

Agustin J. Barrera, Member

SUBJECT: AUTHORIZE THE EXECUTION OF A COVENANT RUNNING WITH THE LAND REQUIRING CORAL GABLES ELEMENTARY SCHOOL TO ADHERE TO THE CITY OF CORAL GABLES HISTORIC PRESERVATION ORDINANCE FOR PURPOSES OF PROTECTING THE DISTRICT'S TRANSFER OF DEVELOPMENT RIGHTS

Background

At its August 20, 2003 meeting, the School Board adopted the recommendations provided by the District's Special Counsel, Tew Cardenas, LLP (Tew Cardenas), to preserve the Board's rights at Coral Gables Elementary School, under the City of Coral Gables Transfer of Development Rights (TDR) Ordinance. Additionally, the Board directed the Superintendent or his designee to communicate this action to the City of Coral Gables (City) and to initiate the appropriate actions to accomplish those recommendations.

Since that time, District staff, along with Tew Cardenas, appeared before the City Commission and attended numerous meetings to communicate the Board's position on this matter. The following provides a brief summary of what has transpired thus far:

1. The City has confirmed via memorandum that the portion of the school eligible for TDRs totals 212,038 square feet. At a potential value of \$15 to \$20 per square foot, and with a 50% transferability limitation, the District could realize a gain of approximately \$2 million by transferring such development rights to a potential buyer. District staff has initiated an appraisal to determine the current value of the TDRs and, should the economics appear viable, District staff will issue a Request for Proposal to sell same.
2. The City Commission has advised that, should the District transfer its development rights, it would require the Board to proffer a covenant running with the land in favor of the City, agreeing to maintain Coral Gables Elementary School pursuant to a City approved preservation plan, as required by the ordinance.
3. The City Commission directed City administration to bring forward a specific agenda item at the City Commission meeting of January 27, 2004, with an administrative recommendation for City action.

**GOOD CAUSE
D-20**

Additional Information

As a result of the numerous discussions held with the City Commission and in order to strengthen the District's position, Tew Cardenas is recommending that the District immediately enter into a Covenant Running with the Land (Covenant) for the portion of the Coral Gables Elementary site that is eligible for TDRs, stipulating that the Board will comply with the City's Historic Preservation Ordinance with respect to that property (see attachment A). The Covenant will include, substantially, the following terms and conditions:

- The District will not convey or cause to be conveyed the title to Coral Gables Elementary School without requiring the successor in title to abide by all of the terms and conditions of the Covenant;
- The maximum development rights available to Coral Gables Elementary School as of the date of execution of the Covenant are established at 212,038 square feet, based on Floor Area Ratio ("FAR") of 2.0, and that, pursuant to City Ordinance, 50% of these rights, or 106,019 square feet are eligible for transfer;
- The District will abide by the City's Historic Preservation Ordinance with respect to the portion of Coral Gables Elementary School that lies within the Central Business District of the City and is therefore eligible for TDRs;
- The Covenant shall remain in full force and effect and be binding upon the District until such time as the same is modified or released. The Covenant may be modified, amended or released, by written instrument executed by the District, provided that the same is also approved by the Zoning Administrator of the City;
- Should a final, non-appealable order or its equivalent, divest the District of the TDRs, or otherwise limit the transferability of the District's TDRs, the Covenant shall terminate automatically, with no further action required of the District or City;
- Any official inspector of the City may have the privilege at any time during normal working hours of entering and inspecting the use of the premises to determine whether or not the requirements of the City's Preservation Ordinance and the conditions under the Covenant are being complied with;
- Enforcement of the Covenant shall be by action against any party violating, or attempting to violate the Covenant. The prevailing party in any action or suit pertaining to or arising out of this Covenant 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 the services of his attorney;

- By entering into this Covenant, the District does not abandon or in any other manner waive its legal rights pursuant to Florida Statutes, or any other legal rights it may have; and
- The Covenant shall be filed on record in the public records of Miami-Dade County.

In order to continue properly representing the District's interests in this matter, authorization is requested for an additional \$15,000 in legal fees for Tew Cardenas to cover the estimated cost of continuing legal services.

This item does not appear in the published agenda. There is good cause to vary from the agenda in order to solidify the District's position prior to the City of Coral Gables Commission Meeting scheduled for January 27, 2004.

**ACTION PROPOSED BY
AGUSTIN J. BARRERA:**

That The School Board of Miami-Dade County,
Florida:

1. authorize the Chair and Superintendent to execute a Covenant Running with the Land requiring Coral Gables Elementary School to adhere to the City of Coral Gables Historic Preservation Ordinance for purposes of protecting the District's Transfer of Development Rights under the terms and conditions enumerated above; and
2. authorize the payment of additional attorney fees to the firm of Tew Cardenas Rebak Kellogg Lehman Demaria Tague Raymond and Levine, LLP., in an amount not to exceed \$15,000 for continuing services.

ATTACHMENT A

REPLY TO:
Miami

WRITERS DIRECT LINE
(305) 536-8420; (305) 536-8481

E-MAIL:
sdc@tewlaw.com; pmb@tewlaw.com

TEW CARDENAS REBAK
KELLOGG LEHMAN
DEMARIA TAGUE
RAYMOND & LEVINE, L.L.P.
ATTORNEYS AT LAW

January 9, 2004

VIA FACSIMILE AND U.S. MAIL

Mr. David Brown, City Manager
City of Coral Gables

City Hall
105 Biltmore Way
Coral Gables, FL 33134

FACILITIES PLANNING
2004 JAN 12 PM 3:55

Re: Coral Gables Elementary Transferable Development Rights

Dear Mr. Brown:

As you know, this firm represents the Miami-Dade County School Board ("School Board") with respect to the issue of Transferable Development Rights ("TDRs") on the Coral Gables Elementary Property ("Property"). As a follow-up to the School Board's Citizen's Presentation to the City Commission on November 18, 2003, and in anticipation of the City Commission meeting on January 27, 2004, we are providing you this letter to state the School Board's position regarding the TDRs at Coral Gables Elementary. Please include this letter in the packet to be presented to the Commission prior to the January 27, 2004 meeting.

As our December 16, 2003 letter to you outlined, the School Board's position is that it will submit to the City's Historic Preservation Ordinance, and all of its attendant requirements, on the portion of Coral Gables Elementary that falls within the Central Business District ("CBD"). To that end, we enclose a Covenant Running with the Land ("Covenant") that will bind the Coral Gables Elementary Property to the terms of the City's Historic Preservation Ordinance. This specifically addresses your City Attorney's comment that the School Board cannot avail itself of the TDRs, while at the same time arguing that it is not subject to the relevant ordinance. Additionally, pursuant to the Ordinance, the School Board would submit a subsequent covenant that would tie it to a City-approved maintenance plan, as required by the Ordinance.

• MIAMI OFFICE •

MIAMI CENTER, 26TH FLOOR, 201 SOUTH BISCAYNE BOULEVARD, MIAMI, FLORIDA 33131-4336, TELEPHONE 305/536-1112, FACSIMILE 305/536-1116

• TALLAHASSEE OFFICE •

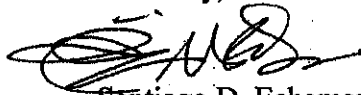
MONROE PARK TOWER, 101 N. MONROE STREET, SUITE 725, TALLAHASSEE, FLORIDA 32301, TELEPHONE 850/841-7770, FACSIMILE 850/841-7778

Mr. David Brown, City Manager
January 9, 2004
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On December 23, 2003, we met with, among others, the City Planning Director, who stated that the City's position is that the School Board must submit to all of the City's zoning and land use regulations, not only on the Coral Gables Elementary Property but also on all other School Board property within the City of Coral Gables. For a number of reasons, we believe the City's position is legally untenable. First, the limited issue presently before the City Commission is whether to continue to acknowledge the grant of TDRs to the Coral Gables Elementary Property, and none of the School Board's other property located within the City of Coral Gables is properly before the City Commission with respect to this issue. Moreover, none of the School Board's other property is located within the CBD, and, therefore, could not benefit from TDRs.

Of course the School Board would like to resolve this matter amicably with the City, but we believe that the position that the City has taken is legally untenable. Please contact Mr. Echemendia at 305.536.8420 or Ms. Baloyra at 305.536.8481 if you have any questions. Thank you.

Sincerely,



Santiago D. Echemendia
Patricia M. Baloyra

Encl.

cc: Mayor Donald Slesnick
Vice Mayor Wayne E. Withers, Jr.
Commissioner Rafael "Ralph" Cabrera, Jr.
Commissioner Maria Anderson
Commissioner William H. Kerdyk, Jr.
Eric Riel, Jr.
Elizabeth Hernandez, Esq.
Dona M. Lubin
Maria Jimenez
City Clerk, City of Coral Gables

Hon. Mr. Agustin Barrera
Ana Rijo-Conde
Vivian Villaamil
Ivan Rodriguez

This instrument was prepared by:

Name:

Santiago D. Echemendia, Esq.

Tew Cardenas, LLP

Address:

201 S. Biscayne Blvd., Suite 2600

Miami, FL 33131

(Space reserved for Clerk)

COVENANT RUNNING WITH THE LAND

WHEREAS, the undersigned Owner, the School Board of Miami-Dade County ("School Board"), holds the fee simple title to the land in Miami-Dade County, Florida, described in Exhibit "A," attached hereto, and hereinafter called the "Property," and

WHEREAS, a portion of the School Board Property, on which sits the Coral Gables Elementary School, lies within the Central Business District of the City of Coral Gables (the "Elementary School Portion"), and

WHEREAS, Coral Gables Elementary has been designated historic, and

WHEREAS, the City of Coral Gables ("City") in 1999 passed a Transferable Development Rights Ordinance, providing transferable development rights ("TDRs") to historic properties within the Central Business District, including 188,593 TDRs on the Property, and

WHEREAS, the City's Zoning Administrator recently confirmed via memorandum to the School Board that the available TDRs on the Coral Gables Elementary School site number 212,038, and

WHEREAS, the City has raised the issue of whether the School Board is subject to the City's ordinances by virtue of the rights and powers provided to the School Board under Chapter 1013, Florida Statutes, and

WHEREAS, the School Board wishes to assure the City of Coral Gables that the School Board will abide by the City's Historic Preservation Ordinance with respect to the Property, the School Board freely, voluntarily, and without duress makes the following Covenant Running With the Land, covering and running with the Property.

City Use Only
Legal Verified _____

(Public Hearing)

Covenant Running With the Land
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NOW THEREFORE, in consideration good and valuable consideration, the undersigned declares:

- (1) That the above recitals are true and correct and incorporated herein by reference.
- (2) That the School Board will not convey or cause to be conveyed the title to the Property without requiring the successor in title to abide by all of the terms and conditions set forth herein.
- (3) That the maximum developable rights available to the Elementary School Portion as of the date of the execution of this Covenant are 212,038, based on Floor Area Ratio ("FAR") of 2.0, and that, pursuant to City Ordinance, 50% of these rights, or 106,019 are eligible for transfer.
- (4) That the School Board will abide by the City's Historic Preservation Ordinance with respect to the Elementary School Portion.

Covenant Running with the Land. This Covenant on the part of the School Board 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 School Board, and its heirs, successors and assigns until such time as the same 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 Property and for the public welfare.

Term. This Covenant is to run with the land and shall be binding on all parties and all persons claiming under it from the date this Covenant is recorded, unless an instrument signed by the, then, owner(s) of the Property has been recorded agreeing to change the covenant in whole, or in part, provided that the Covenant has first been modified or released by the City of Coral Gables. Notwithstanding the foregoing, should a final, non-appealable order or its equivalent, divest the School Board of the Transferable Development Rights on the Property, or otherwise limit the transferability of the School Board's Transferable Development Rights on the Property, this Covenant shall terminate automatically, with no further action required of the School Board or of the City.

Modification, Amendment, Release. This Covenant may be modified, amended or released as to the Property herein described, or any portion thereof, by a written instrument executed by the, then, owner(s) of all of the Property, including joinders of all mortgagees, if any, provided that the same is also approved by the Zoning Administrator of the City of Coral Gables, Florida.

(Public Hearing)

Should this Covenant be so modified, amended or released, the Director of the Coral Gables Department of Planning and Zoning, or the executive officer of the successor of such Department, or in the absence of such director or executive officer by the assistant in charge of the office, shall forthwith execute a written instrument effectuating and acknowledging such modification, amendment or release.

City Inspection. As further part of this Covenant, it is hereby understood and agreed that any official inspector of the City of Coral Gables, or its agents duly authorized, may have the privilege at any time during normal working hours of entering and inspecting the use of the premises to determine whether or not the requirements of the City's Historic Preservation Ordinance and the conditions herein agreed to are being complied with.

Enforcement. Enforcement shall be by action against any parties or person violating, or attempting to violate, any covenants. The prevailing party in any action or suit pertaining to or arising out of this Covenant 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 the services of his attorney. This enforcement provision shall be in addition to any other remedies available at law, in equity or both.

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.

Severability. Invalidation of any one of these covenants, by judgment of Court, shall not affect any of the other provisions which shall remain in full force and effect.

Reservation of Rights. By entering into this Covenant, the School Board does not abandon or in any other manner waive its legal rights pursuant to Chapter 1013, Florida Statutes, or any other legal rights it may have.

Recording. This Covenant shall be filed of record in the public records of Miami-Dade County, Florida.

EXHIBIT "A"

LEGAL DESCRIPTION

IN WITNESS WHEREOF, _____ has caused these presents to be signed
in their name this _____ day of _____, 2004.

Witnesses: _____

Print Name: _____

By: _____

Its: _____

Print Name: _____

STATE OF FLORIDA)
COUNTY OF DADE)

The foregoing instrument was acknowledged by me this _____ day of _____, 2004, by
_____, of _____, who is ☐ personally known
to me or who ☐ produced _____ as identification and who did take an oath.

My Commission Expires: _____

Notary Public _____