

CITY OF CORAL GABLES, FLORIDA

RESOLUTION NO. 2019-299

A RESOLUTION OF THE CITY COMMISSION APPROVING THE FILING OF AN APPLICATION BY ALTA DEVELOPERS, 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 250 BIRD ROAD, CORAL GABLES, FLORIDA 33146.

WHEREAS, Alta Developers, LLC (the “Applicant”) has submitted a request (the “Application 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 250 Bird Road, Coral Gables, Florida 33146, and legally described as follows:

Lots 1 through 10, inclusive, the north 17.5 feet of Lot 11, Lots 33 through 42, inclusive, and north 17.5 feet of Lot 32, Block 3, Revised Plat of Coral Gables Industrial Section, according to the Plat thereof as recorded in Plat Book 28 at Page 22, of the Public Records of Miami-Dade County, Florida (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 (i) 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, according to the Application Request, the Applicant intends to apply to receive 7,000 square feet of TDRs available pursuant to the Agreement; and

WHEREAS, according to the Application Request, the Receiving Site is within the City’s Mixed-Use Overlay District and is zoned Industrial in part and Commercial in part. However, 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, according to the Application Request, the Receiving Site will be developed with residential, office, and retail uses; and

WHEREAS, according to the Application Request, utilization of the TDRs will permit an increase in the F.A.R. from 3.5, as permitted in the underlying zoning district, to 3.58—a 2.3% increase in F.A.R., which is within the 25% increase in F.A.R. permitted when TDRs are utilized; and

WHEREAS, according to the Application Request, the project will incorporate Mediterranean design elements and provide landscaped and public open space in excess of the standard Code requirements; 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 that 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 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 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 in 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 5. That this Resolution shall become effective immediately upon the date of its passage and adoption herein.

PASSED AND ADOPTED THIS EIGHTH DAY OF OCTOBER, A.D., 2019.
(Moved: Lago / Seconded: Mena)
(Yeas: Keon, Lago, Mena, Valdes-Fauli)
(Absent: Fors, Jr.)
(Majority: 4-0)
(Agenda Item: F-12)


ATTEST:


BILLY Y. URQUIA
CITY CLERK

APPROVED:


RAUL VALDES-FAULI
MAYOR

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:


MIRIAM SOLER RAMOS
CITY ATTORNEY

September 11, 2019

VIA HAND DELIVERY

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

Re: 250 Bird Road / Request to Proceed with Application for Transfer of Development Rights

Dear Ms. Ramos:

On behalf of Alta Developers, LLC (the "Applicant"), we respectfully submit this letter of intent in connection with our request for City Commission approval for the filing of an application to request the Transfer of Development Rights described herein to the property located at 250 Bird Road and legally described as follows:

Lots 1 through 10, inclusive, the North 17.5 feet of Lot 11, Lots 33 through 42, inclusive, and the North 17.5 feet of Lot 32, Block 3, Revised Plat of Coral Gables Industrial Section, according to the Plat thereof as recorded in Plat Book 28 at Page 22, of the Public Records of Miami-Dade County, Florida.

(the "Receiving Site").

The Transferrable Development Rights (TDRs) that the Applicant is seeking to utilize were created as the result of that certain Dispute Resolution Agreement between Mudomed, S.A., South High Cliff Corp., and the City of Coral Gables, dated May 2, 2017, recorded in Records Book 30586, at Page 3354, in the Official Records of Miami-Dade County, Florida, a copy of which is attached as Exhibit A (the "Agreement"). The Agreement did not involve a local historic landmark or a contributing property within a local historic district; accordingly, a sending site review is inappropriate. Rather, the Agreement involved certain real property which the City rezoned to a less intensive use and 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 by any 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).

Pursuant to the Agreement, the filing of such a TDR application is subject to approval by the City Commission. Specifically, paragraph 4 of the Agreement provides that since the

September 11, 2019

Page 2

Receiving Site is not located within the Central Business District or the North Ponce Mixed Use Corridor, the filing of the TDR application is subject to the discretion of the City Commission. Accordingly, we respectfully ask that this request be scheduled on the next available City Commission agenda so that my client may proceed with the filing of the TDR application. While the City Commission will eventually approve the use of the TDRs after an in depth and more fully developed plan for their use is presented at a later stage (along with other related requested zoning approvals), the following are some project parameters which are known and can be taken into consideration:

- Only 7,000 square feet of the 50,000 square feet of TDRs available pursuant to the Agreement are intended to be transferred to the Receiving Site.
- The Receiving Site is within the City's Mixed Use Overlay District and is zoned Industrial in part and Commercial in part.
- The Receiving Site will be developed with residential, office, and retail uses, providing a desirable mix of uses.
- Utilization of the TDRs will permit an increase in the F.A.R. from 3.5, as permitted in the underlying zoning district, to 3.58—a mere 2.3% increase in F.A.R., and well within the 25% increase in F.A.R. typically permitted when TDRs are utilized.
- The project will incorporate Mediterranean design elements and provide landscaped and public open space, in excess of the standard Code requirements.

If you have any questions, please do not hesitate to contact me at (305) 376-6061. Thank you for your attention to this matter.

Sincerely,



Mario Garcia-Serra

This instrument was prepared by and
after recording return to:

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:

Walter Foeman
City Clerk

CITY OF CORAL GABLES

By:

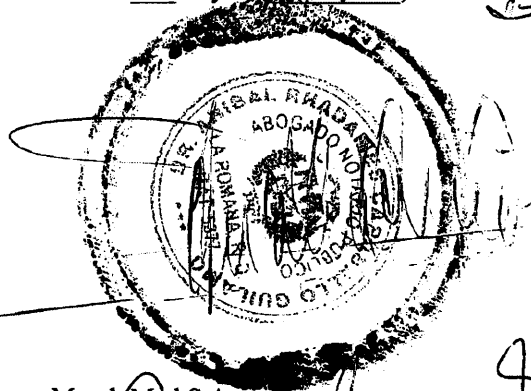
Cathy Swanson-Rivenbark
City Manager

Dated 2 day of MAY, 2017

Approved for form and legal sufficiency:

By:

Craig Leen
City Attorney



OWNERS

MUNDOMED S.A.

WITNESS:

MundoMed S.A.

Demetrio Lalois #43754065
Signature
Demetrio Lalois
Print Name

By: Jaime Bedunier M.
Name: JAIMÉ BEDUNIER M.
Title: GERENTE

Dated 27 day of MARCH, 2017

Maria Mercedes
Signature
LUZ MARIA MERCEDES
Print Name

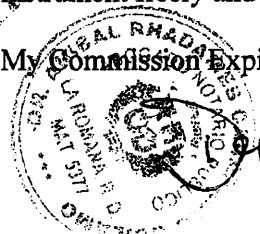
yo, Dr. Arubal R. Coraballo Guillermo
Cedula # 026-0021783-6
5377, Sorlehuco y dayle. Queasa es la
futura del Señor: Jaime Bedunier Mardosa
Veintisiete (27) de marzo del 2017.
La Romana, Rep. Dom.

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

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:

Dr. Arubal Rhadameis Coraballo Guillermo
Abogado Notario Publico

SOUTH HIGH CLIFF CORP.

WITNESS:

South High Cliff Corp.

[Signature]
Signature
F. M. Pazo
Print Name

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

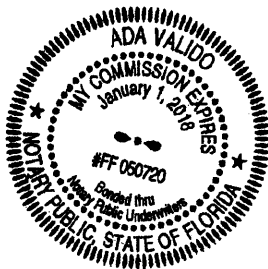
[Signature]
Signature
JOSE MIGUEL PAZ
Print Name

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 26 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



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: [Signature]

By: Walter Foeman
City Clerk

CITY OF CORAL GABLES

By: [Signature]

Cathy Swanson-Rivenbark
City Manager

Dated 2 day of MAY, 2017

5/2/17

Approved for form and legal sufficiency:

By: [Signature]
Craig Leen
City Attorney



OWNERS

MUNDOMED S.A.

WITNESS:

MundoMed S.A.

Demetrio Lalais #13754065

Signature

Demetrio Lalais

Print Name

San Maria Mercedes 026006911-2

Signature

LUZ MARIA MERCEDES

Print Name

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

By: [Signature]
Name: JAI ME BERNARD M.

Title: GERENTE

Dated 27 day of MARCH, 2017

yo, Dr. Arubal R. Caraballo Guillermo
Cedula # 026-0021783-6, matricula
5377, Certificado y day fe. Que esa es la
forma del Señor: Jaime Bernarde Mendosa
Veintisiete (27) de marzo del 2017.
La Reunión Rep. Deon

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: _____

Arubal R. Caraballo Guillermo
Abogado Notario Publico

SOUTH HIGH CLIFF CORP.

WITNESS:

South High Cliff Corp.

Adalberto
Signature
EMILIO POZO
Print Name

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

[Signature]
Signature
JOSE MIGUEL PAZ
Print Name

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 26 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

