



To: Devin Cejas, Deputy Development Services Director / Zoning Official

From: Miriam Soler Ramos, City Attorney for the City of Coral Gables *MSR*

RE: Legal Opinion Regarding Biltmore Development

Date: July 16, 2019

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Devin, further to our conversation yesterday afternoon, please note that the settlement negotiations that lead to the settlement agreement in this matter did not contemplate a pool. Consequently, the use of the word “cabana” is not to be interpreted strictly to mean “cabana” as defined in Art. 8 of the City’s Zoning Code. Instead, “cabana,” as referred to in the settlement agreement, should be interpreted to mean a general recreational space that does not require a “connection with a swimming pool or tennis court.” Art. 8, Zoning Code.

It is also important to note that the City Commission, adhering to all requirements in Art. 3, Div. 17 of the Zoning Code, approved the settlement agreement, without mention of a pool in connection with the “cabana.”

This opinion is issued in accordance with Sec. 2-252(e)(1) and (8) of the City Code and Sec. 2-702 of the City’s Zoning Code.

50  
This instrument is prepared by  
(and after recording)  
please return this instrument to:  
City Attorney  
405 Biltmore Way, Second Floor  
Coral Gables, Florida 33134

Folio 03-4117-059-0010;  
03-4117-008-1780;  
03-4117-008-1790  
Reserved for Recording

### DISPUTE RESOLUTION AGREEMENT

This Dispute Resolution Agreement (hereinafter the "Agreement") is made and entered into by and between the David William Hotel Condominium Association, Inc. and Jorge M. Guarch, Jr. ("Plaintiffs"), BILTMORE DEVELOPMENT, LLC ("Owner"), and the CITY OF CORAL GABLES, a Florida municipality (the "City") (collectively referred to as the "Parties").

#### WITNESSETH

**WHEREAS**, 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, Inc. 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**, 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 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**, Owner has 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 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 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 March 12, 2019 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**, Owner and the City 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 Owner, 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 Owner'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, which were, or could have been noticed, plead, or initiated, and any other matters described and/or defined herein.

**WHEREAS**, this Agreement between the Parties shall fully resolve all of Plaintiffs' claims against the City arising out of or relating to the Litigation, Plaintiffs and City have agreed to fully and irrevocably settle all claims and disputes between them arising out of or relating to the Litigation in accordance with the terms and conditions set forth herein, in reliance upon the promises, representations, acknowledgments, agreements and warranties of the Parties contained herein and for other consideration

**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. Owner hereby 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 set forth in City Zoning Code Section 5-604(B)(1).
4. Owner agrees that the additional rooftop architectural 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.
5. Owner agrees that the rooftop architectural feature 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.
6. The City, hereby 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.
7. Owner shall not request or apply for any bonuses for height, setbacks, or stepbacks pursuant to City Zoning Code Section 5-604 or any other applicable section of the City Zoning Code.
8. 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. Plaintiffs reserve all rights otherwise afforded to them to participate in the review process for the revised project on the Valencia Property as set forth herein. The City recognizes that the Owner has experienced delays and will use its best efforts to expedite all such applicable reviews.
9. This Agreement settles and resolves all disputes, disagreements, claims, and conflicts between the Parties arising out of or relating to the Litigation. Plaintiffs, collectively and individually, and their respective successors and assigns, administrators, executors, heirs, affiliates, parent, related entities and any persons or business entities they represent or acting by and through them do hereby completely, unconditionally and irrevocably remise, release, discharge, satisfy and forever acquit City, and its respective employees, officers, directors, managers, agents, trustees, fiduciaries, representatives, insurers, guarantors, indemnitors, attorneys, and administrators, of and from any and all actions, causes of action, claims, suits and debts, sums of money, accounts, bonds, bills, covenants, contracts, breaches of fiduciary duty, fraud, tortious interference, breach of duty of good faith, settlements, promises, variances, damages, judgments, executions and demands, whatsoever, in law or in equity, whether known or unknown, suspected or unsuspected which any of the parties, or any one or more of them, ever has, had or now has or which they or any personal representative, successor, heir or assign thereof hereafter can, shall or may have, arising out of any event, action, viable contract, settlement, matter, omission or thing connected with or derived from the Litigation, which has occurred as of the date of this Agreement, or previously existed. Notwithstanding anything contained in this Agreement to the contrary, none of the Parties are released from their obligations under this Agreement. Upon the

City's approval and execution of this Agreement and expiration of applicable appeal periods (which period is 30 days from the Effective Date of the Agreement), Plaintiffs shall dismiss the Litigation with prejudice.

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, the Owner 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 matter regarding the subject matter of this Agreement, whether actually asserted by Owner, 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 the Owner 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 Owner.

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 Owner: Biltmore Development, LLC  
9100 S. Dadeland Boulevard, Suite 901  
Miami, Florida 33156

With Copies to: Augusto Maxwell, Esq.  
Akerman LLP  
98 Southeast Seventh Street, Suite 1100  
Miami, Florida 33131

If to the Plaintiffs: The David William Hotel Condominium Association, Inc.  
700 Biltmore Way  
Coral Gables, Florida 33134

With Copies to: Amanda Quirke Hand, Esq.  
Lehtinen Schultz Riedi de la Fuente  
Sabadell Financial Center  
1111 Brickell Avenue, Suite 2200  
Miami, Florida 33131

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 intends 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 Owner shall include the Owner, its heirs, successors, and assigns. The term Plaintiffs shall include the Plaintiffs, their successors and assigns.
25. **Covenant Running with the Land.** This Agreement shall constitute a covenant running with the Valencia Property and shall be recorded, by the Owner and at Owner's expense, in the Public Records of Miami-Dade County, Florida, and shall remain in full force and effect and be binding upon the Owner, and its successors and assigns until such time as the Agreement is terminated, modified or released.
26. **Term of Covenant.** The provisions of this Agreement shall become effective upon its recordation in the Public Records of Miami-Dade County, Florida, and shall continue in effect for a period of thirty (30) years after the date of such recordation, and shall be automatically renewed for successive 10 year periods unless Owner gives written notice of the non-renewal within 30 days of the expiration of the Agreement.
27. **Modification, Amendment, Release.** This Agreement may be modified, amended or released solely by the City, after a public hearing before the City Commission. Owner agrees that in addition to any required notice provided by the City, notice of any public hearing to modify, amend, or release this Agreement shall be mailed by Owner at least 10 days prior to the public hearing to Plaintiffs.

**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.

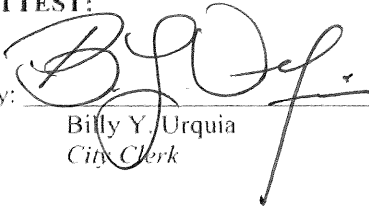
*[Signature pages to follow]*



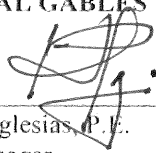
The City's execution of this Dispute Resolution Agreement is subject to Ratification by the City Commission pursuant to Section 3-1705(D) of the City of Coral Gables Zoning Code.

CITY

ATTEST:

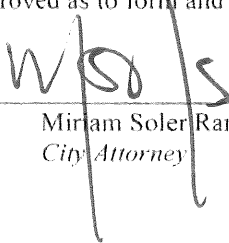
By:   
Billy Y. Urquia  
City Clerk

CITY OF CORAL GABLES

By:   
Peter J. Iglesias, P.E.  
City Manager

Dated \_\_\_\_ day of \_\_\_\_\_, 2019

Approved as to form and legal sufficiency:

By:   
Miriam Soler Ramos  
City Attorney



WITNESSES

[Signature]  
Signature  
Karl Stroeder  
Print Name

David William Hotel Condominium  
Assoc., Inc.

[Signature]

STATE OF FLORIDA

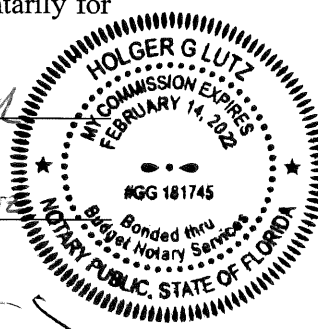
COUNTY OF MIAMI-DADE

THE FOREGOING INSTRUMENT was acknowledged before me this 20 day of MARCH, 2019, by Mejando Garcia who is 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:

[Signature]  
Notary Public, State of Florida

Print Name: HOLGER G LUTZ



WITNESSES

[Signature]  
Signature  
Michele L. Beach  
Print Name

Jorge M. Guarch

[Signature]

STATE OF FLORIDA

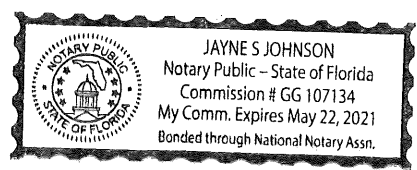
COUNTY OF MIAMI-DADE

THE FOREGOING INSTRUMENT was acknowledged before me this 14 day of March, 2019, by Jorge M. Guarch who is personally known to me or produced personally known as identification, and acknowledged that they did execute this instrument freely and voluntarily for the purposes stated herein.

My Commission Expires: 5-22-21

[Signature]  
Notary Public, State of Florida

Print Name: Jayne S Johnson



48282657;1

**From:** [Ramos, Miriam](#)  
**To:** [Paulk, Enga](#)  
**Subject:** FW: Biltmore Development  
**Date:** Tuesday, July 16, 2019 9:58:13 AM  
**Attachments:** [image001.png](#)  
[ATT00001.htm](#)  
[BILTMORE DEVELOPMENT DISPUTE RESOLUTION AGREEMENT EXECUTED.PDF](#)  
[ATT00002.htm](#)  
[image003.png](#)  
[image004.png](#)

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Enga, please publish.

*Miriam Soler Ramos, Esq., B.C.S.*

*City Attorney*

*Board Certified by the Florida Bar in  
City, County, and Local Government Law  
City of Coral Gables*

405 Biltmore Way, 2<sup>nd</sup> Floor  
Coral Gables, FL 33134  
(305) 460-5218  
(305) 460-5084 direct dial



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**From:** Ramos, Miriam  
**Sent:** Tuesday, July 16, 2019 9:57 AM  
**To:** Cejas, Devin <dcej@coralgables.com>  
**Cc:** Cabrera, Suramy <scabrera@coralgables.com>; Trias, Ramon <rtrias@coralgables.com>; Suarez, Cristina <csuarez@coralgables.com>  
**Subject:** FW: Biltmore Development

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It is also important to note that the City Commission, adhering to all requirements in Art. 3, Div. 17 of the Zoning Code, approved the settlement agreement, without mention of a pool in connection with the “cabana.”

This opinion is issued in accordance with Sec. 2-252(e)(1) and (8) of the City Code and Sec. 2-702 of the City’s Zoning Code.

*Miriam Soler Ramos, Esq., B.C.S.*

*City Attorney*

*Board Certified by the Florida Bar in  
City, County, and Local Government Law  
City of Coral Gables*

405 Biltmore Way, 2<sup>nd</sup> Floor  
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---

**From:** Ramos, Miriam  
**Sent:** Tuesday, July 2, 2019 11:45 AM  
**To:** Cabrera, Suramy <[scabrera@coralgables.com](mailto:scabrera@coralgables.com)>  
**Cc:** Suarez, Cristina <[csuarez@coralgables.com](mailto:csuarez@coralgables.com)>

**Subject:** Fwd: Biltmore Development

Suramy, in accordance with the agreement attached, it is clear that the City Commission approved the cabana as described.

Miriam Soler Ramos, B.C.S.  
City Attorney  
City of Coral Gables

Begin forwarded message:

**From:** "Suarez, Cristina" <[csuarez@coralgables.com](mailto:csuarez@coralgables.com)>  
**Date:** July 2, 2019 at 11:37:06 AM EDT  
**To:** "Ramos, Miriam" <[mramos@coralgables.com](mailto:mramos@coralgables.com)>  
**Subject: FW: Biltmore Development**

**Cristina M. Suárez**  
**Deputy City Attorney & City Prosecutor**  
City of Coral Gables  
405 Biltmore Way, 3rd Floor  
Coral Gables, Florida 33134  
Main Phone: (305) 460-5218  
**Direct Dial: (305) 476-7231**  
Email: [csuarez@coralgables.com](mailto:csuarez@coralgables.com)