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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

MEMORANDUM

Agenda Item No. 8(O)(2)

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: October 6, 2015

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

SUBJECT: Resolution approving settlement agreement between Miami-Dade County, ECRV Clinton, LLC and ECRV Clinton Leasco, LLC for payment to the County of $12,500.00 for water and sewer connection charges; authorizing the County Mayor to execute such agreement and exercise all rights contained therein

Resolution No. R-873-15

The accompanying resolution was prepared by the Water & Sewer Department and placed on the agenda at the request of Prime Sponsor Commissioner Bruno A. Barreiro.

R. A. Cuevas, Jr.
County Attorney

RAC/cp

Memorandum

MIAMI-DADE COUNTY

Date: October 6, 2015

To: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

Subject: Settlement Agreement between Miami-Dade County and ECRV Clinton, LLC and ECRV Clinton Leasco, LLC, as successors in interest to Clinton Hotel Investors, Inc., for their payment of $12,500 to the County for settlement of Miami-Dade County v. Clinton Hotel Investors, Inc., Case No. 07-32742 CA 22

Recommendation

It is recommended that the Board of County Commissioners approve the Settlement Agreement between Miami-Dade County and ECRV Clinton, LLC and ECRV Clinton Leasco, LLC, as successors in interest to Clinton Hotel Investors, Inc. (collectively, the "Clinton Hotel"), for their payment of $12,500 to the County for settlement of Miami-Dade County v. Clinton Hotel Investors, Inc., Case No. 07-32742 CA 22.

The Settlement Agreement resolves all claims connected with outstanding water and sewer connection charges owed by the Clinton Hotel for its property located at 835 Washington Avenue, Miami Beach, Florida 33139. A copy of the Settlement Agreement is attached as Exhibit A.

Scope

The Clinton Hotel is located in Commission District 5 represented by Commissioner Bruno A. Barreiro. This Settlement Agreement does have a countywide impact as water and sewer connection charges are assessed and collected on a countywide basis and are used to offset infrastructure impact and expansion costs for the County's water and sewer system.

Fiscal Impact/Funding Source

Under this Settlement Agreement, the Clinton Hotel will pay $12,500 to the County, which monies are deposited into a special fund used to defray the costs of expansion of the County's regional water and sewer facilities.

Track Record/Monitor

WASD's Assistant Director of Finance, Frances G. Morris, Assistant Director of Finance, will oversee the implementation of this Settlement Agreement.

Background

Miami-Dade County Ordinance 89-95 and WASD's existing Rules and Regulations authorize the Department to collect water and sewer connection charges for new construction, additions or renovations to existing buildings, and any change of use to a property that requires an increase in water and/or sewer flows as measured by gallons of water per day (gpd).

The Clinton Hotel is a commercial property that initially consisted of two (2) structures, which housed a 75-room hotel and 8,239 square feet of retail space. After a number of renovations carried out between 2003 and 2007, which added hotel rooms, restaurants, a salon, a spa and additional retail space, the Clinton Hotel was utilizing an additional 5,768 gpd and, therefore, owed the County additional connection charges in the amount of $40,318.32.

From March 2006 to September 2007, the County engaged in numerous efforts, including site visits, to collect the connection charges from the Clinton Hotel. On October 4, 2007, the County filed a lawsuit against the Clinton Hotel, Miami-Dade County v. Clinton Hotel Investors, Inc., Case No. 07-32742 CA 22, in order to collect the outstanding connection charges. The Clinton Hotel raised various defenses to the lawsuit, including waiver, laches, estoppel, statute of limitations and payment. The Clinton Hotel also raised an indispensable party defense in which it asserted that the County should have sued the City of Miami Beach, not the Clinton Hotel, because the City failed to follow the requirements for volume customers set forth in County Ordinance 89-95. Specifically, the City of Miami Beach allowed the Clinton Hotel to obtain permits, certificates of use, certificates of occupancy, and water service from the City without making sure the connection charges had been paid for the renovations and additions prior to providing these services. The County administration, however, made a management decision in 2007 to forego legal action against the City of Miami Beach.

In early 2015, when the Clinton Hotel changed property owners, the new owners, ECRV Clinton, LLC and ECRV Clinton Leasco, LLC approached the County about resolving the lawsuit. An agreement was reached between the new owners of the Clinton Hotel and the County to settle the lawsuit, and all claims related to connection charges at the property, for $12,500, to be paid by the Clinton Hotel.

Since this lawsuit was filed, the Board of County Commissioners adopted Ordinance No. 11-47, which decreased the standard gpd allocations assigned to various land use categories used in the calculation of water and sewer connection charges based, in part, on changes to the 2007 Florida Building Code that now require the use of water conservation plumbing fixtures when building. The decrease resulted in lower gpd allocations for many of the uses added by the Clinton Hotel, which had also installed water conservation plumbing fixtures. With the adoption of Ordinance 11-47, the amount of water and sewer connection charges due was reduced from $40,318.32 to $20,403.81. This settlement agreement, which was negotiated by the County Attorney's Office with the Department's input and approval, is in the County's best interest as it is fair and reasonable in light of the changes imposed by Ordinance No. 11-47.

Jack Osterholt
Deputy Mayor

MEMORANDUM

(Revised)

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: October 6, 2015

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

SUBJECT: Agenda Item No. 8(O)(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 Mayor'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. 8(O)(2)
10-6-15

RESOLUTION NO. R-873-15

RESOLUTION APPROVING SETTLEMENT AGREEMENT BETWEEN MIAMI-DADE COUNTY, ECRV CLINTON, LLC AND ECRV CLINTON LEASCO, LLC FOR PAYMENT TO THE COUNTY OF $12,500.00 FOR WATER AND SEWER CONNECTION CHARGES; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE SUCH AGREEMENT AND EXERCISE ALL RIGHTS CONTAINED THEREIN

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

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves the Settlement Agreement between Miami-Dade County, ECRV Clinton, LLC and ECRV Clinton Leasco, LLC for a payment to the County of $12,500.00 for water and sewer connection charges, in substantially the form attached and made a part hereof. This Board further authorizes the County Mayor or County Mayor's designee to execute the Settlement Agreement for and on behalf of Miami-Dade County and to exercise all rights contained in the Settlement Agreement.

The foregoing resolution was offered by Commissioner **Daniella Levine Cava**, who moved its adoption. The motion was seconded by Commissioner **Audrey M. Edmonson** and upon being put to a vote, the vote was as follows:

Jean Monestime, Chairman **aye**
Esteban L. Bovo, Jr., Vice Chairman **absent**

Bruno A. Barreiro	**aye**	Daniella Levine Cava	**aye**
Jose "Pepe" Diaz	**absent**	Audrey M. Edmonson	**aye**
Sally A. Heyman	**absent**	Barbara J. Jordan	**aye**
Dennis C. Moss	**aye**	Rebeca Sosa	**absent**
Sen. Javier D. Souto	**absent**	Xavier L. Suarez	**aye**
Juan C. Zapata	**absent**		

The Chairperson thereupon declared the resolution duly passed and adopted this 6th day of October, 2015. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

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

HARVEY RUVIN, CLERK

By: Christopher Agrippa
Deputy Clerk

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

Sara E. Davis

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is entered into this ___ day of _____, 2015 between (1) Miami-Dade County (the "County"), a political subdivision of the State of Florida, and (2) ECRV Clinton, LLC, a Delaware limited liability company, and ECRV Clinton Leasco, LLC, a Delaware limited liability company, as successors-in-interest to Clinton Hotel Investors, LLC, together with those certain tenant-in-common investors listed on the attached Schedule I and their successors and assigns (collectively, the "Clinton Hotel").

RECITALS

WHEREAS, in 1989, the Miami-Dade County Board of County Commissioners (the "BCC") enacted Ordinance 89-95, which provides that various water and sewer charges must be paid prior to connection to (1) the County's water and sewer system or (2) any other water and sewer system that is supplied water by the County; and

WHEREAS, the City of Miami Beach provides water service to residents of Miami Beach and purchases its water from the County as a volume customer in order to provide such service to its residents; and

WHEREAS, under County Ordinance 89-95, the connection charges may be paid to the County directly or may be collected by the municipalities, including the City of Miami Beach, on the County's behalf; and

WHEREAS, the Clinton Hotel conducted renovations and additions to an 88-room hotel complex located at 835 Washington Avenue, Miami Beach, Florida 33139 (also known by Folio Number 02-4203-004-0530) (hereinafter, the "Property"), which renovations and additions allegedly required the Clinton Hotel to pay connection charges in the amount of $40,318.32 for the impact of the additions to the County's water and

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EXHIBIT
A

sewer system; and

WHEREAS, even though, contrary to the requirements of County Ordinance 89-95, a Certificate of Occupancy was issued to the Clinton Hotel by the City of Miami Beach, the connection charges were allegedly not paid by the Clinton Hotel; and

WHEREAS, in October 2007, the County brought a lawsuit against the Clinton Hotel in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida, Case No. 07-32742 CA 22 (the "Lawsuit"), in order to recover the alleged outstanding connection charges from the Clinton Hotel,

WHEREAS, the Clinton Hotel disputes and denies that any water and sewer connection charges are due for the Property as of the date of this Agreement and has raised various defenses including but not limited to waiver, laches, estoppel, statute of limitations, payment, failure to add an indispensable party and other evidentiary issues; and

WHEREAS, the County and Clinton Hotel desire to completely resolve and settle all issues related to the allegedly outstanding water and sewer connection charges for the Property;

NOW, THEREFORE, in consideration of the foregoing recitals and following agreements, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the County and Clinton Hotel agree as follows:

1. **Incorporation of Recitals.** The parties agree that the above recitals are true and correct and that those recitals are incorporated by reference and form a part of this Agreement.

2. **Effective Date.** The Effective Date of this Agreement shall be the date of the expiration of the County Mayor's veto period subsequent to the approval of this

Agreement by the BCC.

3. BCC Approval. Clinton Hotel acknowledges that before the County may settle any claims or enter into any binding contractual obligations pursuant to this Agreement, the County must obtain the approval of the BCC and the subsequent assent of the County Mayor or, if the County Mayor vetoes any legislation approving this Agreement, an override of the County Mayor's veto by the BCC.

a. BCC Approval Window. Clinton Hotel acknowledges that BCC Resolution 130-06 requires that all non-County parties must execute the Agreement before the Agreement may be placed on the BCC's agenda. Accordingly, Clinton Hotel agrees to execute this Agreement before the County and as a precondition of the presentation of tis Agreement to the County Mayor or County Mayor's designee or to the BCC. From the date of the Clinton Hotel's execution of this Agreement, the County shall have 180 days in which to obtain BCC Approval (the "BCC Approval Window"). During the BCC Approval Window, Clinton Hotel agrees that it shall not withdraw or modify the terms of this settlement with the County, as presented in this Agreement.

b. County's Obligations Before BCC Approval. The County shall not be required to file any document compromising any claims it may have against Clinton Hotel and shall not have released Clinton Hotel until obtaining BCC Approval.

c. Consequence Upon Failure to Obtain BCC Approval. To the extent the BCC does not approve this Agreement, and after all opportunities for BCC reconsideration have passed, the parties shall return to the status quo existing before the parties' preparation of this Agreement, and the fact that the County and Clinton Hotel sought to negotiate a resolution to their dispute shall be inadmissible for all reasons and shall not prejudice either party's preexisting rights and remedies.

4. **Payment Terms.** Clinton Hotel shall pay the County the amount of Twelve Thousand Five Hundred Dollars and No Cents ($12,500.00), 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. Within seven (7) days of the Effective Date, Clinton Hotel shall make payment of the $12,500.00 settlement payment by delivering a check made payable to Miami-Dade County to Sarah E. Davis, Assistant County Attorney, 111 N.W. 1st Street, Suite 2810, Miami, FL 33128. Clinton Hotel's failure to comply with the payment provisions above shall entitle the County to: file an affidavit of non-payment, specifying the amount unpaid; furnish a copy of the affidavit to Clinton Hotel by email to Clinton Hotel's counsel, Eileen Chafetz (Miamijuris@aol.com); 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.

5. **County's Release of Clinton Hotel.** The County agrees to release any and all claims, including the court costs, against Clinton Hotel with respect to unpaid water and sewer connection charges, through the Effective Date Settlement Agreement, for the property located at 835 Washington Avenue, Miami Beach, Florida (also known by Folio No. 02-4203-0004-0530), which are the subject of the Lawsuit.

6. **Clinton Hotel's Release of County.** Clinton Hotel agrees to release any and all claims, including the court costs, against the County that it could have brought with respect to unpaid water and sewer connection charges, through the Effective Date Settlement Agreement, for the property located at 835 Washington Avenue, Miami Beach, Florida (also known by Folio No. 02-4203-0004-0530), which are the subject of the Lawsuit.

7. **Dismissal of the Lawsuit.** A Notice of Voluntary Dismissal With Prejudice shall be filed within fifteen (15) days of the County's receipt of Clinton Hotel's check in the sum of $12,500.00.

8. **Dispute Resolution.** In the event a dispute arises as to either party's compliance with any terms of this Settlement Agreement, 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.

9. **Florida Law Applies.** 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.

10. **Agreement to Settle; No Admission of Liability.** Nothing in this Settlement Agreement shall be construed as an admission of liability by either party.

11. **Entire Agreement; Modification.** This Settlement Agreement 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 Settlement Agreement, and the terms of this Settlement Agreement supersede all such other agreements. No supplement, modification or amendment of this Agreement shall be binding unless it is executed in writing by the parties.

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12. Rule of Construction; Opportunity to Review. This Settlement Agreement 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 Settlement Agreement fairly and reasonably in accordance with the purpose of this Settlement.

13. Authority to Execute. By executing this Agreement, the undersigned warrant and represent that they are authorized to enter into this Agreement and empowered to bind their respective parties to its terms. Further, the parties represent that they have not assigned their rights or claims subject to this Agreement to any third party.

14. Severability. The Parties have attempted to create an Agreement that is lawful and enforceable in all respects. The validity of this Agreement shall not be affected by any subsequent changes in federal, state or County law, whether through legislation or judicial interpretation, which create, eliminate or change the rights and obligations of the parties. However, if any provision of this Agreement is held to be invalid, void or unenforceable, the balance of the provisions shall, nevertheless, remain in full force and effect and shall in no way be affected, impaired or invalidated.

IN ACCEPTANCE WHEREOF, Miami-Dade County and Clinton Hotel have set their respective hands as of the date and year appearing by their respective signatures.

EAST COAST REALTY VENTURES, LLC, a Nevada limited liability company, as Manager of ECRV CLINTON, LLC, a Delaware limited liability company, successor-in-interest to Clinton Hotel Investors, LLC By: [signature] Print: Frederic S. Richardson Title: Manager Date: 7/2/15	MIAMI-DADE COUNTY By: _____ Print: _____ Title: _____ Date: _____
EAST COAST REALTY VENTURES, LLC, a Nevada limited liability company, as Manager of ECRV CLINTON LEASCO, LLC, a Delaware limited liability company, successor-in-interest to Clinton Hotel Investors, LLC By: [signature] Print: Frederic S. Richardson Title: Manager Date: 7/2/15	

Approved as to legal form and sufficiency:

[signature] 7/23/15
Assistant County Attorney

SCHEDULE I TO SETTLEMENT AGREEMENT

ECRV Clinton TIC 1, LLC

ECRV Clinton TIC 2, LLC

ECRV Clinton TIC 3, LLC

ECRV Clinton TIC 4, LLC

ECRV Clinton TIC 5, LLC

ECRV Clinton TIC 6, LLC

ECRV Clinton TIC 7, LLC

ECRV Clinton TIC 8, LLC

ECRV Clinton TIC 9, LLC

ECRV Clinton TIC 10, LLC

ECRV Clinton TIC 11, LLC

ECRV Clinton TIC 12, LLC

ECRV Clinton TIC 13, LLC

ECRV Clinton TIC 16, LLC

ECRV Clinton TIC 18, LLC

ECRV Clinton TIC 19, LLC

ECRV Clinton TIC 20, LLC

ECRV Clinton TIC 21, LLC

ECRV Clinton TIC 22, LLC

Each a Delaware limited liability company.