

March 11, 2002

Business Operations
Joe Arriola, Chief Business Officer

SUBJECT: AUTHORIZATION TO PURSUE THE MODIFICATION OF A PREVIOUSLY ACCEPTED DECLARATION OF RESTRICTIONS TO ALLOW MILON CORPORATION, N.V. TO RELOCATE A PROPOSED 6-ACRE SCHOOL SITE DONATION AND ADJACENT 9-ACRE OPTION SITE WITHIN THE PROPOSED MILON VENTURE DEVELOPMENT, TO ALLOW FOR AN EXTENSION OF TIME FOR CONVEYANCE OF SAID SITES AND TO EXPLORE THE FEASIBILITY OF THE PURCHASE OF THE 9-ACRE OPTION SITE

Background

As part of an application to amend the Miami-Dade County Comprehensive Development Master Plan (Amendment 6, 1999 Cycle) and subsequent zoning change requests (Public Hearing No. 00-238), Milon Corporation, N.V. proffered a Declaration of Restrictions (Declaration) in February, 2000, in favor of The School Board of Miami-Dade County, Florida, (Board). This Declaration (Attachment A), required donation of a site consisting of a 6-acre (gross) parcel with the Board having the option to purchase an additional adjacent 9-acre (gross) parcel at fair market value, pursuant to a District commissioned appraisal. At that time, the subject parcels were located at the southwest corner of S.W. 157 Avenue and S.W. 144 Street.

After various appeals the proposed project was remanded back to Community Zoning Appeals Board No. 11 (CZAB11) with the understanding that the development site plan would be revised to address the concerns of the residents of the surrounding area. One such concern was the location of the proposed school. The residents of the surrounding community requested that the developer relocate the proposed site to the northwest corner of SW 157 Avenue and SW 144 Street (see location map). District staff reviewed and preliminarily determined that the new alternate sites would be acceptable as to location, subject to further due diligence. It should be noted that at the CZAB11 hearing on October 10, 2001, the development proposal was approved.

Additional Information

Based on this action, and certain time frames set forth in the existing Declaration, the current developer and contract purchaser (Pentathlon Group, LLC) have requested that the timeline for conveyance of the properties to the Board be extended from December 15, 2001 to October 31, 2002. This would allow sufficient time for the Pentathlon Group, LLC to finalize the purchase of the property and convey the school parcels directly to the Board.

The developer and contract purchaser have also agreed to modify the Declaration with terms more favorable to the Board. The modifications would require the dedication of the right-of-way and necessary easements adjacent to the school parcels prior to conveyance, construction of S.W. 157 Avenue and S.W. 144 Street adjacent to said properties and the provision of utilities to the property line.

Below is a summary of due diligence results received to date on the subject sites:

- 1) The Miami-Dade County Planning and Zoning Department has indicated that the sites are consistent with the Comprehensive Development Master Plan and acceptable for use as a middle school (Attachment B).
- 2) The Miami-Dade County Aviation Department has indicated the sites are compatible with airport operations as they are located outside the No-School Zone (Attachments C and D). However, the sites are located within the outer land use zone and as such school construction would require measures to reduce noise levels by 25db.

Before a final determination can be made by District staff on the sites viability for a middle school the following additional due diligence will be required:

- 1) Determination of historic or cultural resources;
- 2) Jurisdictional wetland statements from the U.S. Army Corps of Engineers, South Florida Water Management District and Miami-Dade County Department of Environmental Resources Management;
- 3) A Phase I and limited Phase II Environmental Audit; and
- 4) District-commissioned appraisals.

A review of projected student population growth in MSA 6.2, in which this property is located, shows a continued need for additional middle school students through 2015.

The modified Declaration of Restrictions, will be reviewed by the School Board Attorney's Office and the Office of Risk and Benefits Management. The Bureau of Facilities Planning and Construction recommends approval of this item. The Department of Safety, Environment and Hazards Management is in agreement with the proposal.

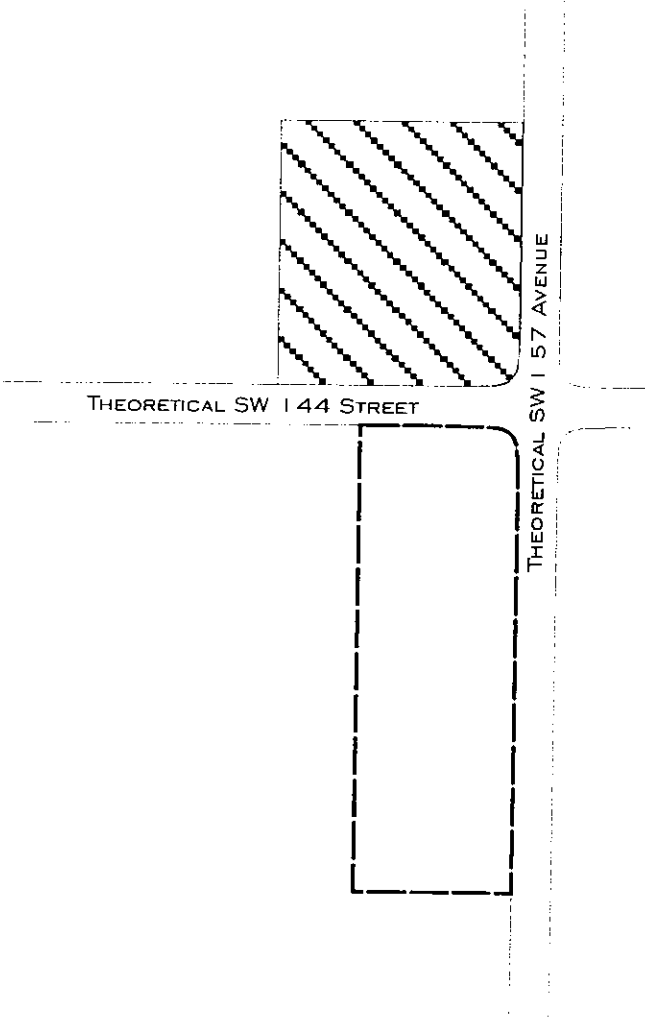
The officer of Milon Corporation, N.V. is Marcela Schneider. The Managers of the Pentathlon Group, LLC are Michael Latterner and Carlos Emilio Martinez.

A copy of the proposed Declaration will be placed on file in the Citizen Information Center and the Recording Secretary's Office.



- RECOMMENDED:** That The School Board of Miami-Dade County, Florida authorize staff to:
- 1) pursue the modification of a previously accepted Declaration of Restrictions to allow Milon Corporation, N.V. to relocate a proposed 6-acre site donation and adjacent 9-acre option site within the proposed Milon Venture Development;
 - 2) to allow for an extension of time for conveyance of said sites; and
 - 3) explore the feasibility of the purchase of the 9-acre option site.

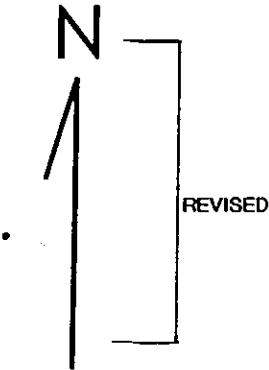
AAD:lh

LOCATION MAP



LEGEND

	OLD PROPOSED SCHOOL SITE
	NEW PROPOSED SCHOOL SITE



This instrument was prepared by:
Name: Michael W. Larkin, Esq.
Address: Bercow & Radell, P.A.
200 S. Biscayne Boulevard, Suite 850
Miami, FL 33131

(Space reserved for Clerk)

DECLARATION OF RESTRICTIONS

The undersigned is the owner ("Owner") of the following described real property (the "Property"), lying, being and situated in Miami-Dade County, Florida, and legally described as:

SEE EXHIBIT A

WHEREAS, an application has been filed to amend the Comprehensive Development Master Plan (CDMP) of Miami-Dade County with the Miami-Dade County Department of Planning and Zoning referred to as CDMP Amendment No. 6 (April 1999 Cycle) (the "Application") seeking to redesignate the land use of Parcels A and B of the Property from "Agriculture" to "Industrial and Office" and Parcels C, D, and E of the Property from "Agriculture" to "Low-Density Residential";

IN ORDER TO ASSURE the Miami-Dade County School Board (the "School Board"), that the representations made by the Owner during consideration of CDMP Amendment No. 6 (April 1999 Cycle) will be abided by the Owner, its successors or assigns freely, voluntarily and without duress, the Owner makes the following Declaration of Restrictions covering and running with the Property:

- (1) This Declaration shall become final and shall be recorded in the Public Records of Miami-Dade County and is conditioned upon the adoption of CDMP Amendment No. 6 (April 1999 Cycle) by the Board of County Commissioners of Miami-Dade County, Florida and expiration of all applicable appeal periods without any appeal being filed. If the adoption is appealed by any third party, or if the Florida Department of Community Affairs issues a Notice of Intent to find the amendment not in compliance with state law, Owner's obligation to record this covenant shall be deferred until: (i) all judicial and administrative proceedings have been concluded; and (ii) such proceedings have resulted in the final approval of Amendment No. 6. If Amendment No. 6 is not approved, this Declaration shall be null and void.
- (2) In order to address the impact of the development of the Property on the Miami-Dade County Public Schools, the Owner shall convey to the School Board title to that certain fifteen gross acres of land located within the Property which is more particularly described in Exhibit B ("School Property") to this Declaration. The School Board acknowledges that the necessary right-of-way for the streets and necessary utility easements associated with the School Property is included within the fifteen gross acres of land and that the School Board will dedicate the right-of-way at

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the appropriate time. Owner shall donate six gross acres (the "Donated Parcel") and the School Board shall have an option to purchase nine gross acres (the "Sale Parcel") of the School Property to the School Board subject to the adjustments set forth in Paragraph (7). When establishing the fair market value of the Sale Parcel, the Sale Parcel shall be appraised based upon the average of two School Board-commissioned appraisals to be completed immediately prior to the conveyance of the Sale Parcel to the School Board. The valuation methodology utilized in the School Board-commissioned appraisals will be based upon the highest and best use of the Sale Parcel, in its "as is" condition, immediately prior to the conveyance of the School Property to the School Board.

- (3) Owner will be responsible for the stormwater management and any wetlands mitigation for the School Property, including the payment of any wetlands mitigation fees associated with the development of the School Property. The stormwater management and wetlands mitigation shall be performed within the balance of the Property, excluding the School Property, at sole cost to the Owner.
- (4) Owner shall convey title to the School Property, free and clear of all encumbrances, if any, except those that are acceptable to the School Board within thirty (30) days after the date of approval of a final plat for the Property, or any portion thereof, or by December 15, 2001, whichever date occurs earlier, unless extended by the School Board. If prior to December 15, 2001, the School Board, at a School Board public hearing, elects not to purchase the Sale Parcel, the Owner is still obligated to convey title to the Donated Parcel to the School Board by the earlier of thirty (30) days after approval of a final plat for any portion of the Property or December 15, 2001. If by December 15, 2001, the School Board, at a School Board public hearing, has not had an opportunity to consider the purchase of the Sale Parcel, the School Board shall have an additional 90 days to consider the purchase of the Sale Parcel.

If the School Board elects to purchase the Sale Parcel, Owner shall have thirty days from the date of said hearing to convey title to the Sale Parcel to the School Board unless extended by the School Board. No building permits shall be issued for structures on the Property, other than model residential units and sales facilities, until the Owner has conveyed title to the School Property to the School Board. If the School Board elects not to purchase the Sale Parcel, building permits may be issued by Miami-Dade County for structures on the Property after Owner has conveyed title to the Donated Parcel to the School Board.

Notwithstanding the foregoing, Owner shall not be required to convey title until all zoning approvals in connection with the development of the Property are obtained for Parcels C, D and E, including the expiration of all applicable appeal periods. Owner shall include the entirety of Parcels

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C, D and E in the site plan that is presented for zoning purposes. No building permits shall be issued until after the zoning of Parcels C, D and E has been approved. Anything to the contrary notwithstanding, if owner is unable to secure approval of its zoning application as described herein, all conditions of this Declaration shall be binding and shall remain in full force and effect without change on all future zoning applications for the subject property. Prior to the transfer of the School Property, Owner must provide to the School Board an updated survey and opinion of title of the School Property. Said survey will be provided to the School Board prior to tentative plat approval and will show all easements, if any, encumbering the School Property. As a condition precedent to the transfer of title to the School Property, Owner must conduct a Phase One Environmental Audit of the School Property to ensure that the School Property is free from environmental contamination. The transfer to the School Board of the School Property is at sole cost to Owner.

- (5) If, at a School Board public hearing, the School Board determines not to purchase the Sale Parcel under the requirements as set forth in Paragraph (2), the Sale Parcel will remain a part of the Property as described in Exhibit A and Owner will be relieved of any and all obligations set forth in this Declaration related to that portion of the School Property. School Board acknowledges that it will not seek any additional mitigation from Owner beyond the payment of the educational facilities impact fee by Owner for the residential development of the Sale Parcel.
- (6) Owner acknowledges and agrees that the donation and conveyance of the School Property to the School Board shall not entitle the Owner or its successors and assigns to a credit against the amount of educational facilities impact fee that will be assessed against the future development of the Property under Chapter 33K of the Miami-Dade County Code.
- (7) The sale and donation of the School Property to the School Board by the Owner as set forth in Paragraph (2) above is predicated upon the zoning approval of five hundred single family detached residential units for the Property by the Board of County Commissioners and/or Community Zoning Appeals Board of Miami-Dade County, Florida. Based upon established student population generation formulae utilized by the School Board and presently in effect, the aforescribed five hundred residential units are anticipated to generate a student population of 250 students. To the extent that the Board of County Commissioners and/or Community Zoning Appeals Board of Miami-Dade County, Florida, approves either (a) a different number of residential units or (b) a different mix of residential unit types than the five hundred single family detached residential units, the amount of acreage to be donated or sold to the School Board shall be adjusted based upon the type of residential units approved and the accompanying student population generated by said units as

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Declaration of Restrictions

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calculated by the School Board using the established formulae presently in effect for student population generation utilized by the School Board

- (8) **Covenant Running with the Land.** This Declaration on the part of the Owner shall constitute a covenant running with the land and shall be recorded in the public records of Miami-Dade County, Florida and shall remain in full force and effect and be binding upon the Owner, and its heirs, successors and assigns after it is recorded and until such time as it is modified or released. These restrictions during their lifetime shall be for the benefit of, and limitation upon, all present and future owners of the real property and for the public welfare.
- (9) **Term.** This Declaration is to run with the land and shall be binding on all parties and all persons claiming under it for a period of thirty (30) years from the date this Declaration is recorded after which time it shall be extended automatically for successive periods of ten (10) years each. However, upon completion of the conveyance of the School Property, the School Board Superintendent, or designee shall release this Declaration. If the School Board elects not to purchase the Sale Parcel as described in Paragraph (5), the School Board Superintendent, or designee shall release this Declaration after the conveyance of title to the School Board of the Donated Parcel.
- (10) **Modification or Amendment.** No modification or amendment that affects the School Board in any manner or fashion shall be permitted without prior approval by the School Board following a public hearing by the School Board.
- (11) **Enforcement.** Enforcement by Owner or School Board shall be by action authorized by law, initiated by the Owner or School Board against any parties or person violating, or attempting to violate, any covenants. If the School Board is the prevailing party in any action or suit, pertaining to or arising out of this Declaration, the School Board shall be entitled to recover, in addition to costs and disbursements allowed by law, such sum as the Court may adjudge to be reasonable for attorney's fees. If the School Board is not the prevailing party, each party will be responsible for its own attorney's fees and costs. This enforcement provision shall be in addition to any other remedies available at law or in equity or both. Nothing contained herein shall prevent the School Board from objecting to the issuance of any plats sought in violation of this Declaration by the Owners, its successors and assigns.
- (12) **School Board Inspection.** As further part of this Declaration, it is hereby understood and agreed that any official inspector of Miami-Dade County School Board, or its agents duly authorized, may have the privilege at any time during normal working hours of entering and inspecting the use of the

Declaration of Restrictions

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premises to determine whether or not the conditions herein agreed to are being complied with.

- (13) **Authorization for Miami-Dade County to Withhold Permits and Inspections.** In the event the terms of this Declaration are not being complied with, in addition to any other remedies available, the County is hereby authorized to withhold any further permits, and refuse to make any inspections or grant any approvals, until such time as this declaration is complied with.
- (14) **Election of Remedies.** All rights, remedies and privileges granted herein shall be deemed to be cumulative and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other additional rights, remedies or privileges.
- (15) **Presumption of Compliance.** Where construction has occurred on the Property or any portion thereof, pursuant to a lawful permit issued by the County, and inspections made and approval of occupancy given by the County, then such construction, inspection and approval shall create a rebuttable presumption that the buildings or structures thus constructed comply with the intent and spirit of this Declaration.
- (16) **Severability.** Invalidation of any one of the covenants contained in this Declaration, by judgment of a Court shall in no way affect any of the other provisions of said Declaration and the remaining provisions shall remain in full force and effect.
- (17) **Recording.** This Declaration shall become final and shall be recorded in the public records of Miami-Dade County, Florida at the cost to the Owner following the adoption by the Miami-Dade County Board of County Commissioners of an ordinance approving Amendment No. 6 and expiration of all applicable appeal periods without any appeal being filed. If the adoption is appealed by any third party, or if the Florida Department of Community Affairs issues a Notice of Intent to find the amendment not in compliance with state law, Owner's obligation to record this covenant shall be deferred until: (i) all judicial and administrative proceedings have been concluded; and (ii) such proceedings have resulted in the final approval of Amendment No. 6. The Owner is responsible for providing the School Board with a recorded copy of this Declaration once the Declaration is recorded.

[SIGNATURE PAGE FOLLOWS]

105.

WITNESSES:

[Signature]
Print Name: Jeffrey BERGOW

[Signature]
Print Name: LISA C. BROOKS

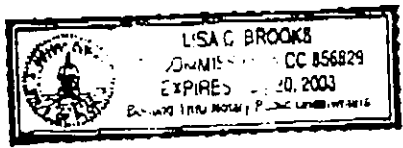
By: MILON CORPORATION, N.V.
a Netherlands Antilles corporation

[Signature]
By: Michael Schneider, Vice President

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this 4th day of February, 2000, by Michael Schneider, as Vice President of Milon Corporation, N.V. He is personally known to me or has produced Florida Driver's License as identification and did/did not take an oath.



Print Name LISA C. BROOKS
Title: _____
Serial Number: _____
(if any)

mk



DEPARTMENT OF PLANNING AND ZONING
111 NW FIRST STREET
SUITE 1110
MIAMI FLORIDA 33128-1974
(305) 375-2800
FAX (305) 375-2795

July 13, 2001

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Ms. Sally Osborne, Supervisor
Miami-Dade County Public Schools
Governmental Affairs and Land Use Policy and Acquisition
1450 N.E. 2nd Avenue, Room 525
Miami, Florida 33132

Re: Prospective Middle School Site located at S.W. 157 Avenue and S.W. 144 Street

Dear Ms. Osborne:

Pursuant to your request by letter dated June 15, 2001, the Department of Planning and Zoning has reviewed the prospective siting of a new middle school on a 15-acre site located at S.W. 157 Avenue and S.W. 144 Street for conformity with the Comprehensive Development Master Plan (CDMP). Our response and comments are as follows:

The subject property is designated "Low Density Residential" on the CDMP Future Land Use Plan (LUP) map. Land in this classification can be used for neighborhood- and community-serving uses, such as schools. Further, CDMP Land Use Policy 1F encourages the inclusion of educational facilities in the planning of residential areas.

The CDMP Educational Element Objective 2 and policies thereunder express County policies regarding the location of new public schools, including distance from the Urban Development Boundary (UDB). According to the criteria set in Policy 2.4, new middle school facilities should be located at least 1/2 mile inside the UDB. The eastern boundary of the subject property, S.W. 157 Avenue, is located exactly 1/2 mile inside and to the east of the UDB. In order to comply with Policy 2.1, the proposed school building and its primary entrances should be oriented toward the vicinity of S.W. 157 Avenue.

In conclusion, the acquisition of the subject property for a new middle school is in conformity with the CDMP. This review does not constitute a determination of

Ms. Sally Osborne, Supervisor
Page 2
July 13, 2001

consistency for site plan review pursuant to s.235.193(5), F.S. Please refer to the CDMP policies and the County's land development regulation when preparing detailed site plans for proposed school sites.

Please call Helen A. Brown in our Planning Division at (305) 375-2589 if you have any questions or comments.

Sincerely,



Diane O'Quinn Williams
Director

DO'QW:hab

cc: Greg Adkins, Supervisor
Development Planning Unit

MIAMI-DADE COUNTY, FLORIDA



AVIATION DEPARTMENT
P.O. BOX 592075
MIAMI, FLORIDA 33159-2075
(305) 876-7000

November 13, 2001

Juan J. Mayol, Esq.
Akerman Senterfitt
One Southeast Third Avenue, 28th Floor
Miami, FL 33131-1714

RE: Proposed 15 Acre School Site Located on Northwest Corner of the Intersection of Southwest 144th Street and Southwest 157th Avenue

Dear Mr. Mayol:

Upon review, it was determined that the proposed school site is located outside the No-School Zone (NSZ), but inside the Outer District (OLZ), as depicted in the Zoning Ordinance for Kendall-Tamiami Executive Airport. According to the Ordinance, new educational facilities within this land use classification are required to incorporate at least a 25 db Noise Level Reduction into the design/construction of the structure. It should also be noted that due to the proposed school site being located within the air traffic pattern for Runway 9R/27L, aircraft will overfly this area daily, and with great frequency at 1000 feet or less.

Should you have any questions, please contact me at (305) 876-0569.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeffrey R. Bunting', written over a horizontal line.

Jeffrey R. Bunting
Chief of Aircraft Noise & Environmental Planning

JRB/rb

Cc: Bruce Drum, Assistant Aviation Director Airside Operations & GAA

MIAMI INTERNATIONAL AIRPORT
ATTACHMENT C

MIAMI-DADE COUNTY, FLORIDA



GOVERNMENTAL AFFAIRS
AND LAND USE POLICY
AND REGULATION
2001 SEP -4 Pii 3:30

AVIATION DEPARTMENT
P.O. BOX 592075
MIAMI, FLORIDA 33159-2075
(305) 876-7000

August 15, 2001

Ms. Patricia Good
Miami-Dade County Public Schools
1450 Northeast Second Avenue
Miami, FL 33132

RE Review of a Proposed School Site Located on SW 144th Street and SW 157th Avenue

Dear Ms. Good

Upon review it has been determined that the proposed school site is located outside the No-School Zone (NSZ), but inside the Outer District Zone (OLZ), as depicted in the Zoning Ordinance for Kendall Tamiami Executive Airport. According to the Ordinance, new educational facilities within this land use classification are required to incorporate at least a 25 db Noise Level Reduction into the design/construction of the structure. Once this building requirement has been satisfied, the school will be compatible with airport operations.

Should you have any questions, please contact me at (305) 876-0569

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey R. Bunting".

For Jeffrey R. Bunting
Chief of Aircraft Noise & Environmental Planning

JRB/rb

Cc Bruce Drum, Assistant Aviation Director Airside Operations & GAA

**MIAMI INTERNATIONAL AIRPORT
ATTACHMENT D**