

MEMORANDUM

Agenda Item No. 8(O)(1)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: October 5, 2021

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Resolution approving settlement agreement between Miami-Dade County and Terrazas Riverpark Village Condominium Association, Inc.; and authorizing the County Mayor to make payments to Terrazas Riverpark Village Condominium Association, Inc. in the amount of \$417,860.98 in accordance with the terms of the settlement agreement, execute the settlement agreement and exercise all rights contained therein

The accompanying resolution was prepared by the Water and Sewer Department and placed on the agenda at the request of Prime Sponsor Commissioner Eileen Higgins.



Geri Bonzon-Keenan
County Attorney

GBK/uw

Memorandum



Date: October 5, 2021

To: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

From: Honorable Daniella Levine Cava
Mayor

A handwritten signature in blue ink that reads "Daniella Levine Cava".

Subject: Approval of Settlement Agreement between Terrazas Riverpark Village Condominium Association, Inc. and Miami-Dade County Regarding Water and Sewer Mixed Use Charges

Recommendation

It is recommended that the Board of County Commissioners (Board) approve the attached resolution approving a Settlement Agreement, attached as Exhibit A to this memorandum, between Miami-Dade County (County), through its Water and Sewer Department (WASD), and Terrazas Riverpark Village Condominium Association, Inc. (Terrazas), resolving a dispute arising from mixed use water and sewer fees due for services provided by WASD to Terrazas.

Scope

The impact of this Settlement Agreement resolves disputes regarding water and sewer charges on a mix-used condominium at which the retail space was never used. This property is located at 1861 NW South River Drive, Miami, Florida 33125, in Commission District 5, represented by Commissioner Eileen Higgins.

Delegation of Authority

This item authorizes the County Mayor or County Mayor's designee to execute the Settlement Agreement for and on behalf the County and to exercise all rights contained therein.

Fiscal Impact/Funding Source

Under the terms of this Settlement Agreement, Terrazas will receive from the County \$417,860.98 as full and final payment of all disputes regarding mixed use water and sewer charges between the County and Terrazas. WASD will pay Terrazas \$229,823.54, equaling 55% from WASD's Operating Revenues and the remaining balance of \$188,037.44, equaling 45% will be issued as a credit to Terrazas' water and sewer account.

Track Recorder/Monitor

WASD's Chief Financial Officer Frances G. Morris will oversee implementation of the Settlement Agreement.

Background

In 2006, developer Windmoor Project LLC, requested a Service Agreement with WASD for the development of a mixed-use property with stores and apartments. On October 21, 2009, the developer paid water and sewer connection charges for 4,486 square feet of dry use stores and 324 apartments. This property, known today as Terrazas, was originally permitted as mixed use residential and commercial property. As the property was developed as a mixed-use property, the development was coded as mixed-use and billed accordingly.

Beginning in 2009, Terrazas sought a water and sewer account reclassification/recode from mixed use to multi-family. However, several inspections by WASD from 2009 to 2016 confirmed the property had mixed use plumbing being serviced through a single service line. Because the apartments and vacant retail space plumbing interconnected to the same water source, WASD’s policies required the property be billed as mixed-use. As part of those inspections, WASD verified that the 4,486 square feet of dry use stores remained commercial vacant space and had not been developed. Although Terrazas insisted that the vacant stores would not be developed in the future, there was no mechanism for WASD to ensure that the stores would not be developed at a later date. WASD provided information to Terrazas on how to separate residential and commercial water services, to facilitate the requested account recode via the establishment of a new water service line.

A WASD audit in 2017 identified the property as no longer having vacant retail space. The space in question was converted into storage units for exclusive use by property owners during the period of 2017 through 2021. However, WASD continued to bill the property under the applicable rate for mixed-use properties because Terrazas had not established a separate water service line. Terrazas proceeded to procure a plumbing permit and eliminate water service to the first-floor storage units as of January 2020. In September 2020, Terrazas filed a lawsuit against the County, Case Number 2020-019069-CA-01, seeking \$718,000.00 and claiming the property’s water account should have been reclassified and recoded back to June 2014.

WASD recognizes that the property was never used for retail space as commercial or open to the public. Therefore, because of the inherent uncertainty of litigation, WASD believes that it is in the County’s best interest to resolve the dispute between the parties, especially given that an unfavorable verdict for the County has the potential of establishing precedent that could be used against the County at a later time. Under the terms of the Settlement Agreement, WASD has agreed to retroactively recode the Terrazas account from mixed-use to multi-family as of April 5, 2017, the date that WASD’s audit confirmed there was no longer vacant retail space. Under the Settlement Agreement (Exhibit A), the County will pay Terrazas \$417,860.98 (with \$229,823.54 paid via check and the remainder provided as a credit on the water bill associated with the property).

Given that WASD verified that Terrazas never operated as mixed use and that plumbing has been separated, it is in the County’s best interest to settle the dispute with Terrazas. WASD recommends approval of the Settlement Agreement.



Jimmy Morales
Chief Operations Officer

Exhibit A

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (“Settlement Agreement”) is voluntarily entered into by and between Terrazas Riverpark Village Condominium Association, Inc. (“Terrazas”), a Florida corporation, and Miami-Dade County (“County”), a political subdivision of the State of Florida (collectively “the Parties”).

WHEREAS, on September 9, 2020, Terrazas filed its Amended Complaint (the “Lawsuit”) against the County asserting various claims related to the billing rate charged by the County’s Water and Sewer Department to Terrazas; and

WHEREAS, Terrazas is the successor in interest to the water account originally opened by Terrazas Owner LLC

WHEREAS, the Parties want to avoid the associated expense and uncertainty of litigation, and therefore desire to amicably resolve their dispute and settle all claims between them which would or could have been asserted by either party in the Lawsuit and to release each other from any and all liability with respect to the claims of the Lawsuit, and to set forth their mutual understanding and agreements with respect thereto; and

NOW, THEREFORE, in consideration of the foregoing recitals and following premises, terms and condition and for other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties agree as follows:

TERMS AND CONDITIONS

1. **Incorporation of Recitals.** The Parties agree that the above recitals are true and correct and those recitals are incorporated by reference and form a part of this Settlement Agreement.
2. **Effective Date.** The Effective Date of this Settlement Agreement shall be the later of: (1) the date the County Mayor’s veto period expires after the approval of this Settlement Agreement by the Board of County Commissioners of Miami-Dade County (“BCC”) without the County

Mayor vetoing the BCC's resolution approving same; or (2) the date on which the Mayor approves the BCC approved resolution authorizing the execution of this Settlement Agreement, as set forth in Section 3 of this Settlement Agreement.

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

a. **BCC Approval.** The Parties acknowledge that County Resolution No. 130-06 requires that all non-County parties shall execute this Settlement Agreement before the Settlement Agreement may be placed on the BCC's agenda. Accordingly, Terrazas shall execute this Settlement Agreement as a precondition of the presentation of this Settlement Agreement to the BCC. After such execution, Terrazas agrees that it may not withdraw from or modify the terms of this settlement with the County, as presented in this Settlement Agreement except as provided in paragraph 3(c) below.

b. **Parties' Obligations Before BCC Approval.** Neither of the Parties shall be required to file any documents compromising any claim it may have against the other party and shall not have released the other party until the Effective Date of this Settlement Agreement.

c. **Consequences Upon Failure to Obtain BCC Approval.** To the extent the BCC does not approve this Settlement 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 Settlement Agreement, and the fact that the Parties sought to negotiate a resolution to their dispute, including any supporting documents necessary to present this Settlement Agreement to the BCC, shall be inadmissible for all reasons and

shall not prejudice any of their pre-existing rights and remedies with respect to each other or any other person or entity.

4. **Agreement to Settle, No Admission of Liability.** Subject to the terms and conditions of this Settlement Agreement, this Settlement Agreement, the payment of any monies, or any other action of forbearance taken pursuant to this Settlement Agreement shall in no way constitute or be construed as an admission of liability or acknowledgement of the validity of any allegation, finding, or conclusion by the Parties or their respective agents, but rather are made for the purpose of settling the claims, controversies, and differences addressed herein and to avoid the expense and uncertainty of litigation. Moreover, this Settlement Agreement shall not be admissible in any proceeding for any purpose, except for the purpose of establishing a claim of default or violation of the provisions contained herein.

a. **Payment Terms.** As outlined below in section 3b of this Settlement Agreement, the County shall provide Terrazas with the total sum of four-hundred-seventeen-thousand-eight-hundred-sixty-dollars-and-ninety-eight-cents (\$417,860.98) (“Settlement Sum”) as a full and final settlement of all disputes between the Parties as set forth in this Settlement Agreement within ten (10) days after the Effective Date.

b. **Payment Method.**

- i. The County shall pay Terrazas 55% of the Settlement Sum, two-hundred-twenty-nine-thousand-eight-hundred-twenty-three-dollars-and-fifty-four cents (\$229,823.54) by check payable to Bercow Radell Fernandez Larkin & Tapanes Trust Account and sent to Thomas Robertson via courier.
- j. The County shall apply a credit to Terrazas’s Miami-Dade County Water and Sewer Department account, account number 3322293223 (which is currently in the name of

Terrazas Owner LLC) in the amount of 45% of the Settlement Sum, one-hundred-eighty-eight-thousand-thirty-seven-dollars-and-forty-four-cents (\$188,037.44)

- k. **County Release.** For the consideration and promises made herein and upon payment of the Settlement Sum, the County forever releases and discharges Terrazas and its officers, directors agents, successors, sureties, representatives, executors, attorneys, experts, employees, insurers, and assigns from any and all claims, causes of action, demands, disputes, and rights of whatever nature and kind, chaotic or inchoate, known or unknown, past or future, related to or in any way arising out of the Lawsuit and related in any way to the claims or defenses that were or could have been asserted by the County against Terrazas in the Lawsuit.
- l. **Terrazas Release.** For and upon receipt by Terrazas of the Settlement Sum as stated in paragraph 4 above, Terrazas and its officers, directors, agents, successors, sureties, representatives, executors, attorneys, experts, employees, agents, insurers, and assigns forever releases and discharges the County from any and all claims, causes of action, demands, disputes, and rights of whatever nature and kind, chaotic or inchoate, known or unknown, past or future, related to or in any way arising out of or related in any way to the claims or defenses that were or could have been asserted by Terrazas against the County in the Lawsuit.
- m. **Dismissal of Claims and Attorneys' Fees.** Within five (5) business days of Terrazas receipt and clearance of the Settlement Sum, the Terrazas shall file a notice of dismissal with prejudice in the Lawsuit, and each party agrees to bear their own attorneys' fees and costs. The Parties shall cooperate with each other to submit a proposed agreed order to the Court for execution to approve the stipulation for the dismissal with prejudice.


- n. **Florida Law Applies, Exclusive Venue.** This Settlement Agreement shall be construed under the laws of the State of Florida without regard to its choice of law provisions. Venue for any dispute arising out of this Settlement Agreement shall lie exclusively in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida.
- o. **Entire Agreement, Modification.** This Settlement Agreement with all documents required to be executed hereunder constitutes the entire agreement and understanding between the Parties with respect to the subject matter of this Settlement Agreement. No supplement, modification, or amendment to this Settlement Agreement shall be binding unless it is executed in writing by all Parties.
- p. **Rule of Construction, Opportunity to Review.** The Parties represent and agree that they have participated equally in the negotiation of the terms and provisions set forth in this Settlement Agreement and that no presumption or inference shall apply against any of the Parties hereto to its construction. The Parties declare that: (a) they have completely read the terms of this Settlement Agreement; (b) they have discussed the terms of the Settlement Agreement with legal counsel of their choice; and (c) they fully understand and voluntarily accept the terms to make a full and final compromise, adjustment and settlement of claims.
- q. **Successors and Assigns.** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, representatives, agents, attorneys, officers, directors, predecessors, affiliates, parent, subsidiaries, successors or assigns in connection with any legal action arising out of the Settlement Agreement.
- r. **Authority to Execute and Bind.** By executing this Settlement Agreement, the signatories warrant and represent that they are authorized to enter into this Settlement

Agreement and empowered to bind their respective parties to these terms and, where applicable, their parent, affiliates, subsidiaries, successors, assigns, and related entities. Further, the Parties represent that they have not assigned any of their respective rights or claims subject of or to this Settlement Agreement to any third party.

- s. **Captions.** The captions or headings in this Settlement Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Settlement Agreement.
- t. **Severability.** The Parties have attempted to create a Settlement Agreement that is lawful and enforceable in all respects. The validity of this Settlement 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. Whenever possible, each provision of this Settlement Agreement shall be interpreted in such a manner as to be effective and valued under applicable law. However, if any provision of this Settlement 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.
- u. **Counterparts, Electronic Signatures.** The Parties agree that this Settlement Agreement, and any and all other documents in connection with this Settlement Agreement, may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall together constitute one and the same Settlement Agreement. This Settlement Agreement may be executed as facsimile, email, or electronic originals and each copy of this Settlement Agreement bearing the

facsimile, email, or electronic transmitted signature of any of the Parties' authorized representatives shall be deemed to be an original.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement and Mutual Releases by their duly authorized representative as of the date of year appearing by their respective signatures.

By: BERNARDO CERVANTES
Sign:  5/25/21
Date
President
Terrazas Riverpark Village Condominium Association, Inc.

Sign: _____ Date _____
Daniella Levine Cava
Mayor, Miami-Dade County
Miami-Dade County, Florida

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MEMORANDUM
(Revised)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: October 5, 2021

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 8(O)(1)

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 present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____) 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)(1)
10-5-21

RESOLUTION NO. _____

RESOLUTION APPROVING SETTLEMENT AGREEMENT BETWEEN MIAMI-DADE COUNTY AND TERRAZAS RIVERPARK VILLAGE CONDOMINIUM ASSOCIATION, INC.; AND AUTHORIZING THE COUNTY MAYOR OR DESIGNEE TO MAKE PAYMENTS TO TERRAZAS RIVERPARK VILLAGE CONDOMINIUM ASSOCIATION, INC. IN THE AMOUNT OF \$417,860.98 IN ACCORDANCE WITH THE TERMS OF THE SETTLEMENT AGREEMENT, EXECUTE THE SETTLEMENT 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:

Section 1. Approves the Settlement Agreement, in substantially the form attached to the accompanying memorandum as Exhibit A, between Miami-Dade County and Terrazas Riverpark Village Condominium Association, Inc.

Section 2. Authorizes the County Mayor or designee to make payments in the amount of \$417,860.98 to resolve any and all claims between the parties; execute the Settlement Agreement for and on behalf of Miami-Dade County, and exercise all rights contained therein.

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:

Jose "Pepe" Diaz, Chairman
Oliver G. Gilbert, III, Vice-Chairman
Sen. René García
Sally A. Heyman
Eileen Higgins
Kionne L. McGhee
Raquel A. Regalado
Sen. Javier D. Souto
Keon Hardemon
Danielle Cohen Higgins
Joe A. Martinez
Jean Monestime
Rebeca Sosa

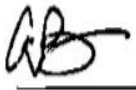
The Chairperson thereupon declared this resolution duly passed and adopted this 5th day of October, 2021. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override 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: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.



Angela F. Benjamin
Melanie J. Spencer