

MEMORANDUM

Agenda Item No. 13(A)(4)

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

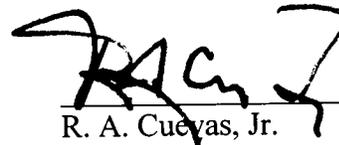
DATE: July 19, 2011

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

SUBJECT: Resolution approving
settlement between Country
Club of Miami & Associates
and Miami-Dade County in
the amount of \$430,000.00
relating to construction
connection charges for water
and sewer facilities

Resolution No. R-630-11

The accompanying resolution was prepared and placed on the agenda at the request of County Attorney.



R. A. Cuevas, Jr.
County Attorney

RAC/jls

Memorandum



Date: July 19, 2011

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

From: Carlos A. Gimenez
Mayor

R. A. Cuevas, Jr.
County Attorney

Handwritten signatures of Carlos A. Gimenez and R. A. Cuevas, Jr. The signature of Carlos A. Gimenez is written in black ink and is positioned above the signature of R. A. Cuevas, Jr., which is also in black ink.

Subject: Approval of a settlement agreement between Country Club of Miami & Associates and Miami-Dade County in the amount of \$430,000 relating to construction connection charges for water and sewer facilities

RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) approve the attached settlement agreement (Settlement) between Country Club of Miami & Associates (CCM) and Miami-Dade County in the amount of \$430,000 relating to construction connection charges for water and sewer facilities.

SCOPE

This Settlement impacts Commission District 12.

FISCAL IMPACT/FUNDING SOURCE

Pursuant to Resolution R-530-10 adopted by the Board on May 4, 2010: 1) there is a one-time payment in the amount of \$430,000 from the County to CCM which has no fiscal impact as the funding source is \$320,000 from construction connection charges collected from developers that connected to the water and sewer facilities and \$110,000 from the Letter of Credit provided by CCM; 2) there was a fiscal impact to the County in the amount of \$134,914.11 in FY 2009 for the contractor repairs made to the pump station. There is no impact to the County's current budget and to future annual budgets.

TRACK RECORD/MONITOR

WASD's Assistant Director of Engineering & Capital Improvements will monitor the implementation of this agreement.

DELEGATED AUTHORITY

This item authorizes the County Mayor or County Mayor's designee to execute this Settlement on behalf of the County.

BACKGROUND

As a matter of practice and policy, the County, through its Water and Sewer Department (WASD), enters into a written agreement with a developer for the installation of water and sewer facilities that are available to serve other developments in the area. The completed water and sewer facilities are donated to WASD to own, operate and maintain. A new property or development that connects to the water and sewer facilities must pay WASD a construction connection charge for its pro rata share of the cost of the facilities and WASD remits the construction connection charges to the developer that constructed the facilities.

On June 14, 2002, the County through WASD entered into an agreement with CCM for the construction of water and sanitary sewage facilities at 8931 NW 109 Court, Doral, Florida. CCM installed water and sewer mains and constructed a large pump station including a wet well and a dry well for service to several residential developments and a public high school in the city of Doral. In July 2006, the facilities were conveyed to and accepted by WASD for operations and maintenance with a one-year warranty period.

Prior to the conveyance, WASD noticed that there were cracks and blistering in the concrete structure of the pump station and that there were actual deviations in the construction process from the approved plans. For these reasons, WASD should not have accepted the conveyance of the facilities. The three WASD employees responsible for acceptance of these facilities are no longer employed with the County.

On August 14, 2007, after the one-year warranty expired, the pumps in the dry well burst which caused flooding and substantial damage. WASD believes that the pumps and piping system failed because of excessive vibration and because the joint restraints for the piping system were improperly located. CCM attributed these system failures to poor maintenance provided by WASD and WASD's operational methods.

As a result of the system failures, WASD withheld payment to CCM of construction connection charges that WASD received from other developers and the nearby school. In addition, WASD applied a \$165,000 letter of credit from CCM towards the cost of repairs of the water and sewer facilities.

In 2007, CCM filed a breach of contract lawsuit against the County, seeking payment of the construction connection charges collected from other developers and users of the pump station facilities and the alleged wrongful drawdown of its \$165,000 letter of credit. CCM alleges that the County owes over \$770,000 for construction costs and reimbursement of the letter of credit, including interest. WASD filed a counterclaim for negligent design and construction of the pump station. The parties engaged in discovery and subsequently negotiated a settlement of \$430,000 consisting of \$320,000 collected from other developers and the return of \$110,000 from the letter of credit.

The Settlement provides that CCM will dismiss its lawsuit with prejudice and both parties will provide mutual releases. Considering that WASD knew of deviations from the approved plans in the actual construction of the pumps and piping system when it accepted the pump station and the fact that the one-year warranty had expired prior to the rupture of the pumps, and that CCM will receive \$430,000 on its \$770,000 claim, WASD, in consultation with the County Attorney's Office, believes that the Settlement is in the County's best interest.



MEMORANDUM

(Revised)

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

DATE: July 19, 2011

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

SUBJECT: Agenda Item No. 13(A)(4)

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. 13(A)(4)
7-19-11

RESOLUTION NO. R-630-11

RESOLUTION APPROVING SETTLEMENT BETWEEN
COUNTRY CLUB OF MIAMI & ASSOCIATES AND MIAMI-
DADE COUNTY IN THE AMOUNT OF \$430,000 RELATING
TO CONSTRUCTION CONNECTION CHARGES FOR WATER
AND SEWER FACILITIES

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 the County Mayor or Mayor's designee is authorized to execute the attached Settlement Agreement with Country Club of Miami & Associates, in the amount of \$430,000, relating to construction connection charges for water and sewer facilities, in substantially the form attached hereto and made a part hereof.

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:

	Joe A. Martinez, Chairman	aye	
	Audrey M. Edmonson, Vice Chairwoman	absent	
Bruno A. Barreiro	absent	Lynda Bell	absent
Esteban L. Bovo, Jr.	absent	Jose "Pepe" Diaz	aye
Sally A. Heyman	absent	Barbara J. Jordan	aye
Jean Monestime	aye	Dennis C. Moss	absent
Rebeca Sosa	aye	Sen. Javier D. Souto	aye
Xavier L. Suarez	aye		

The Chairperson thereupon declared the resolution duly passed and adopted this 19th day of July, 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

Approved by County Attorney as
to form and legal sufficiency.

A handwritten signature in black ink, appearing to read "H. N. Gillman", is written over a horizontal line.

Henry N. Gillman

Christopher Agrippa
By: _____
Deputy Clerk

**SETTLEMENT AGREEMENT BETWEEN COUNTRY CLUB
OF MIAMI & ASSOCS., INC. AND MIAMI-DADE COUNTY**

This SETTLEMENT AGREEMENT is entered into this ___ th day of May, 2011, between COUNTRY CLUB OF MIAMI & ASSOCS., INC. ("CCM") and MIAMI-DADE COUNTY, FLORIDA (the "COUNTY").

WHEREAS, CCM and the County entered into an Agreement for Water and Sewer Facilities (Agreement #17761) dated June 14, 2002; and

WHEREAS, Agreement # 17761 required CCM to install and convey to the Miami-Dade Water and Sewer Department water and sewer mains and appurtenances and a large sewer pump station that would provide water and sewer services to several residential developments and a High School; and

WHEREAS, all water and sewer facilities including the sewer pump station were conveyed to and accepted by the Department in July 2006; and

WHEREAS, Agreement #17761 required the County to collect construction connection charges from other developers for their pro rata share of the costs of the water and sewer facilities including the pump station serving their respective developments; and

WHEREAS, Agreement #17761 further required the County to pay the construction connection charges collected from other developers to CCM for the installation of the water and sewer facilities including the pump station; and

WHEREAS, as a result of a dispute regarding the construction of the pump station, the County withheld payment of the construction connection charges to CCM and also applied monies from a letter of credit toward repairs to the pump station; and

WHEREAS, in 2007, CCM filed a complaint for breach of contract against the COUNTY in an action styled Country Club of Miami & Associates, Inc. v. Miami – Dade County, Florida, Case No. 07-19613 CA 21, in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida. The claims in that action as amended are hereinafter referred to as the “CCM Action”; and

WHEREAS, the COUNTY subsequently asserted a counterclaim for breach of contract against CCM in the CCM Action. That counterclaim as amended is hereinafter referred to the “COUNTY Counterclaim”; and

WHEREAS, the COUNTY and CCM wish to fully resolve the CCM Action and the COUNTY Counterclaim, together with any and all claims between them arising out of or relating to the subject matter thereof.

NOW, THEREFORE, in consideration of the mutual promises, obligations and covenants as set forth in this Agreement and the Exhibits hereto, which are an integral part of this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby admitted and acknowledged, the parties agree as follows:

1. The recitals to this Agreement are incorporated into this Agreement, and accepted and agreed to by all parties, as though fully set forth in the body of the Agreement. The facts stated in the recitals shall conclusively be presumed to be true for all purposes between the parties.

2. The COUNTY, in consideration of the CCM’s promises, obligations and covenants as set forth in this Agreement and the Exhibits hereto, and CCM’s mutual performance in accordance therewith:

a. shall pay to CCM within 30 days of the effective date of this Agreement (“Closing”), the total settlement sum of \$430,000.00, by delivering a check in that amount payable to

the order of "Country Club of Miami & Assocs., Inc. and Thomas Manick, P.A" to Thomas Manick P.A., 3059 Grand Ave., Suite 300, Miami, FL 33133; and

b. shall deliver to the CCM, at Closing, a fully executed Release in the form attached hereto as Exhibit A; and,

c. shall deliver to the CCM, at Closing, a Stipulation of Dismissal in the form attached as Exhibit B, executed on behalf of the COUNTY.

3. CCM, in consideration of the COUNTY's promises, obligations and covenants as set forth in this Agreement and the Exhibits hereto, and the COUNTY's mutual performance in accordance therewith:

a. shall deliver to the COUNTY, at Closing, a fully executed Release in the form attached hereto as Exhibit C;

b. shall deliver to COUNTY, at Closing, a Stipulation of Dismissal with Prejudice, in the form attached as Exhibit B, executed on behalf of CCM.

4. The instruments attached hereto as Exhibits A, B, and C, are integral parts of this Agreement and references herein to the "Agreement" shall include Exhibits A, B, and C as if so specified (collectively, the "Agreement"). The Agreement contains the entire understanding and agreement of the parties, and there are no prior or contemporaneous promises, representations, agreements, warranties, or undertakings by either party to the other, either oral or written of any character or nature, except as set forth herein. The Agreement may not be altered, amended, or modified except by an instrument in writing, executed and acknowledged by the parties to the Agreement, with the same formality as this Agreement, and by no other means. Each party waives any right to claim that the Agreement was modified, canceled, superseded, or changed by an oral

agreement, course of conduct, or estoppel. All matters affecting the execution, interpretation, validity, and enforceability of the Agreement shall be subject to, and interpreted under the laws of the State of Florida.

5. This settlement does not constitute an admission by any party of any wrongdoing or liability of any kind.

6. The fact that any draft of the Agreement was prepared by counsel for one of the parties shall create no presumptions, and, specifically, shall not cause any ambiguities to be construed against that party. The parties acknowledge that each has contributed toward the drafting of the Agreement, and that the Agreement is the result of negotiations between the parties.

7. The parties acknowledge that each fully understands all of the terms and obligations of the Agreement, and each believes the same to be fair, just, equitable, reasonable, fully acceptable, and not unconscionable.

8. The parties enter into the Agreement freely and voluntarily. No party has been the subject of any duress, undue influence, fraud, or coercion in entering into the Agreement.

9. All parties to the Agreement acknowledge that they have had the benefit of their own separate and independent attorneys to advise them of their rights and obligations under the Agreement, and they are also aware of what their rights would be in the absence of the Agreement.

10. The Agreement shall be binding upon the parties hereto and shall also be binding upon and inure to the benefit of the heirs and successors of the respective parties.

11. The Agreement may be executed in two or more counterparts, including facsimile counterparts, none of which need contain signatures of all of the parties hereto, each of which will constitute an original, and all of which, taken together, shall constitute one and the same Agreement.

12. The parties agree that the trial court in the CCM Action shall retain jurisdiction to enforce the terms and conditions of the Agreement.

13. The parties hereto represent and warrant that they respectively have the power, ability and all requisite approvals to enter into and perform under this Agreement; and that the person(s) signing this Agreement are duly authorized to enter into this Agreement on their behalf.

14. This 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 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.

[REMAINDER OF PAGE IS INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the date first above written.

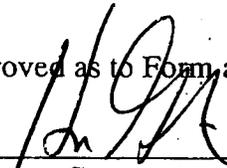
FOR THE COUNTY:

MIAMI – DADE COUNTY, FLORIDA

By _____

ATTEST:

Approved as to Form and Legal Sufficiency:



Assistant County Attorney

FOR CCM:

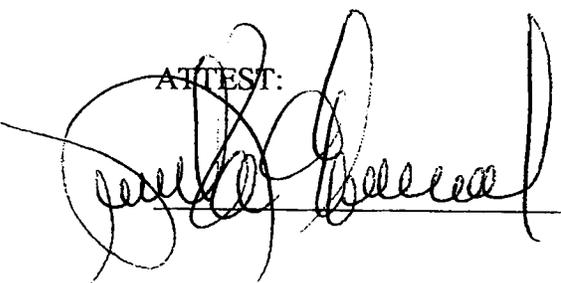
COUNTRY CLUB OF MIAMI & ASSOCS.,
INC.

By: _____

Print Name: _____

Its: _____

ATTEST:



RELEASE [Exhibit A]

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, MIAMI – DADE COUNTY (the “COUNTY”) has asserted counterclaims and set-offs in an action entitled Country Club of Miami & Associates, Inc. v. Miami – Dade County, Florida, Case No. 07-19613 CA 21, in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida (the “Action”) and represents and warrants that it owns and has not assigned the counterclaims and set-offs asserted therein;

WHEREFORE, THE UNDERSIGNED COUNTY, for the sum of ten dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, has and does hereby, on behalf of itself and all of its divisions and departments and their respective commissioners, employees, agents, attorneys, predecessors and successors-in-interest and assigns (collectively “RELEASOR”):

RELEASES AND FOREVER DISCHARGES, COUNTRY CLUB OF MIAMI & ASSOCS., INC. (“CCM”), and its affiliates and their officers, directors, shareholders, principals, partners, trustees, beneficiaries, agents, employees, attorneys, heirs, devisees, legatees, predecessors and successors-in-interest and assigns (collectively “RELEASEE”),

FROM ANY AND ALL OF CLAIMS, demands, causes of action, suits, debts, accounts, bills, liabilities, contracts, controversies, agreements, promises, damages and obligations of any nature, that the COUNTY has or may have against the RELEASEE, through and including the date of this Release, whether known or unknown, asserted or unasserted, which arise out of or relate to: (a) the Agreement entered into as of June 14, 2002 between the COUNTY and CCM (the “Agreement”); (b) the letter of credit in the amount of \$165,000.00 for the benefit of the COUNTY and any prior letters of credit obtained by CCM for the benefit of the COUNTY

pursuant to the Agreement; (c) any of the other events, transactions, claims, defenses, setoffs and/or counterclaims asserted by CCM or the COUNTY in the Action; and/or (d) any and all further connection charges otherwise owing by Jannette Villas at Doral - ID# 20322, which otherwise would be reimbursable to CCM under the Agreement; PROVIDED HOWEVER, that nothing contained herein is intended to, nor shall it, release or discharge any claims or defenses relating to or arising out of (i) any and all fees or charges otherwise due to CCM under the Agreement for future connections made by third parties after the date of this settlement; and/or (ii) any and all obligations under the parties' settlement agreement, including the ancillary agreements referenced therein.

IN WITNESS WHEREOF, RELEASOR has executed this release on this ____ day of _____, 20__.

ATTEST:

RELEASOR:

MIAMI-DADE COUNTY, FLORIDA

By: _____

Print Name: _____

Its: _____

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

COUNTRY CLUB OF MIAMI
& ASSOCIATES, INC.,
Plaintiff,

v.

CASE NO.: 07-19613 CA 21

MIAMI-DADE COUNTY, a political
Subdivision of the State of Florida,
Defendant.

STIPULATION FOR ORDER OF DISMISSAL
WITH PREJUDICE

IT IS HEREBY stipulated and agreed by and between Plaintiff, COUNTRY CLUB OF MIAMI & ASSOCIATES, INC. and Defendant, MIAMI-DADE COUNTY, by and through their undersigned attorneys, that the above cause, including all counterclaims and set-offs, be dismissed with prejudice, the parties to bear their own respective attorney's fees, interest and costs.

DATED this _____ day of _____, 2011.

Law Office
THOMAS MANICK, P.A.

By: _____
Thomas Manick
Florida Bar No. 827185
3059 Grand Avenue, Suite 300
Tel: 305.416.9506
Fax: 305.416.9508
Attorney for Plaintiff



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R. A. CUEVAS, JR. MIAMI-DADE
COUNTY ATTORNEY

By: _____
Henry N. Gillman
Assistant County Attorney
Florida Bar No. 265071
Stephen P. Clark Center
111 NW 1st Street, Suite 2810
Miami, FL 33128
Phone: 305-375-2149
Fax: 305-375-5611
Attorney for Defendant

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

GENERAL JURISDICTION DIVISION

COUNTRY CLUB OF MIAMI
& ASSOCIATES, INC.,
Plaintiff,

v.

CASE NO.: 07-19613 CA 21

MIAMI-DADE COUNTY, a political
Subdivision of the State of Florida,
Defendant.

ORDER OF DISMISSAL WITH PREJUDICE

THIS CAUSE having come on to be heard upon the above and foregoing Stipulation, and the Court having been otherwise advised in the premises thereof, it is thereupon

CONSIDERED, ORDERED and ADJUDGED that the above and foregoing cause, including all counterclaims and set-offs, be and the same is hereby dismissed with prejudice, and that the parties shall each bear their own respective attorney's fees, interests and costs.

DONE AND ORDERED in Chambers, at Miami-Dade County, Florida, this _____ day
of _____, 2011.

CIRCUIT COURT JUDGE

Copies furnished to:

Thomas Manick, Esquire
Henry N. Gillman, Esq

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RELEASE [Exhibit C]

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, COUNTRY CLUB OF MIAMI & ASSOCS., INC. ("CCM") has asserted claims and set-offs in an action entitled Country Club of Miami & Associates, Inc. v. Miami – Dade County, Florida, Case No. 07-19613 CA 21, in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida (the "Action") and represents and warrants that it owns and has not assigned the claims and set-offs asserted therein;

WHEREFORE, THE UNDERSIGNED CCM, for the sum of ten dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, has and does hereby, on behalf of itself and all of its affiliates and their officers, directors, shareholders, principals, partners, trustees, beneficiaries, agents, employees, attorneys, heirs, devisees, legatees, predecessors and successors-in-interest and assigns (collectively "RELEASOR"):

RELEASES AND FOREVER DISCHARGES, MIAMI - DADE COUNTY, FLORIDA (the "COUNTY"), and all of its divisions and departments and their respective commissioners, employees, agents, attorneys, predecessors and successors-in-interest and assigns (collectively "RELEASEE"),

FROM ANY AND ALL OF CLAIMS, demands, causes of action, suits, debts, accounts, bills, liabilities, contracts, controversies, agreements, promises, damages and obligations of any nature, that CCM has or may have against the RELEASEE, through and including the date of this Release, whether known or unknown, asserted or unasserted, which arise out of or relate to: (a) the Agreement entered into as of June 14, 2002 between the COUNTY and CCM (the "Agreement"); (b) the letter of credit in the amount of \$165,000.00 for the benefit of the

COUNTY and any prior letters of credit obtained by CCM for the benefit of the COUNTY pursuant to the Agreement; (c) any of the other events, transactions, claims, defenses, setoffs and/or counterclaims asserted by CCM or the COUNTY in the Action; and/or (d) any and all further connection charges otherwise owing by Jannette Villas at Doral - ID# 20322, which otherwise would be reimbursable to CCM under the Agreement; PROVIDED HOWEVER, that nothing contained herein is intended to, nor shall it, release or discharge any claims or defenses relating to or arising out of (i) any and all fees or charges otherwise due to CCM under the Agreement for future connections made by third parties after the date of this settlement; and/or (ii) any and all obligations under the parties' settlement agreement, including the ancillary agreements referenced therein.

IN WITNESS WHEREOF, RELEASOR has executed this release on this ____ day of _____, 20__.

ATTEST:

RELEASOR:

COUNTRY CLUB OF MIAMI & ASSOCS.,
INC.

By: _____
Print Name: _____
Its: _____