

CITY OF CORAL GABLES, FLORIDA

RESOLUTION NO. 2019-252

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF CORAL GABLES, FLORIDA APPROVING THE FILING OF AN APPLICATION BY RC ACQUISITIONS LLC, PURSUANT TO THE DISPUTE RESOLUTION AGREEMENT BETWEEN THE CITY AND MUNDOMED S.A. AND SOUTH HIGH CLIFF CORP., TO RECEIVE TRANSFER OF DEVELOPMENT RIGHTS FOR THE PROPOSED MIXED-USE PROJECT TO BE LOCATED AT 216 CATALONIA AVENUE, 3000 PONCE DE LEON BOULEVARD, AND 203 UNIVERSITY DRIVE.

WHEREAS, RC Acquisitions LLC (the “Applicant”) has submitted a request, attached as **Exhibit A**, for City Commission approval to file an application for receipt/use of transfer of development rights (“TDRs”) for a proposed mixed-use project to be located at 216 Catalonia Avenue, 3000 Ponce de Leon Boulevard, and 203 University Drive (the “Receiving Site”); and

WHEREAS, the Applicant seeks to utilize TDRs made available pursuant to a Dispute Resolution Agreement (the “Agreement”), attached as **Exhibit B**, whereby the City agreed that owners of a property to be rezoned to a less intensive use and conveyed to the City were entitled to 50,000 square feet of TDRs which may be transferred to and utilized in either the Central Business District (“CBD”) or the North Ponce Mixed Use Corridor, but also in other Commercial and Industrial Zoned areas of the City, which do not abut and are not adjacent to either (1) South Dixie Highway or (ii) properties zoned Single Family Residential, with the filing of the TDR application being subject to the absolute discretion of the City Commission; and

WHEREAS, the Agreement further provides that the TDRs may be used to transfer density units at a ratio of 1,000 square feet being equivalent to 1 density unit; and

WHEREAS, the Applicant intends to apply to receive 40,000 square feet of TDRs available pursuant to the Agreement, but because the Receiving Site is not located in the CBD or North Ponce Mixed Use Corridor, the filing of the TDR application requires Commission approval; and

WHEREAS, the Applicant contemplates the TDR application will be requested only for purposes of intensity, they may ultimately request to convert certain portion of the TDRs to density units; and

WHEREAS, the City Commission has reviewed and considered the Applicant’s request and finds, without making any determination as to whether the TDR application will be ultimately approved, that it is appropriate for the Applicant to proceed with the TDR process set forth in Article 3, Division 10 of the Zoning Code by filing the TDR application;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF CORAL GABLES:

SECTION 1. That the foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon the adoption hereof.

SECTION 2. That the City Commission does hereby approve the filing of the TDR application by the Applicant, to proceed with the process set forth in Article 3, Division 10 of the Zoning Code, for the receipt of TDRs at the Receiving Site, but reserves its full authority and discretion with respect to its review and consideration of the TDR application and makes no representation as to whether the TDR application will be ultimately approved. If TDRs are approved at the Receiving Site, the resulting square feet (or units of density) of TDRs will be determined pursuant to the application process in accordance with Article 3, Division 10 of the Zoning Code.

SECTION 3. That the provisions of the Zoning Code, the Comprehensive Plan, and any other applicable regulations must be considered in the City's review of the TDR application and that this Resolution does not constitute a development order or permit, does not convey any development rights or describe the specific type, intensity or for of development that may be approved for the Receiving Site.

SECTION 4. That this Resolution shall become effective immediately upon the date of its passage and adoption herein.

PASSED AND ADOPTED THIS TWENTY-SEVENTH DAY OF AUGUST, A.D.,
2019.

(Moved: Lago / Seconded: Mena)
(Yeas: Lago, Mena, Fors, Jr., Keon, Valdes-Fauli)
(Unanimous: 5-0 Vote)
(Agenda Item: F-13)

APPROVED:



RAÚL VALDÉS-FAULI
MAYOR

ATTEST:



BILLY Y. URQUIA
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:



MIRIAM SOLER RAMOS
CITY ATTORNEY

Anthony De Yurre
Tel 305-350-2404
Fax 305-351-2222
adeyurre@bilzin.com

August 14, 2019

VIA ELECTRONIC MAIL

Mrs. Miriam Soler Ramos, Esq., B.C.S.
City Attorney
City of Coral Gables
405 Biltmore Way, 2nd Floor
Coral Gables, FL 33134

Re: Ponce Park Tower / Block 29 Lots 10-20 (the "Receiving Site") / Transfer of Development Rights Approval to Proceed with Application

Dear Mrs. Ramos:

On behalf of RC Acquisitions LLC (the "Applicant"), we hereby submit this letter of intent in connection with our request for City Commission approval of the application for the Transfer of Development Rights described herein to the Receiving Site.

The TDRs that the Applicant is seeking to utilize were created as the result of the Dispute Resolution Agreement entered into between Mundomed, S.A., South High Cliff Corp., and the City of Coral Gables, dated May 2, 2017, recorded in Official Records Book 30586, at Page 3354, in the Official Records of Miami-Dade County, Florida, a copy of which is enclosed herewith (the "Agreement"). The Agreement did not involve a local historic landmark or a contributing property within a local historic district, thus no sending site review is required, as confirmed by City Staff. Rather, the Agreement involved certain real property which the City rezoned to a less intensive use. Pursuant to the Agreement, the owner of the property agreed not to oppose or challenge the rezoning in exchange for 50,000 square feet of TDRs which may be transferred to and utilized in any Commercial zoned areas of the City which do not abut and are not adjacent to either (i) South Dixie Highway or (ii) properties zoned SFR (Single Family Residential). Pursuant to the Agreement, the filing of the TDR application is subject to approval by the City Commission.

In accordance with paragraph 4 of the Agreement, since the Receiving Site is not located within the Central Business District or the North Ponce Mixed Use Corridor, the TDR application is subject to the discretion of the City Commission. In particular, "the filing of the TDR application being subject to the absolute discretion of the City Commission", and "[u]pon approval of the filing of the TDR application", the application shall proceed pursuant to Division 10 of Article 3 of the Coral Gables Zoning Code.

MIAMI 6471899 7 84033/87487

Accordingly, we respectfully request that this item be scheduled on the August 27, 2019, City Commission agenda so that the TDR application may be approved to proceed. While, we do not want to prematurely evaluate the future application before it is even submitted, the following are some parameters envisioned for the project on the receiving site:

- Only 40,000 SF of the 50,000 SF of TDRs available pursuant to the Agreement are requested to be transferred
- According to the Agreement the TDRs can be converted from intensity to density at a rate of 1,000 SF of TDRs per unit. Negotiations are ongoing which may increase the building site, and thus while TDRs are all ultimately expected to be transferred for purposes of intensity (aka floor area), if there is a remainder of TDRs they will be converted to density (aka units) at a rate of 1,000 SF of TDRs per unit. This detail will be provided in the actual application and site plan.
- The project will be developed under MXD designation with residential, office and retail uses.
- Total number of residential units will be between 120 to 150 units.
- Design will be consistent with City code requirements for full Mediterranean bonus.
- The project will contain a midblock paseo through the building connecting Catalonia Ave. and Malaga Ave.
- The project will contain midblock vehicular drive through the building connecting Catalonia Ave. and Malaga Ave. for shared ride drop-off/pick-up within the property to avoid any traffic congestion associated with modern shared ride services prevalent in Downtown Coral Gables.
- The project will be pedestrian oriented with significant arcade and outdoor public space to create true sense of place. Further, the project will be designed to maximize place making between building arcades, open spaces and public transit corridor of Ponce de Leon Boulevard which connects to City of Coral Gables trolley bringing passengers between Miracle Mile and Metrorail Douglas Station.

Should you have any questions or require additional information, please do not hesitate to contact me at 305-350-2404. Thank you for your attention to this matter

Sincerely,


Anthony De Yurre

ADY

This instrument was prepared by and
after recording return to:

(Space reserved for Clerk of Court)

Mario Garcia-Serra, Esq.
600 Brickell Avenue, Suite 3500
Miami, Florida 33131

DISPUTE RESOLUTION AGREEMENT

This Dispute Resolution Agreement (hereinafter, the "Agreement"), is made and entered into by and among MUNDOMED S.A., a Dominican Republic corporation, and SOUTH HIGH CLIFF CORP., a Panama corporation (collectively, hereinafter the "Owners") and the CITY OF CORAL GABLES, a Florida municipality (hereinafter the "City" (collectively, the "Parties").

WITNESSETH:

WHEREAS, the Owners own certain real property identified by Miami-Dade County Property Tax Folio Identification Nos. 03-5107-001-0040 and 03-5107-001-0030, legally described as:

Lot 3 of Avocado Land Co. according to the plat thereof recorded at Plat Book 2, Page 44, in the Public Records of Miami-Dade County, Florida (hereinafter the "Property");
and

WHEREAS, the Property is currently zoned as Single-Family Residential District pursuant to the City of Coral Gables Zoning Map; and

WHEREAS, the City intends to change the Property's zoning district to Preservation District; and

WHEREAS, Article 3, Division 17 of the City of Coral Gables Zoning Code ("Division 17") entitled, "Protection of Landowners' Rights; Relief from Inordinate Burdens," is intended to protect landowners' rights and provide relief from inordinate burdens; and

WHEREAS, pursuant to Section 3-1702(B) of the City of Coral Gables Zoning Code, City Staff may initiate this procedure and file an application at any time in order to settle a pending dispute or litigation; and

WHEREAS, pursuant to Section 3-1701 of the City of Coral Gables Zoning Code, the City may agree to a settlement to mitigate the burden where a party to a settlement agrees in the settlement to bear a disproportionate burden of a government use that benefits the public; and

WHEREAS, pursuant to Section 3-1703(A) of the City of Coral Gables Zoning Code, if the City demonstrates that a settlement would avoid, mitigate, or remedy an unfair, disproportionate, or inordinate burden to a property owner, the City Commission may grant appropriate relief; and

WHEREAS, pursuant to Section 3-1703(B) of the city of Coral Gables Zoning Code, the decision to grant such relief rests in the sound discretion of the City Commission in the exercise of its inherent sovereign powers to settle legitimate disputes; and

WHEREAS, pursuant to Section 3-1703(B) of the City of Coral Gables Zoning Code, the City's policy is to fashion a proposal for resolving a dispute based on a considered balance of the following factors: (1) the degree of burden suffered by the applicant or property owners; (2) the nature and significance of the public interest that is served by the application of the regulation to the property; and (3) the likelihood of litigation, and its likely cost, the City's potential exposure, the uncertainty of the outcome, the timetable for resolving disputes, and whether there is a perceived need for a judicial determination of the issues raised by the application; and

WHEREAS, pursuant to Section 3-1703(B) of the City of Coral Gables Zoning Code, all relief granted pursuant to Division 17 is conditioned upon the execution of a release of all claims that may arise from or relate to the application of the land development regulations that allegedly created the unfair, disproportionate or inordinate burden; and

WHEREAS, the Bert J. Harris, Jr. Private Property Protection Act (the "Bert J. Harris Act") as codified in Section 70.001 of the Florida Statutes defines the term "inordinately burden" to include the use of real property such that the property owner is unable to obtain reasonable, investment-backed expectations for the use of the subject property; and

WHEREAS, Owners allege that the City's rezoning of the Property from Single-Family Residential District to Preservation District would disproportionately and inordinately burden the Owners' property rights in violation of Division 17 of the City of Coral Gables Zoning Code and the Bert J. Harris Act as codified in Section 70.001 of the Florida Statutes; and

WHEREAS, Owners have agreed, as part of the settlement, to not oppose or challenge the rezoning of the Property to the Special Use or Preservation District designation and to convey the Property to the City for use as open space and preservation area, which is of substantial public benefit, and which results in a limitation to development on the property, which is also resolved as part of this settlement; and

WHEREAS, the City Commission finds sufficient evidence in the record to justify a settlement pursuant to Division 17 of the City of Coral Gables Zoning Code and the Bert J. Harris Act as codified in Section 70.001 of the Florida Statutes; and

WHEREAS, pursuant to Division 17 of the City of Coral Gables Zoning Code and the Bert J. Harris Act as codified in Section 70.001 of the Florida Statutes, the Parties wish to enter into a dispute resolution agreement; and

WHEREAS, on March 28, 2017, the City Commission reviewed and approved this Agreement in this substantial form, after public hearing, pursuant to Section 3-1705 of the City of Coral Gables Zoning Code; and

WHEREAS, the Parties have reached an agreement as to their dispute and they desire to fully and finally resolve any and all claims against each other and their respective agents, employees, officers, elected and appointed officials, independent contractors, and representatives concerning, relating to, or in any way arising out of their dispute, and entered into this Agreement to completely settle and dispose of all claims or disputes of whatever kind or nature, including, but not limited to, the Bert J. Harris Act claim, any takings or property rights claim, any petitions for certiorari, or any other matter regarding the subject matter of this Agreement whether actually asserted by Owners, or as may have been asserted, whether known or unknown, against the City; and

WHEREAS, this Agreement between the Parties shall fully resolve all of Owners' claims pursuant to Division 17 of the City of Coral Gables Zoning Code and the Bert J. Harris Act as codified in Section 70.001 of the Florida Statutes, which were, or could have been noticed, plead, or initiated, and any other matters described and/or defined herein.

NOW, THEREFORE, in consideration of the mutual promises contained herein, it is agreed between the Parties as follows:

1. The foregoing recitals are true and correct and incorporated herein as if fully set forth.
2. The Parties and all signatories hereto represent and warrant that they have full authorization and legal authority to establish the legally binding rights, obligations, and duties as expressed herein or contemplated hereby.
3. Owners hereby agree not to oppose or challenge the rezoning of the Property from Single Family Residential to Preservation District or Special Use or the redesignation of the Property on the Comprehensive Plan Land Use Map from Residential Single-Family Low Density to Parks and Recreation, Open Space, or Conservation Areas.
4. The City hereby agrees, pursuant to Section 3-1703(A)(2) of the Zoning Code, that Owners are entitled to 50,000 square feet of transferable development rights ("TDRs"), which may be transferred to and utilized in either the Central Business District or the North Ponce Mixed Use Corridor pursuant to and subject to the TDR process and approval criteria provided for in Division 10 of Article 3 of the Zoning Code. The TDRs may also be utilized in other Commercial and Industrial Zoned areas of the City, which do not abut and are not adjacent to either (i) South Dixie Highway or (ii) properties zoned SFR (Single Family Residential), with the filing of the TDR application being subject to the absolute discretion of the City Commission. Upon the approval of the filing of such TDR application, the City Commission shall utilize utilizing the process and criteria set forth in Division 10 of Article 3 of the Zoning Code. Alternatively and subject to the TDR process and approval criteria provided for in Division 10 of Article 3 of the Zoning Code, the TDRs may be used to

transfer density units at a ratio of 1,000 square feet being equivalent to 1 density unit. Any floor area utilized to transfer density units shall be deducted from the 50,000 square feet of TDRs.

5. Owners shall convey the Property to the City of Coral Gables within 90 days of the approval of this Agreement. Said timeframe may be extended administratively by the City Manager at his/her discretion.
6. The Parties understand and agree that no Party admits liability of any sort by reason of the above incidents, acts, casualties, actions, events, representations, omissions, conduct, or interpretation.
7. As required by Section 3-1703(E) of the Coral Gables Zoning Code, Owners hereby release the City of Coral Gables, including its agents, employees, officers, elected and appointed officials, independent contractors, and representatives for any claims concerning, relating to, or in any way arising out of their dispute, including, but not limited to, the Bert J. Harris Act claim, any takings or property rights claim, any petition for certiorari, or any matter regarding the subject matter of this Agreement, whether actually asserted by Owners, or as may have been asserted, and whether known or unknown.
8. The Parties warrant and represent that they have not sold, assigned, transferred, conveyed, or otherwise disposed of any of the claims, demand, obligations, or causes of action referred to in this Agreement. Further, the Parties recognize that this matter is solely unique to the circumstances arising from any potential claims pursuant to the Bert J. Harris Act and/or Division 17 of the City of Coral Gables Zoning Code, and Owners may not assign, transfer, convey, or otherwise dispose of their obligations under this Agreement.
9. The Parties declare and represent that they were not induced to enter into this Agreement by any representations respecting the nature and extent of any damages, legal liability, or financial responsibility made by any Party or their representatives.
10. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
11. The Parties acknowledge that this Agreement constitutes the entire Agreement entered into by the Parties. The Parties further acknowledge that they have read it and understand it; that the terms and conditions of this Agreement were arrived at in arm's-length negotiations between the Parties with all Parties provided the opportunity to seek the advice of legal counsel; that each Party's legal counsel did or could have reviewed this Agreement; and that each of the Parties have given due and full consideration to the legal position of the other in regard to the provisions contained herein.

12. This Agreement sets forth the entire Agreement and understanding among the Parties relating in any way to the subject matter contained herein and merges all prior discussions between Owners and the City. This Agreement may be amended or modified by written instrument signed by both Parties.
13. As established in Section 3-1706 of the Coral Gables Zoning Code, this Agreement shall not become effective until the Agreement is executed by the City Manager, ratified by the City Commission, and executed by an authorized representative of the Owners.
14. Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given if delivered by hand, sent by a recognized courier (such as FedEx) or mailed by certified or registered mail, return receipt requested, in a postage prepaid envelope and addressed as follows:

If to the City: City Mayor
 Office of the Mayor
 405 Biltmore Way, Second Floor
 Coral Gables, Florida 33134

With Copies to: City Manager
 405 Biltmore Way, First Floor
 Coral Gables, Florida 33134

If to the Owners: Mundomed S.A. c/o Espino Law
 Monica Espino, Esq.
 2250 SW 3rd Avenue, 4th Floor
 Miami, Florida 33129

 South High Cliff Corp.
 Susana Restrepo
 799 Crandon Boulevard, Apt. 1204
 Key Biscayne, Florida 33149

With Copies to: Mario Garcia-Serra, Esq.
 Gunster, Yoakley & Stewart
 600 Brickell Avenue, Suite 3500
 Miami, Florida 33131

15. This Agreement shall be construed, enforced, and interpreted in accordance with the laws of the State of Florida. In the event that an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if crafted jointly by each of the Parties hereto and no presumptions or burdens of proof shall arise favoring any party by virtue of the authorship of any of the provisions of the Agreement. The Parties jointly conclude that, should this Agreement be challenged by any of the

Parties, venue to bring such challenges shall be proper in Miami-Dade County, Florida.

16. The Parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the Parties intend to directly or substantially benefit a third party by this Agreement. The Parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the Parties based upon this Agreement. Nothing herein shall be construed as consent by either of the Parties to be sued by third parties in any manner arising out of this Agreement, or other obligations, whether known or unknown to the Parties.
17. For breach of any provision of this Agreement, the Parties shall provide notice, a reasonable time to cure, and will have such remedies and rights as are available at law or in equity.
18. The waiver by any Party of a breach of any provision of this Agreement by any other Party shall not operate or be interpreted as a waiver of any later breach of that provision or any other provision.
19. The Parties agree that if any provision of this Agreement is held to be invalid, illegal or unenforceable, either legislatively or judicially, that provision will be severed from the Agreement and the remainder of this Agreement shall not be effected thereby and will continue to be valid and enforceable to the fullest extent permitted by law, unless such determination of invalidity shall deprive any party of the substantial benefit of this bargain.
20. The term Owners shall include the Owners, their heirs, successors, and assigns.

WHEREFORE, on the effective date as established in paragraph 13 and Section 3-1706 of the Zoning Code, the Parties and signatories hereto acknowledge this Agreement and represent and warrant their authority to enter into this Agreement and do so jointly and severally for all purposes specified.

[Signature pages to follow]

The City's execution of this Dispute Resolution Agreement is subject to Ratification by the City Commission pursuant to Section 3-1705(D) of the City of Coral Gables Zoning Code.

CITY

ATTEST:

By: [Signature]

Walter Foeman
City Clerk

CITY OF CORAL GABLES

By: [Signature]

Cathy Swanson-Rivenbark
City Manager

Dated 2 day of MAY, 2017

Approved for form and legal sufficiency:

By: [Signature]

Craig Leen
City Attorney



OWNERS

MUNDOMED S.A.

WITNESS:

MundoMed S.A.

Signature

Demetrio Calois

Print Name

[Signature]

Signature

Luz Maria Mercedes

Print Name

026-0006911-2

By: [Signature]

Name: JAIMER BERNHARD M.

Title: GERENTE

Dated 27 day of MARCH, 2017

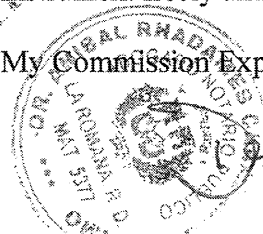
STATE OF FLORIDA

COUNTY OF MIAMI-DADE

yo, Dr. Arubal R. Caraballo Guillermo
Cedula # 026-0021783-6
5377, Lechifuco y day fe'. Questa es la
forma del Señor: Jaime Bernhardt Mercedes
Veintisiete (27) del mes de marzo del 2017.
La Romana, Rep. Dom.

The foregoing instrument was acknowledged before me this ___ day of _____, 2017, by _____, as _____, who is personally known to me or produced _____ as identification, and acknowledged that she did execute this instrument freely and voluntarily for the purposes stated herein.

My Commission Expires:



Notary Public, State of Florida

Print Name: _____

[Signature]
Arubal Rhadamis Caraballo Guillermo
Abogado Notario Publico

SOUTH HIGH CLIFF CORP.

WITNESS:

[Signature]
Signature

MILIO POZO
Print Name

[Signature]
Signature

JOSE MIGUEL POZO
Print Name

South High Cliff Corp.

By: [Signature]
Name: Maria Jose Restrepo
Title: Secretary
Dated 26 day of March 2017

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 4th day of April, 2017, by Maria Jose Restrepo as Secretary, who is personally known to me or produced _____ as identification, and acknowledged that she did execute this instrument freely and voluntarily for the purposes stated herein.

My Commission Expires:

[Signature]
Notary Public, State of Florida
Print Name: Ada Valdes

