

RESOLUTION No.18-73

A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, APPROVING THE SETTLEMENT AGREEMENT AND RELEASE FOR CASE NO. 18-21184-CIV-RNS, GONZALEZ V. CITY OF DORAL, FLORIDA, IN SUBSTANTIALLY THE FORM PROVIDED; AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A SETTLEMENT AND RELEASE IN FURTHERANCE HEREOF; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Mr. Jesus Gonzalez initiated litigation against the City of Doral (the “City”) resulting from issues associated with limited accessibility to certain amenities of Doral Central Park; and

WHEREAS, the parties have a mutual desire to resolve the Litigation and have reached an amicable resolution; and

WHEREAS, the Mayor and Council dispose of the Litigation and settle the matter pursuant to the terms of the “Settlement Agreement and Release,” attached hereto as Exhibit “A”.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are confirmed, adopted, and incorporated herein and made a part hereof by this reference.

Section 2. Approval of Settlement. The Settlement Agreement and Release, in substantially the form attached hereto as Exhibit “A”, which is incorporated herein and made a part hereof by this reference, is hereby approved.

Section 3. Authorization. The City Manager is hereby authorized to negotiate, finalize, and execute a settlement agreement and release in furtherance hereof, subject to approval as to form and legal sufficiency by the City Attorney.

Section 4. Implementation. The City Manager and City Attorney are hereby authorized to take such further action as may be necessary to implement the purpose and provisions of this Resolution.

Section 5. Effective Date. This Resolution shall take effect immediately upon adoption.

The foregoing Resolution was offered by Vice Mayor Rodriguez who moved its adoption. The motion was seconded by Councilmember Mariaca and upon being put to a vote, the vote was as follows:

Mayor Juan Carlos Bermudez	Yes
Vice Mayor Ana Maria Rodriguez	Yes
Councilman Pete Cabrera	Absent/Excused
Councilwoman Christi Fraga	Yes
Councilwoman Claudia Mariaca	Yes

PASSED AND ADOPTED this 9 day of May, 2018.



JUAN CARLOS BERMUDEZ, MAYOR

ATTEST:



CONNIE DIAZ, CMC
CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFIENCY
FOR THE USE AND RELIANCE OF THE CITY OF DORAL ONLY:



WEISS, SEROTA, HELFMAN, COLE & BIERMAN, P.L.
CITY ATTORNEY

EXHIBIT “A”

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is entered into by and between Plaintiff JESUS GONZALEZ (“Plaintiff”), and the CITY OF DORAL (the “City”). For purposes of this Agreement, Plaintiff and the City shall be referred herein as the “Parties,” and individually, as a “Party.” The Agreement is effective on the date last signed by the Parties (the “Effective Date”).

This Agreement is made as a compromise between the Parties for the complete and final settlement of all of their claims, differences, and causes of action as follows:

RECITALS

WHEREAS, Plaintiff initiated a lawsuit against the City in the United States District Court for the Southern District of Florida (the “Court”), Civil Action No. 1:18-cv-21184-RNS entitled *Jesus Gonzalez, v. City of Doral d/b/a Doral Central Park* (the “Lawsuit”) claiming violations of Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 12131-12133 (“Title II of the ADA”) in connection to the Doral Central Park located at 3000 NW 87th Avenue, Doral, Florida 33172 (the “Property”);

WHEREAS, the City disputes the allegations in the Lawsuit and denies that the Property is in violation of the ADA; and

WHEREAS, to avoid further costs, burdens, and distractions of litigation, the Parties now desire to settle fully and finally any and all individual claims alleged or that could have been alleged in a complaint filed in any legal, judicial, administrative, or regulatory forum;

NOW THEREFORE, in consideration of the foregoing recitals, and the mutual promises, covenants and undertakings contained herein and incorporated into this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the

Parties HEREBY agree to the following terms and conditions as a full and complete settlement of the Lawsuit and any and all claims related to the allegations made in the Lawsuit:

1. **Recitals.** The aforementioned Recitals are incorporated into this Agreement.
2. **General Release.** In consideration for the City entering into this Agreement, and for such other good and valuable consideration received from the City, the receipt and sufficiency of which is hereby acknowledged, the Plaintiff, on behalf of himself and any of his agents, employees, representatives, assigns, heirs, executors, trustees, and partners (collectively, the “Releasing Persons”), hereby fully releases, acquits, satisfies, and forever discharges the City, together with the City’s parent, subsidiary, and affiliate corporations; their respective past, present, and future officers, elected officials, directors, servants, employees, agents, attorneys, members and constituents, and other representatives (collectively, the “Released Parties”) from any and all claims, demands, liabilities, debts, judgments, expenses, actions, causes of action, and suits of any kind whatsoever, for reimbursement of attorneys’ fees, costs, expert fees, litigation expenses, and damages, including any compensatory, punitive, and any other damages, if any, and all other legal responsibilities arising from or relating to the allegations made in the Lawsuit in connection to the Property, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, real or imaginary, or actual or potential, including, without limitation, those pursuant to Title III of the ADA or equivalent state or local law, including any violation of any United States, state, or local law or equity regarding acts or omissions by the Released Parties, prior to the Effective Date of this Agreement (collectively, the “Released Claims”).
3. **Attorneys' Fees, Costs, Expenses, and Payments.** As a full and complete compromise and settlement of all Released Claims, the City shall pay, and Plaintiff agrees to accept the total sum of Eleven Thousand and 00/100 Dollars (\$11,000.00) (the “Settlement Payment”) as

payment in full. Allocation of the Settlement Payment is as follows: (a) Ten Thousand and 00/100 Dollars (\$10,000.00) for Plaintiff's attorneys' fees, expert fees, court cost, and other associated expenses; and (b) One Thousand and 00/100 Dollars (\$1,000.00) for Plaintiff's alleged damages, if any, general release, and agreement to maintain the confidentiality of this Agreement.

The Parties expressly acknowledge and agree that the Settlement Payment is made in satisfaction of any and all claims which were raised, or could or should have been raised in the Lawsuit, by Plaintiff, whether known or unknown, including without limitation, for Plaintiff's attorneys' fees, court costs, associated expenses, general releases, confidentiality clauses, damage claims, if any, and any and all other claims relating to the Lawsuit. No later than ten (10) days after the Effective Date and upon the City's receipt of an executed copy of this Agreement and an IRS W-9 completed by Scott R. Dinin, P.A., Settlement Payment in a single check and made payable to "Scott R. Dinin, P.A. IOTA" shall be delivered to Scott R. Dinin, P.A., 4200 NW Seventh Avenue, Miami, Florida 33127. The City will issue a 1099-MISC form to Scott R. Dinin, P.A. reflecting the Settlement Payment amount.

It shall be Plaintiff and Plaintiff's counsel's sole responsibility to pay taxes, if any, on the Settlement Payment. Plaintiff and Plaintiff's counsel hereby indemnify, defend, and hold harmless the Released Parties from the assessment of any taxes, interest, and penalties that the IRS or any other taxing authority, court, or tribunal determines should have been paid in connection with any monies paid by the City pursuant to this Agreement.

4. **ADA Accessibility and Barrier Removal.** Within twelve (12) months of execution of this Agreement, the City shall prepare or cause to be prepared an accessibility plan (the "Accessibility Plan") for all seven (7) of the City's parks, including, but not limited to, Doral Central Park, which is the subject of the Lawsuit, and shall implement the Accessibility, which

shall include, without limitation, the remediation of the accessibility issues associated with the picnic tables and grilling facilities at Doral Central Park. The City shall cause the barrier removal, alterations, and modifications agreed to in this Settlement to be made to the Property in full satisfaction of the City's obligations under law.

5. **No Other Proceedings.** Plaintiff represents that, other than the Lawsuit, Plaintiff has not filed any charges, complaints, lawsuits, or other proceedings against the Released Parties relating to the Released Claims with any court or municipal, state, or federal agency charged with the enforcement of any law.

6. **No Knowledge of Potential Claimants.** Plaintiff represents and warrants that Plaintiff is unaware of any potential plaintiff, putative class member, or other counsel who intends to make demands or bring litigation based on the Released Claims against the City. Plaintiff further represents and warrants that Plaintiff has not been notified nor otherwise informed of any such intention or consideration thereof.

7. **Covenant Not to Sue.** Plaintiff covenants that neither he, nor any person or entity acting on his behalf, will file, charge, claim, sue, encourage, aid or participate in any legal action or administrative proceeding against the Released Parties relating to the Released Claims.

8. **Dismissal with Prejudice.** Within seven (7) days from the Effective Date of this Agreement, the Plaintiff shall file with the Court a stipulation of dismissal of the Lawsuit with prejudice. The Parties further agree that this Agreement shall not be filed with the Court, except as necessary for enforcement purposes, or unless otherwise required by the Court.

9. **Invalidation.** If any provision of this Agreement is invalidated by a court of competent jurisdiction, then all of the remaining provisions of this Agreement shall remain in full

force and effect, provided that the Parties may still effectively realize the complete benefit of the promises and considerations conferred hereby.

10. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties hereto with respect to the matters set forth herein and supersedes in its entirety any and all agreements and communications, whether written or oral, previously made in connection with such matters. Any agreement to amend or modify the terms or provisions of this Agreement must be in writing and executed by both of the Parties hereto. No waiver of any provision of this Agreement will be valid unless it is in writing and signed by the Party against whom such waiver is charged.

11. **Non-Admission of Liability.** This Agreement is the result of a compromise and settlement and shall never be construed as an admission of any liability, wrongdoing, responsibility, or unlawful conduct by the City or the Released Parties. The Parties acknowledge that this Agreement has been entered into by the Parties to avoid the costs and uncertainty of continued of the Lawsuit.

12. **Binding Nature of Settlement Agreement.** This Agreement shall be binding upon each of the Parties and upon their respective heirs, administrators, representatives, executors, successors, and assigns, and shall inure to the benefit of each Party and to its respective heirs, administrators, representatives, executors, successors, and assigns.

13. **Authority.** Each Party represents that each person, or authorized counsel, executing this Agreement on its behalf has been authorized to sign on behalf of the respective Party and to fully bind it to the terms of this Agreement and that the respective Parties have the power and authority to perform their respective obligations as provided by this Agreement.

14. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida and Title III of the ADA (where applicable)

without regard to principles of conflicts of law. Any suit arising as a result of a breach of this Agreement or relating to enforcement of this Agreement shall be filed in the United States District Court for the Southern District of Florida.

15. **Counterparts.** The Parties agree that this Agreement and any and all other documents in connection with settlement of this matter may be executed in exact counterparts, each of which shall be deemed an original but both of which taken together shall constitute one and the same instrument. Any signature page delivered by facsimile transmission or e-mail shall be treated in all manner and respects as an original document.

WHEREFORE, the parties hereto have executed this Agreement on the dates below.

Individually

Jesus Gonzalez
Date: _____

City of Doral

Attest:

Edward A. Rojas
City Manager

Connie Diaz, CMC
City Clerk

Approved as to form and legal sufficiency
for the sole use and reliance of the City of Doral

Weiss Serota Helfman Cole & Bierman, PL
City Attorney