



# MIAMIBEACH

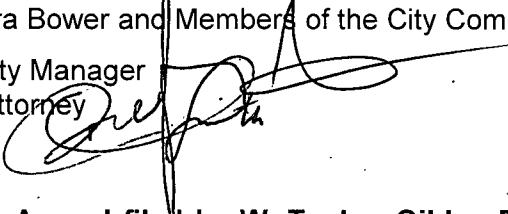
RECEIVED

2013 MAY 16 PM 12:37

OFFICE OF THE CITY MANAGER  
NO. LTC # 174-2013

LETTER TO COMMISSION'S OFFICE

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jimmy Morales, City Manager  
Jose Smith, City Attorney 

DATE: May 14, 2013

SUBJECT: **Settlement of the Appeal filed by W. Tucker Gibbs, P.A., on behalf of Sunset Islands 3 and 4 Property Owners, Inc., and Olga Lens (collectively "Appellants") re: Palau at Sunset Harbour, DRB file no. 22889, 1201-1237 20<sup>th</sup> Street.**

The purpose of this Letter to Commission ("LTC") is to advise of the settlement of the subject appeal. This matter was heard by the City Commission on March 13, 2013, at which time the Commission ruled in favor of the Appellants, remanding to the Design Review Board to provide for further disclosures of ex-parte contacts, if any, and for further review and discussion of important view corridors.

Following the hearing on the appeal, the parties notified the City Attorney's Office that they had reached a settlement and were in the process of preparing a settlement agreement and revised plans to accomplish the settlement. A meeting was arranged between the parties and Planning Department Design Review staff, to confirm that, as proposed by the parties, the changes to the plans would be reviewed at the staff level without further review by the Design Review Board. The settlement provides additional setbacks for the proposed building at multiple levels on its east façade along Sunset Drive, without affecting the exterior façade in any significant respect. Planning Department Design Review Staff has confirmed that these changes, not involving significant alterations to the façade of the project, can be approved at the staff level, and the parties have concurred.

Accordingly, this LTC provides the City Commission with a copy of the letter from counsel for the parties confirming the settlement, a summary of the settlement agreement, and a revised drawing, showing the changes agreed to by the parties and Planning Department Design Review Staff. The settlement effectively withdraws the appeal, and avoids the need for further hearings by either the City Commission or the Design Review Board. The prior order of the DRB therefore remains in effect.

Please contact either of us if you need anything further in this regard.

Attachment

  
JM/JS/JGG/GMH

W. TUCKER GIBBS, P.A.

ATTORNEY AT LAW

P.O. BOX 1050  
COCONUT GROVE FL 33133

TELEPHONE (305) 448-8486  
FACSIMILE (305) 448-0773  
[tucker@wtgibbs.com](mailto:tucker@wtgibbs.com)

May 13, 2013

VIA HAND DELIVERY

Gary M. Held  
First Assistant City Attorney  
1700 Convention Center Dr.  
Fourth Floor  
Miami Beach, FL 33139-1819

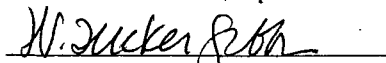
**Re: Settlement of Appeal of Sunset Islands 3 and 4 Property  
Owners, Inc., and Olga Lens (Palau at Sunset Harbor, DRB File  
No. 22889, 1201-1237 20<sup>th</sup> Street)**


Dear Mr. Held,

On May 3, 2009, Palau Sunset Harbor, LLC and Sunset Islands 3 and 4 Homeowners, LLC and Olga Lens, entered into the attached settlement agreement resolving their differences regarding the City of Miami Beach's approval of the Palau Sunset Harbor development. Also attached is a summary of the executed agreement. Because this settlement (including the plans in the exhibits as marked-up by city planning staff) has been executed, the parties understand and the city attorney agrees that no further hearing is necessary and that this matter is concluded.

Thank you for your efforts in effecting this settlement.

Sincerely,

  
W. Tucker Gibbs

  
Wayne M. Pathman

attachment

cc: Terry Bienstock  
Meir Srebernik

Summary of Settlement Agreement Dated May 3, 2013

Between

Palau Sunset Harbor, LLC ("Palau")

and

Sunset Islands 3 and 4 Homeowners, Inc. ("Sunset Islands")  
and Olga Lens ("Lens")

- A. Sunset Islands and Lens agree to support the Palau project as set forth in the agreement including but not limited to, appearing at the public hearings before the City or Miami-Dade County (excluding proceedings or meetings before the Miami-Dade County Environmental Quality Control Board ("EQCB")) to speak in support of the Project.
- B. Palau agrees:
1. The plans attached as Exhibit "B" and Exhibit "C-1" (as approved by appropriate city staff).
  2. Palau shall not seek to change the setbacks and step-backs as set forth on the DRB-approved plans as amended by Exhibit "B" without first obtaining approval by Sunset Islands. Those setbacks and step-backs are as follows:
    - a. There shall be a minimum of a ten (10) foot setback from the property line for all the ground floor retail on Sunset Drive. Terraces for the units on all floors above that retail space shall not extend into the 10 foot setback. There may be a decorative 5 foot deep "eyebrow" overhang on Sunset Drive in front of the 2 residential units closest to 20<sup>th</sup> Street.
    - b. There shall be an additional five (5) foot setback along the 3<sup>rd</sup> floor along the 2 center residential units on Sunset Drive, so as to be the same as the setback for the 4<sup>th</sup> and 5<sup>th</sup> floors along this portion of Sunset Drive.
    - c. The open space depicted on the northeast corner of the building (extending no less than 26 feet from the Sunset Drive right-of-way), shall be public open space and open to the public at all times (24 hours a day, seven days a week, 52 weeks a year). No landscaping, fences, walls or other barriers shall be placed in this space that would impede in any way or restrict the public's access to this public space, or to impede in any way or restrict the view from Sunset Drive to the water or from Sunset Island 4 to Sunset Drive. However the four-foot-high fence as depicted on Exhibit "B" shall be permitted. Nor shall the docking of any boat or other watercraft or any boat or other

watercraft slip or docking facility be permitted within the waterway frontage of this public plaza.

3. Public sidewalk shall be installed pursuant to Exhibit "B". During construction ingress and egress via public sidewalk shall not be impeded.
4. Changes to the landscaping plans in Exhibit "C-1" shall not be submitted to the city for approval without having obtained prior approval of Sunset Islands. If there is a dispute between Sunset Island and Palau over the application of this provision, the parties shall submit the dispute to the city planning director, who shall make the final decision on the issue with no further right of the parties for reconsideration or appeal.
5. If Palau or any successor decides to fund landscape design plans for parks, swales and medians between 20<sup>th</sup> and 21<sup>st</sup> streets, including Sunset Island 4 Park; the 20<sup>th</sup> Street median between Sunset Drive and West Avenue; and the city parks on Sunset Drive and 20<sup>th</sup> Street, Sunset Islands shall review and approve such design before submittal to the city. If there is a dispute between Sunset Island and Palau over the application of this provision, the parties shall submit the dispute to the city planning director, who shall make the final decision on the issue with no further right of the parties for reconsideration or appeal.
6. Palau shall seek (and use its best efforts to obtain at no additional cost to Palau other than a \$5,000.00 allowance for landscaping) and Sunset Islands shall support the removal of the four back-out parking spaces and driveway on Sunset Drive in front of the Palau site. In that event the landscaping for the area shall be as depicted on Exhibit "C-2". If there is a dispute between Sunset Island and Palau over the application of this provision, the parties shall submit the dispute to the city planning director, who shall make the final decision on the issue with no further right of the parties for reconsideration or appeal.
7. Palau will provide 2 valet parking spaces for the Sunset Islands guard house personnel 24-hours, seven-days-a-week. This shall be included in the Declaration of Condominium.
8. No deliveries or drop-off and pick-up on the Sunset Drive frontage of the Palau project. Nor shall any vehicle be permitted to stop or stand on Sunset Drive between 20<sup>th</sup> Street to the Sunset Islands Bridge. This prohibition shall be included in the Declaration of Condominium.
9. The following requirements shall be in place during construction:
  - a. The parties shall provide each other with a 24-hour, seven-days-a-week contact person to whom all

construction-related communication and notices shall be addressed.

- b. Construction shall be limited to Mondays through Saturdays with hours set forth in the city code.
- c. Construction-related vehicles shall not park, idle, stack or in any other way utilize 20<sup>th</sup> Street prior to 7:30am Mondays through Saturdays.
- d. All access to the construction site shall be via the property on 20<sup>th</sup> Street as set forth in the construction graphic depiction in Exhibit "D".
- e. Construction-related vehicles including employee, contractor and subcontractor vehicles; delivery vehicles; and construction equipment including but not limited to cranes and backhoes shall not park, idle, stack or in any other way utilize Sunset Drive north of its intersection with 20<sup>th</sup> Street at any time.
- f. Construction-related items including storage sheds and portable toilet facilities shall not be placed outside the construction fence surrounding the property as depicted in Exhibit "D".
- g. There shall be no deliveries to the property on Sundays or on state and federal holidays, and there shall be no deliveries to the property before 8am or after 5pm Mondays through Saturdays.
- h. Palau shall install motion sensors on and around (1) the Sunset Islands Guard House on Sunset Drive and (2) the historic Sunset Island Bridge connecting Sunset Island Four with Miami Beach before construction. All documentation relating to this monitoring shall be provided to Sunset Islands on a monthly basis until the foundation is complete and up to first floor.
- i. Palau shall provide Sunset Islands with advanced written notice (no less than 3 calendar days) of major construction events such as street closures and road closings. But Sunset Drive between 20<sup>th</sup> Street and the bridge (including the intersection of Sunset Drive and 20<sup>th</sup> Street) shall remain open and clear at all times.
- j. Palau shall maintain workers compensation coverage for all general contractors and subcontractors (minimum coverage \$1,000,000 for property damage and personal and bodily injury insurance for \$1,000,000) for the full duration of the project. Sunset Islands is listed as a certificate holder and as an additional named insured on these policies.
- k. Sunset Islands shall support any effort by Palau to obtain from the City of Miami Beach all documentation regarding the construction and condition of the Sunset Islands Bridge.

- l. Palau shall not utilize any foundation system that includes sheet or pile driving and instead shall use a process such as auger piling. Sheet piles may be used as necessary for foundation and elevator pit construction.
  - m. Construction-related equipment such as cranes shall not extend over Sunset Drive, the Sunset Islands gatehouse or the historic Sunset Islands Bridge. If such equipment is proposed to extend over Sunset Drive, the Sunset Islands gatehouse or the historic Sunset Islands Bridge Palau shall provide Sunset Islands and the City of Miami Beach indemnification in the form of a bond or an insurance policy in the event of damage to those structures or any Sunset Island or City of Miami Beach property by such equipment. The form of said document(s) must be approved by Sunset Islands and the City of Miami Beach.
  - n. Sunset Drive from 20<sup>th</sup> Street to the foot of the bridge shall be watered twice daily (in the morning before 9am and between 4 and 5pm) during construction to reduce the impacts of dust on the surrounding residential neighborhood during dust generating activities.
  - o. Palau shall surround the property with an eight (8) foot high fence and a wind resistant green screening/fencing material to mitigate dust impacts on adjoining and nearby properties, unless more stringent requirements are required under city regulations
10. The parties agree to mutual releases. Palau agrees to a covenant not to sue certain non-parties. If those non-parties sue Palau, Palau may then countersue those individuals.
  11. In the event Palau violates the terms of the settlement agreement, Sunset Islands and Lens retain their right to appear and comment before any public board or government staff regarding the violation.
  12. Any violation may be remedied by any relief available at law or in equity, including injunctive relief and/or damages and sanctions for contempt of court, by any party to the agreement.
  13. The agreement runs with the land and is binding upon the parties and their successors and assigns.
  14. The Agreement shall not become effective unless the appropriate City of Miami Beach entity approves the plans attached to the agreement as Exhibit "B" and Exhibit "C-1".

REVISIONS SUBMISSIONS

|           |      |    |             |
|-----------|------|----|-------------|
| REVISIONS | DATE | BY | DESCRIPTION |
|           |      |    |             |
|           |      |    |             |
|           |      |    |             |
|           |      |    |             |
|           |      |    |             |
|           |      |    |             |
|           |      |    |             |
|           |      |    |             |
|           |      |    |             |
|           |      |    |             |
|           |      |    |             |
|           |      |    |             |
|           |      |    |             |
|           |      |    |             |

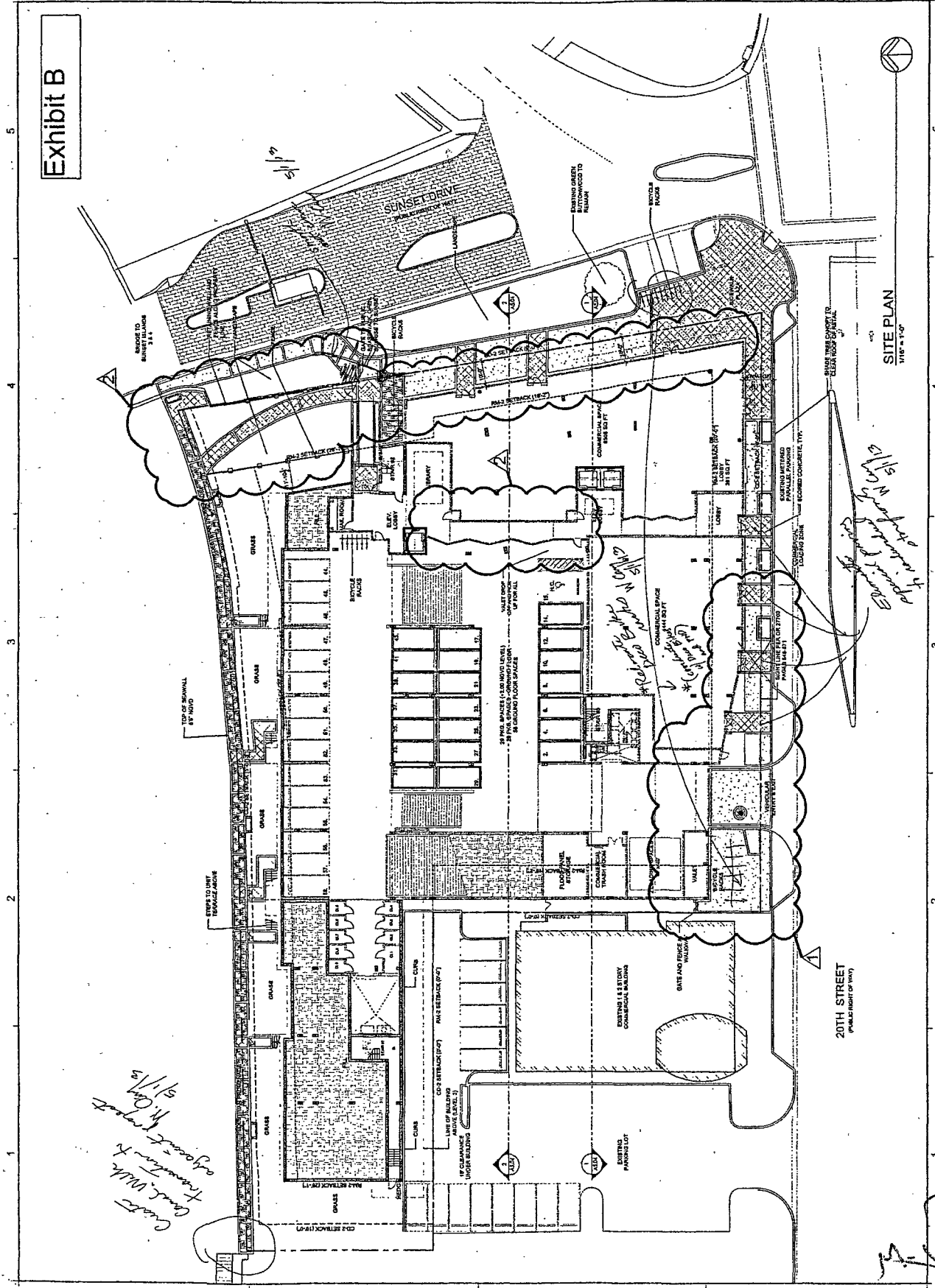
SITE PLAN  
PALAU AT SUNSET HARBOUR  
1201, 1225, 1237 20TH STREET  
MIAMI BEACH, FLORIDA

ARCHITECTURE  
INTERIOR DESIGN  
PLANNING  
AA ASD NCARB  
3013 Bayshore Boulevard  
Miami, Florida 33137  
www.korbkrapp.com

DATE: \_\_\_\_\_  
CHECKED BY: \_\_\_\_\_  
BRAND BY: \_\_\_\_\_

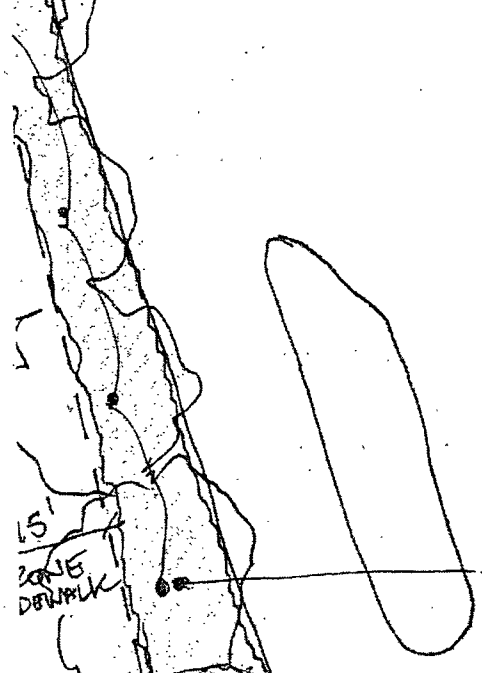
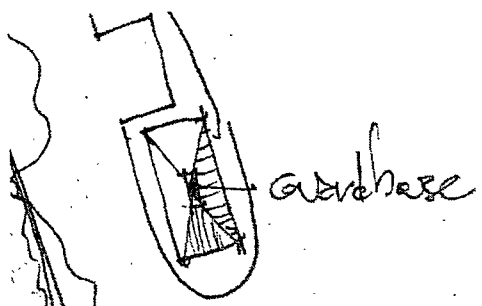
A2.00

Exhibit B



# EXHIBIT C1

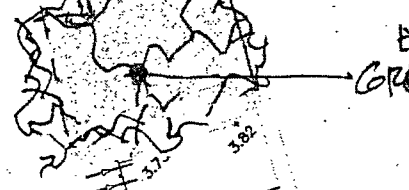
## Landscape Plan for Button Wood & Cathedral Trees



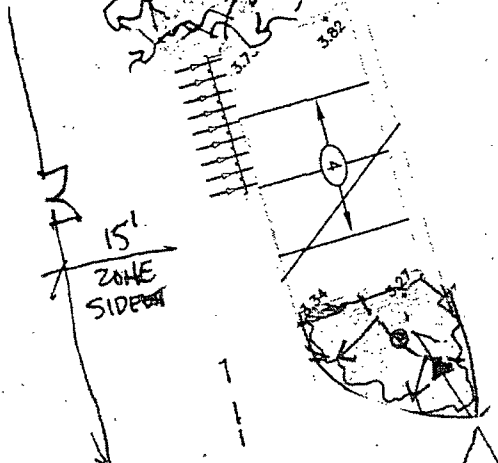
5 Cathedral Oaks  
20'-22' HT. & 14' SP. 8' C.T. MIN.  
200 GAL. of B&B, 6"-7" CAL., MATCHED



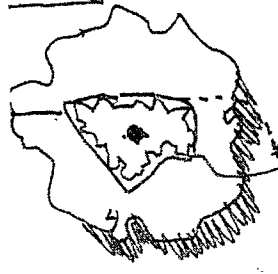
ADD 1 OAK, match size



EX. GREEN BUTTONWOOD, TO REMAIN.



EXPAND OAK PLANTER, as much as possible



Handwritten signature and initials.