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February 7, 2014

VIA HAND DELIVERY

Amanda Quirke, Esq.
Assistant City Attorney
City of Miami
444 SW 2nd Avenue, 9th Floor
Miami, FL 33130

Re: Analysis of Claim to Vested Rights for Redevelopment on Grove Isle

Dear Ms. Quirke:

Enclosed please find our firm's Memorandum of Law for your review and consideration in connection with the captioned matter. Please let me know if you would like to meet to discuss this matter further following your review.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

Tony Recio

TR/ms
Enclosure
2695001
cc: Edgar Lewis, Esq. (w/enc.)
Victoria Mendez, Esq., Barnaby Min, Esq.,Rafael Suarez-Rivas, Esq. (all w/enc.)
Francisco Garcia
Irene Hegedus

Weiss Serota Helfman
Pastoriza Cole & Boniske, P.L.

MEMORANDUM

To: Amanda Quirke, Esq., Assistant City Attorney

From: Gilberto Pastoriza, Esq.
Tony Recio, Esq.

CC: Victoria Mendez, Esq., City Attorney
Barnaby Min, Esq., Deputy City Attorney
Rafael Suarez-Rivas, Esq., Assistant City Attorney

Date: February 7, 2014

Re: Analysis of Claim to Vested Rights for Redevelopment on Grove Isle

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I. Introduction and Purpose

As you are aware, we represent Grove Isle Condominium Association (the "Association") in connection with a proposal by Grove Isle Associates, LLLP (the "Developer") to develop an 18-story residential tower on the northeastern portion of Fair Isle (now known as Grove Isle and referred to herein as such). The Association represents the approximately 510 families that own condominiums in three residential buildings constructed on Grove Isle in the late 1970s.

The purpose of this memorandum is to address the arguments advanced by the Developer to recognize its ability to proceed with the proposed development effort. There is no current vested right to redevelop any portion of Grove Isle in any manner other than as provided under current zoning law.

II. Background/History

Prior to 1972, Grove Isle was a vacant spoil island. Pursuant to Ordinance No. 6871, the zoning ordinance in place at the time, the then-developer sought approvals to construct multi-family residential towers on the island which culminated in building permit nos. 72-7197, 72-13131, 73-2984, 73-2985, and 73-6132 (the "Building Permits") originally providing for two 40-story residential towers consisting of 510 dwelling units, 50 hotel rooms, and related facilities. See building permit no. 72-13131 referencing foundation permit no. 72-7197 attached as Tab 1. Confronted with community backlash from the mainland Coconut Grove residential area and administrative and legal challenges, the then-developer

scaled down his approvals, amending the Building Permits to provide for four 25-story towers[1] and entered into a Covenant of Restrictions (the "Covenant") in 1976 which voluntarily imposed height and density restrictions among other requirements. See Tab 3. The mainland Coconut Grove residents continued their legal opposition, and faced with City Commission efforts to more tightly restrict zoning regulations that would impact the height, intensity, and density achievable for the property, the then-developer sought a settlement with the neighborhood and the City. The Settlement Agreement dated June 13, 1977 (the "Settlement Agreement"), approved by Final Judgment in Case No 73-6449, recorded in Official Records Book 9912, Page 260, of the Public Records of Miami-Dade County, Florida (the "Court Order"), imposed greater restrictions on development on Grove Isle. See Tab 4. Following the execution of the Settlement Agreement, the then-developer amended the Building Permits to provide for three 18-story towers consisting of 511 units and 55 hotel units with accessory facilities including a club, restaurant, tennis courts, spa, etc. (the "Existing Development"). See building permit nos. "72-7197 (Rev)" issued on August 23, 1977, 73-2984 issued on November 22, 1978, and "73-2985 Rev" executed on December 13, 1977, attached as Tab 5. The hotel was constructed pursuant to building permit no. "73-6132 Rev" issued on April 14, 1978. See Tab 6. Following construction and completion of the Existing Development, the then-developer closed out the Building Permits with Certificates of Occupancy nos. 23542 issued on March 13, 1979 for the first 18-story building, 24545 issued on May 14, 1980 for hotel and club facilities, 24607 re-issued as 24616 on July 28, 1980, and 24947 issued on May 14, 1981 for the remaining two 18-story buildings (collectively, the "Certificates of Occupancy"). See Tab 7.

Following issuance of the Certificates of Occupancy, the units were sold and 500+ families moved in and have enjoyed their residential units, amenities, and club space for more than 32 years. In that time, the City Commission enacted Zoning Ordinance 9500 in 1982, and a Comprehensive Neighborhood Plan (the "Comprehensive Plan") in 1989 pursuant to Ordinance No. 10544, which has been amended several times since its adoption. Pursuant to its Comprehensive Plan, the City Commission then enacted two additional zoning ordinance rewrites known as Ordinance 11000 and Miami 21. In each of those zoning ordinances, the height of buildings on Grove Isle has been limited to five stories with floor area limitations commensurate with such five story height.

In 2013, 36 years after the Settlement Agreement and 32 years after the last Certificate of Occupancy was issued for new residential construction on Grove Isle, the Developers sought recognition of purported development rights under the Settlement Agreement and petitioned the City Attorney's office and Planning Department. Further, they asked that any such rights be evaluated under Ordinance 6871 rather than current code. In the absence of input from the current residents of Grove Isle, or any mainland residents, neither of which were notified, Deputy City Attorney Maria Chiaro issued an email purportedly recognizing the Developer's ability to build an 18-story tower under a zoning ordinance that was repealed more than 30 years ago, essentially allowing a tower in gross violation of Miami 21 without notice or for an opportunity to be heard. The Developers have now submitted plans to the Zoning Department for a "dry run" which if successful, would allow them to proceed directly to building permit without any opportunity for meaningful review by the Planning Department, Planning and Zoning Appeals Board and the City Commission.

III. Key Aspects of the Settlement Agreement

The Settlement Agreement was the result of a lawsuit challenging the then-owners attempt to construct a certain intensity and density permissible under Ordinance 6871. Despite previously having obtained the Building Permits, the then-owners were faced with the lawsuit and apparent City

[1] See building permit nos. "72-7197 Rev" for foundations, "73-2985 Rev," and "73-6132 Rev" all issued on June 10, 1977, attached as Tab 2.

Commission attempts to amend the zoning ordinance to limit development of Grove Isle. To resolve the dispute, and secure their ability to go forward under the Building Permits, the owners entered into the Settlement Agreement with the City, resident groups, and others with interests in the property as additional signatories.

The Settlement Agreement imposed a number of obligations and restrictions on development of Grove Isle, including Section 5.4 which required construction of club facilities comprised of a number of sub-facilities, such as a restaurant/bar, banquet room, spa, tennis courts and pool; Sections 5.1, 5.2 and 5.3 which imposed maximum development limitations on density, height, and number of buildings; Section 6 which described a dispute resolution process; and Section 7 which described the mechanism for effectuating the development goals through the Building Permits. At various places within the Settlement Agreement there are express references to particular definitions of Ordinance 6871 and the then-applicable South Florida Building Code.

The Settlement Agreement used deliberate language in imposing the development limitations. For example, in Section 5.1, the maximum density is described as "shall not exceed 575 units". In Section 5.2, the maximum height is similarly described as "shall not exceed 210 feet" adding that "no building located on Fair Isle may contain more than 18 stories (including penthouse)". Finally, in Section 5.3, the maximum number of buildings is described as "not more than four buildings . . . in excess of 5 stories," or in the event that no towers over 5 stories were constructed, "any number of five story towers." This language clearly belied an intent to limit the maximum density, height, and number of buildings greater than five stories achievable, but not to act as guarantees that such maximums could be achieved ad infinitum into the future.[2] This is made clear in the Section 5.3 explanation of a "multi-tower project" which consists of "four (4) high-rise buildings *or less*" (emphasis added).

Describing the basis for recognizing and effectuating rights to develop, Section 7 referenced the Building Permits, automatically granting them a time extension, and allowing for their amendment and revision provided they complied with the Settlement Agreement terms, the Covenant terms, and the laws that applied at the time of issuance. This Section is the only section in the Settlement Agreement which imposes an obligation on the City to follow the then existing Code.

IV. Vested Rights Granted by Settlement Were Limited by Then-Existing Building Permits; Having Been Exercised, None Remain

Vested rights involves an approval by a governmental entity followed by an owner incurring a substantial change of position in reliance on such approval, typically a building permit.[3] The purchase of property in and of itself does not constitute a sufficient change of position to justify a vested rights claim.[4] Vested rights do not exist in perpetuity.[5]

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[2] Section 3.4.2. of Miami 21 describes a similar concept succinctly: "The inability to reach the maximum Density or Intensity because of the necessity to conform to other regulations of this Code shall not constitute hardship for the purpose of a Variance."

[3] *Hollywood Beach Hotel Company v. City of Hollywood*, 329 So.2nd 10 (Fla. 1976). Copies of all cited cases are included in Tab 8.

[4] Grove Isle Associates was not an original party to the Settlement Agreement; therefore at best Grove Isle Associates is a successor in interest to one of the original signatories. It is well settled in Florida that a successor in interest must show his own entitlement to the benefit of an estoppel/vested rights and may not make such a showing by merely purchasing property. *Franklin County v. Leisure Properties, Ltd.*, 430 So.2nd 475 (Fla. 1st DCA 1983).

[5] See Section V.c of this Memorandum.

Applying these elements to the Settlement Agreement, the City's recognition of vested rights in that instrument depended on an existing governmental approval. In this instance, it was the Building Permits, which had been issued prior to entering into the Settlement Agreement that served as the governmental approval from which vested rights issued. In fact, Section 7 made express references to the Building Permits allowing their modification for a specific period of time. This was a deliberate limitation on the then-owner's right to exercise any or all of the development rights described in Sections 5.1, 5.2, and 5.3 that was a key component of the negotiated Settlement Agreement.[6] Thus, the recognition of vested rights was not unconditional or indefinite. The Settlement Agreement did not leave open-ended the then-owner's right to develop Grove Isle nor to grant any rights in perpetuity irrespective of future changes in law; nowhere in the instrument does it state anything close to that nor have the Developers cited any provision or concept of general law to support that contention.

To the contrary, the Settlement Agreement created a window for exercising such rights with the Building Permits as the vehicle for development. Once those Building Permits were executed, completed, and Certificates of Occupancy issued the window closed. Furthermore, the Settlement Agreement did not provide for any alternate vehicle or for any method of extending viability of those rights. Set against the backdrop of looming changes to zoning regulations, it was clear to all parties to the Settlement Agreement that once the Building Permits were used, construction completed, and the Certificates of Occupancy issued, the window for exercising any development rights in excess of then-applicable regulations would be closed and any new development would have to meet the law in force at such time. The then-owner was free to modify the Building Permits to provide for the maximum extent of development described in Sections 5.1, 5.2, and 5.3, including "up to four 18-story towers" but for whatever reasons, such as market demand or corresponding value, the then-owner elected to construct three towers with 510 units, together with a hotel building and club amenities, all spaced evenly on the island. Having been so modified, construction commenced and proceeded through to completion resulting in the Building Permits being closed out by the Certificates of Occupancy. The window for exercise of any further activity pursuant to Sections 5.1, 5.2, and 5.3 was effectively and legally closed. [7] Accordingly, the vested rights provided in the Settlement Agreement were exercised through the Building Permits and there remain no additional vested rights outside of that effectuated through the Building Permits. Any further development of Grove Isle must necessarily comply with all aspects of current regulations.

V. Assuming Vested Rights Survived Building Permits, They Have Been Lost

Although there is no basis for considering vested rights outside of the Building Permits, even if the City were to recognize that such rights could be exercised through some new permit other than the Building Permits, any such rights have been lost because of a change in circumstances, waiver on the part of the apparent holder of any such rights, and abandonment for failure to exercise those rights.

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[6] If instead, the intent of the Settlement Agreement was to leave open the possibility of any number of future building permits to modify Grove Isle to achieve the maximum development described in Sections 5.1, 5.2 and 5.3 irrespective of changes in the law, as the Developer contends, then there would have been no need to specifically reference the Building Permits or their time extension, nor to clarify what regulations would be applied to them. The then-owner could have simply obtained new building permits at any time following execution of the Settlement Agreement.

[7] Although we believe the unambiguous intent of the Settlement Agreement was to limit exercise of the Sections 5.1, 5.2, and 5.3 development rights to the Building Permits, such that no future reservation of development on a future phase would have been effective, it is telling that no description of any future phases such as that currently proposed by the Developer was included in either the Building Permits, filings with the Planning and Zoning Department, condominium documents, or sales literature. It is also telling that the entirety of Grove Isle was developed at the same time, without any portion left vacant for future development. The then-developer's own actions clearly established the total amount of development on the island.

a. Change in Circumstances

Insofar as the Settlement Agreement was approved by Court Order, it is subject to the principle of *res judicata*, which requires upholding the Court Order unless there have been changes in circumstances which compel a different result.[8] Whether changes in circumstances are present is a question of fact based on the totality of the circumstances.[9] In this instance, there have been substantial changes in the surrounding neighborhood context and development pattern, the quality and availability of infrastructure, and perhaps most importantly, in the governing land development policy.

At the time the Settlement Agreement was executed, there was no development on Grove Isle. Pursuant to the Building Permits, the island was developed in the ensuing three years resulting in the Existing Development – three buildings uniformly spaced approximately 255 feet apart (as measured across the mid-point of the island) with a five story hotel and club facility approximately 160 feet from the northeastern-most building. The Existing Development has persisted in this fashion since that time. The fact that 510 families now call Grove Isle home is a vastly different circumstance from the empty island that existed at the time of the Settlement Agreement.

Landward of the two-lane bridge that connects the Island to the mainland is a contained, stable single-family neighborhood bordered by mixed-density neighborhoods to the north and south that include five- to seven-story buildings as the highest intensity development. Since the time of the Settlement Agreement, this surrounding neighborhood has increased dramatically in value and commensurate with such increase, the homes and apartment buildings have been redeveloped or substantially refurbished, taking advantage of the rare combination of low-scale housing close to Biscayne Bay, proximity to downtown, Brickell Avenue, Coral Gables, and the commercial areas of Coconut Grove, and stable single family neighborhood surroundings. This growth without increased density or intensity over the last 33 years is tantamount to change through entrenchment – the solidifying of a neighborhood pattern of development that the then-neighbors fought so desperately to preserve when initial efforts to develop Grove Isle occurred.

A consequence of this entrenchment was an increase in housing size – homes turned into mansions, apartments into multi-bedroom condominiums. Combined with development of higher density development to the south and north beyond the immediate neighborhood, the resulting increased demand has strained infrastructure and public facilities such as water, sewer, and roads that did not exist at the time the Settlement Agreement was executed. Infrastructure has not been meaningfully expanded to keep pace with that demand. For example, the maintenance of water and sewer facilities has been neglected, resulting in moratoriums for necessary upgrades. South Bayshore Drive, the primary north-south corridor in Coconut Grove, is operating at a level of service beyond its capacity, continuing as a two-lane road in the vicinity of Grove Isle despite enormous increases in traffic since the time of the Settlement Agreement.

Perhaps the strongest reason for the entrenchment of the low-density community in this area is the consistency of land use policy since the time of the Settlement Agreement. Following the issuance of the Certificates of Occupancy, Ordinance 9500 was adopted on September 23, 1982, establishing a five-story height limitation on Grove Isle. Seven years later, pursuant to Chapter 163, Florida Statutes, the City adopted its Comprehensive Plan which continued the limitations on density and intensity established by Ordinance No. 9500. Shortly thereafter, Ordinance No. 11000 was adopted rezoning Grove Isle to R-

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[8] *Starkey v. Okaloosa County*, 512 So.2nd 1040 (Fla. 1st DCA 1987).

[9] *Turkey Creek, Inc. v. City of Gainesville*, 570 So.2nd 1055 (Fla. 1st DCA 1990).

3, a zoning district with a maximum height of 50 feet. That height limitation persisted until Miami 21 became effective in May of 2010. Miami 21 designates Grove Isle as T5, a transect limited to a maximum height of five stories. In other words, the 33 years of policy adopted by the City Commission since the issuance of the Certificates of Occupancy have resulted in circumstances vastly different from those existing at the time the Settlement Agreement was approved by the Court Order both in governing law and in facts on the ground. Accordingly, the changed circumstances mandate a result different from the original establishment of development rights.

b. Waiver

It is important to note that there is no evidence that the Developer's predecessors in interest ever objected to any of the enactments that limited maximum height on Grove Isle over these last 33 years, despite plenty of opportunity. Instead, the then-owners did nothing, likely owing to the fact that Grove Isle had already been developed as provided in the Settlement Agreement. There being no remaining rights to protect, there would have been no reason to object. However, even assuming there remained rights, the then-owners failure to object constituted a waiver of their right to assert any such rights in the future.[10]

Their predecessors having failed to object to a series of enactments over 33 years that restricted any potential additional development on Grove Isle, the Developers cannot now assert that any such rights continue to exist.

c. Abandonment due to Lapse of Reasonable Time

Beyond waiving the ability to assert development rights, the lack of further development activity since the issuance of the Certificates of Occupancy has rendered any potential development rights null due to laches. Courts have recognized that even vested rights must be exercised within a reasonable time. See *Equity Resources, Inc. v. County of Leon*, 643 So.2nd 1112 (Fla. 1st DCA 1994). In *Equity* the Court held that 18 years was reasonable for a multi-phase development where successive permits had been pulled over that period to put the government on notice that development was continuing. In this instance, the entire Existing Development was constructed within the first five years following the Settlement Agreement, and no additional development has occurred in the ensuing 32 years. At no point during that time has the City or surrounding residents been on notice of any potential additional development under purported rights.

The State of Florida recognizes developments that due to their size and impact may require long periods of time to be completed. These are development agreements pursuant to Section 163.3220 et seq., Florida Statutes ("Development Agreement"), and developments of regional impact pursuant to Section 380.06 et. seq., Florida Statutes ("DRI"). In the case of a Development Agreement, the duration of the agreement is a required term prior to its approval. See Sec. 163.3227 (b) and in no event may the duration exceed 30 years. See Sec. 163.3229. Under a DRI, a local development order must include a build out date. See Sec. 380.06 (15). Build-out dates can be extended, however extensions beyond seven years are presumed to be a substantial deviation, opening up the DRI to additional scrutiny. Florida law therefore clearly disfavors open-ended development opportunities. Applying these analogous scenarios to the Settlement Agreement, which does not establish a specific duration, the statutory requirements for Development Agreements and DRIs suggest that no vested rights should exist. Even under the best-case

[10] Waiver is defined as the voluntary relinquishment or abandonment of a legal right or advantage Black's Law Dictionary 7th Edition. In this case, the then vested rights claimant never exercised its legal rights to protect any vested rights to the fourth 18-story tower at any of the noticed public hearings which adopted the City's Comprehensive Plan or the three zoning ordinances limiting the height on Grove Isle to less thane 18 stories.

scenario of the maximum 30-year duration under Development Agreements, any rights conferred by the Settlement Agreement would have lapsed in 2007.

VI. Even Assuming Vested Rights Remain, Correct Law to be Applied Is Current Zoning Ordinance

Ms. Chiaro's review resulted in a stunning departure from established law in reversing more than 30 years of legislation and recognizing the Developer's ability to proceed under Ordinance 6871. This was clear and obvious error. The correct law to be applied in reviewing any current development application is current zoning law. Even assuming there are rights to certain density, height, and number of towers in contravention of current code, the remainder of Miami 21, including setbacks, building spacing, and floor lot ratio limitations must be applied to the Developer's proposal.

a. General Law

Florida courts recognize generally that the law to be applied to a development approval is the law in place at the time of the final decision. See *City of Boynton Beach v. Carroll*, 272 So.2nd 171 (Fla. 4th DCA 1973). Only two exceptions to this rule exist: equitable estoppel[11] and express reference in a governing document.[12]

Equitable estoppel requires (i) representation as to some material fact by the party estopped to the party claiming estoppel; (ii) reliance upon the representation by the party claiming estoppel; and (iii) a change in such party's position caused by his reliance on the representation to his detriment. *Calusa Golf, Inc. v. Dade County*, 426 So.2nd 1165 (Fla. 3rd DCA 1983). The Developers have not claimed estoppel, have not identified a specific governmental approval upon which they have relied, and have not identified a substantial change of position.[13]

The Settlement Agreement does not expressly provide for application of an entire code to future development of the island. Instead, it contains several references to specific definitions as defined in Ordinance 6871. See e.g. definitions of "accessory" and "dwelling units" in Section 5.1 of the Settlement Agreement. Only in the context of the Building Permits does it expressly reference the ability to apply "the laws of the City of Miami . . . as in effect at the time of the issuance of said permits" to modifications accommodating future development. See Section 7 of the Settlement Agreement. Thus, the express references in the Settlement Agreement are limited to certain specific definitions and to evaluation of modifications to the Building Permits. Those are the only instances where the 32-year-old law can be applied. In fact, the legal principle of *expressio unius est exclusion alterius* (if said in one place, and silent in another, then that is considered deliberate) makes clear that the express references to Ordinance 6871 in specific contexts and the silence of a reference to Ordinance 6871 in connection with general future applicability was deliberate, establishing that the intent of the Settlement Agreement was to apply Ordinance 6871 only to the specific instances described therein.

The only other express references where current law can potentially be avoided is in the context of density, height, and number of towers expressly described in the Settlement Agreement, assuming the

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[11] *City of Boynton Beach* at 173.

[12] See e.g. Section 2.2.3 of Miami 21 which expressly recognizes the applicability of Ordinance 11000 to development orders issued under that code.

[13] Notably, any reliance on Ms. Chiaro's email would be questionable based upon the informality of the communication and the lack of authority for a Deputy City Attorney to bind her office.

City recognizes such rights continue to be valid. Narrowly construed vested rights/estoppel can be applied against a governmental agency only in rare instances and under special circumstances. *Calusa* at 1156. Accordingly, only density, height, and number of towers are exempt from current law. All other limitations, including floor lot ratio and setbacks must meet current Miami 21 requirements and limitations.

b. Illogical Conclusion of Developer's Argument

The Developers argue that these specific references to Article II Section 2 of Zoning Ordinance 6871 for the specific purpose of defining terms require application of all of Zoning Ordinance 6871 to future development and attempt to support such position through general contract cases that use previously existing law to interpret the intent of the parties. This argument confuses the interpretation of contract law with the applicability of a government's exercise of its police power and ability to alter such exercise over time. It ignores the ability of the City to change policy, essentially guaranteeing a set of rules will remain in place indefinitely for a given property.

The absurdity of the Developer's argument is best demonstrated by applying the same argument to other specific references in the Settlement Agreement to other codes, such as the express references to the South Florida Building Code, 1976 edition. See e.g. Sections 5.2 and 5.3 of the Settlement Agreement. If as the Developer suggests, the specific references to particular provisions of a law indefinitely vest development with the ability to be reviewed under the entirety of that law, then the Developer's proposal would be subject to the 1976 Building Code, rather than the current edition of the Florida Building Code. This is neither warranted by law nor a safe result, and is so contrary to common sense and life safety that even the Developer has not advanced it. Nevertheless, it is the inescapable extension of their argument. To not apply it is tantamount to giving the Developer the power to pick and choose which laws he will follow.

VII. Contract Zoning Issue – As Applied

Hovering over the interpretation of vested rights and applicable law sought by the Developer and assented to by Ms. Chiaro is an obvious contract zoning issue. Insofar as zoning is an exercise of the City's police power, the prohibition on contract zoning disallows the giving away of such police power. See *Hartnett v. Austin*, 93 So.2nd 86 (Fla. 1956). Municipal contracts that give away power over future approvals are illegal contract zoning and the collateral agreements have been held void. *Hartnett* at 89.

On its face, the Settlement Agreement does not constitute illegal contract zoning because of its limited recognition of exercising development rights under the Building Permits. This limitation ties development to previous approvals and does not give away the future ability of the City to enforce its police power.

The argument advanced by the Developer however does the opposite, presenting an egregious case of contract zoning as applied. In recognizing rights to develop under the Settlement Agreement 37 years after its execution, and in advancing that any such development is to be evaluated by a zoning ordinance that was repealed 32 years ago, the Settlement Agreement, as applied in this manner, constitutes an indefinite give-away of the City's right to regulate. In allowing for the ignoring of the City Commission's adoption of three successive zoning ordinances and enactment of the Comprehensive Plan, all of which restrict development on the island, this interpretation would render the City unable to use its police power over development on Grove Isle. As applied in this way, this is as clear a case of illegal contract zoning as can be found in any textbook. The City cannot give credence to an interpretation that leads to illegal contract zoning. The only interpretation that avoids that result is to limit the rights

described in the Settlement Agreement to those exercised under the Building Permits and give effect to the uncontested policy decisions of the City Commission and apply current law to the evaluation of any proposed development on Grove Isle.

VIII. Conclusion

Based on the above, the Developer does not have any rights to redevelop any portion of Grove Isle except as in compliance with all of the requirements of Miami 21. Accordingly, rather than proceed with the proposed development of an 18-sory tower, the Developer is limited to a maximum five stories and other limitations imposed by Miami 21.