RESOLUTION NO. 2014-R-63

A RESOLUTION OF THE VICE-MAYOR AS ACTING MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, REGARDING THE REMOVAL OF APPROXIMATELY 194,000 CUBIC YARDS OF FILL MATERIAL CONTAINING CONCENTRATIONS OF ALUMINUM ABOVE TARGET CLEAN UP LEVELS OBTAINED FROM THE "BRICKELL CITY CENTRE," CURRENTLY STOCKPILED ON THE PREMISES COMMONLY REFERRED TO AS THE BISCAYNE LANDING SITE AS WELL AS AUTHORIZING THE CITY MANAGER TO BEGIN THE APPRAISAL PROCESS AND NEGOTIATE A FORMAL AGREEMENT FOR THE SALE TO OLETA PARTNERS, LLC ("OLETA"), OF APPROXIMATELY FIFTY (50) ACRES OF PROPERTY KNOWN AS "THE RESIDENTIAL PARCEL", SUBSTANTIALLY IN ACCORDANCE WITH OLETA'S EXCLUSIVE PURCHASE OPTION RIGHTS UNDER THE BISCAYNE LANDING LEASE AGREEEMENT; PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER PURPOSES

WHEREAS, the City of North Miami ("**City**"), as landlord, and Oleta Partners, LLC ("**Oleta**"), as tenant, are parties to a certain Lease Agreement dated May 29, 2012 ("**Lease**"), for property commonly referred to as Biscayne Landing ("**Premises**"); and

WHEREAS, Oleta obtained approximately 194,000 cubic yards of fill (the "**Fill**") from the "Brickell City Centre" site, which Fill was determined by the Miami-Dade County of Department of Environmental Resource Management ("**DERM**") (i) to contain concentrations of aluminum in excess of the ground and surface water cleanup target level pursuant to Section 24-44(2) of the Code of Miami-Dade County (the "**County Code**"), and (ii) to contain leachable aluminum above cleanup target levels (but not exceeding the primary drinking water standard and not considered to be a health risk), which Fill is currently stockpiled on the Premises; and

WHEREAS, the Fill is currently being maintained in compliance with a stockpile management plan approved by DERM; and

WHEREAS, on November 12, 2013, the City Council voted to require Oleta to remove the Fill from the Premises; and

WHEREAS, on November 18, 2013, the City sent formal notice directing Oleta to remove the Fill and cease any attempts to deliver additional fill material onto the Premises; and

WHEREAS, in an effort to comply with the Council's mandate, subject to and following the execution of a formal agreement ("**Formal Agreement**") by the City and Oleta, amending the Lease and otherwise setting forth the agreements of the City and Oleta on terms and conditions which may be mutually agreed upon, Oleta will provide to the City, a plan ("**Soil Removal Plan**") approved by DERM for removing the Fill; and

WHEREAS, Section 33 of the Lease titled "Option to Purchase" grants Oleta the exclusive option to purchase approximately 50.6 acres of property, the exact location, acreage and legal description of which will be identified and determined by a survey to be obtained by Oleta at its cost ("**Residential Parcel**") to develop residential units along with attendant retail and other uses, following substantial completion of the initial development as defined in the Lease ("**Option Period**"); and

WHEREAS, Oleta requests an amendment to the Lease providing for, among other things, an acceleration of the Option Period, and has indicated a willingness to enter into the Formal Agreement and to provide the Soil Removal Plan if the Formal Agreement provides for the immediate sale of the Residential Parcel by the City to Oleta at a price to be negotiated by the parties and determined in accordance with the Formal Agreement and otherwise modifying the option provided for in Section 33 of the Lease; and

WHEREAS, the City Council agrees to allow Oleta to begin the negotiation process in order to exercise its option under the Lease as amended pursuant to the Formal Agreement, and to begin the process of negotiating the Formal Agreement and directs the City Manager to begin the negotiation process and to procure (in consultation with Oleta with respect to the appropriate appraisal methodology to be used to appraise the City's interest in the Residential Property) at least two appraisals of the Residential Property in accordance with Section 8 of the City Charter; and

WHEREAS, to ensure a smooth and efficient continuation of the development of the Biscayne Landing project, the City Council agrees to allow for streamlining of the development process in accordance with City of North Miami Land Development Regulations, by, among other things, implementing reasonable and appropriate modifications to the forms of Landlord

Estoppel Certificate and Ground Lease Non-Disturbance Agreement provided for in the Lease; and

WHEREAS, the Formal Agreement will provide that Oleta will pay for the City selected appraisals as well as the City's attorney's fees and other certain associated costs to facilitate the process of the sale of the Residential Parcel; and

WHEREAS, the Vice Mayor as Acting Mayor and City Council believe that it will be in the best interest of the City to pass this Resolution.

NOW THEREFORE, BE IT RESOLVED BY THE VICE MAYOR AS ACTING MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA:

Section 1. **Recitals.** The foregoing recitals are true and correct and incorporated herein by this reference.

Section 2. **Authorization to City Manager and City Attorney.** The Vice Mayor as Acting Mayor and City Council of the City of North Miami, Florida, hereby authorize the City Manager and City Attorney to do whatever is necessary to effectuate the requirements of this Resolution, including but not limited to (i) negotiating the Formal Agreement; (ii) engaging at least two (2), but no more than three (3), appraisers and other necessary professionals at Oleta's cost; and (iii) bringing the Formal Agreement to the City Council for final approval as soon as reasonably possible.

Section 3. **Effective Date.** This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED by a 4-0 vote of the Vice-Mayor as Acting Mayor and City Council of the City of North Miami, Florida, this 8th day of July 2014.

PHILIPPE BIEN-AIME
VICE MAYOR AS ACTING MAYOR

ATTEST:

MICHAEL A. ETIENNE, ESQ.
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

REGINE M. MONESTIME
CITY ATTORNEY

SPONSORED BY: CITY ADMINISTRATION

Moved by: Keys

Seconded by: Steril

Vote:

Vice Mayor as Acting Mayor Philippe Bien-Aime	x (Yes)	____ (No)
Councilperson Scott Galvin	x (Yes)	____ (No)
Councilperson Carol Keys, Esq.	x (Yes)	____ (No)
Councilperson Marie Erlande Steril	x (Yes)	____ (No)