

DISPUTE RESOLUTION AGREEMENT

This Dispute Resolution Agreement (hereinafter, the “Agreement”), is made and entered into by and between PALMCORP DEVELOPMENT GROUP, LLC, a Florida limited liability corporation, (hereinafter “PalmCorp”) and the CITY OF CORAL GABLES, a Florida municipality (hereinafter the “City”) (collectively, the “Parties”).

WITNESSTH:

WHEREAS, PalmCorp is the owner of certain real property located at 1011 and 1015 Lisbon Street, Coral Gables, Florida 33134, identified by Miami-Dade County Property Tax Folio Identification No. 03-4107-018-6280, legally described as follows:

LOTS 13, 14 and 15 in Block 59 of CORAL GABLES GRANADA SECTION, according to the plat thereof recorded at Plat Book 8, Page 113, in the Public Records of Miami-Dade County, Florida (collectively, hereinafter the “Property”); and

WHEREAS, the City of Coral Gables Zoning Code defines a “specimen tree” as a tree with any individual trunk which has a diameter at breast height (“DBH”) of eighteen (18) inches or greater, with certain limitations;

WHEREAS, Lot 15 of the Property contains three (3) specimen sized live oak trees, known as Sherman’s Oak (hereinafter the “Sherman’s Oak”), with heights of approximately fifty (50) feet and a spread of fifty (50) feet to sixty (60) feet; and

WHEREAS, the Property is the subject of two (2) City of Coral Gables Building Site Determinations, No. ZB-13-05-0548, recorded at Official Record Book 28808, Pages 2190 through 2193 of the Public Records of Miami-Dade County, Florida; and

WHEREAS, Building Site Determination No. ZB-13-05-0548 allows the development of one (1) single family residence on Lots 13 and 14 and one (1) single family residence on Lot 15; and

WHEREAS, PalmCorp filed applications for demolition, tree removal and relocation, and plans for the Property; and

WHEREAS, the City, through its Public Services Department and Board of Architects, approved PalmCorp’s applications for demolition, tree removal and relocation, and plans for the Property; and

WHEREAS, the owner of the real property located at 1019 Lisbon Street, Coral Gables, Florida, 33134, appealed the Board of Architects June 26, 2014 approval of the proposed plans for 1015 Lisbon Street; and

WHEREAS, the owner of the real property located at 1019 Lisbon Street appealed Tree Permit Nos. PS14063137 and PS14072101 for the Property, in addition to appealing the Board of Architect's approval of the final design plans for 1015 Lisbon Street (hereinafter the "Consolidated Appeals"); and

WHEREAS, the Consolidated Appeals were considered by the Coral Gables City Commission (hereinafter, the "City Commission") on October 28, 2014, pursuant to Section 3-608(B) of the City of Coral Gables Zoning Code; 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 owner; (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 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 the reasonable, investment-backed expectations for the use of the subject property; and

WHEREAS, PalmCorp alleges that the City’s approval of the Consolidated Appeals would disproportionately and inordinately burden PalmCorp’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, PalmCorp has agreed as part of the settlement to bear the full burden of preserving and protecting Sherman’s Oak, and to provide a tree protection zone (“TPZ”) and other protections as stated herein, which is of substantial public benefit, and which results in a limitation to development on the property, which is also resolved as part of this settlement; and

WHEREAS, the City Commission finds sufficient evidence in the record to justify a settlement pursuant to this section;

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 October 28, 2014, the Parties presented a preliminary agreement to the City Commission; and

WHEREAS, on November 10, 2014, PalmCorp and the owner of 1019 Lisbon Street met on-site to discuss the terms of this Agreement; and

WHEREAS, on November 14, 2014, the Parties met to discuss the terms of this Agreement; and

WHEREAS, on November 18, 2014, the City Commission reviewed and approved this Agreement in this substantial form, after public hearing, pursuant to Section 3-1705 of the City 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 enter 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 PalmCorp, 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 PalmCorp's 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, or 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 are 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. The City hereby approves one (1) Building Site Determination for each of the three (3) Lots, which will allow PalmCorp to secure a building permit to construct a total of three (3) single family residences on the Property, specifically, one (1) single family residence per Lot 13, 14 and 15, respectively. These Building Site Determination approvals shall be formally issued within a reasonable time pursuant to this settlement agreement, as Lots 13 and 14 would have been one building site, but are now permitted to be separate building sites as part of this settlement in order to mitigate the burden that PalmCorp is accepting in the settlement to protect and preserve Sherman's Oak, which is of significant public benefit.
4. The City hereby approves the following variances to implement the proposed site plan:
 - A. Lot 13:
 1. 2'-10" (pool deck) and 4'-10" (water's edge) rear setback variance where a 5'-00" (pool deck) and 10'-0" (water's edge) rear setback is required, but only 2'-2" (pool deck) and 5'-2" (water's edge) are provided.
 - B. Lot 14:
 1. 3'-8" side setback variance for an air conditioning and pool equipment pad where a 5'-0" side setback is required, but only 1'-4" are provided; and
 2. 2'-10" (pool deck) and 4'-10" (water's edge) rear setback variance where a 5'-00" (pool deck) and 10'-0" (water's edge) rear setback is required, but only 2'-2" (pool deck) and 5'-2" (water's edge) are provided.
 - C. Lot 15:
 1. 3'-8" side setback variance for an air conditioning pad where a 5'-0" side setback is required, but only 1'-4" are provided.

5. The City hereby approves, and PalmCorp shall implement, a twenty-five (25) foot TPZ radius surrounding Sherman's Oak.
6. PalmCorp shall retain Arborist Jeff Shimonski, at his standard rate, to collaborate with its development team, City administration and the owners of 1019 Lisbon Street, to reasonably ensure compliance with this Agreement, pre-construction, during construction and following construction, consistent with an amended Work Plan to be approved by the City.
7. The TPZ shall adhere to ANSI A300 Standards, except as otherwise approved by Arborist Jeff Shimonski.
8. Arborist Jeff Shimonski will collaborate with Jeremy Chancy, PalmCorp's Arborist, to implement the Work Plan.
9. PalmCorp shall not prune any live branches or limbs greater than four (4) inches in diameter from the specimen trees.
10. PalmCorp shall locate the concrete and construction clean-out area at least ten (10) feet from the TPZ.
11. PalmCorp shall erect a four (4) foot concrete masonry wall at the rear property line on Lots 13 and 14 and plant a landscape buffer as depicted in Exhibit "A".
12. The City, through its Public Services Department, shall approve an amended tree permit application and Work Plan consistent with the Tree Disposition Plan and Landscape Plan depicted in Exhibit "A" to allow for the implementation of this Agreement as well as the proposed landscape plans and tree disposition plans, including but not limited to, PalmCorp's mitigation for the removal of Tree No. 29 on Lot 15 (African Tulip) and Tree No. 7 on Lot 13 (Live Oak).
13. The City hereby waives Public Works Department review and approval of the ten (10) foot driveway approach on Lot 15. The proposed ten (10) foot driveway complies with the City of Coral Gables Zoning Code.
14. The City shall expedite and support the proposed plans consistent with the terms herein, inclusive of the Site Plan, Landscape Plan, and Tree Disposition Plan, attached hereto as Exhibit "A", through the Board of Architects, Building Department, Public Services Department, Development Services Department, and all other reviewing agencies. The Exhibits do not include architectural drawings, which must be submitted for review and determination by the Board of Architects. The Board of Architects' authority is limited to design matters, and not to review of the terms of this settlement agreement or the development rights granted herein. This provision does not preclude the City from providing comments and exercising its

regulatory authority consistent with this agreement, the Zoning Code, and other applicable law.

15. The City shall waive any further architectural review fees as to the three lots. The City will waive resubmittal fees as to Lots 14 and 15. PalmCorp will pay any remaining impact or building permit fees for the three lots at the required time. To the extent not described in this Agreement, the Parties shall bear their own costs, expert witness fees, attorneys' fees, and other expenses.
16. 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.
17. As required by section 3-1703(E) of the Zoning Code, PalmCorp hereby releases 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 other matter regarding the subject matter of this Agreement, whether actually asserted by PalmCorp, or as may have been asserted, and whether known or unknown.
18. 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 PalmCorp shall not assign, transfer, convey, or otherwise dispose of their obligations under this Agreement.
19. 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.
20. 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.
21. 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.

22. This Agreement sets forth the entire Agreement and understanding between the Parties relating in any way to the subject matter contained herein and merges all prior discussions between PalmCorp and the City. This Agreement may be amended or modified by written instrument signed by both Parties.
23. As established in section 3-1706 of the 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 PalmCorp.
24. 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 Federal Express) or mailed by certified or registered mail, return receipt requested, in a postage prepaid envelop 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 City Attorney City Attorney's Office 405 Biltmore Way, Second Floor Coral Gables, Florida 33134
If to PalmCorp:	PalmCorp Development Group, LLC Attn: Gus DeRibeaux, Esq. 4904 SW 72 nd Avenue Miami, Florida 33155
With copy to:	Melissa Tapanes Llahues, Esq. Bercow Radell & Fernandez, P.A. 200 South Biscayne Boulevard Suite 850 Miami, Florida 33131

25. 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.

26. 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.
27. 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.
28. 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
29. 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.

WHEREFORE, on the effective date as established in paragraph 23 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.

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 Code.

CITY

ATTEST:

CITY OF CORAL GABLES

By: _____
Walter Foeman
City Clerk

By: _____
Carmen Olazabal
Interim City Manager

Dated ____ day of _____, 2014

Approved for form and legal sufficiency:

By: _____
Craig Leen
City Attorney

PALMCORP DEVELOPMENT GROUP, LLC

WITNESS:

PalmCorp Development Group, LLC

Signature

By: _____

Name: _____

Print Name

Title: _____

Signature

Dated this ____ day of _____, 2014

Print Name

STATE OF FLORIDA)

)

COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by _____, as _____, who is personally known to me or produced _____ as identification, and acknowledged that she did execute this instrument freely and voluntarily for the purposes stated herein.

My Commission Expires:

Notary Public, State of Florida
Print/type name: _____