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OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

Memorandum

MIAMI-DADE COUNTY

Date: September 21, 2010

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. 12(A)(2)

Resolution No. R-961-10

Subject: Settlement and Release Agreement between Miami-Dade County and Biscayne Plaza II, LLC for payment of $9,000 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 Biscayne Plaza II, LLC (Biscayne Plaza) relating to additional water and sewer connection charges totaling $9,000. The settlement agreement amount will settle the County's claim against Biscayne Plaza.

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

Under this settlement and release agreement Biscayne Plaza will pay $9,000 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 of the Miami-Dade Water and Sewer Department (WASD) authorize WASD to collect water and sewer connection charges for new or increased flows of water and/or sewer as measured by gallons per day (gpd).

In February 2008, Biscayne Plaza purchased eleven commercial units located in a 19,550 square foot shopping center at 275 NE 18 Street from the Biscayne & 18 Plaza Corporation. In September 2008, WASD sent a collection letter to Biscayne Plaza for increased gpd usage from two commercial units in Biscayne Plaza. The first unit is a restaurant which augmented their seating capacity from 12 seats to 51 seats thereby increasing flows to 1,765 gpd, the second unit now has two additional doctors with increased flows of 500 gpd. The increased flows began after ownership of the shopping center had changed from Biscayne & 18 Plaza Corporation to Biscayne Plaza, totaling $15,832.35 of connection charges due to the County. From September 2008 to February 2010, WASD unsuccessfully engaged in numerous efforts including site visits to collect the connection charges due to the County. On May 24, 2010, the County Attorney's Office filed a lawsuit against Biscayne Plaza with the 11th Judicial Circuit Court in and for Miami-Dade County in order to collect the outstanding connection charges. After the County filed the lawsuit seeking compensation, WASD recalculated the connection charges owed and determined that the amount due was $8,989.14. Biscayne Plaza and the County, therefore, agreed to the attached settlement agreement in which Biscayne Plaza will pay the County $9,000 in three equal monthly installments. The two $3000 payments under the terms of the settlement agreement have already been made by Biscayne Plaza; the final payment is due on or before October 1, 2010.

Assistant County Manager

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 10-30175 CA 27

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

Plaintiff,

vs.

BISCAYNE PLAZA II, LLC,
a Florida Limited Liability Company,

Defendant.
_____/

STIPULATION OF SETTLEMENT

Plaintiff, Miami Dade County (the "County"), a political subdivision of the State of Florida, and Defendant Biscayne Plaza II, LLC ("Biscayne Plaza"), by and through their undersigned representatives, hereby settle all matters and disputes between them that were the subject of this case, Circuit Court Case No. 10-30175 CA 27 (the "Lawsuit"), upon the following terms and conditions:

1. Biscayne Plaza shall pay the County the amount of $9,000.00, as full and final payment for all claims referred to in the Lawsuit. All parties shall be responsible for their own attorney's fees and costs incurred to date. Biscayne Plaza will make three payments of $3,000.00 to the County to satisfy this obligation. The payments will be made on the schedule set forth in Paragraph 2 below.

2. Contemporaneously with the signing of this Stipulation of Settlement,

Biscayne Plaza shall make payment of $3,000.00 by delivering a check made payable to Miami-Dade Water and Sewer Department. The check shall be delivered to: Sarah E. Davis, Assistant County Attorney, Stephen P. Clark Center, 111 N.W. 1st Street, Suite 2810, Miami, Florida 33128. Biscayne Plaza's second $3,000.00 payment will be made by delivering a check (made out to Miami-Dade Water and Sewer Department) to Sarah E. Davis (at the address above) on or before September 1, 2010. Biscayne Plaza's third and final $3,000.00 payment will be made by delivering a check (made out to Miami-Dade Water and Sewer Department) to Sarah E. Davis (at the address above) on or before October 1, 2010.

3. The County agrees to release any and all claims, including the court costs, against Biscayne Plaza with respect to unpaid water and sewer connection charges for the property located at 275 N.E. 18th Street, Commercial Units CU-7 and CU 10B, Miami, Florida, bearing Folio Numbers 01-3231-059-2020 and 01-3231-059-2050, which are the subject of the Lawsuit.

4. This settlement agreement, and each and every provision herein, shall be subject to the express approval of the Miami-Dade County Board of County Commissioners. This agreement becomes effective eleven (11) days after approval by the Miami-Dade County Board of County Commissioners, unless vetoed by the Mayor. In the event the Mayor vetoes the Commission action, the Commission action shall not be effective in the absence of an override of the Mayor's veto at the next regularly scheduled meeting of the Board after the veto occurs. The actions of the Commission and the Mayor in connection with the approval or rejection of this agreement rests within their sole discretion. In the event the Commission and/or Mayor reject this settlement

agreement, the County will place the money that has been paid by Biscayne Plaza to date in a segregated account until the case has been resolved with the Court.

5. A Notice of Voluntary Dismissal With Prejudice shall be filed by the County within fifteen (15) days of the County's receipt of the entire $9,000.00 from Biscayne Plaza, assuming the settlement has been approved by the Board and Mayor as set forth in Paragraph 4 above before the final payment has been made.

6. Biscayne Plaza's failure to comply with the payment provisions set forth in Paragraphs 1 and 2 above shall entitle the County to: file an affidavit of non-payment, specifying the amount unpaid; furnish a copy of the affidavit to Biscayne Plaza by mail or hand-delivery; and upon the filing and serving of said affidavit, to get a judgment issued after ten (10) days for the amount unpaid without necessity of a further hearing.

7. In the event a dispute arises as to either party's compliance with any terms of this Stipulation other than Paragraphs 1 and 2 above, a party may bring an action to enforce the terms of the Stipulation. In any such enforcement action, the defaulting party shall be required to reimburse the prevailing party for all reasonable fees, expenses and costs of collection incurred in the enforcement proceedings, including reasonable attorneys' fees incurred by the prevailing party.

8. The terms and provisions hereof shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida without regard to conflict of law principals. Venue and jurisdiction shall be Miami-Dade County, Florida for all purposes, to which the parties expressly agree and submit.

9. Nothing in this Stipulation for Settlement shall be construed as an admission of liability by either party.

10. This Stipulation of Settlement constitutes the entire agreement of the parties, and there are no other terms, conditions or representations other than those contained in this written agreement. All prior and contemporaneous agreements, understandings, communications, conditions or representations, of any kind or nature, oral or written, concerning the subject matter expressed herein, are merged into this Stipulation of Settlement, and the terms of this Stipulation of Settlement supersede all such other agreements.

11. This Stipulation of Settlement shall be deemed to be drafted jointly and shall not be construed more or less favorably towards any of the parties by virtue of the fact that one party or its attorney drafted all or any part thereof. Any ambiguity found to exist shall be resolved by construing the terms of this Stipulation of Settlement fairly and reasonably in accordance with the purpose of this Stipulation.

BISCAYNE PLAZA II, LLC, a limited liability company. By: _____ Javier Cervera Managing Member Biscayne Plaza II, LLC 1492 South Miami Ave. Miami, FL 33130 Date: 08/05/2010	MIAMI-DADE COUNTY By: Sarah E. Davis Sarah E. Davis, Esq. Assistant County Attorney Florida Bar No. 125652 County Attorney's Office Stephen P. Clark Center 111 NW 1st Street, Suite 2810 Miami, FL 33128 Date: 8/5/10

Attest:
Harvey Ruvin, Clerk

By: _____
Deputy Clerk

MIAMI-DADE COUNTY
By Its Board of County Commissioners

By: _____
County Mayor

Approved as to form
legal sufficiency:

Sarah E Gallieta Davis
Assistant County Attorney

The County filed a complaint against Biscayne Plaza II, LLC to collect unpaid water and sewer connection charges for increased water allocation necessary for a doctor's office at the property and increased seating at one of the restaurants which were owed to the Water and Sewer Department. The original amount owed was $15,832.35.

The lawsuit was settled for $9,000.00 (pending Board approval) after negotiation and some adjustment to the Department's calculations. Biscayne Plaza will make three $3,000 payments-the first of which has already been made.

The parties have entered into a Stipulation of Settlement, and after all payments have been made, the County will voluntarily dismiss the case.

MEMORANDUM
(Revised)

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

DATE: September 21,2010

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

SUBJECT: Agenda Item No. 12(A)(2)

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**

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

✓ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) 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. 12(A)(2)
9-21-10

RESOLUTION NO. R-961-10

RESOLUTION AUTHORIZING EXECUTION OF A STIPULATION OF SETTLEMENT BETWEEN BISCAYNE PLAZA II, 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 approves the settlement of litigation styled Miami-Dade County vs. Biscayne Plaza II, LLC., Case No. 10-30175 CA 27, in accordance with the Stipulation of Settlement attached hereto, in the amount of $9,000.00 to settle payment of water and sewer connection charges; and authorizes the 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	**aye**	Audrey M. Edmonson	**absent**
Carlos A. Gimenez	**aye**	Sally A. Heyman	**aye**
Barbara J. Jordan	**aye**	Joe A. Martinez	**aye**
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 21st day of September, 2010. 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

Sarah E. Davis