Attachment D

CITY OF CORAL GABLES
OFFICE OF THE CITY ATTORNEY
- MEMORANDUM-

TO: **CITY COMMISSION** **DATE:** **September 22, 2008**

FROM: **Elizabeth M. Hernandez**
City Attorney

SUBJECT: **PROPOSAL FOR SETTLEMENT OF THE BERT J. HARRIS ACT CLAIM FILED BY FERNANDO MENOYO AND ALMERIA ROW, LLC**

The Property Owners, Fernando Menoyo and Almeria Row, LLC, at present, own the following properties: 744 Biltmore Way, 2509 Anderson Road, 745 Valencia Avenue, 635 Almeria Avenue; 643 Almeria Avenue, 2605 Anderson Road, 2611 Anderson Road, 731 Almeria Avenue, 735 Almeria Avenue, 743 Almeria Avenue, 2615 Anderson Road, 760 Valencia Avenue, (collectively, the "Properties").

On January 9, 2007, the City Commission adopted Ordinance Nos. 2007-01 and 2007-03, reducing the permissible height on the Properties from forty-five (45) feet to thirty-five (35) feet for the first fifty (50) feet of the Properties and allowing a height of forty-five (45) feet thereafter. As a result of that action, on January 8, 2008, the Property Owners filed a claim for compensation for $8,135,000 pursuant to the Bert J. Harris, Jr., Private Property Rights Protection Act, Sec. 70.001, Fla. Stat. (the "Act") ("Harris Act Claim") for the loss in fair market value of the Properties resulting from the alleged inordinate burdens, restrictions, and limitations that have been placed on the Properties as a result of the City's actions. The City has various defenses to these claims including statutes of limitations and the lack of ownership of some of the properties by the Property Owners at the time of City action.

The Property Owners and the City are considering the possibility of settling the Harris Act Claim. The Property Owners propose a reinstatement of the forty-five (45) foot height limit for the Properties, which would be limited to the Properties by a modification to the Site Specific regulations in the Coral Gables Zoning Code. No other properties in the City would be affected.

The City Commission's action today would refer the potential settlement to the Planning & Zoning Board for a recommendation and the settlement would be considered by the City Commission after Planning & Zoning Board review.

EMH/stg