OFFICIAL FILE COPY
CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

Memorandum

MIAMI-DADE COUNTY

Date: June 30, 2009

To: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

From: George M. Burgess
County Manager

From: Robert A. Cuevas, Jr.
County Attorney

Agenda Item No. 8(R)(1)(A)

Resolution No. R-847-09

Subject: Settlement and Release Agreement between Miami-Dade County and Brickell Bay Plaza, Inc., Brickell Bay Commercial, LLC for payment of $5,410.26 relating to water and sewer connection fees

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RECOMMENDATION

It is recommended that the Board of County Commissioners approve the attached Settlement and Release Agreement between Miami-Dade County and Brickell Bay Plaza, Inc. and Brickell Bay Commercial, LLC, relating to additional water and sewer connection charge totaling $5,410.26. The settlement agreement amount will settle the County's claim against Brickell Bay Plaza, Inc. and Brickell Bay Commercial, LLC.

SCOPE

The impact of this item is county-wide, as the monies collected are deposited into a special fund and are used only to defray the cost of expanding water and sewer existing facilities or construct new ones.

FISCAL IMPACT/FUNDING SOURCE

There is a positive fiscal impact of $5410.26 to the County.

TRACK RECORD/MONITOR

This settlement agreement will be overseen and executed by the County Attorney's Office.

BACKGROUND

The Rules and Regulations (R&R's) of the Miami-Dade Water and Sewer Department (WASD) as contained in Administrative Order 10-8, Section 2.08: Rates & Charges, Paragraphs 1 and 6, authorize WASD to collect water and sewer connection charges for new or increased flows of water and/or sewer.

On March 31, 2000, the County and Brickell Bay Plaza, Inc. entered into an agreement to provide water and sewer services for 639 residential and commercial condominium units at Club at Brickell Bay developed by Brickell Bay Plaza, Inc. The property is located at 1200 Brickell Bay Drive. On September 13, 2004, according to the terms and conditions of the executed water and sewer service agreement, Brickell Bay Plaza, Inc. paid the water and sewer connection charges due per WASD's R&R's. The following year Brickell Bay Plaza, Inc. conveyed to Brickell Bay Commercial, LLC ownership of 74 commercial units in the Club at Brickell Bay property.

In January 2008, WASD staff noted that additional water and sewer charges were due from the Brickell Bay Plaza, Inc. and Brickell Bay Commercial, LLC as the gallons per day used at the property

exceeded the amount paid for. The additional water and sewer charges due ($5,410.26) are for four residential condominiums which were not included in the initial payment and for an increase in the gallons per day for water and sewer from 129,511 gallons per day to 130,564 gallons per day in the commercial units. On October 1, 2008, after attempting unsuccessfully to resolve this matter with Brickell Bay Plaza, Inc. and Brickell Bay Commercial, LLC, the County filed a lawsuit seeking compensation for the additional water and sewer connection charges.

In order to settle the dispute before it is heard by the Miami-Dade Circuit Court, Brickell Bay Plaza, Inc. and Brickell Bay Commercial LLC agreed to pay the amount due.

Assistant County Manager

MEMORANDUM
(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: June 30, 2009

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 8(R)(1)(A)

Please note any items checked.

_____ **"4-Day Rule" ("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**

_____ **Bid waiver requiring County Mayor's written recommendation**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

✓ **Housekeeping item (no policy decision required)**

_____ **No committee review**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(R)(1)(A)
6-30-09

RESOLUTION NO. **R-847-09**

RESOLUTION AUTHORIZING EXECUTION OF A SETTLEMENT AND RELEASE AGREEMENT BETWEEN BRICKELL BAY PLAZA, INC., BRICKELL BAY COMMERCIAL, LLC AND MIAMI-DADE COUNTY RELATING TO WATER AND SEWER CONNECTION FEES

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 hereby approves the execution of a Settlement and Release Agreement between Brickell Bay Plaza, Inc., Brickell Bay Commercial, LLC and Miami-Dade County relating to the payment of water and sewer connection charges, in substantially the form attached hereto and made a part hereto; and authorizes the County Mayor or his designee to execute same for and on behalf of Miami-Dade County.

The foregoing resolution was offered by Commissioner **Jose "Pepe" Diaz**, who moved its adoption. The motion was seconded by Commissioner **Rebeca Sosa** and upon being put to a vote, the vote was as follows:

Dennis C. Moss, Chairman **aye**
Jose "Pepe" Diaz, Vice-Chairman **aye**

Bruno A. Barreiro	**absent**	Audrey M. Edmonson	**aye**
Carlos A. Gimenez	**aye**	Sally A. Heyman	**aye**
Barbara J. Jordan	**aye**	Joe A. Martinez	**absent**
Dorrin D. Rolle	**aye**	Natacha Seijas	**aye**
Katy Sorenson	**aye**	Rebeca Sosa	**aye**
Sen. Javier D. Souto	**absent**		

The Chairperson thereupon declared the resolution duly passed and adopted this 30th day of June, 2009. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

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

HARVEY RUVIN, CLERK

By: **DIANE COLLINS**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. SED

Sara E. Davis

SETTLEMENT AND RELEASE AGREEMENT

THIS SETTLEMENT AND RELEASE (the "Agreement") is entered into this ___ day of April, 2009 (the "Effective Date") by and between Miami-Dade County, Florida, a political subdivision of the State of Florida (the "County"); Brickell Bay Plaza, Inc., a Florida corporation; and Brickell Bay Commercial, LLC, a limited liability company.

RECITALS

WHEREAS, on March 31, 2000, the County and Brickell Bay Plaza, Inc. entered into a contract (the "Agreement") pursuant to which the County agreed to provide water and sewer services for the property known as Brickell Bay Plaza, with the legal description set forth on Exhibit A attached hereto, and in exchange, Brickell Bay Plaza, Inc. agreed to pay various charges to the County, including water and sewer connection charges;

WHEREAS, on September 13, 2004, in accordance with the terms of the Agreement, Brickell Bay Plaza, Inc. paid $905,281.89 in water and sewer connection charges, which amount included payment of the connection charges for 639 apartments and 17,106 square feet of office space;

WHEREAS, in November 2005, Brickell Bay Plaza, Inc. conveyed to Brickell Bay Commercial, LLC ownership of over 70 units within the Brickell Bay Plaza property, each unit conveyed having its own folio number;

WHEREAS, in September 2008, the County discovered that additional water and sewer connection charges were still due for the Brickell Bay Plaza property from either

Brickell Bay Plaza, Inc. or Brickell Bay Commercial, LLC, as the owners of the units at issue within the Brickell Bay Plaza property;

WHEREAS, on October 1, 2008, after attempting unsuccessfully to resolve the dispute as to the additional amount of water and sewer connection charges remaining to be paid, the County filed a lawsuit against Brickell Bay Plaza, Inc. in the Miami-Dade Circuit Court, Case Number 08-58949 CA 27, seeking to collect the additional unpaid water and sewer connection charges owed by Brickell Bay Plaza, Inc. for the units it owns in the Brickell Bay Plaza property;

WHEREAS, the County intends to but has not yet filed a lawsuit in Miami-Dade County Circuit Court against Brickell Bay Commercial, LLC in order to collect the additional unpaid water and sewer connection charges owed by Brickell Bay Commercial, LLC for the units at issue that it owns in the Brickell Bay Plaza property;

WHEREAS, the County, Brickell Bay Plaza, Inc. and Brickell Bay Commercial, LLC wish to amicably resolve all disputes between them with respect to outstanding water and sewer connection charges for the Brickell Bay Plaza property, including those connection charges currently being pursued by the County through Miami-Dade County Circuit Court Case Number 08-58949 CA 27;

THEREFORE, for Ten Dollars ($10.00) and other valuable consideration, the parties have agreed to enter into this Settlement Agreement:

1. **Recitals**: The parties agree that the above recitals are true and correct.

2. **Settlement Consideration**: The parties acknowledge that upon payment by Brickell Bay Plaza, Inc. of $5,410.26, all claims and disputes with respect to the

additional water and sewer connection charges owed as the Effective Date of this Settlement Agreement by Brickell Bay Plaza, Inc. and/or Brickell Bay Commercial, LLC for the Brickell Bay Plaza property shall be dismissed and released. In exchange for Brickell Bay Plaza, Inc.'s payment of $5,410.26, the County agrees to file a Notice of Voluntary Dismissal with Prejudice in Miami-Dade County Circuit Court Case Number 08-58949 CA 27 within seven (7) business days of the County's receipt of payment from Brickell Bay Plaza, Inc. In exchange for Brickell Bay Plaza, Inc.'s payment of $5,410.26, the County also agrees that it will not bring a lawsuit against Brickell Bay Commercial, LLC for unpaid water and sewer connection charges that may have been due as of the Effective Date of this Settlement Agreement.

3. **Joint Statement and Acknowledgement**: The parties wish to jointly acknowledge that, upon Brickell Bay Plaza, Inc.'s payment to the County of $5,410.26, the water and sewer connection charges for the Brickell Bay Plaza property, including but not limited to all units, common areas and limited common elements, will have been fully paid based on the following identified uses and allocated gallonage per day at the Brickell Bay Plaza property, which uses and allocated gallonage per day were accurate as of the Effective Date of this Settlement Agreement:

Table

Identified Use	Allocated Gallons Per Day
643 Residential Apartments	200 GPD/apartment
Office Space- 26,643 sq. feet	10 GPD/100 sq. feet
Gym with showers- 3764 sq. feet	35 GPD/100 sq. feet
Retail Space- 6,284 sq. feet	5 GPD/100 sq. feet

Dry Cleaner- 1155 sq. feet	10 GPD/100 sq. feet
Restaurant- 36 seat	35 GPD/seat
Beauty Salon- 4 chairs, 1651 sq. feet	75 GPD/chair

The parties also wish to jointly acknowledge that, in the event the uses identified in the Table above are changed as to any of Brickell Bay Plaza's units, common areas, and limited common elements, or in the event that there is any increase in the square footage of any of the units, common areas or limited common elements beyond that identified in the Table above, the County has the right to collect any additional water and sewer connection charges due, as a result of those changes or increases, from the owners of the units, common areas or limited common elements, which owners, among others, could include Brickell Bay Plaza, Inc. and/or Brickell Bay Commercial, LLC, in the event that such changes or increases are made by Brickell Bay Plaza, Inc. and/or Brickell Bay Commercial, LLC., their successors or assigns. The parties also jointly acknowledge that, in the event that a tenant of Brickell Bay Plaza, Inc. and/or Brickell Bay Commercial, LLC, their successors or assigns, properly applies with the Miami-Dade Water and Sewer Department (the "Department") for an account for water and sewer service for any of the units, common areas or limited common elements, the Department will be responsible for collecting any additional water and sewer connection charges due for increased use or changes from the tenant itself and will not seek to collect those amounts from Brickell Bay Plaza, Inc. and/or Brickell Bay Commercial, LLC, unless the tenant fails to properly apply for an account with the Department.

4. **Releases**: The execution of this Agreement shall constitute a full and complete release between the County; Brickell Bay Plaza, Inc.; and Brickell Bay Commercial, LLC, with respect to all claims and causes of action that were asserted or could have been asserted against Brickell Bay Plaza, Inc. with respect to the subject matter of Miami-Dade County Circuit Court Case Number 08-58949 CA 27 or which could have been asserted against Brickell Bay Commercial, LLC as of the Effective Date of this Settlement Agreement. The foregoing release shall be understood to also release each and every one of the parties partners, officers, directors, shareholders, employees, members, managers, and lenders, and all of their respective agents, successors and assigns.

5. **Retention of Jurisdiction**: It is agreed between the parties that the Circuit Court Judge in Miami-Dade County Circuit Court Case Number 08-58949 CA 27 shall retain jurisdiction to enforce compliance with the terms of this Settlement Agreement.

6. **No Admission of Liability**: By the execution of this Settlement Agreement, the parties acknowledge and agree that neither party is admitting any liability to the other party with respect to any claims and defenses and that the execution of this Settlement Agreement represents a compromise and settlement of all disputed claims and defenses.

7. **Counterparts**: This Settlement Agreement may be executed in one or more Counterparts, including by fax, with the same effect as if all of the parties had signed the same document. All Counterparts shall be deemed an original, but all Counterparts shall be construed together and shall constitute but one agreement.

8. **Entire Agreement**: This Agreement contains the entire agreement between the parties with respect to the Action and the water and sewer connection charges within the Brickell Bay Plaza property. This Agreement may not be supplemented, changed, or modified except by written agreement signed by all the parties. This Agreement and all of the provisions contained herein shall be binding upon and inure to the benefit of all the parties and their respective successors and any permitted assigns. The parties hereto agree to execute any and all additional documents necessary or appropriate to consummate the transaction contemplated herein.

9. **Own Costs and Fees in Action**: Each Party to this Agreement shall bear its own costs and attorney's fees incurred in connection with the Action.

MIAMI-DADE COUNTY, FLORIDA

Attest:
Harvey Ruvin, Clerk

By: _____
Deputy Clerk

By: _____
County Mayor

Approved as to form and legal sufficiency:

Sarah Gravette Davis
Assistant County Attorney

SIGNATURES CONTINUED ON NEXT PAGE

By: _____
BRICKELL BAY COMMERCIAL, LLC

Printed Name: Jerome Hollo
Title: Member

STATE OF FLORIDA)
) SS
COUNTY OF DADE)

The foregoing instrument was acknowledged before me this 4th day of May, 2009 by Jerome Hollo. He or she is personally known to me or has produced _____ as identification.

My commission expires:

Yoanna Garcia
COMMISSION # DD844983
EXPIRES: MAR. 21, 2013
WWW.AARONNOTARY.com

_____
NOTARY PUBLIC
By:
Print:
State of Florida at Large

By: _____
BRICKELL BAY PLAZA, INC.

Printed Name: Jerome Hollo
Title: V.P.

STATE OF FLORIDA)
) SS
COUNTY OF DADE)

The foregoing instrument was acknowledged before me this 4th day of May, 2009 by Jerome Hollo. He or she is personally known to me or has produced _____ as identification.

My commission expires:

Yoanna Garcia
COMMISSION # DD844983
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_____
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