.33 due by the fifth day of each month in 2030;

(l) \$100,000 to Miami-Dade for the year 2031 paid in 12 monthly installments of \$8,333.33 due by the fifth day of each month in 2031;

(m) \$100,000 to Miami-Dade for the year 2032 paid in 12 monthly installments of \$8,333.33 due by the fifth day of each month in 2032;

2. **Payment Method.** Payments shall be made to Miami-Dade Water and Sewer Department, Post Office Box 026055, Miami, Florida 33102-6055, Account No.: 8657848917. The amount in paragraph 1 above is in addition to the monthly amounts billed for water and sewer service which shall be paid in full by the due date.

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3. **County Approval Process.** The parties acknowledge that before the County may settle any claims or enter into any binding contractual obligations pursuant to this Agreement, the County must obtain the approval of the Board of County Commissioners (BCC) and the subsequent assent of the County Mayor or, if the County Mayor vetoes any legislation approving this Agreement, an override of the County Mayor's veto by the "BCC" Approval.

a. **BCC Approval.** The parties acknowledge that County Resolution No. 130-06 requires that all non-County parties must execute this Agreement before the Agreement may be placed on the BCC's agenda. Accordingly, The Grand agrees to execute this Agreement as a precondition of the presentation of this Agreement to the County Mayor or the County Mayor's designee or to the BCC. After such execution, The Grand may not withdraw from or modify the terms of its settlement with the County, as presented in this Agreement.

b. **The Parties' Obligations Before BCC Approval.** Neither party shall be required to file any document compromising any claims it may have against the other party and shall not have released the other party until the Effective Date of this Agreement.

c. **Consequence Upon Failure to Obtain BCC Approval.** To the extent the BCC does not approve this Agreement, and after all opportunities for BCC reconsideration have passed, the parties shall return to the status quo existing before the parties' preparation of this Agreement, and the fact that the County and The Grand sought to negotiate a resolution to their dispute, including any supporting documents necessary to present this Agreement to the BCC, shall be inadmissible for all reasons and shall not prejudice any of their pre-existing rights and remedies with respect to each other or any other person or entity.

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4. **Effective Date.** The Effective Date of this Agreement shall be the sooner of the date (1) of the expiration of the County Mayor's veto period subsequent to the approval of this Agreement by the Board of County Commissioners of Miami-Dade County (the "BCC") without the County Mayor vetoing the BCC's resolution approving same or (2) on which the County Mayor approves the BCC-approved resolution authorizing the execution of this Agreement.

5. **Stipulation of Dismissal.** Upon payment of the \$250,000.00 set forth in 1(a) above, Miami-Dade shall within three (3) business days execute and deliver to The Grand's counsel, Mitchell E. Widom, Esq. the Stipulation of Dismissal with Prejudice, stating that each party shall bear their own attorney's fees and costs and that the Court reserves jurisdiction to enforce the terms of this Agreement, in the form attached hereto as **Exhibit "A"**.

6. **Default.** In the event that there is a default in any payment set forth in 1(a) - (m) above, Miami-Dade shall e-mail a notification of such failure to counsel for The Grand (Mitchell E. Widom, Esq. mwidom@bilzin.com), and send a letter addressed to the: Property Manager at The Grand, 1717 North Bayshore Drive, Miami, FL 33132. If the payment is not received by Miami-Dade at the address in Paragraph 2 above within seven (7) calendar days of such e-mail and letter, Miami-Dade shall terminate service and be entitled to a judgment for the entire unpaid balance of \$1,450,000.00 less any payments already made by The Grand which shall accrue statutory interest.

7. **Severability.** If any provision of this Agreement is held to be invalid by a court of competent jurisdiction, then all remaining provisions of this document shall continue in full force and effect.

8. **Governing Law; Exclusive Venue.** This Agreement shall be governed by the laws of the State of Florida. Any and all disputes arising in connection with or relating to the terms of this Agreement shall be resolved in Miami-Dade County, Florida.

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9. **Counterparts.** This Agreement may be executed in multiple counterparts. All counterparts executed by the parties shall constitute one agreement.

10. **No Admission of Liability.** This Agreement is a compromise and settlement of disputed claims and is entered into to avoid the expense and uncertainty of litigation. Neither this Agreement nor any payment referred to herein constitutes or shall be construed as an admission of any liability or responsibility whatsoever on the part of any of the parties or an admission as to the truth of any allegations made by any of the parties.

11. **Entire Agreement.** This Agreement constitutes the entire agreement of the Parties as to the subject matter hereof. There are no representations, warranties or inducements, whether oral or written, express or implied, that may in any way effect or condition the validity of this Agreement or any of its conditions or terms. All prior negotiations, discussions and/or agreements, oral or written, are merged into this Agreement.

12. **Rule of Construction: Opportunity to Review.** This Agreement is executed voluntarily and without any duress or undue influence on the part or on behalf of the parties hereto, with the full intent of releasing claims as set forth herein. The parties acknowledge as follows: (a) they have read this Agreement; (b) they have been represented in the preparation, negotiation and execution of this Agreement by legal counsel of their own choice; (c) they understand the terms and consequences of this Agreement and of the releases set forth therein; and (d) they are fully aware of the legal and binding effect of this Agreement.

13. **Authority to Execute and Bind.** The individuals executing this Agreement in a representative capacity, expressly represent and warrant that they are fully authorized and empowered to execute this Agreement on behalf of the Party on whose behalf they are signing, that the represented Party agrees to and accepts the terms of this Agreement, and that all of the Parties represents that no other parties in interest are required to execute this Agreement in order to effectuate the purpose and intent of this Agreement.

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14. **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, representatives, agents, attorneys, officers, directors, predecessors, affiliates, parent, subsidiaries, successors or assigns in connection with any legal action arising out of the Agreement.

15. **Attorney's Fees and Costs.** All parties shall bear their own attorney's fees and costs.

16. **Captions.** The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereby sign, execute and agree to be bound by all the terms of this Stipulation of Settlement and Order Approving Stipulation.

THE GRAND CONDOMINIUM
ASSOCIATION, INC.

By: _____

Name: STUART R. KAUB

Title: PRESIDENT

ATTEST:

MIAMI-DADE COUNTY, FLORIDA

HARVEY RUVIN

By: _____

By: _____

Name: _____

Deputy Clerk

Title: _____

Approved as to Form and Legal Sufficiency

By: _____

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EXHIBIT "A"

MIAMI-DADE COUNTY, a political subdivision of the State of Florida,

Plaintiff,

vs.

THE GRAND CONDOMINIUM ASSOCIATION, INC., a Florida Not for Profit Corporation,

Defendant,

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 2019-029806-CA-01

STIPULATION AND ORDER OF DISMISSAL

IT IS HEREBY stipulated by and between counsel for the Defendant and the Plaintiff that the above claim, having been amicably settled, the same be dismissed with prejudice as to said Defendant, and Plaintiff and all parties are to bear their own costs and attorney's fees.

By: _____
Henry N. Gillman
Attorney for Plaintiff
Miami-Dade County Attorney's Office
111 NW 1st Street, Suite 2810
Miami, FL 33128
Florida Bar No: 793647

By: _____
Mitchell E. Widom
Attorney for Defendant
BILZIN SUMBERG LLC
1450 Brickell Avenue, Suite 2300
Miami, Florida 33131
Florida Bar No: 473911

ORDER APPROVING STIPULATION OF SETTLEMENT AND DISMISSAL OF CASE WITH PREJUDICE

THIS CAUSE, having come before the Court upon the above Stipulation of the parties and the settlement of this matter it is hereupon:

ORDERED AND ADJUDGED:

1. The Court hereby approves the Stipulation of Settlement of the parties and hereby dismisses this matter with prejudice. The Court reserves jurisdiction to enforce the terms of the Stipulation of Settlement.

DONE AND ORDERED in Chambers at Dade County, Miami Florida this ____ day of _____, 2020.

ALAN FINE
JUDGE, CIRCUIT COURT

cc: All counsel of Record

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MEMORANDUM
(Revised)

TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE: May 19, 2020

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 8(O)(1)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(O)(1)
5-19-20

RESOLUTION NO. _____

RESOLUTION APPROVING SETTLEMENT AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE GRAND CONDOMINIUM ASSOCIATION, INC. IN THE AMOUNT OF \$1,450,000.00 TO BE PAID TO THE COUNTY AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE SETTLEMENT AGREEMENT AND EXERCISE ALL RIGHTS CONTAINED THEREIN

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves the Settlement Agreement, in substantially the form attached to the accompanying memorandum as Exhibit A, between Miami-Dade County and The Grand Condominium Association, Inc., for payments to Miami-Dade County in the amount of \$1,450,000.00 to resolve any and all claims between the parties arising out of the lawsuit styled *Miami-Dade County v. The Grand Condominium Association, Inc.*, currently pending in the Circuit Court of the Eleventh Judicial Circuit, in and for Miami-Dade County, Case No. 2019-029806-CA-01. This Board further authorizes the County Mayor or County Mayor's designee to execute the Settlement Agreement for and on behalf of Miami-Dade County and to exercise all rights contained therein.

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The foregoing resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

Audrey M. Edmonson, Chairwoman	
Rebeca Sosa, Vice Chairwoman	
Esteban L. Bovo, Jr.	Daniella Levine Cava
Jose "Pepe" Diaz	Sally A. Heyman
Eileen Higgins	Barbara J. Jordan
Joe A. Martinez	Jean Monestime
Dennis C. Moss	Sen. Javier D. Souto
Xavier L. Suarez	

The Chairperson thereupon declared this resolution duly passed and adopted this 19th day of May, 2020. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.



Henry N. Gillman