

CITY OF CORAL GABLES, FLORIDA

RESOLUTION NO. 2019-__

- A RESOLUTION PURSUANT TO SECTION 3-1705 OF THE ZONING CODE APPROVING THE DISPUTE RESOLUTION AGREEMENT REGARDING THE PROPERTY LOCATED AT 701 AND 711 VALENCIA AND LEGALLY DESCRIBED AS LOTS 23, 24, 25, 26, 27, AND 28, BLOCK 10, OF "CORAL GABLES BILTMORE SECTION", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 20, AT PAGE 28, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, WHICH PROVIDES, IN PART, FOR AN INCREASE TO THE MAXIMUM FLOOR AREA RATIO UP TO 2.7 (FROM 2.0), SUBJECT TO ADDITIONAL TERMS AND CONDITIONS IN THE DISPUTE RESOLUTION AGREEMENT.

WHEREAS, Biltmore Development, LLC (the "Owner") owns certain real property located at 701-711 Valencia Avenue, identified by Miami-Dade County Property Tax Folio Identification Nos. 03-4117-059-0010, 03-4117-008-1780 and 03-4117-008-1790, and legally described as:

Lots 23, 24, 25, 26, 27, and 28, Block 10, of "CORAL GABLES BILTMORE SECTION", according to the Plat thereof, as recorded in Plat Book 20, at Page 28, of the Public Records of Miami-Dade County, Florida (the "Valencia Property"); and

WHEREAS, the David William Hotel Condominium Association is the association for the condominium located at 700 Biltmore Way and Jorge M. Guarch, Jr. lives and resides at 700 Biltmore Way Unit 1201 (collectively, the "700 Biltmore Way Property");

WHEREAS, the Valencia Property is currently zoned as Multi-Family Special Area ("MFSA") District pursuant to the City of Coral Gables Zoning Map; and

WHEREAS, the City Attorney's Office has opined that the site specific regulations govern the permissible height that can be developed on the Valencia Property, such that the maximum height is 150 feet (see history of opinion at CAO 2017-13); and

WHEREAS, Owner is seeking to develop the Valencia Property and the Board of Architects approved Owner's proposed design for an 11-story, 124-foot high condominium project; and

WHEREAS, a dispute has arisen between the City and Plaintiffs regarding their ability to appeal the determination of the Board of Architects, CAO 2017-13, as well as the appropriateness of any development approvals related to Owner's proposed project on the Valencia Property; and

WHEREAS, Plaintiffs filed a lawsuit against the City styled David William Hotel Condominium Association and Jorge M. Guarch, Jr. v. City of Coral Gables, Case No. 2018-26167

CA 34 for a writ of mandamus, or in the alternative, for declaratory judgment and injunctive relief (the “Litigation”); and

WHEREAS, the City denies all of the allegations and claims made against it by Plaintiffs, but nonetheless, Plaintiffs and the City desire to amicably resolve the Litigation to avoid the uncertainties and expense of further litigation; and

WHEREAS, pursuant to discussions with Plaintiffs and the City, Owner has agreed to redesign the proposed project to reduce the height of the building, however, Owner alleges that reducing the project’s height would disproportionately and inordinately burden the Owner’s 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, 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, 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 (the “Agreement”), substantially in the form attached as Exhibit A; and

WHEREAS, among other things, the Agreement provides that:

1. Owner agrees that the maximum height of any development on the Valencia Property shall be no greater than seventy-five (75) feet exclusive of architectural features.
2. Owner agrees that the additional rooftop architectural and features permitted by the City Zoning Code Section 5-604(B)(1) shall not be greater in height than 10 feet. This limitation shall not apply to the elevator shaft and associated equipment.
3. Owner agrees that the rooftop uses shall be limited to an enclosed cabana which shall be no more than 2,500 square feet. This enclosure shall not count as part of the building’s FAR.
4. The City agrees, pursuant to Section 3-1703(A)(2) of the Zoning Code, that Owner is entitled to develop the Valencia Property with an FAR of up to 2.7.
5. Owner agrees that any proposed development on the Valencia Property shall be subject to all reviews, including review by the Development Review Committee, Board of Architects, and all other applicable reviews. The City recognizes that the Owner has experienced delays and will use its best efforts to expedite all such applicable reviews.

6. The Agreement settles and resolves all disputes, disagreements, claims, and conflicts relating to the Litigation and Plaintiffs agree to dismiss the Litigation with prejudice, upon approval of the Agreement and expiration of applicable appeal periods.

WHEREAS, as required by Section 3-1703(E) of the Coral Gables Zoning Code, the Agreement provides that Owner releases the City from any claims related to the dispute, include a Bert J. Harris Act claim or any other takings or property rights claim; and

WHEREAS, courtesy notice was mailed to the property owners within a one thousand (1,000) foot radius of the Property; and

WHEREAS, on March 12, 2019, the City Commission reviewed and approved the Agreement in substantial form, as attached as Exhibit A, after public hearing, pursuant to Section 3-1705 of the City of Coral Gables Zoning Code; and

WHEREAS, Section 3-1705 of the Zoning Code requires that once executed by the City Manager, the dispute resolution agreement shall be placed on the next available consent agenda of the City Commission for ratification and shall not be pulled from the consent agenda except by supermajority vote of the entire membership of the City Commission.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF CORAL GABLES:

SECTION 1. That the foregoing “Whereas” clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon the adoption hereof.

SECTION 2. That the dispute resolution agreement attached as Exhibit A is approved by the City Commission, with such modifications as approved by the City Manager and the City Attorney, consistent with the approval of the City Commission.

SECTION 3. That this resolution shall become effective upon the date of its passage and adoption herein.

PASSED AND ADOPTED THIS ____ DAY OF _____, A.D., 2019.

(Moved: / Seconded:)

(Yeas:)

(; Vote)

APPROVED:

RAÚL VALDÉS-FAULI

MAYOR

ATTEST:

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

BILLY Y. URQUIA
CITY CLERK

MIRIAM SOLER RAMOS
CITY ATTORNEY