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

MEMORANDUM

Agenda Item No. 11(A)(37)

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

DATE: January 20, 2016

FROM: Abigail Price-Williams County Attorney

SUBJECT: Resolution approving settlement and full and final release agreement between Miami-Dade County and Citizens Property Insurance Corporation in amount of $87,500.00 to the County and authorizing the County Mayor to execute same, to take all actions necessary to effectuate the foregoing settlement and to exercise all rights conferred therein

Resolution No. R-86-16

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Xavier L. Suarez.

Abigail Price-Williams
County Attorney

APW/cp

MEMORANDUM

(Revised)

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

DATE: January 20, 2016

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 11(A)(37)

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

_____ Statement of social equity 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. 11(A)(37)
1-20-16

RESOLUTION NO. R-86-16

RESOLUTION APPROVING SETTLEMENT AND FULL AND FINAL RELEASE AGREEMENT BETWEEN MIAMI-DADE COUNTY AND CITIZENS PROPERTY INSURANCE CORPORATION IN AMOUNT OF $87,500.00 TO THE COUNTY AND AUTHORIZING THE COUNTY MAYOR OR MAYOR'S DESIGNEE TO EXECUTE SAME, TO TAKE ALL ACTIONS NECESSARY TO EFFECTUATE THE FOREGOING SETTLEMENT AND TO EXERCISE ALL RIGHTS CONFERRED THEREIN

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying Mayor's memorandum, a copy of which is incorporated herein by reference and attached as Exhibit "A"; and

WHEREAS, specifically, this Board desires to settle the claim initiated by Sundays on the Bay Restaurant, Inc. ("Sundays") against Citizens Property Insurance Corp. ("Citizens") in the case styled *Esteban Bencomo, as former sole officer and director of Sundays on the Bay Restaurant, Inc. v. Citizens Property Insurance Corp.,* Case No.10-33555 CA 08 ("Lawsuit"), in which the County intervened as a beneficiary and named payee of the insurance policy; and

WHEREAS, Citizens has agreed to settle the claim for $175,000.00, half of which will be paid to the County ($87,500.00) and the other half of which will be retained in full by the attorney and expert hired by Sundays to pay their expenses in prosecuting the claim, as set forth in the letter attached as Exhibit "B" hereto,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves and authorizes the County Mayor or Mayor's designee to execute the settlement and the Full and Final Release Agreement ("Agreement") between Miami-Dade County and Citizens in the amount of $87,500.00 in favor of the County in substantially the form attached hereto as Exhibit "C", and further authorizes the County Mayor or Mayor's designee to take all actions necessary to effectuate the foregoing settlement and to exercise all rights conferred in the Agreement.

The Prime Sponsor of the foregoing resolution is Commissioner Xavier L. Suarez. It was offered by Commissioner **José "Pepe" Diaz**, who moved its adoption. The motion was seconded by Commissioner **Sally A. Heyman** and upon being put to a vote, the vote was as follows:

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

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

The Chairperson thereupon declared the resolution duly passed and adopted this 20th day of January, 2016. 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.

Monica Rizo Perez

Memorandum

MIAMI-DADE COUNTY

Date: January 7, 2016

EXHIBIT A

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

From: Carlos A. Gimenez
Mayor

Subject: Settlement between Citizens Property Insurance Corporation and Miami-Dade County in the amount of $87,500.00 in favor of Miami-Dade County

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Recommendation

It is recommended that the Board of County Commissioners (Board) approve the attached Full and Final Release Agreement ("Settlement") between Citizens Property Insurance Corporation ("Citizens") and Miami-Dade County. The recommended settlement, in the amount of $87,500.00 in favor to Miami-Dade County, will settle a lawsuit styled *Esteban Bencomo, as former sole officer and director of Sundays on the Bay Restaurant, Inc. v. Citizens Property Insurance Corp.*, currently pending in the Circuit Court of the Eleventh Judicial Circuit, in and for Miami-Dade County, Case No.10-33555 CA 08, a case for which Miami-Dade County was granted leave to intervene as a named loss payee on July 17, 2015 ("Lawsuit"). This will also result in the dismissal with prejudice of the only defendant, Sundays on the Bay, Ltd. ("Sundays") remaining in a related suit styled *Miami-Dade County v. Sundays on the Bay, Ltd., et. al.*, Case No. 10-41154 CA 11.

Scope

This Settlement stems from litigation related to Hurricane Wilma damage to the former Sundays on the Bay Restaurant, which was located in Crandon Park Marina, 4000 Crandon Boulevard, within County Commission District 7, which is represented by Commissioner Xavier L. Suarez.

Fiscal Impact/Funding Source

The fiscal impact to the County from this settlement agreement is $87,500.00 in favor of the County to be paid by Citizens.

Track Record/Monitor

The Parks, Recreation and Open Spaces Department (PROS) will oversee the collection and deposit of the $87,500.00 from Citizens into PROS' index code PRR600940074 for park and marina improvements.

Background

Sundays on the Bay restaurant ("Restaurant") at Crandon Park Marina was initially damaged by Hurricane Katrina and shortly thereafter damaged beyond repair as a result of Hurricane Wilma. The Restaurant was demolished by the County, as it was deemed an unsafe structure. The Lease Agreement between the County and Sundays required the tenant to obtain property insurance for the Restaurant and to name the County as additional payee on the policy. In 2010, the County sued Sundays, Citizens, and two banks, US Century Bank and Wells Fargo Bank, N.A. ("Banks"), as a result of past-due rent that Sundays had failed to pay the County during the last year it was in operation before and after the hurricane damage, and insurance payments that were made by Citizens that either did not name the County on the check or did name the County but were disbursed by the Banks without a County signature. In 2012, this Board approved a settlement between the County and the Banks in the amount of $65,000.00 in favor of the County in settlement of a $79,000.00 check issued to the County, Sundays, and two other

payees. In 2015, Citizens agreed to pay in full the County's demands for $29,062.83 resulting from a check in that same amount in which the County was not included as a payee.

Separately, Sundays filed the Lawsuit against Citizens in 2010 as a result of damage to the outdoor patio roof of the restaurant as a result of Hurricane Wilma. As the County was named as an additional loss payee on the policy, the County intervened in the Lawsuit in July of 2015 in order to reach a resolution amongst the parties as to the insurance proceeds. The County, Citizens, and Sundays desire to amicably compromise and settle the Lawsuit and related case to finally resolve all issues pending between them and, in furtherance thereof, Citizens has agreed to pay $175,000.00, with the County and Sundays to each receive fifty percent, or $87,500.00 (Attachment A). As Sundays is a dissolved corporation with no assets, its share will go towards the attorneys' fees for its counsel that handled the litigation of the Lawsuit from 2010 through 2015 and to its expert that prepared extensive investigations and analyses of the claims. The County and Sundays will also agree to the dismissal of the related case as the County will have already received in excess of $180,000.00 from these matters and can reasonably expect to receive no monies from the remaining defendant, Sundays, as it is dissolved.

Michael Spring, Senior Advisor
Office of the Mayor

Attachment

EXHIBIT B

Richard A. Alayon, Esq.
ralayon@alayonlaw.com
Admitted to Practice in NY, FL, U.S. Supreme Court
U.S. Dist. S.D., M.D., N.D. Fla., 11th Cir. & T.C

January 7, 2015

Mr. Jack Kardys
Miami-Dade Parks &
Recreation
275 NW 2nd Street
Miami, Florida 33128

RE: Settlement Proceeds Received From Citizens Property Insurance Corp.

Dear Mr. Kardys,

This firm represents Sundays on the Bay, Inc. ("Sundays") with respect to the lawsuit styled *Esteban Bencomo, as former sole officer and director of Sundays on the Bay Restaurant, Inc. v. Citizens Property Insurance Corp.*, Case No.10-33555 CA 08 ("Lawsuit"), in which the County was granted leave to intervene in July of 2015, as a beneficiary and named payee of the insurance policy in question. This firm filed the Lawsuit in 2010 and, since that date, has expended substantial time and resources in furtherance of the claim against Citizens Property Insurance Corp. ("Citizens") and retained the services of Epic Public Adjusters as an expert in this matter.

As a result of mediation attended by the parties, the parties agreed to settle the Lawsuit and release Citizens from any further claims under the insurance policy in question in exchange for a payment of $175,000.00 to be split evenly ($87,500.00 each) between the County and Sundays.

This letter is to represent to the County and affirm that Sundays will not be retaining any portion of the $87,500.00 sum paid by Citizens to it. Those funds will all be paid and disbursed, in part, to Epic Public Adjusters to pay for its expert services in this matter and to undersigned counsel to cover this firm's attorneys' fees and costs in handling the Lawsuit.

Sincerely,

Richard Alayon

Cc: Monica Rizo, Assistant County Attorney

135 San Lorenzo Avenue, Suite 820, Coral Gables, Florida 33146
Phone: (305) 221-2110 ▪ Facsimile: (305) 221-5321

EXHIBIT C

FULL AND FINAL RELEASE

WHEREAS, **MIAMI-DADE COUNTY ("MIAMI DADE COUNTY")** acknowledges that it and **CITIZENS PROPERTY INSURANCE CORPORATION ("CITIZENS"),** collectively known as the "Parties," are in litigation over an insurance claim related to Hurricane Wilma in the Circuit Court of the 11th Judicial Circuit in and for Miami Dade County, Florida, **Case number 10-33555 CA 08,** styled **ESTEBAN BENCOMO, as Former Sole Officer and Director of SUNDAYS ON THE BAY RESTAURANT, INC., an Administratively Dissolved Florida Corporation v. CITIZENS PROPERTY INSURANCE CORPORATION,** arising out of and/or relating to loss, damage, or expense sustained or incurred as a result of a loss occurring on or about **October 24, 2005** (**Claim number 238998**) at **5420 Crandon Blvd., Key Biscayne Florida 33149** associated with **Policy number 491183,** wherein the COUNTY intervened on July 17, 2015 and was declared an interested party as it was a loss payee under the subject policy (the "Proceedings").

WHEREAS, MIAMI DADE COUNTY and CITIZENS acknowledge the Parties are desirous of resolving this controversy and settling all claims or demands presently pending in these Proceedings, or which may arise out of the subject checks, claim handling or subject matter of these Proceedings, as well as all associated interest, costs and attorney's fees, whether such claims or demands are based in statute, tort, contract, extra-contractual theories, or any other theories in law or equity; and

WHEREAS, MIAMI DADE COUNTY and CITIZENS have negotiated and reached such a resolution on August 28, 2015 and intend this Release to describe and effect same; and

WHEREAS, MIAMI DADE COUNTY acknowledges that CITIZENS makes no admissions regarding the legal or factual merits of the underlying claims and/or the Proceedings, but makes this settlement only to avoid the risk and uncertainty associated with further litigation and to compromise and resolve their disputes by way of this Release; and

WHEREAS, MIAMI DADE COUNTY and CITIZENS acknowledge that they had the assistance and advice of counsel and are fully aware of and have been fully advised of the terms, conditions and consequences of this Release,

NOW, THEREFORE, in consideration of the terms and conditions contained herein and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, MIAMI DADE COUNTY and CITIZENS agree as follows:

1. The above-referenced recitals are true and correct and are incorporated herein.

2. MIAMI DADE COUNTY acknowledges that CITIZENS will pay the total sum of **One Hundred and Seventy Five Thousand and 00/100 ($175,000.00)** and that payment will be made in the form of two checks at their request as follows **Eighty Seven Thousand Five Hundred and 00/100 ($87,500.00)** made payable to **Alayon & Associates, P.A. inclusive of indemnity, attorney's fees and costs and any amount due and owing to Epic Public Adjusters and Eighty Seven Thousand Five Hundred and 00/100 ($87,500.00) made payable to Miami Dade County** within thirty (30) days of the execution of this Release, and is inclusive of any and all Attorney Fees and Costs associated with this case. Payment of this amount is conditioned upon the execution of this Release.

3. MIAMI DADE COUNTY acknowledges and agrees that this settlement is a compromise of disputed claims and the Release shall not be construed as, or deemed to be evidence of an admission or concession of any fault, liability or damage whatsoever by CITIZENS.

4. MIAMI DADE COUNTY further acknowledges that it has had an opportunity to fully investigate the extent and scope of the damage to the insured property and the amount of all prior payments made in regards to claim number 238998, and that this Release is intended to include all such damage, whether known or unknown or discovered or undiscovered.

5. MIAMI DADE COUNTY hereby fully, completely, and forever releases and discharges CITIZENS, its respective stakeholders, directors, officers, agents, representatives, employees, related or affiliated companies, subsidiaries, beneficiaries, heirs, successors, assigns and executors from and against any and all past, present and future losses, liabilities, responsibilities, demands, obligations, actions, causes of action, rights, judgments, interest,

damages, compensation of any kind, liens, expenses (including attorney's fees and costs), and claims whatsoever, in law or in equity, whether based in statute, tort, contract, extra-contractual theories, or any other theories in law or equity, whether known or unknown, whether discovered or undiscovered, whether fixed or contingent, which arise out of or relate to the Claim number 238998 or Proceedings.

6. MIAMI DADE COUNTY expressly covenants, promises and agrees that it shall be and is hereby forever barred and permanently enjoined from now or hereinafter instituting, maintaining or asserting, either directly or indirectly, any and all claims, supplemental claims, causes of action or damages because of, arising out of, or resulting from the Proceedings.

7. Within ten (10) business days of receipt of the balance of the funds specified in Paragraph #2, MIAMI DADE COUNTY and CITIZENS agree to execute a Joint Stipulation of Dismissal with Prejudice of the Proceedings (in the form attached hereto) and file or allow the same to be filed with the Court.

8. MIAMI DADE COUNTY agrees to fully cooperate and execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full effect to the terms and intent of this Release.

9. MIAMI DADE COUNTY and CITIZENS agree that each of the provisions contained in this Release shall be construed as independent of any other provision of this Release. In the event any provision or a portion of a provision of this Release is found to be unenforceable, that portion of the provision shall be stricken and the remaining portion and provisions of the Release shall be enforceable.

10. MIAMI DADE COUNTY and CITIZENS expressly recognize that this Release results from a negotiation process in which each of the Parties was given the opportunity to consult with counsel and contribute to the drafting of the Release. No legal or other presumptions against the party drafting this Release concerning its construction, interpretation or otherwise shall therefore accrue to the benefit of either of the Parties and the Parties expressly

waive the right to assert such a presumption in any proceedings or disputes connected with, arising out of, or involving this Release.

11. MIAMI DADE COUNTY and CITIZENS represent, warrant, and certify that CITIZENS and MIAMI DADE COUNTY each, respectively, has the full and complete right and authority to execute this Release and related documents.

12. This Release contains the entire terms of the settlement between the Parties with respect to the matters set forth herein. There are no oral or written agreements, representations or inducements of any kind between the Parties with respect to the settlement that are not contained in this Release. This Release may only be altered or amended, in whole or in part, by a written instrument setting forth such changes as mutually agreed to by all of the Parties.

13. The Parties agree that a facsimile signature may substitute for and have the same legal effect as the original signature.

14. This Release shall be deemed fully executed on the date that MIAMI DADE COUNTY executes the Agreement.

15. MIAMI DADE COUNTY acknowledges the assistance of counsel in reading, understanding, and executing this Release, and that in agreeing to execute this Release, they are forever surrendering certain rights as reflected herein. Based on reading, understanding, and executing of this Release with the assistance of counsel, MIAMI DADE COUNTY releases any claim for fraud or fraud in the inducement related to this Release.

16. This Release shall be construed and interpreted in accordance with the laws of the State of Florida.

I HAVE READ AND UNDERSTAND THIS FULL AND FINAL RELEASE.

ATTEST: MIAMI-DADE COUNTY, FLORIDA

By Its BOARD OF
COUNTY COMMISSIONERS on the

HARVEY RUVIN, CLERK

_____ day of _____, 2016

By: _____
Deputy Clerk

By:

_____
County Mayor

I HAVE READ AND UNDERSTAND THIS FULL AND FINAL RELEASE.

_____

CITIZENS PROPERTY INSURANCE CORPORATION REPRESENTATIVE

_____

PRINT NAME

Signed and dated this _____ day of _____, 2016.

STATE OF _____)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by _____, who is personally known to me or who has produced _____ as identification.

_____
(Signature of Notary Public - State of Florida)

(Print, Type or Stamp Commissioned Name of Notary Public, Commission Number and Expiration Date of Commission.)

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

MIAMI-DADE COUNTY,

Plaintiff,

v.

SUNDAYS ON THE BAY, LTD, a Florida corporation and CITIZENS PROPERTY INSURANCE CORPORATION, a Florida non-profit Corporation.

Defendants.

_____/

CASE NO. 10-41154 CA 08

STIPULATION FOR DISMISSAL WITH PREJUDICE

COME NOW the Plaintiff, MIAMI DADE COUNTY and the Defendant, CITIZENS PROPERTY INSURANCE CORPORATION a government entity established by Fla.Stat. §627.351(6), by and through their undersigned counsel and agree that this case has been amicably settled with attorney's fees and costs, and further agree that this cause should be dismissed with prejudice and the Court retains jurisdiction to enforce the terms of the settlement agreement.

Monica Rizo, Esq.
Counsel for Plaintiff
111 NW 1st Street – Ste 2810
Miami, FL 33128
Telephone No.: 305-375-4791
Facsimile No: 305-375-5634
Email: rizo@miamidade.gov

Buckner, Shifrin, Rice, Etter & Kohlman P.A.
Counsel for Defendant
46 S.W. First Street, Second Floor
Miami, Florida 33130
Telephone : (305) 679-9744
Facsimile : (305) 679-9745
Primary Email: Michelle@buckner-shifrin.com
Secondary Email: Natasha@buckner-shiffin.com

By: _____
MONICA RIZO
Florida Bar No.: 28319

By: _____
MICHELLE B. SEALEY, ESQ.
Florida Bar No: 087086

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

MIAMI-DADE COUNTY,

Plaintiff,

v.

SUNDAYS ON THE BAY, LTD, a Florida corporation and CITIZENS PROPERTY INSURANCE CORPORATION, a Florida non-profit Corporation.

Defendants.

_____/

CASE NO. 10-41154 CA 08

FINAL ORDER OF DISMISSAL WITH PREJUDICE

The Parties have informed the Court that they have settled this cause. It is therefore,

ORDERED and **ADJUDGED** that:

This case is dismissed with prejudice and the Court retains jurisdiction to enforce the terms of the settlement agreement.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida this _____ day of _____, 2015.

_____

CIRCUIT COURT JUDGE

Copies furnished to:

[Michelle B. Sealey, Esq. – Michelle@buckner-shifrin.com]
[Monica Rizo, Esq. – rizo@miamidade.gov]
[Richard Alayon, Esq. – pleadings@alayonlaw.com]