

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXECUTE A SETTLEMENT AGREEMENT, IN SUBSTANTIALLY THE ATTACHED FORM, ARISING OUT OF A PETITION FOR WRIT OF CERTIORARI STYLED AS THE CITY OF NORTH MIAMI V. MIAMI-DADE COUNTY ENVIRONMENTAL QUALITY CONTROL BOARD AND OLETA PARTNERS, LLC, CASE NO. 13-432 AP; PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER PURPOSES.

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

WHEREAS, Oleta obtained approximately One Hundred Ninety-Four Thousand (194,000) cubic yards of fill (the “Fill”) from the “Brickell City Centre” site, which is currently stockpiled upon the Premises; and

WHEREAS, on December 2, 2013, the City filed a Petition for Writ of Certiorari in the Circuit Court of Miami-Dade County, Florida (Case No. 13-432 AP), seeking a reversal of a November 1, 2013, Order of the Miami-Dade County Environmental Quality Control Board that granted a variance to Oleta to use the Fill for lake filling at the Premises; and

WHEREAS, to avoid the expense and inconvenience of litigation, the Parties have reached a compromise and settlement of their claims as set forth in the attached Settlement Stipulation and General Release, attached hereto as Exhibit “A”; and

WHEREAS, the Mayor and Council believe that it is in the best interest of the City to resolve this matter as outlined herein.

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

Section 1. Authority of City Manager. The Mayor and City Council of the City of North Miami, Florida, hereby authorize the City Manager to execute a settlement agreement in substantially the attached form between the City of North Miami and Oleta Partners, LLC.

Section 2. Effective Date. This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED by a _____ vote of the Mayor and City Council of the City of North Miami, Florida, this _____ day of February, 2014.

LUCIE M. TONDREAU
MAYOR

ATTEST:

MICHAEL A. ETIENNE, ESQ.
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

REGINE M. MONESTIME
CITY ATTORNEY

SPONSORED BY: MAYOR LUCIE TONDREAU

Moved by: _____

Seconded by: _____

Vote:

Mayor Lucie M. Tondreau	_____ (Yes)	_____ (No)
Vice Mayor Scott Galvin	_____ (Yes)	_____ (No)
Councilperson Carol Keys, Esq.	_____ (Yes)	_____ (No)
Councilperson Philippe Bien-Aime	_____ (Yes)	_____ (No)
Councilperson Marie Erlande Steril	_____ (Yes)	_____ (No)

SETTLEMENT STIPULATION AND RELEASE

This Settlement Stipulation and Release (“**Stipulation**”) is made and entered into as of February __, 2014 (the “**Settlement Date**”), by and between OLETA PARTNERS, LLC, as Tenant under the Lease (as hereinafter defined) (“**Oleta**”), and THE CITY OF NORTH MIAMI, a Florida municipality, as Landlord under the Lease (the “**City**”), each of which may be hereinafter referred to individually as a “**Party**” and collectively as the “**Parties**”. This Stipulation is based on the following facts:

RECITALS

WHEREAS, the City and Oleta are parties to that certain Lease, dated as of May 29, 2012 by and between the City, as Landlord, and Oleta, as Tenant, as amended by that certain First Amendment to Lease, dated as of June 21, 2012, and that certain Second Amendment to Lease, dated as of July 31, 2012 (as amended, the “**Lease**”), it being the understanding of the Parties that this Stipulation is being entered into by the Parties in respect of their status as Landlord and Tenant under the Lease (initially capitalized terms used herein but not otherwise defined shall have the meanings set forth in the Lease);

WHEREAS, Oleta obtained approximately 194,000 cubic yards of fill (the “**Existing Fill**”) from the “Brickell City Centre” site, which Existing Fill is currently stockpiled upon the Premises;

WHEREAS, on November 12, 2013 the City voted to require Oleta to remove the Existing Fill from the Premises (the “**November 12 Vote**”);

WHEREAS, on November 18, 2013 the City (through its counsel) sent formal notice to Oleta of the November 12 Vote and directing Oleta to cease any attempts to deliver additional fill material to the Premises (the “**November 18 Notice**”);

WHEREAS, on December 2, 2013, the City filed a Petition for Writ of Certiorari in the Circuit Court of Miami-Dade County, Florida (Case No. 13-432AP) (the “**Petition**”) seeking to quash a November 1, 2013 Order of the Miami-Dade County Environmental Quality Control Board that granted a variance to Oleta to use the Existing Fill for lake filling at the Premises (the “**Variance**”);

WHEREAS, on December 9, 2013, Oleta filed a Motion to Dismiss the Petition;

WHEREAS, on December 12, 2013, the Court issued an Order to Show Cause requiring Oleta to respond to the Petition; and

WHEREAS, to avoid the expense and inconvenience of litigation and reach an amicable resolution of certain of the claims, differences, disputes and causes of action between the Parties, the Parties have reached a compromise and settlement of their claims as set forth in this Stipulation.

NOW, THEREFORE, in consideration of the promises, covenants, warranties, and representations set forth herein, each of the Parties, without any admission of wrongdoing by either of them, agree as follows:

1. Recitals. All of the foregoing recitals are true and correct. The foregoing recitals are incorporated herein by such reference and made a part of this Stipulation.

2. Payment by Oleta. Oleta shall pay to the City the sum of One Million and No/100 Dollars (\$1,000,000.00) (the "**Payment**"), in compromise and settlement of its claims and to satisfy its applicable expenses, including but not limited to, the costs of any environmental consultant, the costs of a communications and education campaign as to authorized uses of the Existing Fill, and its attorney's fees. The Payment will be made by Oleta within thirty (30) calendar days following the Settlement Date.

3. Agreements by the City. The City covenants and agrees that this Stipulation by its terms supersedes and renders moot the November 12 Vote and rescinds the November 18 Notice.

4. Deliverables. Upon the full execution and delivery of this Stipulation, the City and Oleta shall execute and deliver to Greenberg Traurig, P.A. ("**GT**") to hold in escrow, the Joint Stipulation and Agreed Order of Dismissal with Prejudice of the Petition, in the form attached hereto as Exhibit "A" (the "**Dismissal**"). The Dismissal will be held by GT in escrow until such time as the Payment is received by the City, at which time the Dismissal will be released from escrow by GT and promptly filed by GT in the Circuit Court of Miami-Dade County, Florida. In the event that the Payment is not received by the City within thirty (30) calendar days following the Settlement Date, GT will promptly return the Dismissal to the City.

5. Intentionally deleted.

6. Release and Covenant Not to Sue.

(a) Specific Release. Subject to the Non-Released Claims (as hereinafter defined), the Parties absolutely and forever release, acquit and discharge each other from any and all potential or actual claims, rights, demands, covenants, agreements, contracts, duties, obligations, responsibilities, representations, warranties, promises, liens, mechanic's liens, accounts, debts, liabilities, damages, expenses, attorneys' fees, costs and causes of action, known or unknown, of whatever kind and howsoever arising, past or present, which either Party now has, ever has had, or may have had from the beginning of the world to the day of these presents, whether at law or in equity, specifically including, without limiting the generality of the foregoing, any claim asserted or which could have been asserted by any Party with regards to the matters asserted by (or which could have been asserted by) the City in the Petition (the "**Released Claims**"). Notwithstanding anything to the contrary contained in this Stipulation, in no event shall the Released Claims include, nor this Stipulation be interpreted to release: (a) any of the obligations, duties, liabilities, ability or right to enforce, or rights under this Stipulation, (b) any of the claims previously made by the Parties or to be made by the Parties in the future with regards to Unavoidable Delays under the Lease, (c) Oleta's claims or rights as to the use of

the Existing Fill, and (d) Oleta's obligation to indemnify the City as set forth in Section 10 of the Lease, said indemnification to include any claims brought against the City arising from or as a result of Oleta's use of the Existing Fill at the Premises (collectively, the "**Non-Released Claims**").

(b) Full Satisfaction. Each Party hereby acknowledges and agrees that this Stipulation, the mutual agreements, covenants, and promises set forth herein, and the other consideration paid and to be paid hereunder including, without limitation, the Payment, is received in full settlement, accord and satisfaction of the Released Claims.

(c) Covenant Not to Sue. Without limiting the generality of the Specific Release in this Section 6, and subject to the terms of this Stipulation, each Party hereby covenants and agrees that, effective as of the Settlement Date, such Party shall not institute, bring, make any complaint, commence, or continue any action in any court, arbitration, or other forum or tribunal against the other Party with respect to any of the Released Claims, in accordance with Section 6(a).

7. Attorneys' Fees. Each Party shall bear its own attorneys' fees and costs, except as set forth in Section 2 above and except that in any legal action or other proceeding arising out of or relating to this Stipulation the prevailing Party shall be entitled to recover its reasonable attorneys' fees and court costs from the non-prevailing Party including reasonable attorneys' fees incurred in connection with such dispute (including costs and fees incurred prior to the filing of any lawsuit, and also those costs including fees incurred at the trial court and appellate court levels, and fees and costs incurred litigating entitlement to, or the amount of, any fees and costs awarded under this provision), in addition to any other relief to which such Party may be entitled.

8. Governing Law, Venue and Jurisdiction. This Stipulation shall be governed by and construed in accordance with the domestic laws of the State of Florida, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Florida or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Florida. The Parties hereby agree that the exclusive venue and jurisdiction to resolve any and all disputes between them including, without limitation, any disputes arising out of or relating to this Stipulation, and any and all alleged underlying obligations of the Released Claims shall be in Eleventh Circuit Court in and for Miami-Dade County, Florida (the "**Circuit Court**"). In that regard, each of the Parties hereto irrevocably submits to the exclusive jurisdiction of the Circuit Court in connection with any suit, action or other proceeding brought by any Party arising out of or relating to this Stipulation, and each of the Parties hereto irrevocably agrees that all claims with respect to any such suit, action or other proceeding shall be heard and determined only in such court.

9. Authority. Each Party hereby represents, warrants and covenants: (a) that such Party has taken all action necessary to authorize execution, delivery and performance of this Stipulation; (b) that this Stipulation and each of its terms are binding; (c) that such Party has the requisite power and authority to perform the acts stated herein; (d) that the undersigned signatories for such Party have the full legal right, power and authority to bind that Party; (e) that

such Party has not assigned or delegated to any third party all or any part of the rights and obligations set forth herein; (e) that such Party owns and has not assigned, conveyed, pledged, encumbered or otherwise transferred, in whole or in part, any of the claims released by such Party pursuant to Section 6 of this Stipulation; and (f) that the execution, delivery and performance of this Stipulation does not contravene or result in a default under any provision of any agreement or instrument to which any Party is bound.

10. Litigation. Each Party hereby represents, warrants and covenants that there is no pending or threatened litigation, action or proceeding(s) affecting such Party concerning the matters contemplated in this Stipulation which would affect, in any way, the execution, delivery and performance of this Stipulation or the transactions contemplated hereby.

11. Reasonableness. The Parties stipulate and agree that the provisions contained in this Stipulation are reasonable, that no Party had overwhelming bargaining power, and that the terms of this Stipulation do not violate any state or federal statute or policy.

12. Enforceability. This Stipulation shall be enforced to the maximum extent permitted by law. In the event that any one or more of the phrases, sentences, sections, or paragraphs contained in this Stipulation shall be declared invalid or unenforceable by order, decree or judgment of any court having competent jurisdiction, or shall be or become invalid or unenforceable by virtue of any applicable law, the remainder of this Stipulation shall be construed as if such phrases, sentences, sections, paragraphs or sections had not been inserted except when such construction shall constitute a substantial deviation from the general intent and purposes of the Parties as reflected in this Stipulation.

13. Entire Agreement. This Stipulation embodies the entire agreement and understanding between the Parties and supersedes any and all prior or concurrent stipulations, understandings, statements, assurances, assumptions, premises, promises, agreements, discussions or representations, oral or written, relating to the foregoing matter, including oral stipulations or representations, if any. Neither Party has made any representations upon which either Party has relied that are not contained in this Stipulation relating to the foregoing matters. Neither Party is relying on an unstated assumption, premise or condition not contained in this Stipulation relating to the foregoing matters.

14. Independent Legal Advice. The Parties have had the opportunity to obtain independent advice of legal counsel of their own selection. Each of the Parties acknowledges that it has entered into this Stipulation freely and voluntarily, believing it to be in their best interest. The Parties have entered into this Stipulation with a full and complete understanding of their legal rights and neither Party is under any current impediment that would prevent their full and complete understanding of this Stipulation and their free and voluntary acceptance of the terms and conditions of this Stipulation. The Parties to this Stipulation further acknowledge and agree that none of the signatories for any Party is/are suffering from any physical, mental, or other condition that would impair their ability to contract and their ability to understand fully the terms and conditions of this Stipulation.

15. Construction. This Stipulation shall be interpreted without regard to any presumption or rule requiring interpretation against the drafter or the Party causing this Stipulation to be prepared.

16. No Modification or Waiver. No modification or waiver of any of the terms of this Stipulation shall be valid unless in writing and executed by the Parties with the same formality as this Stipulation. No waiver of any breach hereof or default hereunder shall be deemed a waiver of any subsequent breach or default of the same or similar or dissimilar nature. No course of dealing or course of conduct shall be effective to amend, modify or change any provision of this Stipulation. Notwithstanding any applicable law, the terms of this Paragraph may not be waived by any course of dealing or course of conduct.

17. Counterparts. The Parties agree that this Stipulation may be executed in counterparts and will become effective, subject to exchange of signature pages and subject to the stipulations set forth above.

18. Assignment. Neither Party shall transfer or assign any of its rights, remedies or obligations under this Stipulation without the prior written consent of the non-transferring/non-assigning Party, which consent shall not be unreasonably withheld.

19. WAIVER OF TRIAL BY JURY. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY LITIGATION, ACTION, PROCEEDING, CROSS-CLAIM, OR COUNTERCLAIM IN ANY COURT (WHETHER BASED ON CONTRACT, STATUTE, TORT, EQUITY OR OTHERWISE) ARISING OUT OF, RELATING TO OR IN CONNECTION WITH (I) THIS STIPULATION OR THE VALIDITY, PERFORMANCE, INTERPRETATION, COLLECTION OR ENFORCEMENT HEREOF OR (II) THE ACTIONS OF THE PARTIES IN THE NEGOTIATION, AUTHORIZATION, EXECUTION, DELIVERY, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT HEREOF.

20. Further Assurances. The Parties shall take, or cause to be taken, all actions and shall do, or cause to be done, all things necessary, proper or advisable to consummate each of the agreements, promises, covenants, and obligations of such Party under this Stipulation.

21. Third Party Beneficiaries. This Stipulation shall not confer any rights or remedies on any person or entity other than the Parties and their respective successors and permitted assigns.

22. Amendment, Termination and Waiver. This Stipulation may not be amended or terminated, and no right or obligation under this Stipulation may be waived, except by written instrument signed by all of the Parties with the same formalities hereof.

23. Notice. Any and all notices, demands or communications required or permitted to be given hereunder to any Party shall be in writing and sent by U.S. Mail, Certified Mail, Return Receipt Requested and either Federal Express or overnight mail at:

If to Oleta: 15045 Biscayne Boulevard
North Miami, Florida 33181
Attention: Michael Tillman

With a copy to: 15045 Biscayne Boulevard
North Miami, Florida 33181
Attention: Herb Tillman

With a copy to: 3390 Mary Street, Suite 200
Coconut Grove, FL 33133
Attention: Michael Swerdlow

With a copy to: LeFrak Organization, Inc.
40 West 57th Street
New York, New York 10019
Attention: Arnold Lehman, Esq.

With a copy to: Greenberg Traurig, P.A.
333 SE 2nd Avenue
Miami, Florida 33131
Attention: Kimberly S. LeCompte, Esq.

With a copy to: Greenberg Traurig, P.A.
401 East Las Olas Boulevard
Fort Lauderdale, Florida 33301
Attention: Glenn E. Goldstein, Esq.

If to the City: 776 NE 125th Street
North Miami, Florida 33161
Attention: City Manager

With a copy to: 776 NE 125th Street
North Miami, Florida 33161
Attention: City Attorney

With a copy to: SMGQ Law
201 Alhambra Circle, Suite 1205
Coral Gables, Florida 33134
Attention: Roland Sanchez-Medina, Jr., Esq.

With a copy to: Lewis, Longman & Walker, P.A.
515 North Flagler Drive, Suite 1500
West Palm Beach, Florida 33401
Attention: Alfred J. Malefatto, Esq.

Or to such other addresses as the Parties may hereafter provide to the other in writing as a notice of change of address. Each such notice, demand or other communication shall be effective upon receipt. Notices delivered by counsel to a Party shall be deemed to be effective notice hereunder.

24. Rules of Construction. The following rules shall apply to the construction and interpretation of this Stipulation:

(a) Singular words shall connote the plural as well as the singular, and plural words shall connote the singular as well as the plural, and the masculine shall include the feminine and the neuter, as the context may require.

(b) All references in this Stipulation to particular paragraphs, articles, sections, subsections or clauses are references to paragraphs, articles, sections, subsections or clauses of this Stipulation, and all references in this Stipulation to particular exhibits are references to the exhibits attached to this Stipulation, unless otherwise expressly stated or clearly apparent from the context of such reference.

(c) The headings in this Stipulation are solely for convenience of reference and shall not constitute a part of this Stipulation nor shall they affect its meaning, construction or effect.

(d) The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms shall refer to this Stipulation, and not solely to the provision in which such term is used.

(e) The terms “include,” “including” and similar terms shall be construed as if followed by the phrase “without limitation.”

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[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS STIPULATION AS OF THE EFFECTIVE DATE.

OLETA

OLETA PARTNERS, LLC

By: _____
Name: Michael Tillman
Title: Vice President

CITY

THE CITY OF NORTH MIAMI

By: _____
Name: Stephen Johnson
Title: City Manager

WITNESS (as to the City Manager
And the City Clerk):

Name:

Name:

ATTEST:

By: _____
Name: _____
Title: City Clerk

EXHIBIT "A"
DISMISSAL

[see attached]

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN
AND FOR MIAMI-DADE COUNTY,
FLORIDA

APPELLATE DIVISION

CASE NO. 13-432AP

CITY OF NORTH MIAMI, a Florida
municipality,

Petitioner,

v.

MIAMI-DADE COUNTY
ENVIRONMENTAL QUALITY
CONTROL BOARD and OLETA
PARTNERS LLC,

Respondents.

JOINT STIPULATION FOR DISMISSAL

Petitioner, the City of North Miami, and Respondent, Oleta Partners LLC, have entered into a settlement agreement, as a result of which they hereby stipulate to a dismissal of the pending petition in the above-styled matter, pursuant to Rule 9.350(a) of the Florida Rules of Appellate Procedure. Respondent Miami-Dade County Environmental Quality Control Board supports the dismissal of this action. Each party shall bear its own attorneys' fees and costs in connection with this matter.

Alfred J. Malefatto
Florida Bar No. 300152
Michelle Diffenderfer
Florida Bar No. 050016
Lewis, Longman, & Walker, P.A.
515 North Flagler Drive, Suite 1500
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amalefatto@llw-law.com
mdiffenderfer@llw-law.com

Counsel for City of North Miami

By: _____
Alfred J. Malefatto

Respectfully submitted,

Elliot H. Scherker
Florida Bar No. 202304
Kerri Barsh
Florida Bar No. 443840
Brigid F. Cech Samole
Florida Bar No. 730440
Greenberg Traurig, P.A.
Wells Fargo Center, Suite 4400
333 S.E. Second Avenue
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scherkere@gtlaw.com
barshk@gtlaw.com
cechsamoleb@gtlaw.com
miamiappellateservice@gtlaw.com

Counsel for Oleta Partners LLC

By: _____
Elliot H. Scherker

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing joint stipulation for dismissal was served on February ____, 2014 by Registered e-mail on the following counsel:

Alfred J. Malefatto
Florida Bar No. 300152
Michelle Diffenderfer
Florida Bar No. 050016
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Miami, Florida 33131
robert@miamidade.gov

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN
AND FOR MIAMI-DADE COUNTY,
FLORIDA

APPELLATE DIVISION

CASE NO. 13-432AP

CITY OF NORTH MIAMI, a Florida
municipality,

Petitioner,

v.

MIAMI-DADE COUNTY
ENVIRONMENTAL QUALITY
CONTROL BOARD and OLETA
PARTNERS LLC,

Respondents.

ORDER DISMISSING PETITION FOR WRIT OF CERTIORARI

THIS MATTER came before the Court on the Joint Stipulation for Dismissal of Petitioner, the City of North Miami, and Respondent, Oleta Partners LLC, and the Court having reviewed the file and being otherwise fully advised in the premises, it is

ORDERED and ADJUDGED as follows:

The Joint Stipulation for Dismissal is granted and the Petition for Writ of Certiorari is dismissed with prejudice. Each party shall bear its own attorneys' fees and costs in connection with this matter.

DONE and ORDERED in Miami, Miami-Dade County, Florida this ____ day of _____, 2014.

Service List:

Alfred J. Malefatto
Michelle Diffenderfer
Elliot H. Scherker
Kerri Barsh
Brigid F. Cech Samole
Thomas H. Robertson