RESOLUTION NO. 2014-R-98

A RESOLUTION OF THE VICE MAYOR AS ACTING MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, APPROVING THE MEMORANDUM OF UNDERSTANDING, IN SUBSTANTIALLY THE ATTACHED FORM, BETWEEN THE CITY OF NORTH MIAMI AND OLETA PARTNERS, LLC; AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO DO ALL THINGS NECESSARY TO EFFECTUATE THE SALE OF APPROXIMATELY 50.6 ACRES OF PROPERTY KNOWN AS THE "RESIDENTIAL PARCEL", LOCATED WITHIN THE PREMISES COMMONLY REFERRED TO AS "BISCAYNE LANDING", AND IN CONNECTION WITH SUCH SALE, APPROVING OLETA'S SOIL REMOVAL PLAN OF APPROXIMATELY 194,000 CUBIC YARDS OF FILL MATERIAL OBTAINED FROM THE "BRICKELL CITY CENTRE"; 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 (as amended, the "Lease"), for property commonly referred to as Biscayne Landing (the "Premises"); and

WHEREAS, on July 8, 2014, the City Council of North Miami (the "City Council") adopted Resolution No. 2014-63 (the "Resolution"), which authorized the City Manager and Oleta to negotiate the sale and purchase of approximately 50.6 acres of property, known as the "Residential Parcel"; and

WHEREAS, pursuant to the Resolution and in accordance with the provisions of the City Charter, the City secured three (3) independent appraisers each of whom has provided City and Oleta with a detailed analysis and final appraisals of the estimated fair market value of the Residential Parcel, utilizing the procedure set forth in the Resolution (the "Appraised Value"), attached hereto as Exhibit "A"; and

WHEREAS, negotiations between the City and Oleta have culminated in the preparation of a document entitled "Memorandum of Understanding" (the "Memorandum of Understanding"), which provides for, among other things, the sale of the Residential Parcel by City to Oleta for a purchase price of Twenty Million Dollars ($20,000,000.00), as well as requiring Oleta to prepare a formal plan for the removal of approximately 194,000 cubic yards of

fill material acquired from the Brickell City Centre site which is presently stored on the Premises; and

WHEREAS, the Vice Mayor as Acting Mayor and City Council believe that it will be in the best interest of the City to adopt 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. **Approval of Memorandum of Understanding.** The Vice Mayor as Acting Mayor and City Council of the City of North Miami, Florida, hereby approve the Memorandum of Understanding, in substantially the attached form as Exhibit "B".

Section 2. **Authority of City Manager and City Attorney.** The City Manager and City Attorney are hereby authorized and directed (i) to do all things necessary to finalize the Memorandum of Understanding, and (ii) to effectuate the terms of all Formal Agreements, to wit: Agreement Regarding Residential Parcel, Fourth Amendment to the Lease, Future Participation Agreement, as well as the delivery of all other documents required by the Formal Agreements to be prepared and/or executed; and to take all steps necessary and appropriate to consummate the closing of the sale of the Residential Parcel pursuant to the terms of the Memorandum of Understanding without the necessity of further action by the City Council.

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 28 day of October, 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: Steril

Seconded by: Bien-Aime

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)

EXHIBIT "B"

Memorandum of Understanding

1. On July 8, 2014, the City Council passed Resolution No. 2014-R-63 authorizing the City Manager and City Attorney to begin the appraisal process and start the process to negotiate an agreement with Oleta providing for (among other things) (i) the sale of certain property of approximately 50 acres (referred to as the Residential Parcel) to Oleta (notwithstanding that Oleta's right to exercise an option to buy the Residential Parcel is not presently exercisable under the Lease), (ii) removal of approximately 194,000 cubic yards of fill brought in by Oleta from the Brickell City Centre site (the "**Fill**"), (iii) amending the existing Lease, and (iv) streamlining the process for the development of the Biscayne Landing project in accordance with City of North Miami Land Development Regulations.

2. In exchange for a purchase price of $20,000,000, Oleta will purchase the Residential Parcel and remove the Fill, subject to the other terms and conditions set forth below. As a condition to closing, the Ground Lease will be amended to reflect the sale of the Residential Parcel and other necessary adjustments, and the Conditional Use Permit will be amended to clarify and amend the development process. In addition, a Declaration of Restrictive Covenants and a Future Participation Agreement will be recorded in connection with closing that will impose certain requirements that will run with the land.

3. Agreement Regarding Residential Parcel (the "**Agreement**").

   - Provides for a purchase price of $20,000,000. The City or Oleta may choose to have $16,000,000 of the purchase price financed by the City at 3.5% interest per year, with Oleta making annual interest and principal payments leading to full payment of the outstanding principal within ten (10) years of closing. If neither City nor Oleta exercises the financing option, the Residential Parcel will be purchased on an "all-cash" basis. If Oleta chooses the financing option, City may choose not to allow Oleta to finance part of the purchase price, in which event Oleta can either elect to acquire the Residential Parcel on an "all-cash" basis or to cancel its agreement to acquire the Residential Parcel. Oleta shall pay all documentary stamp taxes and surtaxes on the deed conveying the Residential Parcel and all recording fees to record the deed.

   - If either City or Oleta chooses the financing option (and City does not choose to prohibit Oleta from financing part of the purchase price), (i) Oleta will pay $4,000,000 of the purchase price at closing, (ii) the purchase money financing will be pre-payable at any time by Oleta without penalty, (iii) the financing will be secured by a mortgage encumbering the Residential Parcel, and (iv) Oleta shall pay all documentary stamp taxes and intangible taxes to record the Mortgage

together all recording fees. There shall be no proration of real estate taxes or rent. The City will release the lien of the Mortgage from any portion of the Residential Parcel being sold by Oleta in exchange for a principal payment equal to the outstanding principal balance immediately prior to the sale, multiplied by a fraction, the numerator of which will be the acreage being sold, and the denominator of which will be 50. Any payment of principal in connection with the sale of any portion of the Residential Parcel will be credited against Oleta's next regularly owed principal payment(s) (i.e., the principal payments due on each anniversary of the Closing).

- Oleta may assign its rights to purchase the Residential Parcel prior to closing to an Affiliate (as defined in the Lease), or to an unaffiliated qualified developer, and Oleta (or its Affiliate) may (if it is the purchaser of the Residential Parcel) sell portions of the Residential Parcel to unaffiliated third parties which meet certain qualifications, after the closing, all with no transfer fee. The qualifications for an unaffiliated third party to acquire portions of the Residential Parcel after closing are having (i) a net worth of no less than $10,000,000, and (ii) experience consisting of having developed at least 500 residential units. City may reasonably approve other developers who do not otherwise meet the above qualifications.

- Conditions to Closing.

  i. The Amended and Restated Conditional Use Permit and the Text Amendment as outlined in composite Exhibit H shall have been passed and become fully effective, beyond any appeal period.

  ii. City shall have complied with the Title Requirements (but City shall not be required to file any lawsuit to cure any title objections).

  iii. All of City's representations, warranties and covenants contained in the Agreement must be materially true as of the date of Closing.

  iv. City and Oleta each shall have delivered their respective Deliverables to Closing Agent, all properly executed and (as appropriate) witnessed and notarized.

  v. Among the other Deliverables, the parties shall have executed and delivered to the Closing Agent for recording (i) the Future Participation Agreement, and (ii) the Declaration of Restrictions.

vi. Oleta shall deliver to City an updated Ownership Certificate in compliance with Section 14.2.3 of the Lease.

vii. The Master Declaration substantially similar to the form previously provided to City shall have been recorded prior to Closing, with the removal or modification of Section 2.3 from that previously provided form.

- The Residential Parcel will be used primarily for residential and limited commercial uses. Within two years of closing, Oleta will be permitted to exchange any portion of the Residential Parcel for another portion of the same size within the Residential Zone of the Biscayne Landing project (92 acres on the southern and eastern portions of the property).

- The City grants Oleta the option to purchase up to 20 additional acres of land within the Residential Zones at $400,000/acre (the per acre sales price) within two years of closing, which will be on substantially the same terms as the sale of the Residential Parcel including the same future participation.

- Oleta will remove and relocate the Fill, at Oleta's sole cost and expense, pursuant to the Removal Plan, the Plan Approval and the Fill Removal Permits, issued by all appropriate governmental agencies, in an orderly fashion commencing thirty days after the later to occur of (i) the Closing, and (ii) issuance of all required Fill Removal Permits. In the event that Oleta is obligated to remove the Fill but fails to comply with its obligation to remove the Fill, the Agreement provides that the City will have all remedies at law or in equity.

4. Future Participation Agreement.

- As a condition to closing, the Parties will execute and record the Future Participation Agreement, which will provide for additional payments to the City as a result of monies received by Oleta or an Unaffiliated Developer from the sale of residential property (whether condominium or otherwise, each a "**Residential Unit**"), and from the net rental profit received by Oleta or an Unaffiliated Developer.

- For sales of Residential Unit, the additional payments will be 2% of the gross sale price paid by the initial end purchaser of the Residential Unit in connection with any Oleta Party's or any Unaffiliated Developer's initial sale of Residential Units on and within the Residential Parcel. For rentals, the additional payments will be 1.75% of (X) the gross rental revenue received by an Oleta Party or by an Unaffiliated Developer from any and all retail, commercial, residential and other Tenants occupying the rentals, less (Y) all pass-through

reimbursements. For purposes of this provision, the term "pass-through reimbursements" means amounts paid to Oleta or to an Unaffiliated Developer (as appropriate) with respect to customary operating expenses, real estate, sales and other taxes, improvement allowances, and leasing commissions, and management fees (not to exceed 3% of gross revenues).

5. Declaration of Restrictions.

- Notwithstanding any future or further transfer, sale or conveyance of all or any portion of the Parcel by Oleta or its designee, Oleta shall remain ultimately responsible for all of Oleta's environmental obligations and compliance costs under Section 9.3 of the Lease with respect to Groundwater Remediation, Landfill Closure, and Landfill Closure Monitoring and Compliance.

- The Parcel shall be used primarily for residential and limited commercial uses.

- Oleta (and as applicable, its designee) and each subsequent owner of any portion of the Parcel wishing to develop such portion of the Parcel shall be bound by and subject to that certain Conditional Use Permit issued by the city with respect to the Parcel (in addition to other land), as such Conditional Use Permit has been amended pursuant to Resolution No. R-2014-____, and as same may be further amended from time to time.

- Oleta (and as applicable, its designee) shall be bound by enumerated Local Preference ordinances. Oleta will use commercially reasonable efforts to cause each subsequent owner of any portion of the Parcel wishing to develop such portion of the Parcel to comply with such ordinances, as well. Oleta will under no circumstances be liable to City in the event that any subsequent owner of any portion of the Parcel does not comply with such ordinances.

- No sale of all or any part of the Parcel shall in any way change or modify Oleta's Tenant's Construction Obligations under the Lease.

6. Conditional Use Permit & Text Amendment.

- As a condition to closing, the City will streamline and simplify the approval process for the development of the Biscayne Landing project in accordance with City of North Miami Land Development Regulations as shown on Composite Exhibit H. In recognition of the fact that the plans are conceptual and will change over time all future changes to the Conceptual Master Development Plan will be reviewed and

approved administratively, unless a proposed change is determined to be substantial in accordance with the amended conditional use permit.

7. Fourth Amendment to the Lease.

- An Adjustment Factor equal to an amount, expressed as a percentage, equal to a fraction, the numerator of which will be 151.6 less the number of acres within the Residential Parcel, and the denominator of which will be 151.6, will be used to determine Fixed Rent and Initial Renewal Rent amounts.

- No transfer fee will be due in connection with the issuance of Equity Interests by Oleta to any Permitted Equity Owner (i.e., a Person making a direct or indirect investment in Oleta). Equity Interests may be issued to new Permitted Equity Owners and/or transferred between Equity Owners, so long as such issuance or transfer does not result in Control being vested in Persons other than Persons Controlled by the Lefrak Organization and/or Swerdlow and/or other Qualified Developer prior to the completion of Tenant's Construction Obligations, unless consented to by the City.

- City will remain entitled to receive a five (5%) percent transfer fee in connection with the sale of an Equity Interest in Oleta by a Permitted Equity Owner (including but not limited to Michael Swerdlow), whether to any Person who is already the holder of an equity interest in Tenant (directly or indirectly), or any Person who is not at the time of said sale already the holder of an equity interest in Tenant (directly or indirectly). Said transfer fee will be paid by the Permitted Equity Owner who sells his or her or its Equity Interest, regardless of whether such transfer occurs before or after completion of Tenant's Construction Obligations.

- The defined term "Qualified Developer" is modified such that in order to fall within said definition, a Person must be of Good Moral Character and must, together with its Affiliates, either (i) have a minimum net worth or capital of $100,000,000.00, and (ii) be an experienced developer of real estate projects, having developed projects collectively costing a minimum of $100,000,000.00.

- The time for completion, achievement and/or satisfaction of all of Oleta's Tenant's Construction Obligations are each extended by a period of two years from the dates they were otherwise required to be completed, achieved and/or satisfied (other than, and specifically excluding, the Oleta's obligation to complete Landfill Closure by the end of the tenth anniversary of the Commencement Date (or such later date to complete Landfill Closure as may be permitted by FDEP/RER). In return for the two year extension Oleta agrees to provide a release

for Unavoidable Delay claims and any other delay claims existing as of closing, and any other claims known by Oleta prior to and which it may have had at closing.

- As a condition to closing on any Option Parcel, Oleta shall expressly acknowledge that it remains responsible for Oleta's environmental obligations and compliance costs under Section 9 of the Lease with respect to such Option Parcel, including for Landfill Closure under the CLCP, Landfill Closure Permit, and other applicable documents and Approvals, and for post-closure monitoring, compliance with environmental Laws, and responsibility for environmental conditions.

- Exhibit D has been agreed to between the parties which includes the connection of 143 Street to Biscayne Boulevard and inclusion of permit numbers.

The final terms memorializing this Memorandum of Understanding in any definitive agreements and documents to be entered to or filed in connection herewith shall be subject to final review and approval of counsel for City and Oleta.