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MEMORANDUM

**TO:** Mayor Jerry L. Demings  
-And-  
County Commissioners

**FROM:** Jeffrey J. Newton, County Attorney *JJM*  
Adolphus Thompson, Assistant County Attorney  
Contact: (407) 836-7320

**DATE:** March 12, 2021

**SUBJECT:** Consent Agenda Item for March 23, 2021  
Settlement Agreement between Orange County, Florida, Yasmin A. Thariani and Yanila Thariani and OA-USA, LLC- Circuit Court Case No. 2019-CA-006509-O

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This item requests approval by the Board of a Settlement Agreement in which Orange County, Yasmin A. Thariani, Yanila Thariani, and OA-USA, LLC resolve the circuit court foreclosure case involving code violations at 3216 Butler Bay, Windermere, Florida.

On May 28, 2019, a foreclosure action was initiated against Yasmin A. Thariani and Yanila Thariani for accrued fines. The parties and OA-USA, LLC have agreed to resolve the foreclosure case and accrued fines by having Yasmin A. Thariani and Yanila Thariani sell the property to OA-USA, LLC and to tender payment of \$25,000 to Orange County for unpaid accrued fines at the closing of the sale. OA-USA, LLC will bring the property into compliance with Orange County Code within the timeframes set in the Settlement Agreement. If OA-USA, LLC fails to comply with the terms of the Settlement Agreement, Orange County may pursue potential code enforcement violations and/or other legal remedies against OA-USA, LLC.

**ACTION REQUESTED:** Approval and execution of Settlement Agreement between Orange County, Florida and Yasmin A. Thariani and Yanila Thariani and OA-USA, LLC related to code violations at 3216 Butler Bay, Windermere, Florida and foreclosure case (9<sup>th</sup> Judicial Circuit Court Case No.: 2019-CA-006509-O)

c: Byron W. Brooks, County Administrator

*Deputy County Attorney*  
Joel D. Prinsell

*Senior Assistant County Attorneys*  
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Lila McHenry

*Assistant County Attorneys*  
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*Paralegals*  
Maria Vargas, ACP  
Gail Stanford

**SETTLEMENT AGREEMENT**  
**between**  
**ORANGE COUNTY, FLORIDA**  
**and**  
**YASMIN A. THARIANI AND YANILA THARIANI**  
**related to**  
**CODE VIOLATIONS AT 3216 BUTLER BAY, WINDERMERE, FLORIDA**  
**and**  
**9<sup>TH</sup> JUDICIAL CIRCUIT COURT CASE NO.: 2019-CA-006509-O**

**THIS SETTLEMENT AGREEMENT ("Agreement") is by and among ORANGE COUNTY, FLORIDA, on behalf of its Code Enforcement Division, (the "County"), a charter county and political subdivision of the State of Florida, located at 201 South Rosalind Avenue, Orlando, Florida 32801, YASMIN A. THARIANI AND YANILA THARIANI (the "Owners"), owners of real property located at 3216 Butler Bay Drive N., Windermere, Florida 34786, and Defendants in Case No. 2019-CA-006509-O, Circuit Court in and for Orange County, Florida, and OA-USA, LLC, located at 151 Southhall Lane, Suite 230, Maitland, FL 32751. The County, the Owners, and OA-USA, LLC may be referred to herein individually as "party" or collectively as "parties."**

**RECITALS**

WHEREAS, the Owners own real property located at 3216 Butler Bay Drive N., Windermere, Florida 34786 (the "Property"); and

WHEREAS, the Owners are Defendants in Case No. 2019-CA-006509-O, Circuit Court in and for Orange County, Florida, ("litigation"), which is a foreclosure case of certain code enforcement liens held by County; and

WHEREAS, the Property remains out of compliance with Orange County Codes and constitutes a serious threat to public health, safety, and welfare; and

WHEREAS, the Owners have proposed a settlement of the litigation that would involve the sale of the Property by the Owners to OA-USA, LLC, the bringing of the Property into compliance with the County's codes by OA-USA, LLC, and the future non-involvement of either of the Owners with the Property.

NOW THEREFORE, in consideration of the mutual promises, covenants, and conditions set forth, the parties agree as follows:

**Section 1: Recitals.**

The above recitals are true and correct and form a material part of this Agreement.

**Section 2: The Owners' Obligations.**

- A. Within forty-five (45) days after the execution of this Agreement and the approval of this Agreement by the Orange County Board of County Commissioners, the Owners shall:
  - 1. Close on the sale of the Property to OA-USA, LLC, so that OA-USA, LLC is the sole owner of the Property; and
  - 2. Tender payment of Twenty-Five Thousand and No/100 Dollars (\$25,000.00) to the County.

If either of the obligations of the Owners set forth in 1 or 2 above does not timely occur, this Agreement shall be deemed to be terminated with cause.

- B. Upon fulfillment of the obligations of the Owners set forth in Section A above, the County hereby releases Owners from any and all personal responsibility to the County in connection with the code violations or condition of the Property, unless there is a violation of Section 2 (C) by the Owners, or either of them, in which case the Owners shall again become personally liable for the full amount of the liens otherwise released pursuant to the terms of this Agreement, with a credit for the payment received pursuant to Section A (2) above.
- C. As a separate and distinct covenant of this Agreement that shall survive for a period of ten (10) years after transfer of the Property by Owners to OA-USA, LLC, the Owners, and each of them, covenant that the Property shall not come under their ownership or control, (including, but not limited to the lease of the Property, or occupancy of the Property by either of the Owners), or the ownership or control of any entity in which either of the Owners has an interest; provided, however, if this covenant is broken, the County shall have the right to re-impose the liens otherwise released pursuant to the terms of this Agreement, with a credit for the payment received pursuant to Section A (2) above.

**Section 3: OA-USA, LLC's Obligations.**

- A. Within one hundred eighty (180) days after the transfer of the Property to OA-USA, LLC by Owners, OA-USA, LLC shall accomplish all of the following:
  - 1. Enclose, secure, construct, and complete the exterior of the main structure of the Property;
  - 2. Repair any and all exterior electrical issues as to the Property and ensure that there are no:

- (a) Unpermitted sources of electricity to the Property; and
  - (b) Exposed wires outside the main structure.
3. Complete all tasks necessary to secure the pool and surrounding area, including any necessary asbestos remediation and abatement measures needed to address the asbestos in the pool liner.
- D. Within three hundred and sixty-five (365) days after the transfer of the Property to OA-USA, LLC, OA-USA, LLC shall:
- 1. Complete construction of both the interior and exterior of the main structure;
  - 2. Close out all outstanding permits on the property; and
  - 3. Obtain a certificate of completion from the County.

**Section 4: The County's Obligations.**

- A. Upon the transfer of the Property to OA-USA, LLC, the County shall:
- 1. Remove any stop-work order on the Property so long as OA-USA, LLC and OA-USA, LLC's contractor obtain all necessary permits, and so long as OA-USA, LLC and OA-USA, LLC's contractor diligently pursues the repairs/renovations of the Property so as to bring the Property fully in compliance with the County's codes as required herein; and
  - 2. Stay its planned demolition of the non-compliant structures that are on, or attached to, the Property, so long as OA-USA, LLC diligently pursues the repairs/renovations of the Property so as to bring the Property fully in compliance with the County's codes; and
  - 3. Dismiss without prejudice the litigation, with the specific understanding that if the litigation is re-filed, the Owners and OA-USA, LLC specifically waive any right to reimbursement of costs associated with such dismissal and re-filing.
- B. If OA-USA, LLC timely complies with all of OA-USA, LLC's obligations as to the Property as set forth herein, the County shall release all current code liens against the Property. If OA-USA, LLC does not timely comply with all of OA-USA, LLC's obligations as to the Property as set forth herein, the County shall have no obligation to release the current code liens against the Property.

**Section 5. Termination for Cause.**

- A. Should either Owners or OA-USA, LLC fail to meet any of their respective obligations herein within the timetables as set forth herein without the express, written permission of

the County's Building Official, or should either the Owners or OA-USA, LLC otherwise violate the terms of this Agreement, this Agreement will immediately terminate, and such termination shall be considered to be with cause. Written permission must be: (1) requested no later than seven (7) business days prior to the deadline for which the extension request is being made; and (2) sent to the County pursuant to the notice provisions herein. Neither the County's Building Official, nor the County, shall be obligated to extend any time table included herein if requested, and the decision as to whether to extend any time table shall be at the sole discretion of the County.

- B. By execution of this Agreement, the Owners and OA-USA, LLC each acknowledge that should this Agreement terminate for cause, the County has the right to:
1. Restore the stop work order; and
  2. Demolish any or all structures on or attached to the Property, regardless of the condition those structures are in at the date of termination, and attach the cost of that demolition as a lien against the Property; and
  3. Reinstate, if necessary, any and all code liens against the Property, with a credit for the payment received (if received by the County) in Section A (2) above.
  4. Take such actions regarding the liens on the Property as allowed by law.

**Section 6. No Waiver / Limitation of Duties and Obligations.**

Except as specifically set forth in this Agreement, nothing in this Agreement shall be taken to be a waiver by the County of any fines and/or liens attached against the Property. Nor shall anything in this Agreement be construed to impose upon the County any duties and/or obligations except for those explicitly stated herein.

**Section 7. Notices.**

A. Notices to any party provided for herein shall be sufficient if sent by certified or registered mail, return receipt requested, postage prepaid, addressed to the following addressees or to such other addressees as the parties may designate to each other in writing from time to time:

**To the County:** Building Official  
Community Environmental Development Services  
201 S Rosalind Avenue, 1st Floor  
Orlando, Florida 32802

**AND**

Orange County Administrator  
Administration Building, 5th Floor  
201 S Rosalind Avenue Orlando, Florida 32802

**To the Owners:** Yasmin A. Thariani  
Yanila Thariani  
8025 SW 81<sup>st</sup> Loop  
Ocala, FL 34476

**To OA-USA, LLC:** OA-USA, LLC  
John Chin  
151 Southhall Lane, Suite 230  
Maitland, FL 32751

**Section 8: General Terms.**

A. **Compliance with Laws.** It shall be each party's responsibility to be aware of federal, state, and local laws relevant to this Agreement. Each party shall comply in all respects with all applicable legal requirements governing the duties, and obligations of that party and shall obtain any permits or licenses necessary for its operations. Neither party shall take any action in violation of any applicable legal requirement that could result in liability being imposed on the other party.

B. **No Waiver of Sovereign Immunity.** Nothing contained herein shall constitute, or be in any way construed to be, a waiver of the County's sovereign immunity or the protections and provisions of Section 768.28, Florida Statutes.

C. **Assignments and Successors.** Each party binds itself and its partners, successors, executors, administrators, and assigns to the other party of this Agreement and to the partners, successors, excutors, administrators, and assigns of such other party, in respect to all covenants of this Agreement. Neither party shall assign, sublet, convey, or transfer its interest in this Agreement without the written consent of the other, which consent shall be in the sole determination of the party with the right to consent.

D. **Waiver.** No delay or failure on the part of any party hereto to exercise any right or remedy accruing to such party upon the occurrence of an event of violation shall affect any such right or remedy, be held to be an abandonment thereof, or preclude such party from the exercise thereof at any time during the continuance of any event of violation. No waiver of a single event of violation shall be deemed to be a waiver of any subsequent event of violation.

E. **Governing Law.** This Agreement, and any and all actions directly or indirectly associated herewith, will be governed by and construed in accordance with the internal laws of the State of Florida, without reference to any conflicts of law provisions.

F. **Venue.** For any legal proceeding arising out of or relating to this Agreement, each party hereby submits to the exclusive jurisdiction of, and waives any venue or other objection against, the Ninth Circuit Court in and for Orange County, Florida. Should any federal claims arise for

which the courts of the State of Florida lack jurisdiction, venue for those actions will be in the Orlando Division of the U.S. Middle District of Florida.

G. **Jury Waiver.** Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in any legal proceeding directly or indirectly arising out of or relating to this Agreement.

H. **Attorneys' Fees and Costs.** The Parties shall each bear their own costs, expert fees, attorneys' fees, and other fees incurred in connection with this Agreement and any litigation that arises either directly, or indirectly, from this Agreement.

I. **No Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to, or shall confer, upon any person, other than the parties and their respective successors and permitted assigns, any legal or equitable right, benefit or remedy of any nature under or by reason of this Agreement.

J. **No Representations.** Each party represents that they have had the opportunity to consult with an attorney, and have carefully read and understand the scope and effect of the provisions of this Agreement. Neither party has relied upon any representations or statements made by the other party hereto which are not specifically set forth in this Agreement. This Agreement is not to be construed against any party as if it were the drafter of this Agreement.

K. **Mutual Release.** Except as otherwise provided herein, upon completion of the transactions called for by this Agreement, the Owners and the County release each other from any and all claims arising prior to this Agreement.

L. **Headings.** The headings or captions of articles, sections, or subsections used in this Agreement are for convenience of reference only and are not intended to define or limit their contents, nor are they to affect the construction of or to be taken into consideration in interpreting this Agreement.

M. **Survival.** Those provisions which by their nature are intended to survive the expiration, cancellation, or termination of this Agreement shall survive the expiration, cancellation, or termination of this Agreement.

N. **Authority of Signatory.** Each signatory below represents and warrants that he or she has full power and is duly authorized by their respective party to enter into and perform this Agreement. Such signatory also represents that he or she has fully reviewed and understands the above conditions and intends to fully abide by the conditions and terms of this Agreement as stated.

O. **Counterparts and Facsimile Signatures.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one agreement. Any counterpart may be delivered by any party by transmission of signature pages to the other parties at the addresses set forth herein, and delivery shall be effective and complete upon completion of such transmission; manually signed copies of signature pages shall nonetheless be delivered promptly after any such facsimile delivery.

P. **Severability.** The provisions of this Agreement are declared by the parties to be severable. However, the material provisions of this Agreement are dependent upon one another, and such interdependence is a material inducement for the parties to enter into this Agreement. Therefore, should any material term, provision, covenant or condition of this Agreement be held invalid or unenforceable by a court of competent jurisdiction, the party protected or benefited by such term, provision, covenant, or condition may demand that the parties negotiate such reasonable alternate contract language or provisions as may be necessary either to restore the protected or benefited party to its previous position or otherwise mitigate the loss of protection or benefit resulting from holding.

Q. **Conflicts.** The terms of this Agreement shall control over any conflicting terms in any referenced agreement or document.

R. **Written Modification.** No modification of this Agreement shall be binding upon any party to this Agreement unless reduced to writing and signed by a duly authorized representative of each party to this Agreement.

S. **Entire Agreement.** This Agreement, and any documents incorporated herein, sets forth and constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof. This agreement supersedes any and all prior agreements, negotiations, correspondence, undertakings, promises, covenants, arrangements, communications, representations, and warranties, whether oral or written, of any party to this agreement.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the dates set forth below.

**ORANGE COUNTY, FLORIDA**

By: \_\_\_\_\_  
Jerry L. Demings  
Orange County Mayor

ATTEST: Phil Diamond, CPA, Orange County Comptroller  
As Clerk of the Board of County Commissioners

By: \_\_\_\_\_  
Deputy Clerk

Date: \_\_\_\_\_



By: [Signature]  
Yasmin A. Thariani

Date: 3/2/21

By: [Signature]  
Yanila Thariani

Date: 3/2/21

(“OWNERS”)

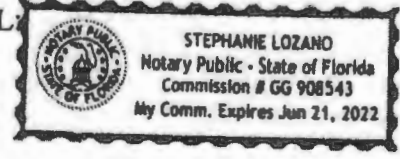
STATE OF FLORIDA )  
COUNTY OF Marion )

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this 2nd day of March, 2021, by Yanila Thariani, property owner of 3216 Butler Bay Drive N., Windermere, Florida 34786.

Personally Known OR  
 Produced Identification  
Type of Identification Produced:  
FL DL

[Signature]  
NOTARY PUBLIC, State of Florida

NOTARIAL SEAL



STATE OF FLORIDA )  
COUNTY OF Marion )

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this 2nd day of March, 2021 by Yasmin A. Thariani, property owner of 3216 Butler Bay Drive N., Windermere, Florida 34786.

Personally Known OR  
 Produced Identification  
Type of Identification Produced:  
FL DL

[Signature]  
NOTARY PUBLIC, State of Florida

NOTARIAL SEAL



OA-USA, LLC, a Florida  
limited liability company

By:

~~John Chin~~ RN RICHARDS

Print Name: RN RICHARDS

Title: PRESIDENT

(OA-USA, LLC)

STATE OF FLORIDA )  
COUNTY OF Orange )

The foregoing instrument was acknowledged before me by means of  physical presence  
or  online notarization, this 1 day of March, 2021, by RN Richards  
as President of OA-USA, LLC, a Florida limited liability  
company, who executes this document on behalf of said company and he/she acknowledges that  
he/she is authorized by such corporation to execute this document on behalf of said company.

           Personally Known OR  
           Produced Identification  
Type of Identification Produced:

[Signature]  
NOTARY PUBLIC, State of Florida

NOTARIAL SEAL:

