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April 12, 2021

Mayor and Commissioners of the
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RE: Stormwater Pump South of 5th Street

Dear Mayor, Commissioners, Mr. City Manager and Mr. City Attorney:

The undersigned has been retained by the Master Associations of the Continuum, Portofino Tower and South Pointe Tower Condominiums. All of these buildings abut South Pointe Park (the "Park"). Specifically, we have been retained to commence litigation, if necessary, against the City (and other parties, if applicable) to prevent the improper installation of a stormwater pump (the "Pump") (either above ground or below ground) in South Pointe Park. Please recall the Park is bounded on the south by Biscayne Bay and on the north by the neighboring condominium projects and includes the paved parking lot accessed via Washington Avenue.

For many months now, my clients have made it clear to the City that the installation of the Pump in South Pointe Park presents major legal obstacles. Despite these clear legal impediments, the Public Works Department not only continues to consider the Park as a viable location for the Pump but, to our knowledge, intends to recommend the Park as the number one preferred location. Ironically, Public Works

continues to advocate for installation in the Park, even though there are other potential installation locations South of Fifth that do not pose any legal issues. The City is needlessly inviting lengthy and expensive litigation when there is no need to do so given the other locations for the Pump.

As you well know, a goal of South of Fifth residents is that the Pump be installed immediately due to worsening flooding conditions. Even if the City does not agree with us on the merits of the legal issues, we can assure you that the lawsuit we will file, including any related actions, will take years to resolve and the installation of the Pump will of course be abated while the litigation is pending.

The two extant, principal legal impediments to installation of the Pump in the Park are found in the County's Save Our Parks charter provision (the "County Charter") and in a relevant deed restriction. Generally, the County Charter requires a Countywide referendum in order to allow construction in the Park, subject to some narrow exceptions not applicable here. Your City Attorney has already opined that the Park is subject to the County Charter and that an above-ground pump installation in the Park would trigger a Countywide referendum. In the event of an underground installation in the Park, a referendum is triggered if the installation would adversely affect park and/or natural resources. The latter is a factual question depending on the specific installation and its anticipated effects. Based on the views of our experts, we are confident that the underground installation would also trigger a Countywide referendum.

The other major legal impediment is a deed restriction contained in the original deed from the Federal government to the City conveying the land for the Park. The deed restriction prevents the land from being used for anything other than a park. Although the installation of minor drainage equipment solely to address Park flooding would likely be allowed, it is clear that the introduction of a major stormwater pump that would service the entire South of Fifth neighborhood (thousands of acres outside the Park) would have no relation to the Park and, thus, would not qualify as an exclusive "park use." In the event the City desires to install the Pump in the Park, then the City would need to request a formal deed waiver from the Federal government and record that waiver in the Public Record. Importantly, the deed waiver request would necessarily trigger a lengthy, full-blown environmental analysis by Florida's Department of Environmental Protection, which would act as a recommending body to the Federal Department of the Interior and National Parks Service.

We understand that on April 21, 2021 the City Commission will consider the Public Works recommendation for the location of the installation of the Pump. Demand is hereby made that the City cease any further consideration of installation of the Pump in the Park. If the City decides to proceed with installation of the Pump in the Park, we will commence litigation against the City for declaratory relief, injunctive relief and other causes of action to, *inter alia*, require that a Countywide referendum be held and a recordable Federal deed waiver be obtained as a condition of such installation. Moreover, if a referendum and deed waiver are pursued, we will vigorously seek the rejection of the referendum by the electorate and the denial of the deed waiver by the Federal government.

PLEASE BE GOVERNED ACCORDINGLY.

Very truly yours,

/s/ Phillip M. Hudson III

Phillip M. Hudson III