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September 26, 2008

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ADVOCATE

**ARDYTH WALKER**  
STAFF GENERAL COUNSEL

Marili Cancio  
1395 Brickell Avenue  
14<sup>th</sup> Floor  
Miami, FL 33131

**RE: REQUEST FOR ADVISORY OPINION 08-44**

Dear Ms. Cancio:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on September 25, 2008 and rendered its decision based on the facts stated in your letter.

You requested an opinion regarding whether you may vote on issues related to the Vizcayan's lawsuit regarding the Grove Bay Residences or on matters regarding the renovation of Vizcaya. You are currently serving as General Counsel for Central Concrete Supermix ("Supermix").

In your letter, you stated that the Vizcaya Museum and Gardens Trust is a county board whose purpose is to serve as the governing board for Vizcaya. The Vizcaya Trust is charged with the responsibility of establishing rates and fees for Vizcaya and developing policies regarding membership, accreditation, gifts, outreach and fee waivers. The Vizcaya Trust is also responsible for negotiation and recommendation of agreements with Vizcaya support organizations.

Section 2-1111 of the Code of Miami-Dade County provides that the Vizcaya Trust board shall be comprised of 23 members and include appointees from each member of the Board of County Commissioners, the Mayor and the County Manager. The enabling ordinance also

requires that the President of the Vizcayans, the Guides and the Foundation of Villa Vizcaya serve as members of the Trust.

The Vizcayans is a private non-profit organization that was first chartered in 1957 to provide private financial support for the preservation and operation of Vizcaya. The Vizcayans serve as an advocacy group for Vizcaya. The Vizcayans are also responsible for the control, management and supervision of the Vizcaya Museum and Gardens Endowment fund. The Vizcayans are responsible for making an annual contribution to the Trust from endowment funds.

Last year, the Trust voted to oppose a development known as "Grove Bay Residences". Grove Bay Residences is proposed to be built on property located between Vizcaya and Mercy Hospital. After the Board of County Commissioners passed a resolution barring the Trust from engaging in litigation regarding the matter, the Vizcayans filed suit against several parties including the Related Group, Mercy Hospital and the City of Miami in opposition to the project.

In May, 2008, the Vizcayans received a line of credit of five hundred thousand dollars to finance its attorney's fees in the litigation. The line of credit is secured by the unencumbered portion of the endowment fund. The Vizcayans' resolution approving the line of credit provides that no portion of the corpus of the endowment fund may be used to repay the loan. The loan must be paid from either a settlement agreement that includes attorney's fees or fundraising conducted for the purpose of paying any outstanding attorney's fees. At the time, the Vizcayans has prevailed at the trial court level in the litigation and were involved in settlement discussions. The Vizcayans also received a legal opinion stating that the line of credit did not violate the use of the

endowment fund as provided in the agreement between the Trust and the Vizcayans. Supermix is a supplier of the Related Group and has provided concrete for several Related projects over the years. Supermix is not currently under contract to provide concrete for the Grove Bay Residences project. Cancio's father is the President and CEO of Supermix.<sup>1</sup>

At its July meeting, the Vizcaya Trust also awarded a contract to Trigram, L.L.C. to perform renovation work at Vizcaya. The renovation work is primarily funded through GOB funds and does not involve any major construction. Supermix is not currently contracted to provide any services on the renovation project.

The Ethics Commission found that you do not have a conflict of interest in regard to voting on matters involving the Grove Bay Residences litigation or the renovation project. Section 2-11.1(v) provides that "no person included in the terms defined in Subsections (b)(3) (quasi-judicial personnel) and (b)(4) (advisory personnel) shall vote on any matter presented to an advisory board or quasi-judicial board on which the person sits if the board member will be directly affected by the action of the board on which the member serves, and the board member has any of the following relationships with any of the persons or entities appearing before the board: (i) officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary; or (ii) stockholder, bondholder, debtor or creditor." You do not have any of the enumerated relationships with Related because you are not an officer, director, employee or creditor of Related.

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<sup>1</sup> Cancio's brother also owns a construction-related company. However siblings are not immediate family members under the Conflict of Interest and Code of Ethics ordinance. Therefore, the opinion does not analyze any conflict in regard to your brother's company.

Further, you are not directly affected by decisions that the Trust may make in regard to the Vizcayans litigation with Related. The Trust may not prohibit the Vizcayns from pursuing the litigation because the Vizcayans is an independent 501(c)(3) organization that has the authority to advocate on behalf of Vizcaya. Moreover, you do not have ties to any party in the litigation so you are not directly affected by the Trust's decisions regarding the line of credit or the endowment fund.

Section 2-11.1(n) also prohibits an advisory board member from taking action. Section 2-11.1(n) provides that "no person included in the terms defined in subsection (b)(1) through (6) shall participate in any official action directly or indirectly affecting a business in which he or any member of his or her family has a financial interest." You do not have a conflict under this section regarding either the Grove Bay Residences or the renovation contract because the board's actions do not directly or indirectly affect a business in which you or a member of your immediate family has a financial interest. Since Supermix is not a party to the litigation and did not bid on the renovation project, it is not directly affected by the Trust's action. Further, since Supermix is not a subcontractor on either project, it is not indirectly affected by the Trust's actions. Therefore, neither you or a member of your immediate family is directly or indirectly affected by the Trust's actions.

Accordingly, you may vote on matters related to the Vizcayan's lawsuit against the Grove Bay Residences and the line of credit or the renovation project.

This opinion construes the Miami-Dade Conflict of Interest and Code of Ethics ordinance only and is not applicable to any conflict under state law. Please contact the State of Florida Commission on Ethics if you

have any questions regarding possible  
conflicts under state law.

If you have any questions regarding the  
opinion, please call the undersigned at (305)  
579-2954 or Ardyth Walker, Staff General  
Counsel at (305) 350-0616.

Sincerely Yours,

A handwritten signature in black ink, appearing to read "Robert Meyers", with a long horizontal flourish extending to the right.

ROBERT MEYERS  
Executive Director

cc: Joel Hoffman, Executive Director, Vizcaya  
Museum and Gardens