

CITY OF CORAL GABLES, FLORIDA

RESOLUTION NO. 2009-223

A RESOLUTION AUTHORIZING EXECUTION OF A SETTLEMENT AGREEMENT REGARDING OLGA MIRABAL (A/K/A OLGA GARCIA) FOR THE PURPOSE OF SETTLING ANY AND ALL CLAIMS MADE BY MIRABAL, INCLUDING, BUT NOT LIMITED TO, A LAWSUIT FILED IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, CASE 09-20733-UNGARO, PURSUANT TO THE FAIR LABOR STANDARDS ACT, 29 U.S.C. § 216(B), AND A CHARGE OF DISCRIMINATION FILED WITH THE UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, CHARGE NO. 510-2009-00987, AND AUTHORIZING EXECUTION OF A SETTLEMENT AGREEMENT REGARDING SUSAN FRANQUI FOR THE PURPOSE OF SETTLING ANY AND ALL CLAIMS BY FRANQUI REGARDING THE REASSIGNMENT OF HER FORMER POSITION OF DEPUTY CITY CLERK.

BE IT RESOLVED OF THE CITY COMMISSION OF CORAL GABLES:

SECTION 1. That the Settlement Agreement (Agreement) between the City, Ms. Olga Mirabal, and David L. Brown is attached hereto as Attachment 1.

- A. Ms. Mirabal filed a lawsuit pursuant to the Fair Labor Standards Act, 29 U.S.C. § 216(b), in the United States District Court for the Southern District of Florida, Case No. 09-20733-Ungaro, alleging that she had been denied overtime pay. Ms. Mirabal also filed a charge of discrimination with the United States Equal Employment Opportunity Commission, Charge No. 510-2009-00987, alleging that she had been discriminated against on the basis of sex and was retaliated against.
- B. The City denies all allegations made by Ms. Mirabal, but prefers to avoid the uncertainties and expense of further litigation and desires to settle the claims on the basis set forth in the Agreement that is Attachment 1 to this Resolution. In exchange for the consideration set forth in the Agreement that is Attachment 1 to this Resolution, Ms. Mirabal provides the City with a general waiver and release of all claims in addition to other promises set forth in said Agreement.

SECTION 2. That the Settlement Agreement (Agreement) between the City and Susan Franqui is attached hereto as Attachment 2.

- A. Ms. Franqui has made allegations regarding the reassignment of her former position of Deputy City Clerk and her continued entitlement to that position.
- B. The City denies all allegations made by Ms. Franqui, but prefers to avoid the uncertainties and expense of further litigation and desires to settle the claims on the basis set forth in the Agreement that is Attachment 2 to this Resolution. In exchange for the consideration set forth in the Agreement that is Attachment 2 to this Resolution, Ms. Franqui provides the City with a general waiver and release of all claims in addition to other promises set forth in said Agreement


SECTION 3. That the City Attorney is hereby authorized to execute the settlement agreements that are attached hereto as Attachment1 and Attachment 2.

SECTION 4. That this resolution shall become effective upon the date of its passage and adoption herein.

PASSED AND ADOPTED THIS TWENTY-NINTH DAY OF JULY, A.D.,
2009.

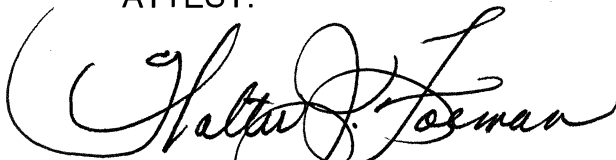
(Moved: Withers/ Seconded: Kerdyk)
(Yeas: Cabrera, Kerdyk, Withers)
(Nays: Anderson, Slesnick)
(Majority: (3-2) Vote)
(Non-Agenda Item)

APPROVED:




DONALD D. SLESNICK II
MAYOR

ATTEST:



WALTER J. FOEMAN
CITY CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:



ELIZABETH M. HERNANDEZ
CITY ATTORNEY

SETTLEMENT AGREEMENT WITH
FULL AND MUTUAL GENERAL WAIVER AND RELEASE

This SETTLEMENT AGREEMENT WITH FULL AND MUTUAL GENERAL WAIVER AND RELEASE ("Agreement") is entered into by SUSAN FRANQUI (hereinafter referred to as "FRANQUI") and the CITY OF CORAL GABLES. The CITY OF CORAL GABLES is defined to include any and all related entities and subdivisions, as well as all respective former and current commissioners, city managers, city clerks, directors, administrators, agents, department heads, supervisors, employees, attorneys, representatives, insurers, and officials (all in their official and individual capacities), as well as their heirs, executors, administrators, predecessors, successors, insurers, assigns, and all other persons, partnerships, firms or corporations, and their insurers who are related to the CITY OF CORAL GABLES, and all will be collectively referred to in this Agreement as the "CITY".

WHEREAS, FRANQUI was employed by the CITY as Deputy City Clerk, which position was filled by another individual due to FRANQUI's extended absence;

WHEREAS, FRANQUI has made allegations regarding the reassignment of her position;

WHEREAS, the CITY denies all of the allegations made by FRANQUI; and,

WHEREAS, the parties prefer to avoid the uncertainties and expense of further litigation and, instead, desire to set forth in this Agreement, without establishing precedent, the terms and conditions of the settlement of FRANQUI's claims, including the release of any and all claims that she has or could possibly have against the CITY, in exchange for the consideration described herein.

NOW, THEREFORE, in consideration of their mutual promises and other good and valuable consideration, receipt of which is hereby acknowledged, the parties, intending to be legally bound, agree as follows:


FRANQUI


CITY

1. Contingent Agreement.

This Agreement is contingent upon Olga Mirabal (a/k/a Olga Garcia) entering into and not revoking a Settlement Agreement with Full and Mutual General Waiver and Releases. Should Olga Mirabal fail to execute such agreement or revoke such agreement, then this Agreement between FRANQUI and the City shall be null and void and shall be deemed invalid and unenforceable in its entirety, and the CITY shall be relieved of all obligations imposed by this Agreement. Further, should FRANQUI fail or refuse to execute this Agreement for any reason, this Agreement shall be deemed invalid and unenforceable in its entirety, and the CITY shall be relieved of all obligations imposed by this Agreement.

This Agreement is further contingent upon FRANQUI being released to full duty by her health care provider. To this end, the medical certification form attached hereto as exhibit A shall be filled out by her health care provider and submitted to the CITY's Human Resources Department.

2. Consideration.

In consideration for FRANQUI's agreement to execute this Agreement, to enter into a confidentiality agreement, and to give the release stated in this Agreement, in addition to fulfilling the other promises set forth herein, the CITY agrees to provide the following consideration:

- a. FRANQUI shall be employed in the position of Assistant to the Assistant City Attorney at the rate of \$26.04 per hour. Her first day of employment in this position will be August 3, 2009. FRANQUI understands that being placed in this position is not a guarantee of lifetime employment. FRANQUI is required to adequately perform the functions of the job. FRANQUI understands and agrees that she will be subject to the



FRANQUI

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same terms and conditions of employment as all other employees of the CITY in the same job or classification.

b. FRANQUI agrees that the consideration being provided by the CITY in this Agreement constitutes adequate and ample consideration for the rights and claims she is waiving under this Agreement and for the obligation imposed upon her by virtue of this Agreement. FRANQUI further agrees and understands that the consideration being provided by this Agreement is consideration to which she is not otherwise entitled and which she would not receive but for this Agreement.

c. FRANQUI also agrees and understands that she is not entitled to any accrual of benefits for the time period that she was on no pay status. This includes, but is not limited to any accrual of leave, seniority, time towards vested pension rights, or any other benefit based upon pay status.

3. No Lawsuits or Claims.

FRANQUI represents and agrees that she will not hereafter pursue, initiate, or cause to be instituted against the CITY or any party released herein, any dispute that is released herein. FRANQUI further represents that she does not currently have pending before any court or before any federal, state or local agency any dispute of any kind against the CITY. If it is determined that FRANQUI has any lawsuit, charge of discrimination, or other claim pending against the CITY, FRANQUI agrees to dismiss any such claims, with prejudice, immediately upon determining that such charge or claim is pending.

4. Full and Mutual General Waiver and Release of All Claims.

In exchange for the consideration described in this Agreement, FRANQUI irrevocably, knowingly, and voluntarily releases, waives, and forever discharges any and all claims, demands,


FRANQUI


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actions, or causes of action, of any kind whatsoever, known or unknown, foreseen or unforeseen, foreseeable or unforeseeable, and any consequences thereof, which she has or may have against the CITY from the beginning of the world until the effective date of this Agreement. The disputes released by FRANQUI include, but are not limited to, any and all disputes against the CITY concerning her employment and the elimination of her position.

The disputes released by FRANQUI include those known or unknown, actual or contingent, in law, in equity, or otherwise and whether based in tort, contract, statute, or any other basis. This release includes all disputes for which FRANQUI could seek equitable relief, and actual, compensatory, consequential, liquidated, punitive, special, multiple or other damages, expenses (including attorneys' fees and costs), and all other reimbursements or charges of any kind. The disputes released by FRANQUI include, but are not limited to, any claim(s) under:

- Title VII of the Civil Rights Act of 1964;
- The Civil Rights Act of 1991;
- The Florida Civil Rights Act of 1992;
- Sections 1981 through 1988 of Title 42 of the United States Code;
- The Constitutions of the United States and the State of Florida;
- The Employee Retirement Income Security Act of 1974;
- The Florida Health Insurance Coverage Continuation Act;
- The Florida Wage Discrimination Law;
- Florida Wage and Hour laws;
- Any Florida or federal whistleblower laws;
- The Internal Revenue Code;
- The Rehabilitation Act;
- The Consolidated Omnibus Budget Reconciliation Act;
- The Immigration Reform and Control Act of 1986;
- The Americans with Disabilities Act of 1990;
- The Age Discrimination in Employment Act, including the Older Workers Benefit Protection Act;
- The Fair Labor Standards Act;
- The Equal Pay Act of 1963;
- The Occupational Safety and Health Act;
- The Family and Medical Leave Act of 1993;
- The National Labor Relations Act; or
- Any other federal, state, or local civil or human rights law or any other federal, state, or local law, regulation, or ordinance.


FRANQUI

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The disputes released by FRANQUI also include any and all disputes she has or believes herself to have against the CITY in contract or at common law, including, but not limited to, breach of oral, written and/or implied contract, an implied covenant of good faith and fair dealing, wrongful discharge under any theory, including for lack of good cause, in violation of public policy, and constructive discharge, intentional and negligent infliction of emotional distress, any tort action, negligent retention and supervision, assault, battery, negligence, misrepresentation or fraud of any kind, duress, unfair dealing, breach of fiduciary or other duty, invasion of privacy, defamation, false imprisonment, and interference with contract and/or prospective economic advantage.

The reference herein to specific statutory, contract and common law claims is in no way intended to limit the disputes released by FRANQUI. FRANQUI intends that the disputes that she releases be construed as broadly as possible to cover any and all disputes she may have or believe herself to have against the CITY. In that regard, FRANQUI further acknowledges that she may later discover facts in addition to or different from those which she now knows or believes to be true. FRANQUI agrees that any such difference in the facts shall not affect this Agreement; that she assumes the risk of any such difference in the facts; and that she further agrees that this Agreement shall remain in full force and effect and not be subject to rescission by reason of any such difference in the facts.

FRANQUI also agrees and acknowledges that this Agreement is also entered into pursuant to Section 440.20(11)(c)(d) and (e), Florida Statutes, and is intended to be a complete and final settlement of any and all workers' compensation benefits under Chapter 440, Florida Statutes, including, but not limited to, future medical benefits. FRANQUI also stipulates that all accidents, injuries, repetitive traumas, exposures, and occupational diseases known to have


FRANQUI


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occurred or been sustained due to employment by the CITY have been revealed. FRANQUI agrees that this Agreement includes all accidents, occupational diseases and injuries sustained while employed by FRANQUI, whether reported or not. It is FRANQUI's intention to fully, finally and forever resolve and release any and all disputes that she may have or believe herself to have against the CITY with respect to any alleged acts occurring before the effective date of this Agreement, whether those disputes presently are known or unknown, suspected or unsuspected.

FRANQUI understands that nothing in this Agreement prohibits her from filing a charge with or participating in any investigation or proceeding before any federal, state or local governmental agency such as the Equal Employment Opportunity Commission and does not prohibit her from challenging the validity of the waiver and release set forth herein. However, FRANQUI agrees that with respect to the claims she is waiving, she is waiving not only her right to recover money or other relief in any action that she might institute but also that she is waiving her right to recover money or other relief in any action that might be brought on her behalf by any other person or entity including, but not limited to, the State of Florida, the United States Equal Employment Opportunity Commission, the Florida Commission on Human Relations, or any other (U.S. or foreign) federal, state, or local agency or department. FRANQUI further represents that she has not heretofore assigned or transferred, or purported to have assigned or transferred, to any entity or person any dispute released herein.

The CITY hereby knowingly and voluntarily releases, waives, and forever discharges any and all claims, rights, demands, actions or causes of action, of any kind whatsoever, known or unknown, foreseen or unforeseen, foreseeable or unforeseeable, and any consequences thereof, which it may have against FRANQUI.


FRANQUI


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5. No Admission of Liability or Wrongdoing.

The parties to this Agreement agree that nothing contained in this Agreement or otherwise shall constitute or be construed as an admission of any alleged liability or wrongdoing by the CITY. Indeed, the CITY denies that it engaged in any wrongdoing of any kind with respect to FRANQUI.

6. Confidentiality, Breach of Confidentiality and Response to Media.

FRANQUI understands and agrees that this Agreement is a confidential document. Accordingly, FRANQUI agrees that she will not disclose or discuss this Agreement, the circumstances relating thereto, or any of the claims or allegations giving rise to this Agreement, with any persons except her attorneys, accountants, or spouse or to comply with the requirements of the law or court order. Moreover, if FRANQUI discusses this Agreement with her attorneys, accountants, or spouse, it shall be her duty to direct them not to discuss the terms of this Agreement with any other person. FRANQUI shall be fully and completely responsible for any breach of this confidentiality provision, whether it be her own breach or a breach by her attorneys, accountant or spouse.

FRANQUI understands and agrees that under the Public Records Law, the CITY is required to, and shall upon request by a third party, disclose the terms of this Agreement, and the CITY shall comply with all federal, state and local laws requiring disclosure of public records

All media inquiries regarding this Agreement shall be directed to the City Attorney's office. If the City Attorney's office is asked about the resolution of FRANQUI's allegations or about her employment, the City Attorney's office is authorized only to say, "The parties resolved the matter to their mutual satisfaction." If FRANQUI is asked about the resolution of


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FRANQUI's lawsuit, charge or employment, she will only say, "I have no comment. Any questions should be directed to the City Attorney."

7. Non-Disparagement and Breach of Non-Disparagement.

FRANQUI agrees that she will not take any action which might embarrass, harass or adversely affect the CITY or which might, in any way, whether directly or indirectly, work to the detriment of the CITY. In particular and by way of illustration and not limitation, FRANQUI agrees that she will not contact members of the press or media, any employee or former employee of the CITY, or any other entity that has a business relationship with the CITY in order to disparage the good reputation or business practices of the CITY.

The CITY, defined for purposes of this paragraph as the City Commission, City Manager, City Clerk and City Attorney, agree that they will not take any action which might embarrass, harass or adversely affect FRANQUI or which might, in any way, whether directly or indirectly, work to the detriment of FRANQUI. In particular and by way of illustration and not limitation, the CITY agrees that it will not contact members of the press or media or any entity that has a business relationship with FRANQUI in order to disparage the good reputation or business practices of FRANQUI.

8. Indemnity.

FRANQUI acknowledges that all costs and/or attorneys' fees liens, workers' compensation liens, and all medical liens and bills for medical, hospital, ambulance and/or nursing care, treatment, diagnosis, or examination of FRANQUI arising out of or related to her allegations have or will be paid in full by FRANQUI. FRANQUI agrees to this indemnity provision for the purpose of inducing the CITY to settle her allegations and in consideration for the promises made by the CITY as set forth in this Agreement. FRANQUI agrees to indemnify


FRANQUI


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and hold the CITY harmless of and from any and all bills, sums, amounts, debts, liens, demands, claims, promises, damages, judgments, and executions in law or in equity, for attorneys' fees and/or costs, medical, hospital, ambulance and/or nursing care, treatment, diagnosis or examination arising out of or related to the allegations that were made or could have been made by FRANQUI.

9. **Encouragement to Consult Attorney and Time for Consideration.**

a. **Representation by Legal Counsel.** The CITY encouraged FRANQUI to consult an attorney regarding the terms of this Agreement before signing the Agreement, and FRANQUI acknowledges that she did, in fact, consult with an attorney regarding the terms of this Agreement. FRANQUI acknowledges that she had his attorney review this Agreement and explain this Agreement to her. **FRANQUI ACKNOWLEDGES THAT SHE FULLY UNDERSTANDS THE LEGAL EFFECT OF THIS AGREEMENT, HER RIGHTS AND OBLIGATIONS UNDER THIS AGREEMENT, AND THAT SHE INTENDS TO BE LEGALLY BOUND BY THIS AGREEMENT.**

b. **Time to Consider Signing Agreement.** FRANQUI acknowledges that she has been given a reasonable period of time of not less than twenty-one (21) days within which to decide whether to sign this Agreement. FRANQUI understands and agrees that she can use all or any part of this period to decide whether to sign this Agreement. FRANQUI agrees that any changes to this Agreement from that originally presented to FRANQUI will not restart the twenty-one (21) day consideration period.


FRANQUI


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c. **Seven (7) Day Period to Revoke.** FRANQUI understands that she may revoke this Agreement within seven (7) calendar days after she signs the Agreement.¹ If FRANQUI revokes the Agreement, the Agreement will be deemed unenforceable, will be null and void, and the CITY shall be relieved of all obligations stated in this Agreement. To be an effective revocation, any revocation must be in writing, executed by FRANQUI and delivered to the CITY's counsel, Denise M. Heekin, Esquire, at the law firm of BRYANT MILLER OLIVE, One Biscayne Tower, 2 South Biscayne Boulevard, Suite 1480, Miami, Florida 33131, on or before the seventh calendar day by or before 5:00 p.m. (Eastern Time). The revocation must expressly state "I hereby revoke the Agreement."

d. **Effective Date.** FRANQUI acknowledges that this Agreement shall not become effective and enforceable until the seven (7) day revocation period has expired.

10. Governing Law and Interpretation.

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, and where applicable, federal laws. The language of this Agreement shall be construed as a whole, according to its fair meaning, and not strictly construed for or against either party.

11. Severability.

Should any court of competent jurisdiction declare illegal or unenforceable any provision of this Agreement (which provision cannot be modified to be enforceable), with the exception of section 4. General Waiver and Releases of All Claims, such provision shall immediately become

¹ For purposes of computing this seven (7) day period, the date FRANQUI signs the Agreement should not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period of time prescribed runs until the end of the next day which is not one of the aforementioned days. Intermediate Saturdays, Sundays, and legal holidays shall be included in the computation.


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null and void leaving the remainder of this Agreement in full force and effect. Should section 4. General Waiver and Releases of All Claims be declared illegal or unenforceable, this entire Agreement shall become null and void and FRANQUI will be required to immediately return to the CITY all consideration provided to her or on her behalf by this Agreement.

12. Entire Agreement; Amendment; Signatures.

This Agreement and its attachment set forth the entire agreement between the parties and supersede any and all prior agreements or understandings between the parties. This Agreement may not be amended except by a written agreement signed by the parties or signed by their respective administrators, trustees, personal representatives, or successors.

13. Headings.

Section headings are used in this Agreement for ease of reference only and shall not affect the meaning of any provision of this Agreement.

14. Disputes.

In the event that any party to this Agreement institutes legal proceedings for breach of the terms of this Agreement, it is stipulated and agreed that such a claim shall be heard and determined by the court, and not by a jury, in Miami-Dade County, Florida. **FRANQUI AGREES AND UNDERSTANDS THAT SHE IS WAIVING THE RIGHT TO A JURY TRIAL, IF ONE EXISTS, AS TO A CLAIM OF BREACH OF THIS AGREEMENT.** Furthermore, in the event that it shall be necessary for any party to this Agreement to institute legal action to enforce any of the terms and conditions or provisions contained herein, or for any breach thereof, the prevailing party shall be entitled to costs and reasonable attorney's fees up through any appeals.

15. Entire Agreement.


FRANQUI


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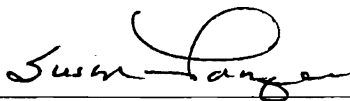
FRANQUI acknowledges that she has carefully read and understands this Agreement and agrees that the CITY has not made any representations other than those contained herein. FRANQUI also acknowledges that she enters into this Agreement voluntarily, without any pressure or coercion, and with full knowledge of its significance, and that this Agreement constitutes a **FULL AND ABSOLUTE SETTLEMENT AND BAR AS TO ANY AND ALL CLAIMS** she had, has, or may have against the CITY.

16. **Acknowledgement.**

THE PARTIES HAVE READ, UNDERSTOOD, AND FULLY CONSIDERED THIS AGREEMENT CONSISTING OF THIRTEEN (13) PAGES AND ONE (1) EXHIBIT AND ARE MUTUALLY DESIROUS OF ENTERING INTO SUCH AGREEMENT. THE TERMS OF THIS AGREEMENT ARE THE PRODUCT OF MUTUAL NEGOTIATION AND COMPROMISE BETWEEN FRANQUI AND THE CITY. HAVING ELECTED TO EXECUTE THIS AGREEMENT, TO FULFILL THE PROMISES SET FORTH HEREIN, AND TO RECEIVE THEREBY THE BENEFITS SET FORTH ABOVE, FRANQUI FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTERS INTO THIS AGREEMENT INTENDING TO RELEASE, WAIVE, AND SETTLE ALL CLAIMS THAT SHE HAS OR MIGHT NOW HAVE AGAINST THE CITY.

WHEREFORE, the parties, intending to be legally bound, execute this Agreement as of the dates set forth below.

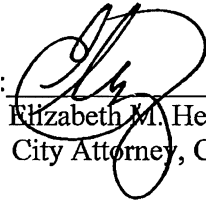
SUSAN FRANQUI



FRANQUI

CITY OF CORAL GABLES, FLORIDA

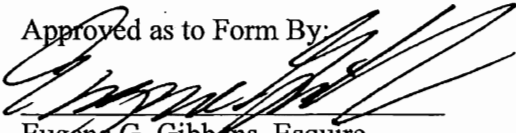
By:



Elizabeth M. Hernandez, Esquire
City Attorney, City of Coral Gables

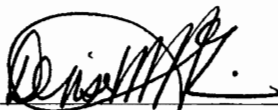
CITY

Date: July 30, 2009

Approved as to Form By:

Eugene G. Gibbons, Esquire
Counsel for Franqui

July 30, 2009
Date

Date: August 3, 2009


Denise M. Heekin, Esquire
Counsel for the City of Coral Gables

August 3, 2009
Date


FRANQUI


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SETTLEMENT AGREEMENT WITH
FULL AND MUTUAL GENERAL WAIVER AND RELEASES

This SETTLEMENT AGREEMENT WITH FULL AND MUTUAL GENERAL WAIVER AND RELEASES ("Agreement") is entered into by OLGA MIRABAL (a/k/a OLGA GARCIA and hereinafter referred to as "MIRABAL"), DAVID L. BROWN ("BROWN"), and the CITY OF CORAL GABLES. The CITY OF CORAL GABLES is defined to include any and all related entities and subdivisions, as well as all respective former and current commissioners, city managers, city clerks, directors, administrators, agents, department heads, supervisors, employees, attorneys, representatives, insurers, and officials (all in their official and individual capacities), as well as their heirs, executors, administrators, predecessors, successors, insurers, assigns, and all other persons, partnerships, firms or corporations, and their insurers who are related to the CITY OF CORAL GABLES, and all will be collectively referred to in this Agreement as the "CITY".

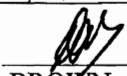
WHEREAS, MIRABAL is employed by the CITY as an Assistant to the Assistant City Attorney;


WHEREAS, BROWN was employed by the CITY as the former City Manager;

WHEREAS, on November 20, 2008, MIRABAL filed a charge of discrimination with the Equal Employment Opportunity Commission, Charge No. 510-2009-00987, which was dual filed with the Florida Commission on Human Relations alleging discrimination on the basis of sex and retaliation and made certain allegations against the CITY and BROWN, among others (hereinafter "Charge No. 510-2009-00987");

WHEREAS, on March 23, 2009, MIRABAL also filed a lawsuit against the CITY in the United States District Court, Southern District of Florida, styled OLGA GARCIA, an individual, and on behalf of all others similarly situated, v. CITY OF CORAL GABLES, Case No. 09-


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20733-CIV-UNGARO/SIMONTON ("Case No. 09-20733"), alleging that the CITY violated the Fair Labor Standards Act, 29 U.S.C. § 201, 207, 216(b), et seq., by failing to pay her overtime for hours worked over forty hours in a work week;

WHEREAS, the CITY and BROWN deny all of the allegations made by MIRABAL in Charge No. 510-2009-00987 and the CITY denies all allegations made against it in Case No. 09-20733; and,


WHEREAS, the parties prefer to avoid the uncertainties and expense of further litigation and, instead, desire to set forth in this Agreement, without establishing precedent, the terms and conditions of the settlement of MIRABAL's claims, including the release of any and all claims that she has or could possibly have against the CITY and BROWN, in exchange for the consideration described herein.

NOW, THEREFORE, in consideration of their mutual promises and other good and valuable consideration, receipt of which is hereby acknowledged, the parties, intending to be legally bound, agree as follows:

1. **Execution and Approval of Agreement and Joint Stipulation for Dismissal with Prejudice.**

Should MIRABAL fail or refuse to execute this Agreement for any reason, this Agreement shall be deemed invalid and unenforceable in its entirety, and the CITY shall be relieved of all obligations imposed by this Agreement. MIRABAL will authorize her attorney to execute on her behalf the Joint Motion for Approval of Settlement Agreement and to Dismiss Action With Prejudice ("Joint Motion") that is attached to this Agreement as Exhibit 1, thereby agreeing to dismiss Case No. 09-20733 with prejudice (each party to bear its own costs and fees except as delineated in this Agreement). Upon the expiration of the revocation period set forth in section 11.c. of this Agreement, MIRABAL will direct her attorney to return the properly-


MIRABAL


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executed Agreement, and the original, properly-executed Joint Motion to counsel for the CITY, Denise M. Heekin, at the law firm of BRYANT MILLER OLIVE, One Biscayne Tower, 2 South Biscayne Boulevard, Suite 1480, Miami, Florida 33131. Counsel for the CITY shall execute and file the Joint Motion upon receipt of the same.

MIRABAL shall also file a Notice of Dismissal with the Equal Employment Opportunity Commission and the Florida Commission on Human Relations dismissing Charge No. 510-2009-00987.


2. Consideration.

In consideration for MIRABAL's agreement to dismiss Case No. 09-20733 and Charge No. 510-2009-00987, to execute this Agreement, to forego future reemployment by the CITY, to enter into a confidentiality agreement, and to give the release stated in this Agreement, in addition to fulfilling the other promises set forth herein, the CITY agrees to provide the following consideration:

a. Pay MIRABAL the sum of One Hundred Eighty Five Thousand Dollars (\$185,000.00), which MIRABAL accepts in settlement of all claims. This amount shall be paid as follows:

i. MIRABAL will remain on the CITY's payroll through January 31, 2010. During the period of time from July 30, 2009, until January 31, 2010, MIRABAL will continue to receive her regular CITY paycheck, minus deductions for taxes and benefits, in accordance with the CITY's regular payroll system. MIRABAL will be allowed to first exhaust her accrued leave (206.71 hours of sick leave and 0 hours of annual leave), which amount totals Five Thousand Three Hundred Eighty Two Dollars and Seventy Three Cents


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
(\$5,382.73). Thereafter, she will be on administrative leave with pay and will receive her regular pay through the end of business on January 31, 2010, which amount shall total Twenty Two Thousand One Hundred Fifteen Dollars and Fifty One Cents (\$22,115.51). The amounts paid pursuant to this provision will be reported to the Internal Revenue Service ("IRS") on Form W-2.

ii. During the period of time from July 30, 2009, until January 31, 2010, MIRABAL understands and agrees that she will not be entitled to accrue any sick, annual or other leave. She will be entitled, however, to continue her participation in the CITY's health insurance plans. After January 31, 2010, MIRABAL will then be eligible for continuation benefits pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA").

iii. The parties have been assured by the pension administrator that MIRABAL will be vested in pension benefits on January 31, 2010. If for any reason MIRABAL is not vested in pension benefits on January 31, 2010, she will be allowed to remain on administrative leave with pay until such time as she is vested in pension benefits. Any additional time on administrative leave with pay after January 31, 2010, will cause a downward adjustment in the amount of the lump sum to be paid pursuant to section 2.a.iv.

iv. Pay MIRABAL the sum of One Hundred Sixty Two Thousand Eight Hundred Eighty Four Dollars and Forty Nine Cents (\$162,884.49) on February 1, 2010. This amount is in full settlement of any amounts allegedly owed as compensatory or other damages including attorneys' fees and costs. This amount will be paid in a check made payable to OLGA MIRABAL and the


MIRABAL


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TRUST ACCOUNT OF ROTHSTEIN ROSENFELDT ADLER. The amount will be paid in a lump sum and reported to the Internal Revenue Service ("IRS") on Form 1099.

iv. Of the One Hundred Eighty Five Thousand Dollars (\$185,000.00) that MIRABAL is receiving, One Thousand Dollars (\$1,000.00) represents back wages for unpaid overtime and One Thousand Dollars (\$1,000.00) represents liquidated damages.


v. Pay MIRABAL's attorney, ROTHSTEIN ROSENFELDT ADLER, the sum of Seven Thousand Five Hundred Dollars (\$7,500.00). Payment of this amount will be made within fifteen (15) days of the effective date of this Agreement by check made payable to ROTHSTEIN ROSENFELDT ADLER (ID No. 01-0587961), on behalf of MIRABAL.

b. MIRABAL agrees that the consideration being provided by the CITY in this Agreement constitutes adequate and ample consideration for the rights and claims she is waiving under this Agreement and for the obligation imposed upon her by virtue of this Agreement. MIRABAL further agrees and understands that the consideration being provided by this Agreement is consideration to which she is not otherwise entitled and which she would not receive but for this Agreement.

3. No Lawsuits or Claims.

MIRABAL represents and agrees that she will not hereafter pursue, initiate, or cause to be instituted against the CITY or BROWN or any party released herein, any dispute that is released herein. MIRABAL further represents that she does not currently have pending before any court or before any federal, state or local agency any dispute of any kind against the CITY or


MIRABAL


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BROWN other than Case No. 09-20733 and Charge No. 510-2009-00987. If it is determined that MIRABAL has any other lawsuit, charge of discrimination, or other claim pending against the CITY or BROWN, MIRABAL agrees to dismiss any such claims, with prejudice, immediately upon determining that such charge or claim is pending.

The CITY represents that it does not have pending before any court or before any federal, state or local agency any dispute of any kind against MIRABAL and that it will not bring any dispute against MIRABAL that is released herein to any federal, state or local agency.

BROWN also represents that he does not have pending before any court or before any federal, state or local agency any dispute of any kind against MIRABAL and that he will not bring any dispute against MIRABAL that is released herein to any federal, state or local agency.


4. General Waiver and Releases of All Claims.


a. Full and Mutual General Waiver and Release of All Claims Between the CITY and MIRABAL and Between BROWN and MIRABAL.

In exchange for the consideration described in this Agreement, MIRABAL irrevocably, knowingly, and voluntarily releases, waives, and forever discharges any and all claims, demands, actions, or causes of action, of any kind whatsoever, known or unknown, foreseen or unforeseen, foreseeable or unforeseeable, and any consequences thereof, which she has or may have against the CITY and/or BROWN from the beginning of the world until the effective date of this Agreement. The disputes released by MIRABAL include, but are not limited to, any and all disputes against the CITY and/or BROWN concerning her employment and separation from employment with the CITY or any relationship that might have existed with BROWN.

The disputes released by MIRABAL include those known or unknown, actual or contingent, in law, in equity, or otherwise and whether based in tort, contract, statute, or any other basis. This release includes all disputes for which MIRABAL could seek equitable relief,


MIRABAL


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

CITY

and actual, compensatory, consequential, liquidated, punitive, special, multiple or other damages, expenses (including attorneys' fees and costs), and all other reimbursements or charges of any kind. The disputes released by MIRABAL include, but are not limited to, any claim(s) under:

- Title VII of the Civil Rights Act of 1964;
- The Civil Rights Act of 1991;
- The Florida Civil Rights Act of 1992;
- Sections 1981 through 1988 of Title 42 of the United States Code;
- The Constitutions of the United States and the State of Florida;
- The Employee Retirement Income Security Act of 1974;
- The Florida Health Insurance Coverage Continuation Act;
- The Florida Wage Discrimination Law;
- Florida Wage and Hour laws;
- Any Florida or federal whistleblower laws;
- The Internal Revenue Code;
- The Rehabilitation Act;
- The Consolidated Omnibus Budget Reconciliation Act;
- The Immigration Reform and Control Act of 1986;
- The Americans with Disabilities Act of 1990;
- The Age Discrimination in Employment Act, including the Older Workers Benefit Protection Act;
- The Fair Labor Standards Act;
- The Equal Pay Act of 1963;
- The Occupational Safety and Health Act;
- The Family and Medical Leave Act of 1993;
- The National Labor Relations Act; or
- Any other federal, state, or local civil or human rights law or any other federal, state, or local law, regulation, or ordinance.

The disputes released by MIRABAL also include any and all disputes she has or believes herself to have against the CITY or BROWN in contract or at common law, including, but not limited to, breach of oral, written and/or implied contract, an implied covenant of good faith and fair dealing, wrongful discharge under any theory, including for lack of good cause, in violation of public policy, and constructive discharge, intentional and negligent infliction of emotional distress, any tort action, negligent retention and supervision, assault, battery, negligence, misrepresentation or fraud of any kind, duress, unfair dealing, breach of fiduciary or other duty,


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invasion of privacy, defamation, false imprisonment, and interference with contract and/or prospective economic advantage.

The reference herein to specific statutory, contract and common law claims is in no way intended to limit the disputes released by MIRABAL. MIRABAL intends that the disputes that she releases be construed as broadly as possible to cover any and all disputes she may have or believe herself to have against the CITY and/or BROWN. In that regard, MIRABAL further acknowledges that she may later discover facts in addition to or different from those which she now knows or believes to be true. MIRABAL agrees that any such difference in the facts shall not affect this Agreement; that she assumes the risk of any such difference in the facts; and that she further agrees that this Agreement shall remain in full force and effect and not be subject to rescission by reason of any such difference in the facts.

MIRABAL also agrees and acknowledges that this Agreement is also entered into pursuant to Section 440.20(11)(c)(d) and (e), Florida Statutes, and is intended to be a complete and final settlement of any and all workers' compensation benefits under Chapter 440, Florida Statutes, including, but not limited to, future medical benefits. MIRABAL also stipulates that all accidents, injuries, repetitive traumas, exposures, and occupational diseases known to have occurred or been sustained due to employment by the CITY have been revealed. MIRABAL agrees that this Agreement includes all accidents, occupational diseases and injuries sustained while employed by MIRABAL, whether reported or not. It is MIRABAL's intention to fully, finally and forever resolve and release any and all disputes that she may have or believe herself to have against the CITY with respect to any alleged acts occurring before the effective date of this Agreement, whether those disputes presently are known or unknown, suspected or unsuspected.


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MIRABAL understands that nothing in this Agreement prohibits her from filing a charge with or participating in any investigation or proceeding before any federal, state or local governmental agency such as the Equal Employment Opportunity Commission and does not prohibit her from challenging the validity of the waiver and release set forth herein. However, MIRABAL agrees that with respect to the claims she is waiving, she is waiving not only her right to recover money or other relief in any action that she might institute but also that she is waiving her right to recover money or other relief in any action that might be brought on her behalf by any other person or entity including, but not limited to, the State of Florida, the United States Equal Employment Opportunity Commission, the Florida Commission on Human Relations, or any other (U.S. or foreign) federal, state, or local agency or department. MIRABAL further represents that she has not heretofore assigned or transferred, or purported to have assigned or transferred, to any entity or person any dispute released herein.

The CITY and BROWN hereby knowingly and voluntarily each release, waive, and forever discharge any and all claims, rights, demands, actions or causes of action, of any kind whatsoever, known or unknown, foreseen or unforeseen, foreseeable or unforeseeable, and any consequences thereof, which it or he may have against MIRABAL.


b. Partial Waiver and Release of All Claims Between the CITY and BROWN.

The CITY and BROWN hereby knowingly and voluntarily release, waive, and forever discharge each other from any and all claims, rights, demands, actions or causes of action based upon or arising out of anything having to do with MIRABAL.

5. Resignation of Employment and No Future Employment.

MIRABAL agrees that she will sign and submit the irrevocable letter of resignation attached hereto as exhibit 2. Between July 30, 2009, and January 31, 2010, MIRABAL will


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either be exhausting her leave or on administrative leave with pay and will not be at work. MIRABAL agrees that she will return all City property, including, but not limited to employee identification and keys, at the close of business on July 29, 2009.

MIRABAL further agrees that she will never seek employment or reinstatement of her employment with the CITY. MIRABAL also agrees that should she breach this provision of the Agreement in that she seeks reemployment or reinstatement and, thereafter, files any type of administrative or legal action, that such administrative or legal action shall be immediately dismissed, that the CITY shall be entitled to an injunction barring such action, and that MIRABAL shall be fully responsible for any attorneys' fees and costs expended by the CITY in seeking such injunction and defending against such administrative or legal action.


6. No Admission of Liability or Wrongdoing.

The parties to this Agreement agree that nothing contained in this Agreement or otherwise shall constitute or be construed as an admission of any alleged liability or wrongdoing by the CITY, BROWN or MIRABAL. Indeed, the parties deny that any of them engaged in any wrongdoing of any kind with respect to any other party.

7. Confidentiality, Breach of Confidentiality and Response to Media.

MIRABAL and BROWN understand and agree that this Agreement is a confidential document. Accordingly, MIRABAL and BROWN each agree that she/he will not disclose or discuss this Agreement, the circumstances relating thereto, or any of the claims or allegations giving rise to this Agreement, with any persons except each one's attorneys, accountants, or spouse or to comply with the requirements of the law or court order. Moreover, if MIRABAL or BROWN discusses this Agreement with her/his attorneys, accountants, or spouse, it shall be her/his duty to direct them not to discuss the terms of this Agreement with any other person.


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MIRABAL and/or BROWN shall be fully and completely responsible for any breach of this confidentiality provision, whether it be her/his own breach or a breach by her/his attorneys, accountant or spouse.

MIRABAL understands and agrees that under the Public Records Law, the CITY is required to, and shall upon request by a third party, disclose the terms of this Agreement, and the CITY shall comply with all federal, state and local laws requiring disclosure of public records


All media inquiries regarding this Agreement shall be directed to the City Attorney's office. If the City Attorney's office is asked about the resolution of MIRABAL's lawsuit, charge or employment, the City Attorney's office is authorized only to say, "The parties resolved the matter to their mutual satisfaction." If BROWN or MIRABAL are asked about the resolution of MIRABAL's lawsuit, charge or employment, they will only say, "I have no comment. Any questions should be directed to the City Attorney."

8. Non-Disparagement and Breach of Non-Disparagement.

MIRABAL agrees that she will not take any action which might embarrass, harass or adversely affect the CITY or BROWN or which might, in any way, whether directly or indirectly, work to the detriment of the CITY or BROWN. In particular and by way of illustration and not limitation, MIRABAL agrees that she will not contact members of the press or media, any employee or former employee of the CITY, or any other entity that has a business relationship with the CITY or BROWN in order to disparage the good reputation or business practices of the CITY or BROWN.

The CITY, defined for purposes of this paragraph as the City Commission, City Manager, and City Attorney, and BROWN agree that they will not take any action which might embarrass, harass or adversely affect MIRABAL or which might, in any way, whether directly or indirectly,


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work to the detriment of MIRABAL. In particular and by way of illustration and not limitation, the CITY and BROWN agree that they will not contact members of the press or media or any entity that has a business relationship with MIRABAL in order to disparage the good reputation or business practices of MIRABAL.

9. Indemnity.


MIRABAL acknowledges that all costs and/or attorneys' fees liens, workers' compensation liens, and all medical liens and bills for medical, hospital, ambulance and/or nursing care, treatment, diagnosis, or examination of MIRABAL arising out of or related to the claims asserted in, or that could have been asserted in connection with Case No. 09-20733 or Charge No. 510-2009-00987, have or will be paid in full by MIRABAL.

MIRABAL agrees to this indemnity provision for the purpose of inducing the CITY and BROWN to settle Case No. 09-20733 and Charge No. 510-2009-00987 and in consideration for the funds paid as set forth in this Agreement. MIRABAL agrees to indemnify and hold the CITY and BROWN harmless of and from any and all bills, sums, amounts, debts, liens, demands, claims, promises, damages, judgments, and executions in law or in equity, for attorneys' fees and/or costs, medical, hospital, ambulance and/or nursing care, treatment, diagnosis or examination arising out of or related to Case No. 09-20733 and Charge No. 510-2009-00987, or any other allegation that was made or could have been made by MIRABAL.

10. Tax Consequences of Settlement.

MIRABAL understands and agrees that should the IRS, or any other taxing authority or other federal, state, or local agency assert, argue, or determine that any money received or paid pursuant to this Agreement that was not subject to withholding and/or deductions, is taxable wages, income, or benefits of any kind, MIRABAL will be solely and individually responsible


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for the payment of any and all taxes, contributions, withholdings, or deductions. MIRABAL's responsibility for such taxes, withholding, contribution and/or deduction includes, but not limited to, the amount of the tax, withholding, contribution and/or deduction as well as any and all penalties, interest, fees, fines, attorneys' fees and costs, related to the amount of taxes, withholding, contribution and/or deduction that should have been paid by MIRABAL. MIRABAL further agrees that she will indemnify, reimburse, and hold the CITY harmless for any and all taxes, contributions, withholdings, deductions, fees, attorneys' fees and costs, interest and/or penalties related to the amount of taxes, withholding, contribution and/or deduction attributable to what should have been paid by MIRABAL.

11. Encouragement to Consult Attorney and Time for Consideration.

a. **Representation by Legal Counsel.** The CITY encouraged MIRABAL to consult an attorney regarding the terms of this Agreement before signing the Agreement, and MIRABAL acknowledges that she did, in fact, consult with an attorney regarding the terms of this Agreement. MIRABAL acknowledges that she had his attorney review this Agreement and explain this Agreement to her. **MIRABAL ACKNOWLEDGES THAT SHE FULLY UNDERSTANDS THE LEGAL EFFECT OF THIS AGREEMENT, HER RIGHTS AND OBLIGATIONS UNDER THIS AGREEMENT, AND THAT SHE INTENDS TO BE LEGALLY BOUND BY THIS AGREEMENT.**

b. **Time to Consider Signing Agreement.** MIRABAL acknowledges that she has been given a reasonable period of time of not less than twenty-one (21) days within which to decide whether to sign this Agreement. MIRABAL understands and agrees that she can use all or any part of this period to decide whether to sign this Agreement. MIRABAL agrees


MIRABAL


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that any changes to this Agreement from that originally presented to MIRABAL will not restart the twenty-one (21) day consideration period.

c. **Seven (7) Day Period to Revoke.** MIRABAL understands that she may revoke this Agreement within seven (7) calendar days after she signs the Agreement.¹ If MIRABAL revokes the Agreement, the Agreement will be deemed unenforceable, will be null and void, and the CITY and BROWN shall be relieved of all obligations stated in this Agreement. To be an effective revocation, any revocation must be in writing, executed by MIRABAL and delivered to the CITY's counsel, Denise M. Heekin, Esquire, at the law firm of BRYANT MILLER OLIVE, One Biscayne Tower, 2 South Biscayne Boulevard, Suite 1480, Miami, Florida 33131, on or before the seventh calendar day by or before 5:00 p.m. (Eastern Time). The revocation must expressly state "I hereby revoke the Agreement."


d. **Effective Date.** MIRABAL acknowledges that this Agreement shall not become effective and enforceable until the seven (7) day revocation period has expired and until the Court approves the settlement of MIRABAL's claims for back wages allegedly due to unpaid overtime. Payment of the amounts due pursuant to section 2 of this Agreement will be made as stated in that section.

12. Governing Law and Interpretation.

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, and where applicable, federal laws. The language of this Agreement shall be

¹ For purposes of computing this seven (7) day period, the date MIRABAL signs the Agreement should not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period of time prescribed runs until the end of the next day which is not one of the aforementioned days. Intermediate Saturdays, Sundays, and legal holidays shall be included in the computation.


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construed as a whole, according to its fair meaning, and not strictly construed for or against either party.

13. Severability.

Should any court of competent jurisdiction declare illegal or unenforceable any provision of this Agreement (which provision cannot be modified to be enforceable), with the exception of section 4. General Waiver and Releases of All Claims, such provision shall immediately become null and void leaving the remainder of this Agreement in full force and effect. Should section 4. General Waiver and Releases of All Claims be declared illegal or unenforceable, this entire Agreement shall become null and void and MIRABAL will be required to immediately return to the CITY all consideration provided to her or on her behalf by this Agreement.

14. Entire Agreement; Amendment; Signatures.

This Agreement and its attachment set forth the entire agreement between the parties and supersede any and all prior agreements or understandings between the parties. This Agreement may not be amended except by a written agreement signed by the parties or signed by their respective administrators, trustees, personal representatives, or successors.


15. Headings.

Section headings are used in this Agreement for ease of reference only and shall not affect the meaning of any provision of this Agreement.

16. Disputes.

In the event that any party to this Agreement institutes legal proceedings for breach of the terms of this Agreement, it is stipulated and agreed that such a claim shall be heard and determined by the court, and not by a jury, in Miami-Dade County, Florida. **MIRABAL**


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AGREES AND UNDERSTANDS THAT SHE IS WAIVING THE RIGHT TO A JURY TRIAL, IF ONE EXISTS, AS TO A CLAIM OF BREACH OF THIS AGREEMENT.

Furthermore, in the event that it shall be necessary for any party to this Agreement to institute legal action to enforce any of the terms and conditions or provisions contained herein, or for any breach thereof, the prevailing party shall be entitled to costs and reasonable attorney's fees up through any appeals.


17. Entire Agreement.

MIRABAL acknowledges that she has carefully read and understands this Agreement and agrees that the CITY has not made any representations other than those contained herein. MIRABAL also acknowledges that she enters into this Agreement voluntarily, without any pressure or coercion, and with full knowledge of its significance, and that this Agreement constitutes a **FULL AND ABSOLUTE SETTLEMENT AND BAR AS TO ANY AND ALL CLAIMS** she had, has, or may have against the CITY or BROWN.

18. Acknowledgement.

THE PARTIES HAVE READ, UNDERSTOOD, AND FULLY CONSIDERED THIS AGREEMENT CONSISTING OF SEVENTEEN (17) PAGES AND TWO (2) EXHIBITS AND ARE MUTUALLY DESIROUS OF ENTERING INTO SUCH AGREEMENT. THE TERMS OF THIS AGREEMENT ARE THE PRODUCT OF MUTUAL NEGOTIATION AND COMPROMISE BETWEEN MIRABAL, BROWN AND THE CITY. HAVING ELECTED TO EXECUTE THIS AGREEMENT, TO FULFILL THE PROMISES SET FORTH HEREIN, AND TO RECEIVE THEREBY THE BENEFITS SET FORTH ABOVE, MIRABAL FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTERS INTO THIS AGREEMENT INTENDING


MIRABAL


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TO RELEASE, WAIVE, AND SETTLE ALL CLAIMS THAT SHE HAS OR MIGHT
NOW HAVE AGAINST THE CITY OR BROWN.

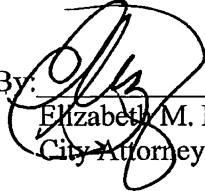
WHEREFORE, the parties, intending to be legally bound, execute this Agreement as of
the dates set forth below.

OLGA MIRABAL




Date: July 30, 2009

CITY OF CORAL GABLES, FLORIDA

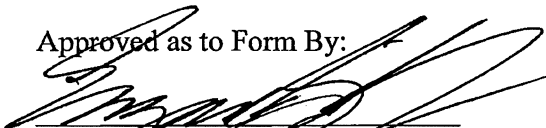
By: 
Elizabeth M. Hernandez, Esquire
City Attorney, City of Coral Gables

Date: August 3, 2009

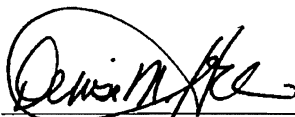
DAVID L. BROWN


Date: July 31, 2009

Approved as to Form By:

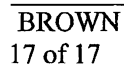

Eugene G. Gibbons, Esquire
Counsel for Plaintiff

Date: July 30, 2009


Denise M. Heekin, Esquire
Counsel for Defendant

Date: 8/3/09


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July 30, 2009

To Whom It May Concern:

I, Olga Mirabal, irrevocably resign from my employment with the City of Coral Gables as of January 31, 2010.

Sincerely,



Olga Mirabal

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-20733-CIV-UNGARO/SIMONTON

OLGA GARCIA, an individual,)
and on behalf of all others similarly situated,)
)
Plaintiff,)
)
v.)
)
CITY OF CORAL GABLES,)
)
Defendant.)
_____)

**JOINT MOTION TO APPROVE SETTLEMENT AGREEMENT
AND TO DISMISS WITH PREJUDICE**

The parties, through their undersigned counsel, hereby file this Joint Motion to Approve Settlement Agreement and to Dismiss with Prejudice.

PRELIMINARY STATEMENT

Plaintiff filed this action pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* ("FLSA"). Plaintiff alleged that Defendant failed to pay her overtime for work performed in excess of forty (40) hours per week. Defendant denies any wrongdoing under the FLSA, and denies that it owes Plaintiff any additional compensation. Nevertheless, in an effort to avoid the costs and uncertainty of litigation, the parties have negotiated a settlement in this matter and request that the Court approve the same and dismiss this matter with prejudice.

ARGUMENT AND CITATION OF AUTHORITY

Pursuant to Lynn's Food Stores, Inc. v. United States, 679 F.2d 1350 (11th Cir. 1982), claims for back wages arising under the FLSA may be settled or compromised only with the approval of the district court or the Secretary of Labor. To approve the settlement, the court should determine that the compromise is a fair and reasonable resolution of a bona fide dispute over FLSA provisions. See id.

Plaintiff alleges that she did not receive overtime pursuant to the FLSA. Defendant alleges that Plaintiff never worked over forty (40) hours in any workweek. To avoid the costs and uncertainty of litigation, the parties have negotiated a settlement agreement. The terms of the agreement are described below:¹

1. Defendant will pay Plaintiff the sum of \$2,000, \$1,000.00 as back wages and an equal amount in liquidated damages. This amount represents approximately 25 hours of overtime at the last (and highest) rate worked by Plaintiff (\$26.04 per hour). To the extent that these hours differ from that set forth in the Complaint, Plaintiff states that the Complaint contained an estimate of the number of hours. While the City disagrees that any overtime was worked, Plaintiff agrees that upon further discovery she only could have worked, at the most, this amount of overtime.

2. Defendant will also pay \$7,500.00 to Plaintiff's counsel for attorneys' fees and costs.

3. Defendant does not admit liability or wrongdoing under the FLSA or any other basis.

4. Plaintiff has agreed to provide Defendant with a full and general waiver and release of all claims.

5. Plaintiff agrees to dismiss this action with prejudice and the parties ask the district court to retain jurisdiction to enforce the terms of the settlement of the FLSA claims.

6. The terms of the settlement agreement are contingent upon approval by the Court.

7. The parties agree that the above-delineated settlement terms represent a fair and equitable resolution of this matter for the following reasons:

¹ The settlement agreement resolves Plaintiff's FLSA claims as well as allegations of discrimination that Plaintiff made to the Equal Employment Opportunity Commission. It is only Plaintiff's FLSA claims that must be approved by the Court. Plaintiff's FLSA claims and the settlement are set forth in this document. However, should the Court require a review of the agreement, then counsel will be happy to provide the same, preferably at a settlement or status conference.

- a. There is a significant factual dispute about the number of hours actually worked by Plaintiff.
- b. To avoid the costs and uncertainty of litigation, the parties have negotiated a settlement agreement pursuant to which Plaintiffs are obtaining wages for overtime hours claimed, an equal amount in liquidated damages, and attorneys' fees and costs.
- c. The parties were represented by competent counsel who have experience in FLSA claims.

Accordingly, the parties respectfully request that the Court grant this motion and enter an Order approving the terms of the settlement, dismissing this action with prejudice, and retaining jurisdiction to enforce the terms of the settlement of the FLSA claims.

August 6, 2009
Miami, Florida

Respectfully submitted,

s/Michael A. Pancier

Michael A. Pancier (FL Bar No.958484)

mpancier@rra-law.com

ROTHSTEIN ROSENFELDT ADLER

401 E. Las Olas Blvd., Suite 1650

Fort Lauderdale, FL 33301

Telephone: (954) 522-3456

Facsimile: (954) 527-8663

Counsel for Plaintiff

s/ Denise M. Heekin

Denise M. Heekin (FL Bar No. 892998)

dheekin@bmlaw.com

James C. Crosland (FL Bar No. 171389)

jcrosland@bmlaw.com

BRYANT MILLER OLIVE

2 South Biscayne Boulevard, Suite 1480

Miami, FL 33131

Telephone: (305) 374-7349

Facsimile: (305) 374-0895

Counsel for Defendant City of Coral Gables

Elizabeth M. Hernandez (FL Bar No. 0378186)

ehernandez@coralgables.com

CITY OF CORAL GABLES

405 Biltmore Way

Coral Gables, Florida 33134

Telephone: (305) 460-5338

Facsimile: (305) 460-5264

Co-Counsel for Defendant Coral Gables

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-20733-CIV-UNGARO/SIMONTON

OLGA GARCIA, an individual,)
and on behalf of all others similarly situated,)
)
Plaintiff,)
)
v.)
)
CITY OF CORAL GABLES,)
)
Defendant.)
_____)

**ORDER GRANTING JOINT MOTION TO APPROVE SETTLEMENT AGREEMENT
AND TO DISMISS ACTION WITH PREJUDICE**

THIS MATTER came before the Court upon the Joint Motion to Approve Settlement Agreement and to Dismiss Action With Prejudice [DE ____] filed August 6, 2009.

The Court having reviewed the Joint Motion and being advised fully in the premises, hereby ORDERS AND ADJUDGES as follows:

The Court finds that the settlement agreement is a fair and reasonable resolution of a bona fide dispute over FLSA provisions, and accordingly, the terms of the settlement are approved. Furthermore, this case is dismissed with prejudice, with each party to bear its own attorney's fees and costs, except as otherwise agreed between the parties in the settlement agreement. This Court shall retain jurisdiction to enforce the terms of the settlement agreement as the same relates to Plaintiff's FLSA claims.

DONE and ORDERED in chambers, Miami, Florida, this _____ day of August, 2009.

HONORABLE URSULA UNGARO
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Magistrate Judge Simonton
All Counsel of Record