

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

DEPARTMENT OF COMMUNITY AFFAIRS,

CASE NO. 06-2395GM

Petitioner,

and

TOWN OF MIAMI LAKES,

Intervenor,

v.

MIAMI-DADE COUNTY,

Respondent,

and

**AKOUKA, LLC, SOUTH FLORIDA
GROWERS ASSOCIATION, INC., 46 ACRES,
LLC; CITY OF HIALEAH; DYNAMIC
BISCAYNE SHORES ASSOCIATES, LTD;
PRINCETON LAND INVESTMENTS, INC.;
and LIBERTY INVESTMENTS, INC.,**

Intervenors.

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SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is entered into by and between the State of Florida Department of Community Affairs (the “Department”) and Miami-Dade County (the “County”) as a complete and final settlement of all claims raised in the above-styled proceeding.

RECITALS

WHEREAS, the Department is the state land planning agency and has the authority to administer and enforce the Local Government Comprehensive Planning and Land Development Regulation Act, Chapter 163, Part II, Florida Statutes; and

WHEREAS, the County is a local government with the duty to adopt comprehensive plan amendments that are “in compliance”; and

WHEREAS, the County adopted the April 2005-06 Cycle Applications to Amend the Miami-Dade County Comprehensive Development Master Plan by Ordinance Nos. 06-42 and 06-43 on April 18, 2006 (the “Plan Amendment”); and

WHEREAS, the Department issued its Notice and Statement of Intent regarding the Amendment on June 22, 2006; and

WHEREAS, as set forth in the Notice and Statement of Intent, the Department contends that the Plan Amendment is not in compliance because it fails to demonstrate that adequate water supplies are available to serve the application area and because it fails to adequately address the potential impact of development on Florida Intrastate Highway System and Strategic Intermodal System facilities; and

WHEREAS, the County disputes the allegations of the Statement of Intent; and

WHEREAS, the parties previously entered into a Settlement Agreement concerning Application No. 5 of the Plan Amendment and, pursuant to that Agreement, the County adopted a Remedial Plan Amendment and the Department issued a Notice of Intent to find the Remedial Plan Amendment “in compliance”; and

WHEREAS, the parties wish to avoid the expense, delay, and uncertainty of lengthy litigation and to resolve this proceeding under the terms set forth herein, and agree it is in their respective mutual best interests to do so,

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, and in consideration of the benefits to accrue to each of the parties, the receipt and sufficiency of which are hereby acknowledged, the parties hereby represent and agree as follows:

GENERAL PROVISIONS

1. Definitions. As used in this agreement, the following words and phrases shall have the following meanings:

- a. Act: The Local Government Comprehensive Planning and Land Development Regulation Act, as codified in Part II, Chapter 163, Florida Statutes
- b. Agreement: This Settlement Agreement
- c. Amendment: The April 2005-06 Cycle Applications to Amend the Miami-Dade County Comprehensive Development Master Plan adopted by Ordinance Nos. 06-42 and 06-43, on April 18, 2006.
- d. Department or DCA: The Florida Department of Community Affairs
- e. DOAH: The Florida Division of Administrative Hearings
- f. In compliance or into compliance: The meaning set forth in Section 163.3184(1)(b), Florida Statutes
- g. Notice: The Notice of Intent issued by the Department, which was attached to its Statement of Intent to find the Amendment not in compliance, attached hereto as Exhibit A
- h. Plan: The Miami-Dade County Comprehensive Development Master Plan.
- i. Remedial Action: A remedial plan amendment, submission of support document, or other action described in the statement of intent or this agreement as an action which must be completed to bring the plan amendment into compliance.
- j. Remedial Plan Amendment: An amendment to the plan or support document, the need for which is identified in this agreement, including its exhibits, and which the County must adopt to complete all remedial actions. Remedial plan amendments adopted pursuant to this Agreement must, in the opinion of the Department, be consistent with and substantially similar in concept and content to the ones identified in this Agreement or be otherwise acceptable to the Department, consistent with the provisions of Section 6 below.
- k. Statement of Intent: The statement of intent to find the Amendment not in compliance issued by the Department in this case.

1. Support Document: The studies, inventory maps, surveys, data, inventories, listings or analyses used to develop and support the Amendment or Remedial Plan Amendment.
2. Department Powers. The Department is the state land planning agency and has the power and duty to administer and enforce the Act and to determine whether the Amendment is in compliance.
3. Negotiation of Agreement. The Department issued its Notice and Statement of Intent to find the Amendment not in compliance. Subsequent to the filing of the Petition, the parties entered into a previous settlement agreement, and the County adopted a Remedial Plan Amendment, to resolve the issues concerning Application No. 5 of the Plan Amendment. The parties subsequently conferred and agreed to resolve the remaining issues in the Notice and Statement of Intent through this Agreement. It is the intent of this Agreement to resolve fully all issues between the parties. It is understood and agreed that this Agreement is the compromise of a disputed claim, and that it is not to be construed as an admission of liability.
4. Dismissal. If the County completes the Remedial Actions required by this Agreement, the Department shall issue a cumulative Notice of Intent addressing both the Remedial Plan Amendment and the initial Amendment subject to these proceedings. The Department shall file the cumulative Notice of Intent with the Florida Division of Administrative Hearings.
5. Description of Remedial Actions; Legal Effect of Agreement. Exhibit A to this Agreement is a copy of the Statement of Intent, which identifies the provisions not in compliance. Exhibit B contains Remedial Actions needed for compliance. Exhibits A and B are incorporated into this Agreement by this reference. This Agreement constitutes a stipulation that if the Remedial Action is accomplished, the Amendment will be in compliance.
6. Remedial Actions to be Considered for Adoption. Miami-Dade County agrees to consider for adoption by formal action of its governing body all Remedial Actions set forth in Exhibit B no later than the time period provided for in this Agreement. However, Miami-Dade

County may, at its sole discretion, amend or delete projects from Table 12, Water Facilities in Exhibit B. In that event, the Department hereby stipulates that the Amendment will be in compliance provided that, when added to the 347 million gallons per day that Miami-Dade County is authorized by the South Florida Water Management District to withdraw from the Biscayne Aquifer, the projects remaining after any changes to Table 12 in Exhibit B provide a total amount of water for each year in accordance with the following table:

<u>Year</u>	<u>Total Water (million gallons per day)</u>
2007	349
2008	346
2009	350
2010	354
2011	359

7. Adoption or Approval of Additional Amendment. Within 75 days after execution of this Agreement by the parties, Miami-Dade County shall consider for adoption all Remedial Actions. This may be done at a single adoption hearing. Within 10 working days after adoption of the Remedial Plan Amendment, Miami-Dade County shall transmit 5 copies of the amendment to the Department as provided in Rule 9J-11.011(5), Florida Administrative Code. Miami-Dade County shall also submit one copy each to the South Florida Regional Planning Council, the Florida Department of Environmental Protection, the South Florida Water Management District, and to any other unit of local or state government that has filed a written request with Miami-Dade County for a copy of the Remedial Plan Amendment. The Remedial Plan Amendment shall be transmitted to the Department and the foresaid units of local or state government, along with a letter that describes the remedial action adopted for each part of the Plan amended, including references to specific portions and pages.

8. Acknowledgment. All parties to this Agreement acknowledge that the "based upon" provisions in Section 163.3184(8), Florida Statutes, shall not apply to the Remedial Plan Amendment.

9. Review of Remedial Plan Amendment and Notice of Intent. Within 30 days after receipt of the adopted Remedial Plan Amendment and Support Documents, the Department shall issue a Notice of Intent pursuant to Section 163.3184, Florida Statutes, for the adopted amendments in accordance with this Agreement.

a. In Compliance: If the adopted Remedial Actions satisfy this Agreement, the Department shall issue a cumulative Notice of Intent to find both the Amendment and the Remedial Plan Amendment in compliance. The Department shall file this notice with DOAH and shall move to have this proceeding.

b. Not in Compliance: If the adopted Remedial Actions do not satisfy this Agreement, the Department shall issue a Notice of Intent to find the Plan Amendment not in compliance and shall forward the notice to DOAH for consolidation with the pending proceeding.

10. Effect of Amendment. Adoption of the Remedial Plan Amendment shall not be counted toward the frequency restrictions imposed upon plan amendments pursuant to Section 163.3187(1), Florida Statutes.

11. Purpose of this Agreement; Not Establishing Precedent. The parties enter into this Agreement in a spirit of cooperation for the purpose of avoiding costly, lengthy, and unnecessary litigation and in recognition of the desire for the speedy and reasonable resolution of disputes arising out of the Amendment. The acceptance of proposals for purposes of this Agreement is part of a negotiated agreement affecting many factual and legal issues and is not an endorsement of, and does not establish precedent for, the use of these proposals in any other circumstances or by any other local government. Nothing contained herein shall require or prohibit Miami-Dade County from applying for, modifying, or terminating any consumptive use permit issued by the South Florida Water Management District.

12. Approval by Governing Body. This Agreement has been approved by Miami-Dade County at a public hearing advertised at least 10 days prior to the hearing in a newspaper of general

circulation in the manner prescribed for advertisements in Section 163.3184(16)(c), Florida Statutes. This Agreement has been executed by the appropriate officer as provided in Miami-Dade County's charter or other regulations.

13. Changes in Law. Nothing in this Agreement shall be construed to relieve any party from adhering to the law, and in the event of a change in any statute or administrative regulation inconsistent with this agreement, the statute or regulation shall take precedence and shall be deemed incorporated into this Agreement by reference.

14. Other Persons Unaffected. Nothing in this Agreement shall be deemed to affect the rights of any person not a party to this Agreement. This Agreement is not intended to benefit any third party.

15. Attorney's Fees and Costs. Each party shall bear its own costs, including attorney's fees, incurred in connection with the above-captioned case and this Agreement.

16. Effective Date. This Agreement shall become effective immediately upon final execution by the parties.

17. Filing and Continuance. The Department shall file this Agreement with DOAH after execution by the parties, along with a request to stay the administrative proceeding in this matter in accordance with Section 163.3184(16)(b), Florida Statutes.

18. Retention of Right to Final Hearing. All parties hereby retain the right to have a final hearing in this proceeding in the event of a breach of this Agreement, and nothing in this Agreement shall be deemed a waiver of such right. Any party to this Agreement may move to have this matter set for hearing if it becomes apparent that any other party whose action is required by this Agreement is not proceeding in good faith to take that action.

19. Construction of Agreement. All parties to this Agreement are deemed to have participated in its drafting. In the event of any ambiguity in the terms of this Agreement, the parties agree that such ambiguity shall be construed without regard to which of the parties drafted the provision in question.

20. Entire Agreement. This is the entire agreement between the parties, and no verbal or written assurance or promise is effective or binding unless included in this document.

21. Governmental Discretion Unaffected. This Agreement is not intended to bind Miami-Dade County in the exercise of governmental discretion, which is exercisable in accordance with law only upon the giving of appropriate public notice and required public hearings.

22. Multiple Originals. This Agreement may be executed in any number of originals, all of which evidence one agreement, and only one of which need be produced for any purpose.

23. Captions. The captions inserted in this Agreement are for the purpose of convenience only and shall not be utilized to construe or interpret any provision of this Agreement.

In witness whereof, the parties hereto have caused this Agreement to be executed by their undersigned officials as duly authorized.

MIAMI-DADE COUNTY

DEPARTMENT OF COMMUNITY AFFAIRS

By: _____
George Burgess
County Manager

By: _____
Valerie Hubbard, Director
Division of Community Planning

Date

Date

Approved as to form and legality:

Senior Attorney

EXHIBIT B

**REMEDIAL ACTIONS
Remedial Plan Amendment**

Part A. Land Use Element

**Interpretation of The Land Use Plan Map:
Adopted Policy of the Land Use Element**

1. Revise the “Interpretation of the Land Use Plan Map” section titled “Concepts and Limitations of the Land Use Plan” (Pages I-62-I-63) as follows:

Restrictions. Restrictions accepted by the Board of County Commissioners in association with applications to amend the CDMP, including LUP map amendments, such as Declarations of Restrictions, shall be considered as an adopted part of the CDMP. Restrictions that have been accepted and take effect on or after July 1, 2006, are identified in the table below:

**Restrictions Accepted by the Board of County Commissioners
in Association with Land Use Plan Map Amendments**

<u>Amendment Cycle</u>	<u>Application No.</u>	<u>General Location</u>	<u>Township-Range-Section</u>	<u>Type of Restriction</u>	<u>Summary of Restrictions</u>
<u>April 2005-2006</u>	<u>No. 1</u>	<u>Change 26.13 gross acres on the south side of NE 215 Street approximately 900 feet west of San Simeon Way</u>	<u>51-31-42</u>	<u>Declarations of Restrictions</u>	<u>Requires provision of workforce housing units; commits to water conservation measures and to connecting to any regional wastewater re-use system constructed by the County.</u>
<u>April 2005-2006</u>	<u>No. 3</u>	<u>Change 15.5 gross acres on the west side of Biscayne Boulevard to NW 13 Avenue between NE 112 and NE 115 Streets</u>	<u>52-42-32</u>	<u>Declarations of Restrictions</u>	<u>Limits development of the property in accordance with design guidelines (Exhibit B); commits to neighborhood outreach meeting and to coordinate with the Biscayne Corridor Redevelopment Agency prior to seeking rezoning for the property; commits to educational facilities mitigation, transit improvements, public park contribution, workforce housing units, and water-saving measures.</u>

<u>Amendment Cycle</u>	<u>Application No.</u>	<u>General Location</u>	<u>Township-Range-Section</u>	<u>Type of Restriction</u>	<u>Summary of Restrictions</u>
<u>April 2005-2006</u>	<u>No. 4</u>	<u>Change 27.6 gross acres located between NW 12 and NW 9 Avenues and between NW 95 Terrace and NW 99 Street</u>	<u>53-41-2</u>	<u>Declarations of Restrictions</u>	<u>Limits development of the property as follows: Parcel C shall be conveyed to County for library branch; Parcels D and E shall not be used for multifamily residential buildings; lot depth limited to minimum 115 feet if town houses or single family homes are proposed within Parcels D and E; prohibits vehicular access from property to NW 99 Street and restricts extension of NW 12 Avenue to NW 99 Street and commits to traffic calming study; commits to educational facilities mitigation, transit improvements, workforce housing units, water conservation measures, and preservation of specimen sized trees.</u>
<u>April 2005-2006</u>	<u>No. 5</u>	<u>Change 347 gross acres located between NW 97 Avenue, the Homestead Extension of the Florida Turnpike (HEFT) and NW 154 Street</u>	<u>52-40-18</u>	<u>Declarations of Restrictions</u>	<u>Limits development to land uses that will generate no more than 2,582 net external P.M. peak hour trips; prohibits residential uses; and provides for water conservation and re-use</u>
<u>April 2005-2006</u>	<u>No. 15</u>	<u>Change 10 gross acres at Northwest corner of SW 147 Avenue and SW 184 Street, lying southeast of CSX Railroad ROW</u>	<u>55-39-33</u>	<u>Declarations of Restrictions</u>	<u>Prohibits residential uses and requires initial development of the property to include a grocery store.</u>
<u>April 2005-2006</u>	<u>No. 21</u>	<u>Change 0.91 gross acres at the southeast corner of SW 112 Avenue and SW 224 Street</u>	<u>56-40-18</u>	<u>Declarations of Restrictions</u>	<u>Prohibits residential uses.</u>

<u>Amendment Cycle</u>	<u>Application No.</u>	<u>General Location</u>	<u>Township-Range-Section</u>	<u>Type of Restriction</u>	<u>Summary of Restrictions</u>
<u>April 2005-2006</u>	<u>No. 22</u>	<u>Change 62.51 gross acres located at northwest and southeast corners of SW 127 Avenue and SW 240 Street</u>	<u>56-39-23,24</u>	<u>Declarations of Restrictions</u>	<u>Limits development to be consistent with Princeton CUC and Urban Design Manual; commits to educational facilities mitigation, transit improvements, traffic impact mitigation, workforce housing units, water conservation measures, and preservation of specimen sized trees; and exempts from restrictions any portion of the property developed in accordance with existing zoning approval.</u>

Part B. Capital Improvements Element

In the CIE Schedules of Improvements, Tables of Proposed Projects, modify currently adopted Table 12, Water Facilities, as follows:

**TABLE 12
WATER FACILITIES**

Project Number	Project Name and Location	Purpose* / Year of Completion	Prior Years	2005/06	Expenditures						Six Year Totals	Future Years	Project Totals	Funding Source
					(In Millions of Dollars)									
					2006/07	2007/08	2008/09	2009/10	2010/11					
G. 4.5 MGD <u>New Upper Floridan</u> (R.O.) WT Plant <u>Phase I (10 mgd)</u>		<u>3 +</u> / 2011	0	0	<u>2.0</u>	<u>8.9</u>	<u>17.1</u>	<u>36.1</u>	<u>28.9</u>	<u>93</u>	0	<u>93</u>	<u>520, 895.1</u>	
					5.6	22.3	17.8	3.48	0.82	<u>50</u>		<u>998, 1135</u>		
					<u>3.4</u>	<u>19.7</u>	<u>26.1</u>	<u>23.3</u>	<u>8.3</u>	<u>80.8</u>		<u>80.8</u>		
H. <u>North District W.W.T.P. Reuse Projects</u> (2.0 MGD Biscayne Landings/North Miami Stadium)		<u>3</u> / 2010	0	0	0	<u>1.5</u>	<u>6.2</u>	<u>12.9</u>	<u>6.2</u>	<u>26.8</u>	0	<u>26.8</u>	<u>521, 914, 961</u>	
					0	<u>1.5</u>	<u>6.2</u>	<u>12.9</u>	<u>6.2</u>	<u>26.8</u>		<u>26.8</u>		
I. <u>Central District W.W.T.P. Reuse Projects</u> (1.0 MGD Key Biscayne/Crandon Park/Virginia Key Redevelopments)		<u>3</u> / 2010	0	0	0	<u>0.9</u>	<u>3.4</u>	<u>7.0</u>	<u>4.0</u>	<u>15.3</u>	0	<u>15.3</u>	<u>521, 914, 961</u>	
					0	<u>0.9</u>	<u>3.4</u>	<u>7.0</u>	<u>4.0</u>	<u>15.3</u>		<u>15.3</u>		
TOTALS				227.13	92.61	<u>85.91</u>	<u>121.3</u>	<u>134.02</u>	<u>158.02</u>	<u>143.41</u>	<u>735.27</u>	800.43	<u>1708.5</u>	
						89.51	132.30	125.12	105.50	105.13	<u>650.17</u>		<u>1677.7</u>	
					379.57	39.91	<u>29.14</u>	<u>119.78</u>	<u>134.99</u>	<u>137.56</u>	<u>250.65</u>		<u>712.03</u>	<u>1750.6</u>
					31.34	119.98	117.09	97.84	232.97	639.13		1677.7		

* 1=Existing Deficiency; 2=Future Growth; 3=Combined

Source: Miami-Dade Water and Sewer Department and Department of Planning and Zoning.

Data provided by the Office of Management and Budget.

Underlined words are proposed additions. Strikethrough words are proposed deletions. Double-underline words are proposed additions, and double-strikethrough words are proposed deletions, to provisions adopted as part of the April 2005-06 Cycle Applications to Amend the Miami-Dade County Comprehensive Development Master Plan or the Remedial Plan Amendment adopted on August 24, 2006, by Ordinance No. 06-116.

