

THIS INSTRUMENT WAS PREPARED BY:
Laura L. Russo, Esq., LLC
Laura L. Russo, Esq.
2655 LeJeune Road, Suite PH 1-F
Coral Gables, Florida 33134

DISPUTE RESOLUTION AGREEMENT

This Dispute Resolution Agreement (hereinafter the "Agreement") is made and entered into by and between WILLIAM I. MUINOS and ADRIANA R. MUINOS, husband and wife, (hereinafter the "Owners") and the CITY OF CORAL GABLES, a Florida municipality (hereinafter the "City") (collectively, the "Parties").

WITNESSETH

WHEREAS, the Owners own certain real property located at 910 Capri Street, identified by Miami-Dade County Property Tax Folio Identification Nos. 03-4107-020-0081, and legally described as:

Lots 11 and 12, Block 83, amended Plat of Coral Gables Part of Granada Section, according to the plat thereof recorded at Plat Book 15, Page 7, in the Public Records of Miami-Dade County, Florida (hereinafter the "Property"); and

WHEREAS, the Property is currently zoned as Single-Family Residential District pursuant to the City of Coral Gables Zoning Map; and

WHEREAS, the City intends to seek to historically designate the Property because the existing residence was built in 1923 and it is the City's position that the Property satisfies the criteria for designation as a Local Historic Landmark; and

WHEREAS, Owners do not want the Property historically designated because it will prevent demolition of the existing, historically significant garage thus complicating an addition to the existing residence; and

WHEREAS, Article 3, Division 17 of the City of Coral Gables Zoning Code ("Division 17") entitled, "Protection of Landowners' Rights; Relief from Inordinate Burdens," is intended to protect landowners' rights and provide relief from inordinate burdens; and

WHEREAS, pursuant to Section 3-1702(B) of the City of Coral Gables Zoning Code, City Staff may initiate this procedure and file an application at any time in order to settle a pending dispute or litigation; and

WHEREAS, pursuant to Section 3-1701 of the City of Coral Gables Zoning Code, the City may agree to a settlement to mitigate the burden where a party to a settlement agrees in the settlement to bear a disproportionate burden of a government use that benefits the public; and

WHEREAS, pursuant to Section 3-1703(A) of the City of Coral Gables Zoning Code, if the City demonstrates that a settlement would avoid, mitigate, or remedy an unfair, disproportionate, or inordinate burden to a property owner, the City Commission may grant

appropriate relief; and

WHEREAS, pursuant to Section 3-1703(B) of the city of Coral Gables Zoning Code, the decision to grant such relief rests in the sound discretion of the City Commission in the exercise of its inherent sovereign powers to settle legitimate disputes; and

WHEREAS, pursuant to Section 3-1703(B) of the City of Coral Gables Zoning Code, the City's policy is to fashion a proposal for resolving a dispute based on a considered balance of the following factors: (1) the degree of burden suffered by the applicant or property owners; (2) the nature and significance of the public interest that is served by the application of the regulation to the property; and (3) the likelihood of litigation, and its likely cost, the City's potential exposure, the uncertainty of the outcome, the timetable for resolving disputes, and whether there is a perceived need for a judicial determination of the issues raised by the application; and

WHEREAS, pursuant to Section 3-1703(B) of the City of Coral Gables Zoning Code, all relief granted pursuant to Division 17 is conditioned upon the execution of a release of all claims that may arise from or relate to the application of the land development regulations that allegedly created the unfair, disproportionate or inordinate burden; and

WHEREAS, the Bert J. Harris, Jr. Private Property Protection Act (the "Bert J. Harris Act") as codified in Section 70.001 of the Florida Statutes defines the term "inordinately burden" to include the use of real property such that the property owner is unable to obtain reasonable, investment-backed expectations for the use of the subject property; and

WHEREAS, Owners allege that the City's historic designation of the Property and would prohibit demolition to the existing non-conforming garage would impede design of an addition to the residence would disproportionately and inordinately burden the Owners' property rights in violation of Division 17 of the City of Coral Gables Zoning Code and the Bert J. Harris Act as codified in Section 70.001 of the Florida Statutes; and

WHEREAS, Owners have agreed, as part of the settlement, to not oppose or challenge the historic designation and denial of the demolition of the existing non-conforming garage of the Property; and

WHEREAS, the City Commission finds sufficient evidence in the record to justify a settlement pursuant to Division 17 of the City of Coral Gables Zoning Code and the Bert J. Harris Act as codified in Section 70.001 of the Florida Statutes; and

WHEREAS, pursuant to Division 17 of the City of Coral Gables Zoning Code and the Bert J. Harris Act as codified in Section 70.001 of the Florida Statutes, the Parties wish to enter into a dispute resolution agreement; and

WHEREAS, on _____, the City Commission reviewed and approved this Agreement in this substantial form, after public hearing, pursuant to Section 3-1705 of the City of Coral Gables Zoning Code; and

WHEREAS, the Parties have reached an agreement as to their dispute and they desire to fully and finally resolve any and all claims against each other and their respective agents, employees, officers, elected and appointed officials, independent contractors, and representatives concerning, relating to, or in any way arising out of their dispute, and entered into this Agreement to completely settle and dispose of all claims or disputes of whatever kind or nature, including, but

not limited to, the Bert J. Harris Act claim, any takings or property rights claim, any petitions for certiorari, or any other matter regarding the subject matter of this Agreement whether actually asserted by Owners, or as may have been asserted, whether known or unknown, against the City; and

WHEREAS, this Agreement between the Parties shall fully resolve all of Owners' claims pursuant to Division 17 of the City of Coral Gables Zoning Code and the Bert J. Harris Act as codified in Section 70.001 of the Florida Statutes, which were, or could have been noticed, plead, or initiated, and any other matters described and/or defined herein.

NOW, THEREFORE, in consideration of the mutual promises contained herein, it is agreed between the Parties as follows:

1. The foregoing recitals are true and correct and incorporated herein as if fully set forth.
2. The Parties and all signatories hereto represent and warrant that they have full authorization and legal authority to establish the legally binding rights, obligations, and duties as expressed herein or contemplated hereby.
3. Owners hereby agree not to oppose or challenge historic designation of the entire Property and/or the denial of the request for demolition of the garage of the Property and agree not to claim economic hardship in the future.
4. Owners and the City agree that a condition precedent to this Agreement shall be the historic designation of the entire Property by the Historic Preservation Board. In the event that the Historic Preservation Board does not historically designate the Property, this Agreement shall be deemed null and void.
5. Owners agree to demolish the addition to the Property that is not historically significant by applying for a Certificate of Appropriateness to the Historical Resources and Cultural Arts Department and a Demolition Permit to the Building Department.
6. The City hereby agrees, pursuant to Section 3-1703(A)(2) of the Zoning Code, that Owners are entitled to Lot 12 as a separate building site; to approve, once the Property is historically designated and the building permit for the proposed addition is issued, the tree removal application submitted by the Owners on July 18, 2017 with tree mitigation as required and approved by the City with respect to Lot 11; and to allow a rear five (5) foot setback on Lot 11 on which the historic house is located.
7. Owners agree that the total combined maximum allowable square footage of the historic home on Lot 11 and any residence to be developed on Lot 12 shall be equal to or less than 4,200 square feet, which is the maximum size of a residence that can currently be constructed on the Property if developed as a single building site, and more specifically, Owners agree that the maximum allowable square footage of the residence on each lot shall not exceed 2,100 square feet.
8. Owners agree that any proposed development on Lot 12 shall be subject to all reviews, including but not limited to, review by the Board of Architects and the Historic Preservation Board and that included in such reviews will be consideration

- of whether the proposed development is compatible with the neighborhood.
9. Within thirty (30) days of the effective date of this Agreement, Owners agree to execute and record in the Public Records of Miami-Dade County, Florida, a Declaration of Restrictive Covenant (“Restrictive Covenant”), substantially in the form attached as Exhibit A, providing that (1) the existing historic home will not be demolished; (2) that the historic home will be restored and maintained in accordance with the Secretary of the Interior’s Standards for Rehabilitation as required by the Historical Resources and Cultural Arts Department; and (3) that the total combined maximum allowable square footage of the historic home on Lot 11 and any residence to be developed on Lot 12 shall be equal to or less than 4,200 square feet, which is the maximum size of a residence that can currently be constructed on the Property if developed as a single building site, and more specifically, that the maximum allowable square footage of the residence on each lot shall not exceed 2,100 square feet; and (4) any other conditions set forth in this Agreement.
 10. The Parties understand and agree that no Party admits liability of any sort by reason of the above incidents, acts, casualties, actions, events, representations, omissions, conduct, or interpretation.
 11. As required by Section 3-1703(E) of the Coral Gables Zoning Code, Owners hereby release the City of Coral Gables, including its agents, employees, officers, elected and appointed officials, independent contractors, and representatives for any claims concerning, relating to, or in any way arising out of their dispute, including, but not limited to, the Bert J. Harris Act claim, any takings or property rights claim, any petition for certiorari, or any matter regarding the subject matter of this Agreement, whether actually asserted by Owners, or as may have been asserted, and whether known or unknown.
 12. The Parties warrant and represent that they have not sold, assigned, transferred, conveyed, or otherwise disposed of any of the claims, demand, obligations, or causes of action referred to in this Agreement. Further, the Parties recognize that this matter is solely unique to the circumstances arising from any potential claims pursuant to the Bert J. Harris Act and/or Division 17 of the City of Coral Gables Zoning Code, and Owners may not assign, transfer, convey, or otherwise dispose of their obligations under this Agreement.
 13. The Parties declare and represent that they were not induced to enter into this Agreement by any representations respecting the nature and extent of any damages, legal liability, or financial responsibility made by any Party or their representatives.
 14. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
 15. The Parties acknowledge that this Agreement constitutes the entire Agreement entered into by the Parties. The Parties further acknowledge that they have read it and understand it; that the terms and conditions of this Agreement were arrived at in arm's-length negotiations between the Parties with all Parties provided the opportunity to seek the advice of legal counsel; that each Party's legal counsel did or could have reviewed this Agreement; and that each of the Parties have given due and full consideration to the legal position of the other in regard to the provisions

contained herein.

16. This Agreement sets forth the entire Agreement and understanding among the Parties relating in any way to the subject matter contained herein and merges all prior discussions between Owners and the City. This Agreement may be amended or modified by written instrument signed by both Parties.
17. As established in Section 3-1706 of the Coral Gables Zoning Code, this Agreement shall not become effective until the Agreement is executed by the City Manager, ratified by the City Commission, and executed by an authorized representative of the Owners.
18. Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given if delivered by hand, sent by a recognized courier (such as FedEx) or mailed by certified or registered mail, return receipt requested, in a postage prepaid envelope and addressed as follows:

If to the City: City Mayor
 Office of the Mayor
 405 Biltmore Way, Second Floor
 Coral Gables, Florida 33134

With Copies to: City Manager
 405 Biltmore Way, First Floor
 Coral Gables, Florida 33134

If to the Owners: William I. Muinos and Adriana R. Muinos
 4804 Biltmore Drive
 Coral Gables, Florida 33146

With Copies to: Laura L. Russo, Esq.
 Laura L. Russo, Esq., LLC
 2655 LeJeune Road, Suite PH 1-F
 Coral Gables, Florida 33134

19. This Agreement shall be construed, enforced, and interpreted in accordance with the laws of the State of Florida. In the event that an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if crafted jointly by each of the Parties hereto and no presumptions or burdens of proof shall arise favoring any party by virtue of the authorship of any of the provisions of the Agreement. The Parties jointly conclude that, should this Agreement be challenged by any of the Parties, venue to bring such challenges shall be proper in Miami-Dade County, Florida.
20. The Parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the Parties intend to directly or substantially benefit a third party by this Agreement. The Parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the Parties based upon this Agreement. Nothing herein shall be construed as consent by either of the Parties to be sued by third parties in any manner arising out of this Agreement, or other obligations, whether known or unknown to the Parties.

21. For breach of any provision of this Agreement, the Parties shall provide notice, a reasonable time to cure, and will have such remedies and rights as are available at law or in equity.
22. The waiver by any Party of a breach of any provision of this Agreement by any other Party shall not operate or be interpreted as a waiver of any later breach of that provision or any other provision.
23. The Parties agree that if any provision of this Agreement is held to be invalid, illegal or unenforceable, either legislatively or judicially, that provision will be severed from the Agreement and the remainder of this Agreement shall not be effected thereby and will continue to be valid and enforceable to the fullest extent permitted by law, unless such determination of invalidity shall deprive any party of the substantial benefit of this bargain.
24. The term Owners shall include the Owners, their heirs, successors, and assigns.

WHEREFORE, on the effective date as established in paragraph 13 and Section 3-1706 of the Zoning Code, the Parties and signatories hereto acknowledge this Agreement and represent and warrant their authority to enter into this Agreement and do so jointly and severally for all purposes specified.

[Signature pages to follow]

The City's execution of this Dispute Resolution Agreement is subject to Ratification by the City Commission pursuant to Section 3-1705(D) of the City of Coral Gables Zoning Code.

CITY

ATTEST:

CITY OF CORAL GABLES

By: _____
Walter Foeman
City Clerk

By: _____
Cathy Swanson-Rivenbark
City Manager
Dated ____ day of _____, 2017

Approved as to form and legal sufficiency:

By: _____
Miriam Soler Ramos
City Attorney

WITNESSES

OWNERS

Signature

William I. Muinos

Print Name

Adriana R. Muinos

Signature

Print Name

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

THE FOREGOING INSTRUMENT was acknowledged before me this _____ day of _____, 2017 by William I. Muinos and Adriana R. Muinos, who are personally known to me or produced _____ as identification, and acknowledged that they did execute this instrument freely and voluntarily for the purposes stated herein.

My Commission Expires:

Notary Public, State of Florida

Print Name: _____