Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 12(A)(4)
1-25-07

OFFICIAL FILE COPY
CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

RESOLUTION NO. R-115-07

RESOLUTION AUTHORIZING EXECUTION OF A SETTLEMENT AGREEMENT, WAIVER AND RELEASE BETWEEN ZOM SOUTH BEACH, LTD., ATHENA KARLTON SOBE, LLC, THE WAVERLY OF SOUTH BEACH CONDOMINIUM ASSOCIATION, INC., AND MIAMI-DADE COUNTY RELATING TO THE PAYMENT OF WATER AND SEWER CONNECTION CHARGES PURSUANT TO MIAMI-DADE COUNTY ORDINANCE 89-95.

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 hereby approves the execution of a Settlement Agreement, Waiver and Release between Zom South Beach, Ltd., Athena Karlton Sobe, LLC, and The Waverly of South Beach Condominium Association, Inc. relating to the payment of water and sewer connection charges pursuant to Miami-Dade County Ordinance 89-85, in substantially the form attached hereto and made a part hereto; and authorizes the County Manager to execute same for and on behalf of Miami-Dade County.

The foregoing resolution was offered by Commissioner Sally A. Heyman, who moved its adoption. The motion was seconded by Commissioner Jose "Pepe" Diaz and upon being put to a vote, the vote was as follows:

Bruno A. Barreiro, Chairman	nay		
Barbara J. Jordan, Vice-Chairwoman	nay		
Jose "Pepe" Diaz	aye	Audrey M. Edmonson	aye
Carlos A. Gimenez	aye	Sally A. Heyman	aye
Joe A. Martinez	absent	Dennis C. Moss	absent
Dorrin D. Rolle	aye	Natacha Seijas	absent
Katy Sorenson	aye	Rebeca Sosa	absent
Sen. Javier D. Souto	absent		

The Chairman thereupon declared the resolution duly passed and adopted this 25th day of January, 2007. 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.

By: KAY SULLIVAN
Deputy Clerk

David M. Murray

Memorandum

MIAMI-DADE COUNTY

Date: January 25, 2007

Agenda Item No. 12(A)(4)

To: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

George M. Burgess
County Manager

From:

Murray A. Greenberg
County Attorney

Subject: Resolution authorizing the execution of a Settlement Agreement, Waiver, and Release between Zom South Beach, Ltd., Athen Karlton Sobe, LLC, The Waverly of South Beach Condominium Association, Inc. (collectively, the Entities) and Miami-Dade County

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RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) adopt the attached resolution authorizing the execution of a Settlement Agreement, Waiver, and Release between Zom South Beach, Ltd., Athen Karlton Sobe, LLC, The Waverly of South Beach Condominium Association, Inc. (collectively, the Entities) and Miami-Dade County. This resolution relates to water and sewer connection fees established in Miami-Dade County Ordinance No. 89-95. The Entities have agreed to pay the County $175,000 in full satisfaction of the County's claim for payment. This settlement does not include the City of Miami Beach's responsibilities described below.

BACKGROUND

Miami-Dade County Ordinance No. 89-95 requires that all new buildings within the jurisdiction of a volume customer that are deemed to impact water and/or sewer facilities pay a connection charge to the Miami-Dade Water and Sewer Department (MDWASD). Volume customers are those municipalities that purchase water and/or sewer service from the County and then directly provide these services to retail customers within their jurisdiction. The City of Miami Beach is a volume customer of MDWASD's. Under Ordinance No. 89-95, the volume customer is prohibited from rendering water service, sewer service, or both until it has either collected the County's connection charge or it is presented with a receipt showing the County has received the money. In 2005, an audit conducted by the County's Audit and Management Services revealed that for a number of buildings built between 1989 and 2005 the City of Miami Beach had failed to either collect the connection charges or verify that the charges had been collected by the County. Contrary to the mandates of Ordinance No. 89-95, the City of Miami Beach provided water and/or sewer services to all those buildings.

As a result of an Audit and Management Services audit, MDWASD staff sought payment from all the buildings in the City of Miami Beach that were identified as not having paid the proper connection charges between 1989 and 2005. MDWASD initially sent letters to the building owners seeking full payment. In many instances, the owners paid, in others, the County instituted legal action. As a result of these collection efforts, from an initial amount of $10,440,969 due in connection charges, MDWASD has collected $5,715,252, the remaining balance of $4,725,717 consists for the most part of monies owed by projects constructed more than 4 years ago. These projects which total $3,255,900 depending on individual circumstances could be subject to Florida's 4 Year Statute of Limitations. MDWASD is proceeding on a case by case basis to collect these monies and expects to bring resolution to all outstanding connection charges by year-end.

Projects in the City of Miami Beach that owe MDWASD more than $100,000 in connection charges are listed below. In the coming months, MDWASD will present settlement agreements to the Board for those projects subject to the statute of limitations. MDWASD's collection effort on these outstanding connection charges does not relieve the City of Miami Beach from its responsibility to either collect or pay the remainder of these delinquent fees. In fact, staff has and will continue to meet with City of Miami Beach officials, to inform them of the amounts we intend to settle.

Projects Developed in the City of Miami Beach

Name of Project	Amount Owed	Actions Being Taken by MDWASD
The Loews Hotel	$899,047	While this is the amount on the books, our research has discovered that the amount may be significantly less. We will be completed with the Loews negotiations in the next two weeks.
The Waverly (subject of this recommendation)	$526,347	Settlement Agreement attached for $175,000. The remainder will be the responsibility of the City of Miami Beach.
Yacht Club at Portofino	$513,758	Collection notices sent for the full amount due.
Portofino Tower	$310,356	Collection notices sent for the full amount due.
The Royal Palm Hotel	$286,129	Collection notices sent for the full amount due.
Cosmopolitan Towers	$229,831	Collection notices sent for the full amount due.
The Ritz Carlton Hotel	$145,218	Collection notices sent for the full amount due.
Ocean Blue Condominiums	$138,961	Collection notices sent for the full amount due.
The Shores Club	$118,585	Nearing agreement with developer for full amount to be paid in three equal installments with interest from the date of the settlement.
Collins Victory Plaza	$106, 255	Collection notices sent for the full amount due.

Regarding this Waverly fee, the entities have asserted various defenses to the County's claim; these defenses may prevent the County from recovering any of the claimed amounts. After initial negotiations, the original offer of settlement was $35,000. After further negotiations, that amount has been increased to $175,000. It should be noted that the building is now under control of the condominium association. The settlement will be paid by the developers. This settlement is fair and reasonable given the strength of the Entities' defenses, the risks of litigation and the costs of trying this case.

Each of these major buildings reflects a different set of facts and a different probability of success in court. Board of County Commission approval of the settlement is the first phase of our effort to completely recover. The second phase will be a negotiation with the City of Miami Beach once the total recovery balance from all projects is known.

Based upon the complex legal issues, the risks of litigation and the potential for additional revenues from a final settlement with the City of Miami Beach your approval of the attached resolution and Settlement Agreement, Waiver and Release is respectfully requested.

Assistant County Manager

MEMORANDUM

(Revised)

TO: Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners

DATE: January 25, 2007

FROM: Murray A. Greenberg, County Attorney

SUBJECT: Agenda Item No. 12(A)(4)

Please note any items checked.

_____	**"4-Day Rule" ("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**
_____	**Bid waiver requiring County Manager's written recommendation**
_____	**Ordinance creating a new board requires detailed County Manager's report for public hearing**
_____	**Housekeeping item (no policy decision required)**
✓	**No committee review**

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SETTLEMENT AGREEMENT, WAIVER AND RELEASE

BY AND BETWEEN

MIAMI-DADE COUNTY

AND

ZOM SOUTH BEACH, LTD., ATHENA KARLTON SOBE, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AND THE WAVERLY OF SOUTH BEACH CONDOMINIUM ASSOCIATION, INC.

This Settlement Agreement is entered into on this _____ day of _____, 2007, by and between Miami-Dade County (the "County") and ZOM South Beach, Ltd., a Florida limited liability partnership (the "Developer"), Athena Karlton SoBe, LLC, a Delaware limited liability company, and the Waverly of South Beach Condominium Association, Inc. (hereinafter collectively referred to as the "Entities");

WHEREAS, Developer constructed a property known as the Waverly, more particularly described as 1330 West Avenue, Miami Beach, Florida, 33133 ("the Property"); and

WHEREAS, Developer later conveyed the Property to Athena Karlton SoBe, LLC, and thereafter the Property was converted to the Condominium form of ownership; and

WHEREAS, the County has alleged the development of the Property obligated the Entities to pay, individually or collectively, water and sewer connection charges to the County pursuant to Miami-Dade County Ordinance 89-95; and

WHEREAS, on September 29, 2005, Harold Concepcion of the Miami-Dade Water and Sewer Department ("WASA") sent a letter ("Letter") to David H. Rogel, attorney for the Waverly of South Beach Condominium Association, Inc. requesting payment for water and sewer connection charges for the Property; and

WHEREAS, the County has alleged that these fees remain outstanding; and

WHEREAS, the Entities dispute and deny the allegation of the County that they are responsible for payment of the water and sewer connection charges; and

WHEREAS, the County and the Entities desire to completely resolve and settle all issues related to the outstanding water and sewer connection charges;

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth below, and other good and valuable consideration, the sufficiency of which are hereby acknowledged, the Entities and the County agree as follows:

1. Pursuant to the execution of this Agreement, the Developer shall pay to the County the amount of $175,000.00. This amount shall be due upon execution of this agreement by all parties.

2. The Entities and the County waive and release any and all claims at law or equity each party has or may accrue against the other, its agents, employees, and officials, arising, on or before the effective date of this agreement, out of the allegedly due water and sewer connection charges for the Property. This waiver and release includes any and all claims for the water and sewer connection charges the County has or may have against the owners of condominium units on the Property. Notwithstanding the preceding, nothing contained herein shall limit the ability of the County to enforce any provision of the Code of Miami-Dade County against any of the Entities with respect to any matters occurring after the date of this Agreement other than and excluding those matters related to the water and sewer connection charges.

3. Neither the Entities, collectively or individually, nor the County admit any liability or wrongdoing.

4. This agreement is complete and contains the full understanding of the Entities and the County. This agreement may not be modified without the express written consent of the Entities and the County. This agreement supersedes all other terms, provisions, or specifications of any prior documentation or agreement as may

exist between the Entities and the County relating to water and sewer connection charges allegedly due for the Property.

5. The execution of this agreement is duly authorized and is binding on the parties hereto and their successors in interest.

6. This agreement shall be interpreted under Florida law. Venue for any litigation relating to this Agreement shall be had in Miami-Dade County, Florida.

7. This agreement may be entered into in any number of counterparts and by the parties to it on separate counterparts each of which when so executed and delivered shall be an original but all the counterparts shall together constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement on the day and year first above written.

"Seller"
ZOM South Beach, Ltd.
a Florida limited liability partnership

Witnesses:

_____

_____

By: ZOM Development IV, Ltd.,
a Florida limited liability partnership,
its General Partner

By: ZOM Development, Inc., a Florida corporation, its General Partner

By: _____
Name: Samuel C. Stephen, III
Title: Executive Vice President

Address: 1950 Summit Park Drive
Suite 300
Orlando, Florida 32810
Attention: Samuel C. Stephens, III
Facsimile: (407) 475-0894

Athena Karlton SoBe, LLC,
a Delaware limited liability company

Witnesses:

_____ By: _____

_____ Print Name: _____

Title: _____

Waverly of South Beach Condominium Association, Inc.

Witnesses:

_____ By: _____

_____ Print Name: _____

Title: _____

Attest:
Harvey Ruvin, Clerk

MIAMI-DADE COUNTY

By: _____
Deputy Clerk

By: _____
County Manager

Approved as to form and Legal sufficiency:

_____
Assistant County Attorney