

STATEMENT OF USE
August 5, 2011

The City of Coral Gables issued Somerset Grace Academy, Coral Gables (“Somerset”) a Certificate of use to operate a school for 110 students (ages 3-13) at the University Baptist Church’s (“UBC”) existing educational building located at 624 Anastasia Avenue. Somerset wishes to increase the student enrollment and initially filed an application to allow up to 735 students. After numerous public hearings with the Planning and Zoning Board, meetings with City’s staff and traffic consultant, meetings with representatives of the Biltmore Neighborhood Association and its counsel and feedback from door to door walking initiative, Somerset is demonstrating that it has heard its neighbors, and the City and its concerns, and in good faith is amending its request.

Somerset believes that its amendment Application represents a fair balance of the interest of all of the stakeholders.

Somerset now proposes a total of 436 students to be phased in over three years. The first year would increase enrollment up to 260 students, the second year by an additional 88 for 348 students and the third year by again 88 for a total of 436. This amended request represents a 44% reduction from the original application.

In conjunction with the 44% reduction in total students, Somerset is proffering a reverter clause in association with the requested change in land use from Religious Institution to Community Services and Facilities. This reverter clause to be implemented with a Restrictive Covenant shall provide that when the school use ceases to exist or the school abandons the property, the land use of the property shall revert to Religious Institution. The applicant’s only intent in requesting the Change in Land Use is to allow a charter school as a community service use at the church facility.

The traffic study performed for the reduced number incorporates additional safeguards in its analysis to ensure that the impact of the proposed 436 will remain on site and not spill over into the surrounding neighborhood streets. Thoughtfully crafted plans for traffic operations, pick up and drop off and special events have been included.

Some of the salient features of this revised application are:

- Reduction of 44% from previous requested enrollment - now 436 – equates to 2 classes per grade, averaging 20 students per class
- Proposed enrollment to be phased in over 3 years: 260 students year one, 348 students year two, 436 students year three
- Enrollment cap of 436 students implemented via Restrictive Covenant regardless of charter issued by Miami-Dade County School Board and future state legislation that would allow for increases in student enrollment
- Charter School to include grade levels Pre-K3 – 8th; there will be no stand alone middle school
- Somerset school will not seek use of the Youth Center facilities. Physical Education requirements will be met on site
- Traffic Report conclusions based on the most conservative approaches regarding impact
- All traffic impacts from drop off and pick are to be contained on site
- On-site vehicular stacking reduced from 31 cars to 29 cars, and there is stacking of 10 additional cars available on-site as safety valve. The additional stacking cars were not used for calculating the number of students
- Van service and students walking are not subtracted from traffic accumulation figures. Traffic Report assumes all students arrive by car
- Staggered drop offs (3) and pick-ups (3) – each shift is almost equivalent to current, single drop off and pick up of entire student body
- All but one overall Intersection levels of service (LOS) remain at A
signalized intersection goes to B
- No parking signs during school days (7am-4pm) surrounding UBC swales

- Proposed traffic, scenarios take into account Segovia street modifications
- Special event or events requiring more than the parking spaces on-site will be staggered or the event will be held off site

Attached hereto is a proposed Restrictive Covenant that incorporates the conditions proffered above.

Prepared by:
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Laura L. Russo, Esq., LLC
2655 LeJeune Road, Suite PH 2-B
Coral Gables, Florida 33134

DRAFT
DECLARATION OF RESTRICTIVE COVENANT

KNOW ALL MEN BY THESE PRESENTS, that **THE UNIVERSITY BAPTIST CHURCH OF CORAL GABLES, INC.**, a Florida not-for-profit corporation (hereinafter the "**Owner**") does hereby make, declare, and impose on the land herein described, the covenants running with the title to the land, which shall be binding on the **Owner**, heirs, successors, and assigns, personal representatives, mortgages, lessees, and against all persons claiming by, through or under them;

WHEREAS, **Owner** holds the fee simple title to the lands in the City of Coral Gables, Florida, described as:

Lots 1 thru 18 of Block 116, of "CORAL GABLES COUNTRY CLUB SECTION PART SIX" according to the Plat thereof recorded in Plat Book 20, Page 1 of the Public Records of Miami-Dade County, Florida

(hereinafter called the "**Property**"), which statement as to title is supported by the attorney's opinion which is attached to this Declaration as **Exhibit "A"**; and

WHEREAS, **Owner** has entered into an unrecorded Educational Facilities Lease Agreement with Somerset Academy, Inc., a Florida not-for-profit corporation (hereinafter referred to as "**Lessee**") for the above described real property; and

WHEREAS, **Owner** on behalf of **Lessee** submitted an application to Change the Land Use Map Designation in the City of Coral Gables Comprehensive Plan's Future Land Use Map for **Owner**'s property from "Religious Institution" to "Community Services and Facilities" for a 2.6 acres size parcel legally described above with address of 624 Anastasia Avenue, Coral Gables, Florida, and applications for Conditional Use and Site Plan approval to increase enrollment at existing charter school from 110 to 436 students

WHEREAS, after notice of public hearing duly published and notified of all property owners of record within two thousand (2,000) feet of the property, a public hearing was held before the Local Planning Agency (Planning and Zoning Board) of the City of Coral Gables on _____, and

WHEREAS, on _____ the Local Planning Agency recommended approval in a _____ vote to amend the Land Use Map of the Coral Gables Comprehensive Plan, and

WHEREAS, pursuant to the provisions of sections 163.3187 Florida Statutes, the City Commission held a public hearing on _____ at _____ which hearing all interest persons were afforded an opportunity to be heard and the **Owner's** application was approved, and

WHEREAS, based on issues raised in discussions of the application, **Owner** and **Lessee** have proffered the following conditions of the Property:

- a. **Owner** and **Lessee** agree that in the event the Charter school use ceases to exist, or the Charter school abandons the property that the land use shall revert to Religious Institution;
- b. **Owner** and **Lessee** agree that they shall not pursue an increase on enrollment beyond 436 students notwithstanding that the Charter issued by the Miami-Dade County School Board is for a greater number, and notwithstanding any current or future state legislation that would allow an increase in student enrollment;
- c. **Owner** and **Lessee** agree that the Charter school shall be for students from Pre K-3 through 8th grade; and that it shall not request any change to allow a stand alone middle school;
- d. **Owner** and **Lessee** agree that they shall not file any request to use the Youth Center to meet its physical education requirements.

WHEREAS, **Owner**, successors or assigns, have submitted an application to the City for "Conditional Use" review to the City pursuant Zoning Code Article 4., Division 4., Conditional Uses, as amended, and "Site Plan" review pursuant to Article 3, Development Review, as amended, as provided herein, and

WHEREAS, the City Commission requests for a Comprehensive Plan Map amendment to the "City of Coral Gables Comprehensive Plan, Future Land Use Map", amended from "Religious Institution" to "Community Facilities" with the conditions proffered by the **Owner** and **Lessee** outlined above, the applications for Conditional Use and Site Plan approval for the 2.6 acre parcel legally described above are hereby approved;

NOW THEREFORE, IN ORDER TO ASSURE the City of Coral Gables that the representations made by the **Owner** in connection with the above-described approval by the City will be abided by, the **Owner** freely, voluntarily, and without duress, makes the following Declaration of Restrictions covering and running with the Property:

- (1) The above recitations are true and correct and are incorporated herein in their entirety.
- (2) **Owner** and **Lessee** agree to the following restrictions:
 - a. **Owner** and **Lessee** agree that in the event the Charter school use ceases to exist, or the Charter school abandons the property that the land use shall revert to Religious Institution;
 - b. **Owner** and **Lessee** agree that they shall not pursue an increase on

enrollment beyond 436 students notwithstanding that the Charter issued by the Miami-Dade County School Board is for a greater number, and notwithstanding any current or future state legislation that would allow an increase in student enrollment;

- c. **Owner and Lessee** agree that the Charter school shall be for students from Pre K-3 through 8th grade; and that it shall not request any change to allow a stand alone middle school;
- d. **Owner and Lessee** agree that they shall not file any request to use the Youth Center to meet its physical education requirements.

- (3) This Declaration on the part of the **Owner** shall constitute a covenant running with the land and shall remain in full force and effect and be binding upon the undersigned **Owner**, and his heirs, successors and assigns until such time as the same is modified or released. These restrictions shall be for the benefit of, and limitation upon, all present and future owners of the real property and for the public welfare.
- (4) 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, 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 Declaration has first been modified or released by the City of Coral Gables.
- (5) This Declaration of Restrictions may be modified, amended or released as to the land 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 City of Coral Gables. Should this Declaration of Restrictions be so modified, amended or released, the City shall forthwith execute a written instrument effectuating and acknowledging such modification, amendment or release.
- (6) Enforcement shall be by action at law or in equity against any parties or person violating, or attempting to violate, any covenants, either to restrain violations or to recover damages. The prevailing party in any action or suit pertaining to or arising out of this Declaration 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 their attorney. This enforcement provision shall be in addition to any other remedies available at law, in equity, or both;
- (7) In the event the terms of this Declaration are not being complied with, in addition to other remedies available, the City is hereby authorized to withhold any further permits, and refuse to make any inspections or grant any approvals, until such time as there is compliance with this declaration;

- (8) 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;
- (9) Invalidation of any of these covenants by judgment or Court shall not affect any of the other provisions, which shall remain in full force and effect.
- (10) This Declaration shall be filed in the public records of Miami-Dade County, Florida, at the expense of the **Owner**.

NOW, THEREFORE, for good and valuable consideration, the undersigned **Owner** does hereby declare that he will not convey or cause to be conveyed the title to the above referenced Property without requiring the successor in title to abide by all the terms and conditions set forth herein.

FURTHER, the undersigned **Owner** declares that this covenant is intended and shall constitute a restrictive covenant concerning the use, enjoyment, and title to the Property and shall be binding upon the undersigned, his successors and assigns.

IN WITNESS WHEREOF, the undersigned has caused its seal to be affixed hereto on this _____ day of _____, 2011.

[SIGNATURE PAGES TO FOLLOW]

WITNESSES:

“OWNER”

The University Baptist Church of Coral Gables, Inc., a Florida not-for-profit corporation

Witness Signature

Print Name

By: _____

Print name: _____

Title: _____

Witness Signature

Print Name

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

I hereby certify that on this ____ day of _____, 2011, personally appeared before me _____, as _____ of the University Baptist Church of Coral Gables, Inc. a Florida not-for-profit corporation, who is personally known to me or has produced _____ as identification and he acknowledges that he executed this agreement.

NOTARY PUBLIC, STATE OF FLORIDA

My Commission Expires

WITNESSES:

“LESSEE”

Somerset Academy, Inc., a Florida not-for-profit corporation

Witness Signature

By: _____

Print name: _____

Print Name

Title: _____

Witness Signature

Print Name

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

I hereby certify that on this ____ day of _____, 2011, personally appeared before me _____, as _____ of Somerset Academy, Inc., a Florida not-for-profit corporation, who is personally known to me or has produced _____ as identification and he acknowledges that he executed this agreement.

NOTARY PUBLIC, STATE OF FLORIDA

My Commission Expires

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

CRAIG E. LEEN
CITY ATTORNEY