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OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

Memorandum

MIAMI-DADE COUNTY

Agenda Item No. 12(A)(2)

Resolution No. R-51-11

Date: January 20, 2011

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

From: George M. Burgess, County Manager
R. A. Cuevas, Jr., Miami Dade County Attorney

Subject: Resolution approving the Second Amendment to the Naranja Lakes Redevelopment Agreement and Settlement Agreement of the Lawsuit between Miami-Dade County, Naranja Lakes Construction LLC and Solo Construction Corporation.

Recommendation
It is recommended that the Board of County Commissioner (BCC) adopt the accompanying resolution to: (1) adopt the Second Amendment to the Naranja Lakes Redevelopment Agreement and (2) authorize the execution of the attached settlement agreement between Miami-Dade County, Naranja Lakes Construction LLC, and Solo Construction Corporation.

Scope
This item adopts the Second Amendment to the Naranja Lakes Redevelopment Agreement and the settlement agreement between Miami-Dade County, Naranja Lakes Construction LLC, and Solo Construction Corporation.

Fiscal Impact/Funding Source
This item has no fiscal impact, the Second Amendment to the Redevelopment Agreement moves two projects between Phase I and Phase II. The settlement agreement does not require the County to disburse any additional funding to the contractor.

Track Record/Monitor
The Office of Strategic Business Management will monitor the Redevelopment Agreement. The County Attorney's Office will monitor the settlement agreement.

Background
On May 6, 2003, the BCC approved the establishment of the Naranja Lakes Community Redevelopment Agency (the "CRA") when it approved the CRA's Redevelopment Plan (Plan) pursuant to Resolution R-418-03 and the funding of the Plan when it enacted Ordinance No. 03-106 (Trust Fund). An Interlocal Agreement between Miami-Dade County and the CRA was approved by the BCC on July 22, 2003 governing the administration of the CRA and the execution of the Plan. On September 9, 2003, the BCC adopted Resolution R-941-03, approving a Redevelopment Agreement ("Redevelopment Agreement") between the County, the CRA and Naranja Lakes Construction, LLC, Naranja Lakes Holdings, LLC, and Naranja Lakes Holdings II, LLC (collectively "Naranja Lakes") to stimulate the redevelopment of a certain property known as the Naranja Lakes Community Redevelopment Area (the "Project"). Pursuant to the Redevelopment Agreement, the CRA would provide funding to Naranja Lakes for the Project and in turn Naranja Lakes would select and hire the architects, engineers, and contractors necessary to complete the design and construction of the Project. The maximum amount of the funding approved for the entire Redevelopment Agreement was $17,745,355.75. The Redevelopment Agreement was divided into two phases, Phase I was capped at $10,613,062.37 and Phase II was capped at $7,132,293.38. In 2004 and 2005, Naranja Lakes entered into two contracts with Solo Construction Corporation ("Solo") to construct the Project. On November 27, 2007, Naranja Lakes terminated the contract with Solo Construction upon Naranja Lakes' rejection

of Solo's request for additional costs to complete the contracted work and Solo's failure to start the construction of work for the agreed upon and contracted price.

The Phase I improvements of the Redevelopment Agreement consisted mostly of roadway improvements, water and sewer lines, landscape and mini parks. The projects associated with Phase I are Canal Street and Naranja Lakes Boulevard Extension, Canal Street Bridge, SW 140th Avenue, SW 143rd Avenue, SW 272nd Street and SW 280th Street. All of the items in Phase I are substantially complete with the exception of the two items being moved to Phase II which consist of a park and a small roadway around a future park. The items being moved to Phase II are geographically located where Phase II of the Mandarin Lakes Project is to be built, therefore until residential units are constructed on that location, those improvements will not be utilized. One item from Phase II which was moved to Phase I consisting of improvements to SW 280th Street in the amount of $271,331. This item was located where the Phase I of the Mandarin Lakes Project was built and therefore made sense to be constructed at the same time as the other Phase I improvements. The value of the work being moved to Phase II is valued at $314,463.06, the value of the work being moved from Phase II to Phase I is $271,331. The work being moved to Phase II in the amount of $314,463.06 has not been ordered nor paid for. The value of the work ordered and completed as part of Phase I is $10,533,966 which is inclusive of $182,864.12 in retainage that remains to be paid. The total maximum guaranteed price of the project at $17,745,355.75 will not change, however the Phase I maximum price will be adjusted to $10,569,930.31 and the Phase II maximum price will be adjusted to $7,175,425.44.

As part of this Second Amendment the parties will also attempt to negotiate new milestones and other terms for the Redevelopment Agreement. In the event that the parties are unable to agree on a new Amended Redevelopment Agreement within 6 months, the parties shall have no obligation to pursue Phase II of the Redevelopment Agreement. Since the work for Phase I has been substantially complete, the County, in exchange for the appropriate releases of claims and liens, will release the Letter of Credit that is currently in place for Phase I issued by Naranja Lakes in lieu of a payment and performance bond for the Project. Naranja Lakes will not perform any work or enter into any construction contracts related to Phase II without first having provided the County with a form of security, such as a Payment and Performance Bond, acceptable to the County and in compliance with Section 255.05 of the Florida Statutes.

In 2009, Solo filed a lawsuit against Naranja Lakes and the County seeking damages based on unpaid invoices in excess of $2 million. In the same year, in response to the County's request, Solo certified its claim, as to the County only, in the amount of $715,988.65. The County denies that it is liable to Solo for any of these alleged damages. The parties have agreed to settle the case by having Naranja Lakes pay the sum of $400,000 directly to Solo. The County is not making any payments to any of the parties as part of this settlement.

Jennifer Glazer-Moon
Special Assistant/Director
Office of Strategic Business Management

cmo03011

MEMORANDUM
(Revised)

TO: Honorable Chairman Joe A. Martinez and Members, Board of County Commissioners

DATE: January 20, 2011

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**

3

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 12(A)(2)
1-20-11

RESOLUTION NO. R-51-11

RESOLUTION APPROVING THE SECOND AMENDMENT TO THE NARANJA LAKES REDEVELOPMENT AGREEMENT AND AUTHORIZING THE SETTLEMENT AGREEMENT OF THE LAWSUIT BETWEEN SOLO CONSTRUCTION CORPORATION, NARANJA LAKES CONSTRUCTION LLC, AND MIAMI-DADE COUNTY

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 second amendment to the Naranja Lakes Redevelopment Agreement and authorizes the Mayor or designee to execute the attached settlement agreement between Solo Construction Corporation, Naranja Lakes Construction LLC, and Miami-Dade County, in substantially the form attached hereto and incorporated herein.

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

Joe A. Martinez, Chairman	aye		
Audrey M. Edmonson, Vice Chairwoman	absent		
Bruno A. Barreiro	aye	Lynda Bell	aye
Jose "Pepe" Diaz	aye	Carlos A. Gimenez	aye
Sally A. Heyman	absent	Barbara J. Jordan	absent
Jean Monestime	aye	Dennis C. Moss	aye
Natacha Seijas	absent	Rebeca Sosa	aye
Sen. Javier D. Souto	aye		

The Chairperson thereupon declared the resolution duly passed and adopted this 20th day of January, 2011. 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.

Daniel Frastai

SECOND AMENDMENT TO REDEVELOPMENT AGREEMENT

THIS SECOND AMENDMENT TO THE REDEVELOPMENT AGREEMENT ("Second Amendment") dated as of , 20___, is entered into by and between the **NARANJA LAKES COMMUNITY REDEVELOPMENT AGENCY** (the "CRA"), an entity created pursuant to the Community Redevelopment Act of 1969, Part III of Chapter 163, Florida Statutes (the "Act"), **MIAMI-DADE COUNTY,** a political subdivision of the State of Florida., (the "County"), **NARANJA LAKES CONSTRUCTION, LLC,** a Florida limited liability company, or such other successor developer selected by the Owner and approved by the County in accordance with applicable law, (the "Developer"), **NARANJA LAKES HOLDINGS, LLC,** a Florida limited liability company ("NLH"), **NARANJA LAKES HOLDINGS II, LLC,** a Florida limited liability company ("NLH II"), and **D.R. HORTON, INC.,** a Delaware corporation ("Horton") (NLH, NLH II and Horton are hereinafter collectively referred to as the **"Owner").**

RECITALS

I. The CRA, County, Developer NLH, and NLH II entered into that certain Redevelopment Agreement recorded January 8, 2004 in Official Records Book 21959, Pages 4169 through 4300 of the Public Records of Miami-Dade County ("Agreement"), with respect to the Property (as defined in the Redevelopment Agreement) and as more particularly described on Exhibit "A" attached hereto and by this reference made a part of this Second Amendment.

II. The parties desire to amend the Agreement in certain respects as set forth in this Second Amendment.

NOW, THEREFORE, in consideration of the mutual covenants described above and the agreements contained below, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. INCORPORATION OF RECITALS

The recitations set forth in the foregoing recitals are material to this Second Amendment and are incorporated into and made a part of this Second Amendment as though they were fully set forth in this Section 1.

2. SECOND AMENDMENT CONTROLS; DEFINED TERMS

In the event of any conflict between the terms and conditions of this Second Amendment and the Agreement, it is agreed that the terms and conditions of this Second Amendment shall control. Any defined terms not defined in this Second Amendment shall have the meaning ascribed to them in the Agreement and First Amendment. All references herein to "this Agreement" shall include this Second Amendment of the Agreement.

3. RATIFICATION

Except as set forth in this Second Amendment, all other terms and provisions of the Agreement and the First Amendment shall remain unmodified and in full force and effect and the parties hereby ratify the terms and conditions set forth in the Agreement.

4. MASTER PLAN OF IMPROVEMENTS

For all intents and purposes under the Agreement, the Owner shall, jointly and severally, consist of Naranja Lakes Holdings, LLC, Naranja Lakes Holdings II, LLC and Horton, subject to any further conveyance of the Property or any portion thereof and the application of Section 14.08 (Successors and Assignees) and Section 14.14 (Covenants Running with the Land) of the Agreement.

The parties agree that as part of this amendment the improvements in Exhibit "B" which are currently part of Phase 1 improvements, will be moved to Phase 2. As noted in Exhibit "B", Item C – Canal Street – Naranja Lakes Blvd. project in the amount of $263,607.53 and Item "D" Canal Street Bridge, Green and Pathways in the amount of $50,855,41, for a total of $314,462.94 will be moved to Phase 2.

The parties agree that as part of this amendment the improvements in listed in Exhibit "C" that are currently part of Phase II improvements, will be moved to Phase 1. As noted in Exhibit "C" Item G SW 280th Street in the amount of $271,331 will be moved and made part of Phase 1 improvements.

5. DESIGN AND CONSTRUCTION

5.01 Section 4.02(a) of the Agreement is amended by deleting the last two sentences and replacing them with the following:

"The guaranteed maximum price for Phase I of the CRA Project is Ten Million Five Hundred Sixty Nine Thousand Nine Hundred and Thirty and 31/100 Dollars ($10,569,930.31) (the "Phase I GMP"). The guaranteed maximum price for Phase II of the CRA Project is Seven Million One Hundred and Seventy Five Thousand Four Hundred and Twenty Five and 44/100 Dollars ($7,175,425.44) (the "Phase II GMP")."

5.02 The parties acknowledge and agree that the GMP of Seventeen Million Seven Hundred Forty-Five Thousand Three Hundred Fifty-Five and 75/100 Dollars ($17,745,355.75) shall remain unchanged.

6. RENEGOTIATION OF REDEVELOPMENT AGREEMENT

The CRA, County and Developer agree to attempt to renegotiate the Redevelopment Agreement in order to remove certain milestones and make certain adjustments to Phase 2. Should the parties fail to agree on a new amended Redevelopment Agreement with new milestones on or before July 1, 2011, the parties agree to delete Phase 2, and any other obligations from the

Redevelopment Agreement, and to release each other from any obligations in connection with Phase 2.

7. PROJECT REQUIRED SECURITY

The Developer shall not enter into any contract for construction or perform any work on any improvement associated with the Redevelopment Agreement until after it has provided the County with a form of security, such as a Payment and Performance Bond, that is acceptable to the County and is in compliance with Section 255.05 of the Florida Statutes.

8. PARTIES

This amendment shall be binding upon any and all parties to have executed this amendment by signing below.

IN WITNESS WHEREOF, the parties hereto have caused this Second Amendment to be executed on or as of the day and year first above written.

NARANJA LAKES COMMUNITY REDEVELOPMENT AGENCY

By:_____
Kenneth Forbes, Acting Chairperson

Approved as to legal form and sufficiency

By:_____
Agency Attorney

MIAMI-DADE COUNTY FLORIDA

By:_____
County Mayor or Designee

By:_____
Deputy Clerk

Approved as to legal form and sufficiency

By:_____
County Attorney

NARANJA LAKES CONSTRUCTION, LLC, a Florida limited liability company

By: HAV, LLC, a Florida limited liability company, its Sole Member

By:_____

George de Guardiola, its President

NARANJA LAKES HOLDINGS, LLC, a Florida limited liability company

By: HAV, LLC, a Florida limited liability company, its Sole Member

By:_____

George de Guardiola, its President

NARANJA LAKES HOLDINGS II, LLC, a Florida limited liability company

By: HAV, LLC, a Florida limited liability company, its Sole Member

By:_____

George de Guardiola, its President

EXHIBIT "A-1"

LEGAL DESCRIPTION OF THE PROPERTY

Tracts 12, 13, 14, 15, 16, and 17 of NARANJA LAKES SECTION ONE, according to the plat thereof, as recorded in Plat Book 91, Page 7, of the Public Records of Miami-Dade County, Florida.

Tracts 18, 19, 20, 21 22, and 23, and Lots 1 through 4, inclusive, of Block 1, Lots 1 through 8, inclusive, of Block 2, and Lots 1 through 15, inclusive, of Block 3, of NARANJA LAKES SECTION TWO, according to the plat thereof, as recorded in Plat Book 92, Page 64, of the Public Records of Miami-Dade County, Florida.

EXHIBIT "A-2"

D.R. HORTON PROPERTY

Tracts 20 and 21, and Lots 1 through 8, inclusive of Block 2 and Lots 1 through 15, inclusive of Block 3, of NARANJA LAKES SECTION TWO, according to the Plat thereof, as recorded in Plat Book 92, Page 64, of the Public Records of Miami-Dade County, Florida.

Tracts 22 and 23 of NARANJA LAKES SECTION TWO, according to the Plat thereof, as recorded in Plat Book 92, Page 64, of the Public Records of Miami-Dade County, Florida

EXHIBIT B

Item "C" - Canal Street - Naranja Lakes Blvd.

ITEM	DESCRIPTION OF WORK	QUANTITY	UNIT	UNIT PRICE	ITEMS WEST OF 145TH MOVE TO PHASE II QUANTITY	AMOUNT
	Item "C" - Canal Street - Naranja Lakes Blvd.					
1	CONN. TO 8" GATE VALVE @ NARANJA LAKES BLV.					$ 1,518.78
2	CONN. TO EXIST 12" WLM @ SW 145 AVE					$ 3,208.66
3	12" D.I.P.					$ 23,353.40
4	6" D.I.P.					$ 1,058.40
5	12" GATE VALVE					$ 3,007.49
6	8" GATE VALVE					$ 13,845.72
7	6" GATE VALVE					$ 1,574.88
8	FIRE HYDRANT					$ 7,782.48
9	12" x 8" CROSS					$ 737.95
10	12" 45 DEGREE BEND					$ 1,343.76
11	8" CROSS					$ 61.28
12	8" TEE					$ 1,323.54
13	8" x 6" TEE					$ 537.88
14	8" 45 DEGREE BEND REST.					$ 1,657.91
15	8" x 2" CAP W/2" F.V.O					$ 3,826.28
16	1" SINGLE SERVICE					$ 1,973.64
17	EXF. TR. W/18" CMP (HDPE)					$ 7,506.98
18	VGI (42")					$ 1,175.65
19	P6 (42")					$ 7,272.35
20	CONN. TO MH 39					$ 2,599.08
21	8" SDR35 PVC (6' - 8')					$ 12,751.26
22	10" SDR35 PVC (12' - 14')					$ 4,901.44
23	10" D.I.P. (14' - 16')					$ 30,917.94
24	12" D.I.P. (14' - 16')					$ 13,416.95
25	MH (14' - 16')					$ 11,127.00
26	REMOVE & DISPOSE EXIST.					$ 732.20
27	SUBGRADE	10,700	SY	$ 1.21		$ 1,869.50
28	8" BASEROCK	8,982	SY	$ 8.78		$ 2,084.05
29	1-1/2" A.C.S.C. (2 LIFTS)	8,350	SY	$ 6.96		$ 12,503.55
30	TYPE "F" CURB & GUTTER	3,600	LF	$ 9.78		$ 10,816.61
31	TYPE "D" CURB (6" x 12")	2,350	LF	$ 9.68		$ 5,991.20
32	VALLEY GUTTER	2,850	LF	$ 8.83		$ 1,488.98
33	SIDEWALK (4")	34,700	SF	$ 2.32		$ 322.39
34	SIDEWALK (6")	2,600	SF	$ 3.08		$ 1,821.70
35	MEDIAN CONCRETE (4")	280	SF	$ 2.72		$ 761.60
36	CONCRETE DRIVEWAY (6")	1,350	SF	$ 3.50		$ 1,863.30
37	TRAFFIC CONTROL					$ 2,707.42
38	DENSITIES					$ 262.27
39	SURVEYING					$ 4,689.08
	LANDSCAPE & IRRIGATION					
40	IRRIGATION					$ 10,233.15
41	FOXTAIL PALM	16	EA	$ 384.20	16	$ 6,147.20
42	LANTANA	232	EA	$ 4.17	232	$ 967.44
43	SOD	511	SY	$ 2.02	511	$ 1,031.72
44	GENERAL CONDITIONS				4	$ 33,253.30
45	MOT					$ 5,580.17
	PROPOSED ITEM "C" - TOTALS:					**$ 263,607.53**

Item "D" - Canal Street Bridge, Green and Pathways

ITEM	DESCRIPTION OF WORK	QUANTITY	UNIT	UNIT PRICE	ITEMS WEST OF BRIDGE MOVE TO PHASE II	
					QUANT.	AMOUNT
	Item "D" - Canal Street Bridge, Green and Pathways					
	LANDSCAPE & IRRIGATION				0.36	$ 10,716.44
1	IRRIGATION	6	EA	$ 167.25	6	$ 1,003.50
2	MAHOGANY	14	EA	$ 208.17	14	$ 2,914.38
3	YELLOW TRUMPET TREE	6	EA	$ 149.51	6	$ 897.06
4	ROYAL POINCIANA	1	EA	$ 150.25	1	$ 150.25
5	PAUROTIS PALM	13	EA	$ 384.20	13	$ 4,994.60
6	FOXTAIL PALM	200	EA	$ 8.67	200	$ 1,734.00
7	CROTON	210	EA	$ 7.90	210	$ 1,659.00
8	CROWN OF THORNS	740	EA	$ 3.02	740	$ 2,234.80
9	AZTEC GRASS	320	EA	$ 2.48	320	$ 793.60
10	LIRIOPE	58	EA	$ 7.92	58	$ 459.36
11	RED TAWAIN DWARF	412	EA	$ 2.63	412	$ 1,083.56
12	PURPLE QUEEN	190	EA	$ 9.47	190	$ 1,799.30
13	XANADU	120	EA	$ 7.94	120	$ 952.80
14	VAR. SCHEFFLERA	1,980	SY	$ 2.02	1980	$ 3,999.60
15	SOD	6	EA	$ 178.00	6	$ 1,068.00
16	TRASH RECEPTACLES	8	EA	$ 462.00	8	$ 3,696.00
17	BENCH	2	EA	$ 620.00	2	$ 1,240.00
18	BIKE RACKS	759	LF	$ 3.24	759	$ 2,459.16
19	PATHS AND SIDEWALKS					$ 7,000.00
20	GENERAL CONDITIONS					
	PROPOSED ITEM "D" - TOTALS:					**$ 50,855.41**

EXHIBIT C

SW 280 Street Improvements

ITEM	DESCRIPTION OF WORK	SCHEDULED VALUE
77	PCO #3 SEWER	$67,274.00
78	PCO #3 WATER	$61,045.00
79	PCO #3 DRAINAGE	$41,865.00
86	LANDSCAPING	$15,000.00
84	ROADWAY 140TH AVENUE	$86,147.00
	TOTAL	**$271,331.00**

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (the "Agreement") is made and entered into as of the Effective Date of this Agreement as defined below by and among Miami-Dade County, Florida, a political subdivision of the State of Florida (the "County"); Naranja Lakes Construction, L.L.C., Naranja Lakes Holdings, L.L.C., Naranja Lakes Holdings II, LLC (collectively "Naranja Lakes"); and Solo Construction Corporation ("Solo") (collectively, the "Parties").

BACKGROUND

WHEREAS, in 2003, the County entered into a Redevelopment Agreement ("Redevelopment Agreement") with the Naranja Lakes Community Redevelopment Agency (the "CRA") and Naranja Lakes to stimulate the redevelopment of a certain property known as the Naranja Lakes Community Redevelopment Area (the "Project");

WHEREAS, pursuant to the Redevelopment Agreement, the County would provide a certain amount of funding to Naranja Lakes for a portion of the Project on behalf of the CRA and in turn Naranja Lakes would select and hire the architects, engineers, and contractors necessary to complete the design and construction of the Project;

WHEREAS, in 2004 and 2005, Naranja Lakes entered into two contracts (hereinafter the "Subcontracts") with Solo to perform a portion of the construction work on the Project; and

WHEREAS, in 2009, Solo filed a Lawsuit against Naranja Lakes and Miami-Dade County in connection with the Subcontracts and the Project in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida (the "Court"), Case No. 09-55762 CA 27, (the "Lawsuit"); and

WHEREAS, Naranja Lakes is providing the County with releases of claims and liens from all of the contractors, subcontractors, and materialmen for all work or labor performed on and all material or equipment supplied to the Project in the last 12 months; and

WHEREAS, the Parties desire to enter into this Agreement in order to effect a full, complete, and final settlement of all claims or disputes, whether asserted or not, related to the Lawsuit, the Project, and the Redevelopment Agreement, with the exception of any Phase 2 work and certain Phase 1 work being descoped from Phase 1 and added to Phase 2 (see work in the attached Exhibit A).

AGREEMENT

NOW, therefore, in consideration of the mutual promises contained herein and intending to be legally bound, the Parties agree as follows:

1. **Effective Date:** This Agreement becomes effective after the Board of County Commissioners of Miami-Dade County, Florida (the "BCC") approves the Second Amendment to the Redevelopment Agreement and this Settlement Agreement and either (1) the time period for veto by the Mayor of the County expires without the exercise of that veto, or, if

exercised, (2) the BCC overrides any such veto by the Mayor of the County (the "Effective Date") and binding on all Parties after all of the obligations in paragraph #2 titled Closing have been performed.

2. **Closing:** The parties shall hold a Closing at a place, date and time mutually agreeable to all of the parties within seven business (7) days of the Effective Date of this Agreement, to simultaneously exchange the items listed below. In the event that any of the items is not complied with this Settlement Agreement shall become null and void and the parties shall be free to pursue the Lawsuit.

a. Since all of the Project's Phase I work has either been completed or is being descoped from Phase I and added to Phase II, the County shall issue a release of the Letter of Credit that was posted by Naranja Lakes in connection with the Redevelopment Agreement and currently in place for this Project in the amount of two million, four hundred and ninety four thousand, three hundred and thirty-three dollars 63/00 ($2,494,333.63);

b. Naranja Lakes agrees that because upon the release of the Letter of Credit there will not be any form of security in place, Naranja Lakes shall not perform any work whatsoever on the Project including any work related to Phase II unless and until it provides a form of security to the reasonable satisfaction of the County and in compliance with Section 255.05 of the Florida Statutes and;

c. Naranja Lakes shall provide a check payable to the Trust Account of Elder & Lewis, P.A., in the sum of Four Hundred Thousand ($400,000.00) Dollars which shall not be released to Solo until and unless the court enters the Order Of Dismissal provided immediately below.

d. Naranja Lakes shall provide to the County releases of claims and liens from all of the contractors, subcontractors, and materialmen for all work or labor performed on and all material or equipment supplied to the Project in the last 12 months. A copy of a sample acceptable release is attached to this Agreement as Exhibit B.

e. Solo shall provide final Releases from its subcontractors and materialmen on this project to the Parties, and remain responsible for claims of laborers, and shall also furnish a copy of a signed Notice of Dismissal with Prejudice of the Lawsuit providing that the Lawsuit should be dismissed in its entirety with prejudice, with each side to bear its own attorneys' fees and costs, and with the Court reserving jurisdiction for the purpose of enforcing this Agreement in accordance with Rule 1.420 of the Florida Rules of Civil Procedure, along with a proposed Order of Dismissal With Prejudice. Solo shall file this Notice and the proposed Order with the Court within two (2) business days of the date of the closing.

3. **Release of Solo and Naranja Lakes by the County:** In consideration of the agreements by Solo and Naranja Lakes as set forth in this Agreement and effective upon the completion of all of the conditions of the Closing, the County releases and forever discharges Solo and Naranja Lakes of and from any and all claims, liabilities, causes of action, damages, and costs of every kind and nature whatsoever which the County has, whether asserted or not, related

to the Lawsuit, the Project, and/or the Redevelopment Agreement. Notwithstanding the foregoing, the County expressly excludes from the effect of this Release and does not release Solo and Naranja Lakes from the terms and conditions of this Settlement Agreement. Furthermore, the County does not release Naranja Lakes from: (1) any claims related to latent defects or warranties, (2) any claims related to the work that is being descoped from Phase I and added to Phase II that is described in the attached Exhibit A in the amount of $314,462.94, and (3) any claims related to Phase 2 of the Redevelopment Agreement.

4. **Release of Solo, the CRA and the County by Naranja Lakes:** In consideration of the agreements by Solo and the County as set forth in this Agreement and effective upon the completion of all of the conditions of the Closing, Naranja Lakes releases and forever discharges Solo, the CRA and the County of and from any and all claims, demands, liabilities, actions, causes of action, damages, and costs, of every kind and nature whatsoever which Naranja Lakes has, whether asserted or not, that are related to the Lawsuit, the Project, and/or the Redevelopment Agreement. Notwithstanding the foregoing, Naranja Lakes expressly excludes from the effect of this Release and does not release Solo and the County from the terms and conditions of this Settlement Agreement. Furthermore, Naranja Lakes does not release the County from: (1) any defenses it may have related to latent defects or warranties, (2) any claims related to the work that is being descoped from Phase I and added to Phase II that is described in the attached Exhibit A in the amount of $314,462.94, and (3) and any claims related to Phase 2 of the Redevelopment Agreement.

5. **Release of the CRA, the County and Naranja Lakes by Solo:** In consideration of the agreements by the County and Naranja Lakes as set forth in this Agreement and effective upon the completion of all of the conditions of the Closing, Solo releases and forever discharges the CRA, the County and Naranja Lakes of and from any and all claims, demands, liabilities, actions, causes of action, damages, and costs, of every kind and nature whatsoever which Solo has, whether asserted or not, that are related to the Lawsuit, the Project, and/or the Redevelopment Agreement. Notwithstanding the foregoing, Solo expressly excludes from the effect of this Release and does not release the County and Naranja Lakes from the terms and conditions of this Settlement Agreement.

6. **Costs and Fees:** The Parties agree to be responsible for their own attorneys' fees, costs, and expenses incurred in connection with their dispute, the Lawsuit, and this Agreement, except for any fees, costs, and expenses incurred in connection with seeking the enforcement or interpretation of this Agreement by the Court.

7. **No Admission of Liability:** It is expressly understood and agreed that this Agreement constitutes a compromise of disputed claims. This Agreement is not, and shall not be construed as, an admission of guilt, fault, or liability on behalf of any party. Rather, the Parties have entered into this Agreement solely for the purpose of reaching a compromise and avoiding the expense and uncertainty of litigation and have relied on their own judgment in entering into this settlement and not on any representations of the other party.

8. **Authority; No Prior Assignment:** The Parties warrant and represent that they are fully entitled and duly authorized to give the releases contained herein, and that they

have not assigned, granted, conveyed or transferred any of the rights or causes of action released herein to any other party, including any of the Parties listed herein, and that they have not relied upon any representation, promise, or statement made by anyone which is not recited, contained or embodied in this Agreement. Each of the signatories hereto represents and warrants that he or she is duly authorized to execute this Agreement on behalf of such party.

9. **Representation of Comprehension of Document:** In entering into this Agreement, the Parties represent that they have relied upon the legal advice of their attorneys, who are the attorneys of their own choice, and that the terms of this Agreement have been completely read and explained to them by their attorneys and these terms are fully understood and voluntarily accepted by them. Notwithstanding the identity of the drafters of this Agreement, the Parties agree that there will be no presumption against any Party arising out of or relating to the identity of such draftspeople.

10. **Notices:** All notices, demands, requests, offers or responses permitted or required to be given under this Agreement shall be deemed sufficient if mailed by registered or certified mail, postage prepaid, addressed to:

a. If to the County, to:

Director
Office of Strategic Business Development (OSBM)
111 NW 1st, Suite XXXX
Miami, Florida 33128

With a copy to:

Office of the County Attorney
c/o Daniel Frastai, Esquire
Assistant County Attorney
111 N.W. 1st Street, Suite 2800
Miami, FL 33128

b. If to Naranja Lakes, to:

George deGuardiola
5500 Military Trail, #22-356
Jupiter, Florida 33458

With a copy to:
Aballi Milne Kalil, P.A.
c/o Craig P. Kalil, Esq.
2250 SunTrust International Center
One Southeast Third Avenue

Miami, Florida 33131

c. If to Solo, to:

Mr. Randy Pierson
Solo Construction Corporation
3855 Commerce Parkway
Miramar, FL 33025

With a copy to:

Elder & Lewis, P.A.
c/o David R. Elder, Esq.
1500 San Remo Avenue
Suite 214
Coral Gables, FL 33146

11. **Governing Law and Venue:** This Agreement shall be enforceable and construed according to the laws of the State of Florida without regard to its conflict of laws provisions. The Parties agree that any action to enforce this Agreement shall be brought in the Court in the Lawsuit.

12. **Complete Agreement:** This Agreement and the exhibits thereto constitute the complete and entire Agreement between the Parties relating to the Lawsuit. All prior agreements, negotiations, correspondence, proposals, prior documents, and any verbal understandings regarding the Lawsuit are merged into this Agreement, which shall supersede any provision of any agreement inconsistent with the terms of the Agreement. The terms of this Agreement may not be modified, supplemented, or waived except by a writing signed by the Parties.

13. **Severability:** If any term or provision of this Agreement, other than Sections 1, 2, 3, 4, and 5, of this Agreement, shall be deemed or declared by a court of competent jurisdiction to be invalid or unenforceable, in whole or in part, it shall be severed herefrom, and the remaining provisions of this Agreement shall remain in effect and enforceable.

14. **Binding Effect:** This Agreement shall be binding upon and inure to the benefit of the Parties, their affiliates, representatives, agents, shareholders, members, licensees, employees, investors, trustees, parent and subsidiary corporations or related entities, successors in interest and/or assigns, and any and all others acting by or through them or under their direction and control, including but not limited to all persons or entities that may attempt to make a claim through the Parties.

15. **Enforcement Costs and Fees:** In the event one of the Parties brings suit to enforce or interpret any provisions of this Agreement, or is required to defend any action or proceeding, the defense of which is based upon any provision of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred in connection with any such action or proceeding.

16. **Further Action**: Each of the Parties hereto agrees to execute and deliver all documents, provide all information and take or forbear from all such action as may be reasonable necessary or appropriate to achieve the purposes of this Agreement.

17. **Counterparts:** This Agreement may be executed in separate counterpart originals, and facsimile, photocopy, or PDF signatures shall be considered as original signatures for all purposes.

IN WITNESS WHEREOF, the Parties have duly authorized and caused this Agreement to be executed effective as of the Effective Date.

MIAMI-DADE COUNTY, FLORIDA

By: _____

Title: _____

Date: _____

NARANJA LAKES CONSTRUCTION LLC, NARANJA LAKES HOLDINGS LLC, AND NARANJA LAKES HOLDINGS II LLC

By: _____

Title: _____

Date: _____

SOLO CONSTRUCTION CORPORATION

By: _____

Title: PRESIDENT

Date: 11/29/10

IN WITNESS WHEREOF, the Parties have duly authorized and caused this Agreement to be executed effective as of the Effective Date.

MIAMI-DADE COUNTY, FLORIDA

By: _____

Title: _____

Date: _____

NARANJA LAKES CONSTRUCTION, LLC, a Florida limited liability company

By: HAV, LLC, a Florida limited liability company, its Sole Member

By: _____

George de Guardiola, its President

NARANJA LAKES HOLDINGS, LLC, a Florida limited liability company

By: HAV, LLC, a Florida limited liability company, its Sole Member

By: _____

George de Guardiola, its President

NARANJA LAKES HOLDINGS II, LLC, a Florida limited liability company

By: HAV, LLC, a Florida limited liability company, its Sole Member

By: _____

George de Guardiola, its President

SOLO CONSTRUCTION CORPORATION

By: _____

Title: _____

Date: _____

AFFIDAVIT AND FINAL RELEASE

KNOW ALL MEN BY THESE PRESENTS that the undersigned, having undertaken with NARANJA LAKES CONSTRUCTION CORPORATION (hereinafter "Developer") to perform part of the Developer's work or furnish labor, materials or equipment to the Developer to be used in performing part of the Developer's work on the NARANJA LAKES PRIMARY REDEVELOPMENT PROJECT NO. NLC-400 (the "Job") hereby certifies, affirms and acknowledges that the Developer has paid the full amount due and payable to the undersigned for all work or labor performed and all material or equipment supplied through the date of the signing of this affidavit; and (2) in consideration of the receipt of payment made to the Contractor, which is hereby acknowledged, the undersigned specifically releases any and all liens, claims and demands, including bond rights, which the undersigned has by contract, at law or in equity against the Developer, Miami-Dade County, and the Naranja Lakes Community Redevelopment Agency that is related to the Job through the date set forth below.

IN WITNESS THEREOF, THE UNDERSIGNED has caused this Affidavit and Final Release to be executed and sealed this ____ day of _____, 20___.

(CORPORATE SEAL)

_____
Name of undersigned corporation or entity

By:_____
Signature of Officer, Partner, or Owner

_____
Title

Signed, Sealed And Delivered in the presence of
State of _____
County of _____

On this _____ day of _____, 20__, before me, a Notary Public, in aforesaid County, personally appeared _____, the _____ of _____ who acknowledged that he/she executed the above Affidavit and Final Release on behalf of the Corporation or Entity as its free act and deed.

Notary Public:_____ My Commission Expires:_____