

**CITY OF CORAL GABLES, FLORIDA**

**RESOLUTION NO. 2021-\_\_**

- A RESOLUTION PURSUANT TO SECTION 14-214.5 OF THE ZONING CODE APPROVING THE AMENDED AND RESTATED 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, THAT THE OWNER IS ENTITLED TO DEVELOP THE PROPERTY WITH A MAXIMUM RESIDENTIAL DENSITY OF 65 UNITS PER ACRE, CONSISTING OF 25 RESIDENTIAL DWELLING UNITS, 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"); and

**WHEREAS**, in 2017, the zoning on the Valencia Property was 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**, as reconfirmed in CAO 2017-13, Owner relied on an official Zoning Verification Letter issued by the City on March 23, 2007, in purchasing the Valencia Property in 2015-16 (under the same zoning classifications as described in the Zoning Verification Letter) for an amount in excess of \$2.5 million and thereafter engaged several professionals to design an 11-story, 124-foot high condominium project based on the opinion determining a maximum height of 150 feet; and

**WHEREAS**, the Board of Architects subsequently approved Owner’s proposed design for the Valencia Property; and

**WHEREAS**, a dispute arose between the City and David William Hotel Condominium Association and Jorge M. Guarch, Jr. (collectively, “Plaintiffs”) regarding 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 denied all of the allegations and claims made against it by Plaintiffs, but nonetheless, Plaintiffs and the City desired 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 agreed to redesign the proposed project to reduce the height of the building, however, Owner alleged and continues to maintain that reducing the project’s height would disproportionately and inordinately burden the Owner’s property rights in violation of Section 14-214<sup>1</sup> 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 14<sup>2</sup>, Section 14-214 of the City of Coral Gables Zoning Code ("Section 14-214") 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 14-214.2(B) of the City of Coral Gables Zoning Code, City Staff initiated this procedure to settle this pending Litigation; and

**WHEREAS**, pursuant to Section 14-214.1 of the City of Coral Gables Zoning Code, the City may grant relief pursuant to this section when it is demonstrated that the applicant for said relief has been unfairly, disproportionately, or inordinately burdened by a final order of the City and

**WHEREAS**, pursuant to Section 14-214.1 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 14-214.3(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 14-214.3(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

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<sup>1</sup> Previously Article 3, Division 17 of the City of Coral Gables Zoning Code.

<sup>2</sup> Previously Article 3 of the City of Coral Gables Zoning Code.

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 14-214.3(B) of the City of Coral Gables Zoning Code, all relief granted pursuant to Section 14-214 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**, Owner agreed, as part of the settlement, to reduce the height of the building so that it will not exceed seventy-five (75) feet with a limitation of ten (10) feet for the enclosed architectural feature, in exchange for an increase in the floor area ratio (“FAR”) from what is currently allowed, 2.0, to 2.7; and

**WHEREAS**, the City Commission found sufficient evidence in the record to justify a settlement pursuant to Section 14-214 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 Section 14-214 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 entered into a prior dispute resolution agreement to settle the Litigation (the “Original Agreement”); and

**WHEREAS**, the Original Agreement was reviewed and approved pursuant to Resolution No. 2019-84, after public hearing, by the City Commission on March 12, 2019 and as required by Section 14-214.5 of the City of Coral Gables Zoning Code, was ratified on March 26, 2019 pursuant to Resolution No. 2019-95 and subsequently recorded on April 3, 2019 at Official Records Book 31388, Page 4108 of the Miami Dade County Public Records; and

**WHEREAS**, upon approval of the Original Agreement, Owner filed with the City a permit application to build a structure that is less than seventy-five (75) feet in height and with an FAR that is lower than 2.7, consisting of 25 residential dwelling units; and

**WHEREAS**, Owner relied on various City Staff written confirmations that the Coral Gables Mediterranean Style residential density bonus of an additional fifteen (15) units was available for a total of seventy-five (75) units per acre in the MFSA (see history of City Staff communications) in accepting the Original Agreement and hiring professionals to prepare revised plans; and

**WHEREAS**, the City Attorney and current City Staff determined that prior City

interpretations were incorrect and that the applicable residential density was only sixty (60) units per acre, such that the Valencia Property could only have 23 units and not the 25 units proposed by Owner; and

**WHEREAS**, the loss of these two (2) dwelling units would significantly diminish Owner's reasonable anticipated benefits and investment-backed expectations in pursuing this investment and the Valencia Property, thereby constituting an additional claim for relief by Owner under the Bert J. Harris Act, and the City Commission determines that Owner has a good faith belief in such claims; and

**WHEREAS**, the City Commission finds sufficient evidence in the record to justify a settlement of this additional dispute pursuant to Section 14-214 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**, Owner and City have reached an agreement as to this additional dispute and the parties desire to amend and restate the Original Agreement by entering into an Amended and Restated Dispute Resolution Agreement ("Amended and Restated Agreement"), substantially in the form attached as Exhibit A; and

**WHEREAS**, among other things, the Amended and Restated 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 5-201(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 14-214.3(A)(2) of the Zoning Code, that Owner is entitled to develop the Valencia Property with an FAR of up to 2.7 and a maximum residential density of 65 units per acre, consisting of 25 residential dwelling units.
5. Owner shall not request or apply for bonuses for height, setbacks, or stepbacks pursuant to the City Zoning Code Section 5-201 or any other applicable section of the City Zoning Code.
6. 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.

7. The Amended and Restated 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 14-214.3(E) of the Coral Gables Zoning Code, the Amended and Restated Agreement provides that Owner releases the City from any claims related to the dispute, including a Bert J. Harris Act claim or any other takings or property rights claim; and

**WHEREAS**, notice was mailed to the property owners within a one thousand (1,000) foot radius of the Valencia Property (see Affidavit Attesting to Public Notice of Zoning Application, attached as Exhibit A; and

**WHEREAS**, on March 9, 2021, the City Commission reviewed and approved the Amended and Restated Agreement in substantial form, as attached as Exhibit B, after public hearing, pursuant to Section 14-214.5 of the City of Coral Gables Zoning Code; and

**WHEREAS**, Section 14-214.5 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 Amended and Restated Dispute Resolution Agreement attached as Exhibit B 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., 2021.

(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