

RESOLUTION No. 25-116

A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, APPROVING A SETTLEMENT AGREEMENT WITH NEVAR PENA; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR INCORPORATION OF RECITALS; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, in the year 2022, Nevar Pena (the “Plaintiff”) filed a law suit against the City of Doral (the “City”) in the Eleventh Circuit Court, in and for Miami-Dade County, Case Number 2022-023282 CA 01, claiming negligence on behalf of the City; and

WHEREAS, the City has and continues to denies of the Plaintiff’s allegations; and

WHEREAS, as the result of mediation, the Plaintiff and City have reached a settlement agreement that has been sanctioned by the City’s insurance carrier; and

WHEREAS, in return for an immediate dismissal of the civil action and releases, the City’s insurance carrier will tender the amount of Seventy Five Thousand Dollars and 00/100 (\$75,000.00) to the Plaintiff, as detailed in the settlement agreement enclosed herein as Exhibit “A”; and

WHEREAS, the City believes that the attached terms enclosed in Exhibit “A” is in the City’s best interest.

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

Section 1. Incorporation of Recitals. The aforementioned recitals are incorporated herein by reference.

Section 2. Authorization. The Mayor and City Council hereby authorize City Manager to accept the term’s described in Exhibit “A,” and authorize the City Manager and Attorney to negotiate a formal settlement agreement that will include terms in

substantially the same form as Exhibit “A.”, and authorize the City Manager and Attorney to negotiate a purchase and sale agreement in conformity with Exhibit “A” and any other necessary documents relating to the settlement as described in Exhibit “A.”

Section 3. Implementation. The City Manager and City Attorney are authorized to take all necessary steps to implement this Resolution.

Section 4. Effective Date. This Resolution shall become effective immediately upon adoption.

The foregoing Resolution was offered by Councilmember Cabral who moved its adoption.

The motion was seconded by Councilmember Pineyro and upon being put to a vote, the vote was as follows:

Mayor Christi Fraga	Yes
Vice Mayor Maureen Porras	Yes
Councilwoman Digna Cabral	Yes
Councilman Rafael Pineyro	Yes
Councilwoman Nicole Reinoso	Yes

PASSED AND ADOPTED this 16 day of April, 2025.



CHRISTI FRAGA, MAYOR

ATTEST:



CONNIE DIAZ, MMC
CITY CLERK

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



LORENZO COBIELLA
GASTESI, LOPEZ, MESTRE & COBIELLA, PLLC
CITY ATTORNEY

EXHIBIT “A”

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release (“Agreement”) is entered into April __, 2025, by and between Nivar Pena (“Plaintiff”) and the City of Doral (“City”), a Florida municipal corporation (Plaintiff and City collectively referred to as the “Parties”).

Recitals

WHEREAS, on or about December 8, 2022, Plaintiff filed a lawsuit against the City, styled *Nivar Pena v. City of Doral*, in the Circuit Court of the 11th Judicial Circuit In and For Miami-Dade County, Case No. 2022-023282 CA 01 alleging negligence against the City (the “Lawsuit”); and

WHEREAS, the City denies Plaintiff’s allegations; and

WHEREAS, the Parties agreed to resolve this matter; and

NOW THEREFORE, in consideration of their mutual promises contained herein, the Parties hereby agree as follows:

Terms

1. **Incorporation of Recitals.** The Parties hereby agree and acknowledge that the foregoing Recitals to this Agreement are true and correct and are hereby incorporated into and made a part of this Agreement as if fully set forth herein.

2. **Payment.**

a. The City’s insurer shall pay Plaintiff, pursuant to Paragraph 3 below, the sum of Seventy-Five Thousand and 00/100 Dollars (\$75,000.00) in full and complete settlement of all of Plaintiff’s claims relating to the Lawsuit (“Settlement Sum”).

b. The Settlement Sum should be made payable to: Gregg R. Schwartz, P.A. Trust Account.

3. **Closing of Settlement.**

a. Within twenty-five (25) days of the approval of this Agreement by the City Council, the City shall deliver the Settlement Sum to Gregg R. Schwartz, Esquire, 9500 S.W. 148th Street, Miami, Florida 33176.

b. Within three (3) business day of the receipt of Settlement Sum, Plaintiff’s counsel shall inform counsel for the City that the Settlement Sum has been received and shall file a Notice of Voluntary Dismissal with Prejudice as to the City with the Court, with each Party bearing their own fees and costs.

c. The Settlement shall be considered closed upon the receipt of the Settlement Sum and the filing of the Notice of Voluntary Dismissal with Prejudice.

4. **Additional Terms.** Plaintiff agrees to forfeit his rights (a) to reinstate the Lawsuit, and (b) to bring a new lawsuit based upon the facts and allegations raised in the Lawsuit.

Additionally, Plaintiff states that at the time of the execution of this Agreement there are no outstanding claims or liens by way of reimbursement or subrogation by insurance carriers, attorneys, hospitals, medical providers or other entities including Medicare or Medicaid, for amounts paid or owed on behalf of the Plaintiff by reason of the incident which is described above, or, in the alternative, if there are any such outstanding claims or liens, Plaintiff will indemnify and hold the City harmless from said amounts and will fully satisfy and resolve those claims including but not limited to any hospital liens, medical liens, attorneys liens, insurance liens and/or liens held by Medicaid or Medicare, any other governmental agency, or any other entity. Plaintiff acknowledges that it is his responsibility to satisfy any of the foregoing bills, liens or subrogated interests from the proceeds of this settlement and that the City will not be liable.

5. **Adequate Consideration.** Plaintiff agrees that the consideration as set forth in paragraph 2 above constitutes adequate and ample consideration for the rights and claims Plaintiff is waiving and/or forfeiting under this Agreement and for the obligations imposed upon him by virtue of this Agreement.

6. **Complete Release.** Plaintiff (including his parents, heirs, executors, administrators, successors and assigns) hereby voluntarily release, waive, and forever discharges any and all claims, rights, demands, actions, or causes of actions, of any kind whatsoever, known or unknown, foreseen or unforeseen, foreseeable or unforeseeable, and any consequences thereof, which he has or may have against the City and agents in their official and individual capacities (including but not limited to, its officials, elected officials, employees, agents, law enforcement officers, and attorneys) from the beginning of the world until the date of execution of this Agreement.

It is Plaintiff's (including his parents, heirs, executors, administrators, successors and assigns) intention to fully, finally and forever resolve and release any and all disputes he may have or believe himself to have against the City and agents in their official and individual capacities (including but not limited to, its officials, elected officials, employees, agents, law enforcement officers, and attorneys) with respect to any alleged acts occurring before the Effective Date of this Agreement, whether those disputes are presently known or unknown, suspected or unsuspected.

6. **No Lawsuits or Claims by Third Parties.** Plaintiff waives the rights and claims set forth above and agrees not to institute, or have instituted by anyone, a lawsuit against the City based on any such claims or rights. Plaintiff further acknowledges and agrees that with respect to the rights and claims they are waiving, they are waiving not only their right to recover money or any other relief in any action they might commence, but also their right to recover in any action brought on their behalf by any other party.

7. **No Precedent Set.** The Parties agree that this Agreement is based upon the unique facts and circumstances of this particular case and does not establish any precedent, pattern or evidence of past practice for the resolution, disposition or determination of any other matter. Plaintiff further acknowledges that this Agreement is being entered into by the Parties as a compromise of the disputed claims and not on the merits, and is solely for the purposes of avoiding

the expense and inconvenience of further litigation. Neither this Agreement, nor any other consideration made and contained herein is construed to be an admission of liability on the part of the any Parties.

8. **Effective Date.** This Agreement will become effective upon the execution of this Agreement by Plaintiff and the City and cannot be executed by the City unless approved by the City Council during a public meeting. If this Agreement is not approved by the City Council, then this Agreement is null and void and of no effect.

9. **Public Record.** Plaintiff understand and agree that under the Florida Public Records Law, Chapter 119, Florida Statutes, the City is required to, and shall upon request by any 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.

10. **Non-Admission of Wrongdoing.** The Parties agree that neither this Agreement nor the furnishing of any consideration under this Agreement shall be construed as an admission by any party of any wrongdoing, liability or unlawful conduct.

11. **Governing Law and Interpretation.** This Agreement shall be governed and construed in accordance with the laws of the State of Florida. If any provision of this Agreement is declared illegal or unenforceable by any court of competent jurisdiction, and if it cannot be modified to be enforceable, such provision shall immediately become null and void, leaving the remainder of this Agreement in full force and effect. Venue for any litigation arising from this Agreement will be in Miami-Dade County, Florida.

12. **Entire Agreement.** This Agreement sets forth the entire agreement between the Parties and shall supersede any and all prior agreements, understandings, whether written or oral, between the Parties, except as specified in this Agreement. The Parties acknowledge that they have not relied on any representations, promises, or agreements of any kind made to them in connection with their decision to sign this Agreement except for those set forth in this Agreement.

13. **Encouragement to Consult Attorney.** The Parties acknowledge that they have taken a reasonable period of time to consider the Agreement and have consulted with legal counsel before signing this Agreement.

14. **Amendment.** This Agreement may not be amended except by written agreement signed by all Parties.

15. **Headings.** Section headings are used herein for convenience of reference only and shall not affect the meaning of any provisions of this Agreement.

16. **Acknowledgement.** The Parties acknowledge that they have carefully read and understand this Agreement consisting of four (4) pages and agree that they have not made any representations other than those contained herein. Plaintiff also acknowledges that he enters into this Agreement voluntarily, without any pressure or coercion and with full knowledge of its significance, and this Agreement constitutes a full and absolute settlement and bar as to any and all claims he had, has, or may have against the City.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Agreement as of the date set forth below.

NIVAR PENA

CITY OF DORAL

By: _____

By: _____

Title: _____

Date: _____

Date: _____

ATTEST:

BY: _____
CITY CLERK

DATE: _____

Approved as to Form, and Legal Sufficiency:

BY: _____
CITY ATTORNEY

DATE: _____