MEMORANDUM

Agenda Item No. 8(H)(2)

TO:	Honorable Chairwoman Rebeca Sosa and Members, Board of County Commissioners	**DATE:**	December 17, 2013
FROM:	R. A. Cuevas, Jr. County Attorney	**SUBJECT:**	Resolution approving settlement agreement between Miami-Dade County and Deering Bay Yacht and Country Club in the amount of $532,000.00

The accompanying resolution was prepared by the Parks, Recreation and Open Spaces Department and placed on the agenda at the request of Prime Sponsor Commissioner Xavier L. Suarez.

for

R. A. Cuevas, Jr.
County Attorney

RAC/cp

Memorandum

MIAMI-DADE COUNTY

Date: December 17, 2013

To: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

R.A. Cuevas, Jr.
County Attorney

Subject: Chapman Field Park
Settlement Agreement with Deering Bay Yacht and Country Club

Recommendation

It is recommended that the Board of County Commissioners authorize the Mayor to execute the attached Settlement Agreement between Miami-Dade County ("County") and Deering Bay Yacht and Country Club ("Deering Bay") to establish a lease payment structure and non-binding land negotiations for a 72-acre portion of Chapman Field Park used as a private golf course.

Scope

Miami-Dade County's Chapman Field Park, a park of County-wide significance, is located at 13601 Old Cutler Road, Miami, FL 33176, in Commission District 7. This item focuses on the County-owned 72-acre portion of the 566-acre property used since 1958 exclusively as part of a private golf course.

Fiscal Impact/Funding Source

According to this Settlement Agreement, Deering Bay is required to pay: 1) $432,000 for past due rent from 2008-present; 2) eliminate the next 2019 appraisal by establishing an annual rent of $150,000 increased by 2% each year (see attached rent payments schedule); and 3) $100,000 for pre-judgment interest on past due rent. Furthermore, Deering Bay remains solely responsible for all improvement, management, operation and maintenance of the leased property. All lease payments are deposited into an County controlled Improvement Trust for the development of the Park. There are no County costs attached to this Settlement Agreement.

Track Record/Monitor

Jack Kardys, Director of the Parks, Recreation and Open Spaces Department (PROS), will monitor compliance of the Settlement Agreement.

Background

In 1958, Miami-Dade County leased Kings Bay Corporation 48-acres of park land for 20 years for the sole purpose of creating a golf course. As consideration of rent for the private use of public lands, Kings Bay provided capital improvements in lieu of lease fees by dredging and filling certain portions of Chapman Field Park to provide for a later metropolitan park marina facility.

In 1980, after County approval of many requested amendments to the lease including expanded acres, allowing assignment of the lease and allowing course improvements, the now 72-acre lease was amended to provide for a minimal rent payment of $35,000 annually until 2008,

when the rent payment would be adjusted to a percentage (8%) of market rate as provided for through a specific appraisal process.

In 2008, the County and the current lessee, Deering Bay, were to each select an appraiser to establish the new 2008-2019 lease payment. Appraisals were completed by both parties in 2009, but they yielded vastly different property values and lease payment amounts.

In 2010, rather than move to a third and binding joint appraisal as directed by the lease, Deering Bay notified the County of their opposition to the County's appraisal, appraisal process and appraisal amount, and their intent to file suit.

In 2011, at the Court's direction, the County and Deering Bay attempted to use mediation to resolve the impasse. Although the mediator found the County's case more compelling, Deering Bay would not agree to settle on an amount or final appraisal.

In 2012, the Court found in favor of the County and accepted the third appraiser's $2 million value of the leased lands and a $160,000/year rental rate.

In 2013, at the Court's direction, Deering Bay deposited rent owed into an escrow account, but Deering Bay indicated that it intended to appeal the court decision. In order to avoid further litigation, the County, represented by the Mayor's Office, County Attorney's Office and Parks, Recreation and Open Spaces Department, and Deering Bay mutually agreed to enter into a Settlement Agreement that would establish a new lease payment structure, eliminate the next 2019 appraisal adjustment in lieu of a straight yearly escalation, and provide a framework for a long-term solution for the leased land, since without a solution the lease would terminate in 2030 and effectively eliminate the Deering Bay Golf Course.

In summary, terms of the Settlement Agreement included:

1) Deering Bay payment to the County of $432,000 for past due rent from 2008-present;
2) County elimination of the next 2019 appraisal by establishing an annual rent of $150,000, increased by 2% each year until lease termination;
3) Deering Bay payment to the County of $100,000 for pre-judgment interest on past due rent.
4) Mutual discussions to identify alternative solutions for allowing the golf course leased lands to survive the 2030 termination date.

Attachment

Lisa M. Martinez, Senior Advisor
Office of the Mayor

Memorandum

MIAMI-DADE COUNTY

Date: November 25, 2013

To: Carlos A. Gimenez
County Mayor

From: Jack Kardys, Director
Parks, Recreation and Open Spaces Department

Subject: Chapman Field Park
Settlement Agreement

The purpose of the Settlement Agreement is to resolve an ongoing Lease Agreement issue involving a 72-acre County-owned portion of the Deering Bay golf course, and to lay the framework for identifying long-term solutions for its retention as golf course lands.

In 1958, Miami-Dade County leased Kings Bay Corporation 48-acres of park land for 20 years for the sole purpose of creating a golf course. As consideration of rent for the private use of public lands, Kings Bay provided capital improvements in lieu of lease fees by dredging and filling certain portions of Chapman Field Park to provide for a later metropolitan park marina facility.

In 1980, after County approval of many requested amendments to the lease including expanded acres, allowing assignment of the lease and allowing course improvements, the now 72-acre lease was amended to provide for a minimal rent payment of $35,000 annually until 2008, when the rent payment would be adjusted to a percentage (8%) of market rate as provided for through a specific appraisal process.

In 2008, the County and the current lessee, Deering Bay, were to each select an appraiser to establish the new 2008-2019 lease payment. Although convoluted, appraisals were completed by both parties in 2009, but they yielded vastly different property values and lease payment amounts.

In 2010, rather than move to a third and binding joint appraisal as directed by the lease, Deering Bay notified the County of their opposition to the County's appraisal, appraisal process and appraisal amount, and their intent to file suit.

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4) Mutual discussions to identify alternative solutions for allowing the golf course leased lands to survive the 2030 termination date.

MEMORANDUM

(Revised)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: December 17, 2013

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

SUBJECT: Agenda Item No. 8(H)(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(H)(2)
12-17-13

RESOLUTION NO. _____

RESOLUTION APPROVING SETTLEMENT AGREEMENT BETWEEN MIAMI-DADE COUNTY AND DEERING BAY YACHT AND COUNTRY CLUB IN THE AMOUNT OF $532,000.00

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 and authorizes the County Mayor or Mayor's designee to execute the Settlement Agreement between Miami-Dade County and Deering Bay Yacht and Country Club in substantially the form attached to this resolution as Exhibit A.

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

Rebeca Sosa, Chairwoman
Lynda Bell, Vice Chair

Bruno A. Barreiro	Esteban L. Bovo, Jr.
Jose "Pepe" Diaz	Audrey M. Edmonson
Sally A. Heyman	Barbara J. Jordan
Jean Monestime	Dennis C. Moss
Sen. Javier D. Souto	Xavier L. Suarez
Juan C. Zapata	

The Chairperson thereupon declared the resolution duly passed and adopted this 17th day of December, 2013. 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:_____
Deputy Clerk

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

Monica Rizo

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Settlement Agreement" or "Agreement") is made this ____ day of _____, 2013 (the "Effective Date") between Deering Bay Yacht and Country Club ("Deering Bay") and Miami-Dade County, Florida (the "County"), a political subdivision of the State of Florida (Deering Bay and the County are hereinafter collectively referred to as the "Parties").

WHEREAS, Deering Bay currently leases from the County approximately 72 acres of public park property located along Biscayne Bay off of Old Cutler Road in Miami-Dade County; and

WHEREAS, the Lease Agreement between the Parties provides, among other things, that in 2008 and again in 2019, the annual rent paid by Deering Bay to the County is to be adjusted upwards to 8% of the appraised fair market value of the leased property; and

WHEREAS, in order to establish the fair market value, the Lease Agreement provides, among other things, that each party would, in 2008 and again in 2019, select its own appraiser to appraise the leased property and, if the appraisers could not agree on a fair market value, select a third appraiser to appraise the leased property, whose determination of fair market value would be final and binding on the Parties; and

WHEREAS, in 2010, Deering Bay filed a lawsuit against the County seeking to have the Court declare the Parties rights and obligations under the Lease Agreement and other equitable relief and the County, in turn, filed a counterclaim against Deering Bay alleging breach of contract, in the matter styled *Deering Bay Yacht and Country Club v. Miami-Dade County,* 10-18082 CA 25 ("Lawsuit"); and

WHEREAS, on August 17, 2013, the Court entered a Final Order and Judgment in the Lawsuit setting the annual rental amount due under the Lease Agreement, ordering the payment of past rent due at that Court-ordered amount and ordering the payment of interest for the past due rent; and

WHEREAS, Deering Bay has sought to have the Court reconsider its Final Order and Judgment and the County has appealed the Court's denial of a writ of possession to allow the County to repossess the leased property, and

WHEREAS, the Parties desire to resolve the Lawsuit and appeal in order to avoid further litigation,

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter set forth, the Parties agree as follows:

1. **Amendment of the Lease Agreement.** The Parties agree to amend the Lease Agreement in order to delete, in its entirety, Paragraph 7(b) of the Lease Agreement and replace it with the new Paragraph 7(b) to provide as follows:

> "(b) Commencing with calendar year 2008, the Lessee shall pay to the Lessor as annual rental for the demised premises $150,000.00. Commencing with calendar year 2014, the Lessee shall pay to the Lessor as annual rental for the demised premises $150,000.00 increased by 2% and the annual rental shall continue to be increased by 2%, every year thereafter. Said rental payments shall be made semi-annually on March 1st and September 1st of every calendar year so that one-half of the total annual rental is paid each six months."

Other than replacing Paragraph 7(b) of the Lease Agreement as set forth above, the Lease and all applicable Amendments thereto remain unchanged and in full force and effect. Further, the Parties agree that the Rent Schedule attached hereto as Schedule 1 represents the payments due for the balance of the term.

2. **Past Due Rent.** Deering Bay shall pay the County $432,000 representing the unpaid portion of the past due rent for calendar year 2008 through and including calendar year 2013.

3. **Additional Funds.** Deering Bay shall pay the County an additional $100,000.00 representing the reduced prejudgment interest on the past due rent for calendar year 2008 through and including calendar year 2013 and the reduced costs incurred by the County in this Lawsuit. Payment of the funds in Paragraphs 2 and 3 shall be made within five (5) days from the rendition of the Court Order required by Paragraph 5 herein and may be made from the funds in the Court ordered account at Coconut Grove Bank. Counsel for Deering Bay shall make arrangements with Coconut Grove bank for disbursement of the foregoing amounts directly to the County. After the County has received the funds identified in paragraphs 2 and 3 as set forth above, all remaining funds in the Court ordered account at Coconut Grove Bank shall be disbursed to Deering Bay and the account shall be closed.

4. **Discussions on Long-term Solutions.** Within sixty (60) days after final execution by both Parties of this Settlement Agreement, and provided that the County has received the funds as provided in paragraphs 2 and 3 above, the Parties shall meet at Deering Bay's facilities, and up to five (5) more times thereafter in calendar year 2014, at alternating locations between the County's offices and Deering Bay's facilities or such other place as mutually agreed upon. Deering Bay shall select one or more members of its Board of Directors to represent Deering Bay and attend the meeting(s) and the County shall select one or more senior members from the Office of the Mayor and senior-level Parks, Recreation and Open Spaces Department's administration to attend the meeting(s). The purpose of the meeting(s) is to discuss, between the County and Deering Bay, possible solutions for Deering Bay with respect to its concerns about the golf course. The discussions may include their respective advisors or consultants and the anticipated subjects may include, but not be limited to, analyzing the legal, political, financial, and practical implications of any solution proposed. The Parties agree and understand that the

aforementioned discussions will be simply that: discussions between the Parties and their respective representatives, advisors, or consultants. Accordingly, neither Deering Bay nor the County shall be bound to act or fail to act in conformance with any particular discussion of the Parties, absent a legally binding written contract between the Parties. Should either Party fail to comply with the requirements of this Paragraph 4, then the sole and exclusive remedy for such breach shall be injunctive relief in order to compel the breaching Party to meet with the non-breaching Party.

5. **Settlement of Litigation.** Within five (5) days of the execution of this Settlement Agreement by both Parties, the Parties agree to file the Joint Stipulation of Settlement and Motion to Vacate the August 17, 2013 Final Order and Judgment and To Enter Consent Order attached hereto. As part of this stipulation and motion, the Parties agree to jointly petition the Court to retain jurisdiction to enforce Paragraphs 2, 3, and 4 of this Settlement Agreement.

6. **Governing Law/Venue.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida. Venue for any action or proceeding to enforce the Agreement shall lie exclusively in the courts located in Miami-Dade County, Florida.

7. **Dependent Covenants.** All provisions of this Settlement Agreement, and the performance of each of the parties hereunder, are expressly dependent upon the other provisions of this Settlement Agreement and the performance of the other party. An uncured breach by a party to this Settlement Agreement shall relieve the other party from the other party's duties of performance hereunder.

8. **Assignment.** This Settlement Agreement shall be binding upon and inure to the benefit of, and be enforceable by, the Parties hereto and their respective heirs, successors, and permitted assigns. This Settlement Agreement, and the rights and obligations contained herein, shall not be transferred or assigned to any third party without the express written consent of the Parties.

9. **Modification.** This Settlement Agreement cannot be terminated, modified or waived orally. No modification or waiver of any provision of this Settlement Agreement, nor consent to any departure therefrom, shall in any event be effective unless the same shall be in writing and signed by both Parties and then such modification, waiver, or consent shall be effective only in the specific instance and for the specific purpose for which given.

10. **Headings.** Headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Settlement Agreement for any other purposes.

11. **Authority to Enter Settlement Agreement.** The County warrants and represents that it has the full power and authority to enter into this Settlement Agreement, and the execution, delivery, and performance of this Settlement Agreement by the County have been duly authorized by all necessary governmental action. The County Mayor or his designee is the party duly authorized to execute and deliver this Settlement Agreement on behalf of the County and has so executed and delivered this Settlement Agreement. Deering Bay warrants and

represents that it is a corporation, duly formed and validly existing under the laws of the State of Florida, and has all requisite power and authority to enter into this Settlement Agreement. The execution, delivery and performance by Deering Bay of this Settlement Agreement has been duly authorized by all necessary actions of Deering Bay and will not result in the breach of or constitute a default under any loan or credit agreement, or other agreement or instrument to which Deering Bay is a party or by which Deering Bay or its assets may be bound or affected. All consents and approvals of any person or board required in connection with Deering Bay's execution of this Settlement Agreement has been obtained.

12. Binding Nature. This Settlement Agreement is a valid and binding obligation of Deering Bay and the County, enforceable against Deering Bay and the County in accordance with its terms. Deering Bay represents and acknowledges that it has been given the opportunity to independently review this Settlement Agreement with legal counsel, has agreed to the particular language of the provisions hereof and has fully participated in the drafting of this Settlement Agreement. Deering Bay acknowledges that it has read this Settlement Agreement and that it fully knows, understands and appreciates the contents and effect thereof, and that the settlement terms are made voluntarily and of Deering Bay's own free will and accord. In the event of any ambiguity in or dispute regarding the interpretation of any provision of this Settlement Agreement, such dispute shall not be resolved by any rule of construction providing for interpretation against the party who causes the ambiguity, or against the drafter. Both parties expressly agree that in the event of ambiguity or dispute regarding the interpretation of this Settlement Agreement, the document will be interpreted as if each Party hereto participated in the drafting hereof which, in fact, has been the case.

13. Attorneys' Fees and Costs. Except as expressly and explicitly set forth herein to the contrary in Paragraph 3, each Party agrees to bear its own costs and attorneys' fees relating to the Lawsuit. However, in the event that any action is instituted to enforce any term of this Settlement Agreement, to seek a declaration as to, or to assert, by way of defense, any term of this Settlement Agreement, the prevailing party in such action shall recover from the losing party its reasonable attorneys' fees and costs incurred in such action.

14. Entire Agreement. This Settlement Agreement and all of the documents referred to herein, represent the entire agreement between the Parties concerning the subject matter hereof. Deering Bay and the County each agree and acknowledge that all prior negotiations and understandings between the Parties have been merged herein. There are no representations, promises, warranties, covenants or understandings between the Parties other than those expressly set forth in this Settlement Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Settlement Agreement:

Deering Bay Yacht and Country Club, Inc.

21st day of November, 2013.

By: _____
Neil Leach as President

Attest:

_____
Witness

_____
Witness

ATTEST:

HARVEY RUVIN, CLERK

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

_____ day of _____, 2013

By:_____
DEPUTY CLERK

By: _____
Carlos Gimenez
County Mayor

ATTEST:

[ ]

_____
Witness

_____
Witness

_____

Approved for form and legal sufficiency _____.

Schedule 1

RENT PAYMENTS

March 1, 2008	$75,000.00
September 1, 2008	$75,000.00
March 1, 2009	$75,000.00
September 1, 2009	$75,000.00
March 1, 2010	$75,000.00
September 1, 2010	$75,000.00
March 1, 2011	$75,000.00
September 1, 2011	$75,000.00
March 1, 2012	$75,000.00
September 1, 2012	$75,000.00
March 1, 2013	$75,000.00
September 1, 2013	$75,000.00
March 1, 2014	$76,500.00
September 1, 2014	$76,500.00
March 1, 2015	$78,000.00
September 1, 2015	$78,000.00
March 1, 2016	$79,500.00
September 1, 2016	$79,500.00
March 1, 2017	$81,000.00
September 1, 2017	$81,000.00
March 1, 2018	$82,500.00
September 1, 2018	$82,500.00

March 1, 2019	$84,000.000
September 1, 2019	$84,000.00
March 1, 2020	$85,500.00
September 1, 2020	$85,500.00
March 1, 2021	$87,000.00
September 1, 2021	$87,000.00
March 1, 2022	$88,500.00
September 1, 2022	$88,500.00
March 1, 2023	$90,000.00
September 1, 2023	$90,000.00
March 1, 2024	$91,500.00
September 1, 2024	$91,500.00
March 1, 2025	$93,000.00
September 1, 2025	$93,000.00
March 1, 2026	$94,500.00
September 1, 2026	$94,500.00
March 1, 2027	$96,000.00
September 1, 2027	$96,000.00
March 1, 2028	$97,500.00
September 1, 2028	$97,500.00
March 1, 2029	$99,000.00
September 1, 2029	$99,000.00