

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

CITY OF CORAL GABLES, FLORIDA,  
a Florida Municipal Corporation,

CASE NO.: 2023-003192-CA-01

Plaintiff,

v.

BUSINESS IMPROVEMENT DISTRICT  
OF CORAL GABLES, INC., a Florida  
Non-Profit Corporation,

Defendant.

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**STIPULATED SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement”) is made by and between Plaintiff, CITY OF CORAL GABLES, a Florida Municipal Corporation, and Defendant BUSINESS IMPROVEMENT DISTRICT OF CORAL GABLES INC., a Florida Non-profit Corporation.

**RECITALS**

**WHEREAS**, Plaintiff City of Coral Gables, Florida (“the City”) is a Florida Municipal Corporation, located within Miami-Dade County, Florida, with assessment powers under Chapter 170, Florida Statutes, and home rule authority, pursuant to Article VIII, Florida Constitution and Chapter 166, Florida Statutes; and

**WHEREAS**, the City adopted Resolution No. 28987 in 1995, creating the Business Improvement District of Coral Gables (“the District”) and approved the levying of special assessments pursuant to Chapter 170, Florida Statutes, to stabilize and improve the retail business district within the District’s borders through promotion, management, marketing, and other similar services; and

**WHEREAS**, a majority of the affected property owners approved the creation of the District by the City in a vote held in 1997; and

**WHEREAS**, Defendant BUSINESS IMPROVEMENT DISTRICT OF CORAL GABLES, INC. (“the Corporate BID”), is a private, Florida Non-profit Corporation, incorporated under the laws of Florida in 1997 and classified as a Section 501(c)(6) entity under the Internal Revenue Code, for the following stated purposes:

The purposes for which the corporation is organized shall be to foster the downtown Coral Gables business district as the center of commerce and culture in Coral Gables, Florida and (i) to represent and act as an advocate for the business owners and property owners located within the boundaries of the Business Improvement District of Coral Gables (the "District"), as approved by majority vote of the property owners located within those boundaries in the election held in June, 1997 for the purpose of enacting a special assessment to fund the operations of the District, together with any additions to the District approved in future elections, (ii) to stabilize and improve the District through marketing, management, promotion, fund raising and other similar services and (iii) to pursue any other lawful activity permitted or not prohibited by Chapter 170 of the Florida Statutes, as amended from time to time, or other applicable Florida law. In furtherance of these purposes, the corporation will work toward creating a favorable environment which will increase commercial and cultural activity within the District. The corporation will encourage a spirit of cooperation and maintenance of high standards among its members; and

**WHEREAS**, the City levied and collected special assessments pursuant to Chapter 170, Florida Statutes, ("170 Funds") annually on commercial properties within the District from 1997 to 2022; and

**WHEREAS**, during the period between 1997 and 2022, the Corporate BID coordinated with the City and otherwise provided valuable services in furtherance of the objectives for which the City created the District; and

**WHEREAS**, from 1997 until 2022, the District's property owners and business owners repeatedly voted to self-assess and approve the City's creation of the District; and

**WHEREAS**, the City recognizes the continued utility of a business improvement district for the benefit of downtown Coral Gables, and, accordingly, intends to explore the creation of a new business improvement district; and

**WHEREAS**, the Corporate BID currently holds the remaining unspent 170 Funds levied by the City pursuant to Chapter 170, Florida Statutes, for the District; and

**WHEREAS**, The City filed the above-styled action ("the Litigation") to seek possession of the remaining, unspent 170 Funds from the Corporate BID, which disputes all claims made in the Litigation; and

**WHEREAS**, the parties seek to bring a final resolution to all pending or currently anticipated litigation between the Parties regarding the 170 Funds;

**NOW THEREFORE**, in consideration of \$10.00 and other good and valuable consideration, as set forth herein, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties do hereby agree as follows:

**1. Recitals.**

The foregoing recitals are true and correct and by this reference are incorporated as material parts of this Agreement.

**2. Authority.**

This Agreement is executed by the Parties and signed by persons with full and complete authority to bind the Parties. The signature by any person to this Agreement shall be deemed a personal warranty by that person that he/she has the full power and authority to bind any corporation, partnership, non-profit organization or association, or any other entity for which the person purports to act hereunder.

**3. Expenditures of the 170 Funds.**

The Corporate BID shall foster the District as the center of culture and commerce in Coral Gables, Florida, in a manner consistent with Chapter 170, Florida Statutes, including but not limited to: (i) represent and act as an advocate for the business owners and property owners located within the boundaries of the District to the extent consistent with Florida law, (ii) stabilize and improve the District through marketing, management, promotion, fund raising and other similar services and (iii) pursue any other lawful activity permitted under Chapter 170, Florida Statutes, as amended from time to time (the "Purpose"). In furtherance of this Purpose, the Corporate BID will work toward creating a favorable environment which will increase commercial and cultural activity within the District. For purposes of this Agreement, the Parties agree that expenditures of the 170 Funds consistent with the Purpose may include, but are not limited to, and are not required to include:

- a. Events designed to attract people to the geographic boundaries of the District ("the District Area") and spend money at local businesses. This can include, but is not limited to:
  - i. Taste the Gables
  - ii. Halloween on the Mile
  - iii. Holiday Marketplace
  - iv. Music Event (live music, music on the mile)
  - v. Giralda Plaza Activations
  - vi. Temporary Installations/Artistic Activations
  - vii. Giralda Under the Stars

viii. Sip and Shop

- b. Liaising with the City concerning events hosted by businesses, or hosted by the Corporate BID, within the District Area.
  - i. Assisting local business with navigating City special event processes and permitting.
- c. Beautification and property improvement within the District Area, including but not limited to lighting, seating fixtures, or similar installations.
- d. Holiday decorations and seasonal decorations within the District Area. This can include, but is not limited to:
  - i. Pumpkin Arch
  - ii. Christmas Tree and Lighting on Giralda Avenue
- e. Advertisement and branding of the District Area as a destination. This can include advertising and branding of the Events described above.
- f. Temporary staffing if necessary to execute above services and activities.
- g. Collaborating with the City on evaluating the creation of a new BID, including contributing funds to support technical analysis necessary to evaluate the creation of a new BID, such as analysis of geographic boundaries.

**4. Prohibited Use of 170 Funds.**

Notwithstanding anything else contained in this Agreement, the following are not permitted uses of the 170 Funds:

- a. Political speech supporting or opposing candidates;
- b. To the extent prohibited by law, political speech supporting or opposing political issues.
- c. Payment of Board Members for service as a Board Member (this does not prohibit reimbursement of Board Members for out-of-pocket expenses).
- d. Illegal substances or activities.
- e. Any other purposes inconsistent with Chapter 170, Florida Statutes, state, or federal law.
- f. Recruitment of members to the Corporate BID. This is not intended to limit the Corporate BID's abilities pursuant to 4(g) of this Agreement.

All expenditures of the 170 Funds must be for services or activities for the benefit of the District Area.

## 5. Coordination

- a) This Agreement does not exempt the Corporate BID from undergoing the normal City permitting processes, whose permit applications shall be processed in the same manner as any other applicant.
- b) The Corporate BID may undertake the activities and services described in Section 4, above, subject to the following notice provisions, if applicable:
  - (i) For any event in which the Corporate BID requires a special event permit or requests City assistance, such as use of City Right-of-Way, police services, use of City resources, the Corporate BID will provide notice to the City as soon as is practicable, but in no case shall the Corporate BID provide less than 90 days' notice.
  - (ii) The City presently anticipates putting on the following "Special Events." If the Corporate BID desires to take over any of the following events, the Corporate BID shall notify the City by the date specified below (absent mutual consent of the parties), and the City shall allow the Corporate BID to do so. Nothing contained herein should preclude the parties from co-hosting any of these Special Events:
    1. Trick or Treat on the Mile/Halloween on the Mile (notification 6 months prior to last weekend in October)
    2. Winter Holiday Tree on Giralda (six months prior to Thanksgiving Day)
    3. Holiday Décor for Miracle Mile (six months prior to Thanksgiving Day)
    4. Taste the Gables (March 1, 2024 for the 2024 event, and six months prior to July 1 for every year thereafter)
    5. Sip and Shop (six months prior to December 5 for 2024; after 2024 the City will notify the Corporate BID of the intended dates at least 7 months before the dates of the event).
  - (iii) For all other events, the Corporate BID will endeavor to provide the City with notice of the Corporate BID's planned events as soon as is practicable.

## 6. Reporting

The Corporate BID agrees to provide the City with the following documentation related to the expenditures of the 170 Funds:

- a. Provision of certain documentation:
  - i. Starting balance with reasonable documentation (within 30 days of the Effective Date of this Agreement)
  - ii. Annual audits and tax returns in existence for 2020 through the Effective Date. The Corporate BID shall use best efforts to provide these documents within 90 days of the Effective Date of this Agreement, but shall provide the documents no later than 120 days of the Effective Date of this Agreement. This subsection only requires the Corporate BID to produce those documents currently in existence as of the Effective Date,

and does not require it to create any new documents within the timeframe prescribed herein.

- b. For the first calendar year following the Effective Date:
  - i. The Corporate BID will cause an annual audit to be performed for that year (“the First Year Audit”) that meets the standards applicable to financial audits contained in Government Auditing Standards, as was done in audits past. The Corporate BID agrees to produce all records it believes necessary for the Auditor to complete the First Year Audit within (60) days following the later of (1) the end of the applicable fiscal year, or (2) the Auditor’s initial request for such documents.
  - ii. Once the First Year Audit is complete for the first calendar year following the Effective Date, the Corporate BID agrees to provide a copy of the First Year Audit to the City within ten (10) business days following its receipt of same from the Auditor.
  - iii. If the Corporate BID was unable to provide an annual audit from any year between 2020 and the Effective Date, then the Corporate BID will supply a certified statement from a licensed CPA detailing the expenditures for any year in which an annual audit was not performed concurrent with the annual audit conducted for the year of the Effective Date.
- c. For every year thereafter, the Corporate BID will provide an annual audit that meets the requirements of the Auditor General that meets the standards applicable to financial audits contained in Government Auditing Standards, as was done in audits past.
- d. In addition to the audit described above, the Corporate BID will provide to the City a semi-annual report (every six months) containing a general description of total approximate expenditures of the preceding six months and a narrative of those expenditures (e.g., list of events, marketing efforts) reasonably sufficient to determine compliance with the spending guidelines provided herein. If the City believes that the information provided was inadequate, it will so inform the BID within 10 business days and provide the Corporate BID 10 business days to resubmit the information.
- e. The Corporate BID will provide the City with copies of the monthly Board Meeting agendas and financial reports provided to the Board.
- f. Upon the Corporate BID’s expenditure of the remaining 170 Funds and completion of its reporting obligations, as required under this Section 6, for the final year it maintained and expended such funds, the Corporate BID shall have no further reporting obligations under the Agreement.

## **7. Enforcement.**

The terms of this Agreement may be enforced by the Parties through any and all remedies provided in law or in equity.

**8. Governing Law; Venue.**

This Agreement, and any issues relating to it or its subject matter shall be construed, interpreted, enforced, and governed in accordance with and governed by the substantive laws of the State of Florida. Venue for any action arising out of relating to this Agreement shall be solely in the circuit court in and for Miami Dade County, Florida.

**9. Further Understandings and Agreements.**

This Agreement constitutes the entire understanding between the Parties with respect to the settlement of the matters addressed herein. All prior negotiations and understanding, whether verbal or written between said parties, collectively, jointly, and/or severally, and their agents, employees, and representatives are merged herein and fully set forth. Each Party hereto acknowledges, represents, and warrants that, except as expressly set out in this Agreement, no representation of fact or law has been made by those released hereby, or their counsel, or any other person, and that this Agreement is not based upon any unstated representation(s), the undersigned or their counsel having investigated to the fullest extent possible the factual and legal issues involved in this matter.

**10. Effective Date.**

This Agreement becomes effective on the date of the last signature affixed below (the "Effective Date"). This Agreement shall be binding upon and shall inure to the benefit of the Parties, their respective successors, heirs, and assigns. Beyond the Parties and their successors, heirs, and assigns, this Agreement is not intended to benefit third parties.

**11. Amendment.**

This Agreement or any part hereof may not be changed, amended, waived, discharged, or terminated, except by an instrument in writing, executed by all Parties affected by such amendment.

**12. Attorney's Fees and Costs.**

Each Party shall be responsible for their respective attorney's fees and costs.

**13. Counterparts.**

This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and need not be signed by more than one of the parties and all of which shall constitute one and the same agreement. In addition, said counterparts may be transmitted electronically (i.e., via facsimile or .pdf format document sent via electronic mail), which transmitted document shall be deemed an original document for all purposes hereunder. The Parties further agree that each Party shall execute and deliver all other appropriate supplemental agreements and other instruments, and take

any other action necessary, to make this Agreement fully and legally effective, binding, and enforceable as between the and as against third parties.

**14. Survivability.**

All provisions that logically ought to survive termination of this Agreement shall survive.

**15. Dismissal of the Litigation.**

Within five (5) business days of the Effective Date, the City will cause to be filed a Notice of Voluntary Dismissal with prejudice of the Litigation.

**16. Mutual Releases.**

By executing this Agreement, each Party agrees for itself, its successors, and assigns to the following release:

Each Party (“the Releasing Party”) agrees that it hereby waives, releases, acquits, discharges, indemnifies, and holds harmless the other Party, its officers, employees, and agents, (“the Released Parties”), from any and all claims, counterclaims, defenses, actions, causes of action, suits, controversies, agreements, promises, and demands whatsoever the Releasing Party ever had, now has, or may have in the future, in law or in equity against the Released Parties, for, upon, or by reason of any claim raised, which could have been raised, or could be raised, by the Releasing Party related to the Litigation, including, but not limited to the City’s claims of ownership over the 170 Funds. The release set forth in this Paragraph does not apply to any rights granted by or arising from this Agreement, including without limitation any action to enforce this Agreement, or to latent claims that could not have been discovered through reasonable efforts on the part of the Releasing Party.

[SIGNATURES ON FOLLOWING PAGES]



**IN WITNESS WHEREOF**, the Parties hereto intending to be legally bound, have executed this Agreement to be effective upon the execution by all parties and as provided in this Agreement.

**PLAINTIFF**

**CITY OF CORAL GABLES, FLORIDA**

**BY:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Dated:** \_\_\_\_\_

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

Sworn to and subscribed before me by means of \_\_\_ physical presence or \_\_\_ online notarization this \_\_\_ day of \_\_\_\_\_, 202\_ by \_\_\_\_\_, who is personally known to me or produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
NOTARY PUBLIC, State of Florida

\_\_\_\_\_  
NOTARY (print name)

My commission expires: \_\_\_\_\_

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**DEFENDANT**

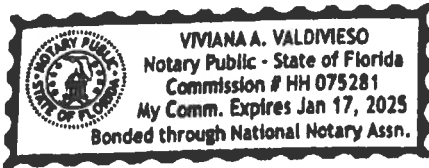
**BUSINESS IMPROVEMENT DISTRICT OF CORAL GABLES, INC.**

BY: Burton H. Hersh  
Burton H. Hersh (Feb 12, 2024 22:16 EST)  
Title: Director  
Dated: 02/12/2024

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

Sworn to and subscribed before me by means of      physical presence or  online notarization this 12th day of February, 2024 by Burton H. Hersh, who is personally known to me or produced Florida Drivers License as identification.



NOTARY PUBLIC, State of Florida

Viviana Valdivieso

NOTARY (print name)

My commission expires: 01/17/2025







# 2024-02-12 Stipulated Settlement Agreement.Redline with City changes.Additional Revisions.Clean

Final Audit Report

2024-02-13

Created:	2024-02-13
By:	Viviana Valdivieso (vivi@markmigd.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAA23Sg2aQUIoAa4j32kKLcyxQRaSg-qQJD

## "2024-02-12 Stipulated Settlement Agreement.Redline with City changes.Additional Revisions.Clean" History

-  Document created by Viviana Valdivieso (vivi@markmigd.com)  
2024-02-13 - 3:00:51 AM GMT- IP address: 73.84.195.246
-  Document emailed to burton@burtonhersh.com for signature  
2024-02-13 - 3:00:54 AM GMT
-  Email viewed by burton@burtonhersh.com  
2024-02-13 - 3:01:30 AM GMT- IP address: 204.9.240.32
-  Signer burton@burtonhersh.com entered name at signing as Burton H Hersh  
2024-02-13 - 3:16:11 AM GMT- IP address: 204.9.240.32
-  Document e-signed by Burton H Hersh (burton@burtonhersh.com)  
Signature Date: 2024-02-13 - 3:16:13 AM GMT - Time Source: server- IP address: 204.9.240.32
-  Agreement completed.  
2024-02-13 - 3:16:13 AM GMT

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