11 BD

"Scott, W Ray"
<scottra@doacs.state.fl.us>
07/13/2010 01:08 PM

To <DCPexternalagencycomments@dca.state.fl.us>
cc
bcc
Subject FDACS LGCP Amendment Review

FDACS has reviewed the following LGCP amendments and has no objections, recommendations, or comments:

Miami-Dade County 10–2
Brevard County 10–1

Please call if you have any questions or comments:

W. Ray Scott
Conservation & Water Policy Federal Programs Coordinator
Office of Agricultural Water Policy
Florida Department of Agriculture and Consumer Services
The Capitol (PL-10)
Tallahassee, FL 32399-0810
(office) 850-410-6714
(mobile) 850-544-9871
(fax) 850-922-4936

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

11 BD
7/15/10

July 9, 2010

Ray Eubanks, Administrator
Plan Review and Processing
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, FL 32399-2100

Dear Mr. Eubanks:

Subject: Miami-Dade County, DCA #10-2
Comments on Proposed Comprehensive Plan Amendment Package

The South Florida Water Management District (District) has completed its review of the proposed amendments from Miami-Dade County (County). The District's comments focus on Application No. 9. Under this application, White Rock Quarries, Inc. is proposing to modify the text of Future Land Use Element Open Land Subarea 1 (Snake-Biscayne Canal Basin) to allow nurseries and tree farms. Under the County's revised recommendations, "agricultural production" and "limited raising of livestock" would also be allowed. The County is proposing changes to its land development regulations to better regulate these proposed land uses subsequent to adoption of the proposed text amendments.

As currently proposed, the amendment does not address the potential for the activities to impact water quality, District canals and right of ways, and downstream water bodies including the C-9 Canal and Biscayne Bay. Activities of concern related to nurseries include stock piling material (mulch, raw manure, soil, etc.), extensive use of impervious plastic covering, soil disturbance, increased vehicle traffic and increased irrigation. Activities of concern related to raising livestock include manure management, pasture management, concentrated feed areas and erosion control.

The District offers the following recommendations, which we request be incorporated into your response to the County:

Stormwater:

- Revise the amendment to require total on-site retention of stormwater runoff.

Water Quality:

- Require implementation of best management practices, pursuant to the criteria of the Florida Department of Agricultural and Consumer Services.

- Address and ensure the compatibility and consistency of the proposed development's surface water management plan and resulting water quality with Total Maximum Daily Load (TMDL) criteria for the C-9 Canal and Biscayne Bay.

Right Of Way:

- Prohibit any use and/or occupancy of District rights-of-way, especially along the C-9 Canal, unless the District has issued a Right Of Way Occupancy Permit authorizing the proposed activities.

The District offers its technical assistance to the County and the Department of Community Affairs in developing sound, sustainable solutions to meet the County's future water supply needs and protect the region's water resources. For assistance or additional information, please contact Rod Braun, Director, Intergovernmental Policy and Planning Division, at (561) 682-2925 or rbraun@sfwmd.gov.

Sincerely,

Kim Shugar

Kim Shugar
Department Director
Intergovernmental Programs
South Florida Water Management District

c: Rod Braun, SFWMD
Bob Dennis, DCA
Rachel Kalin, SFRPC
Marc LaFerrier, Miami-Dade County
Jim Quinn, DEP

STAFF ANALYSIS
MIAMI-DADE COUNTY COMPREHENSIVE DEVELOPMENT MASTER PLAN (CDMP)
PROPOSED AMENDMENT PACKAGE #10-2

Application 4

Proposed Application 4 is a combination of text and map amendments. The amendments would 1) modify the "Miami Metrozoo Entertainment Area" future land use category text in the Miami-Dade County Comprehensive Development Master Plan's (CDMP) Land Use Element to establish Areas I and II; 2) add "Miami Metrozoo Entertainment Area I designation to the Adopted 2015 and 2025 Land Use Plan (LUP) map; and 3) change the land use designations a 286-acre site located on the southwest corner of SW 117th Avenue and SW 152nd Street (see Attachment 3) as follows:

Area A – From: Low Medium Density Residential To: Miami Metrozoo Entertainment Area II
Area B – From: Institutions, Utilities and Communications To: Miami Metrozoo Entertainment Area II
Area C – From: Institutions, Utilities and Communications To: Environmentally Protected Parks
Area D – From Institutions, Utilities and Communications To: Miami Metrozoo Entertainment Area II

The Dade County Zoological Park Development of Regional Impact (DRI) was originally approved in 1975. Less than half of the site has been developed as Metrozoo and the Gold Coast Railroad Museum. In 2005, Miami-Dade County, as property owner, submitted a Notice of Proposed Change (NOPC) to amend the Development Order to allow for construction of a privately operated hotel (150,000 square feet), family entertainment center (20 acres), and water theme park (23 acres), along with improvements to the existing Gold Coast Railroad Museum. On June 14, 2005, the South Florida Regional Planning Council (SFRPC) issued a letter identifying no regional issues with the NOPC. However, the DRI must be consistent with the CDMP and the existing "Parks and Recreation" land use designation does not permit such commercial activity on public park land. Submittal of the CDMP amendment was delayed by the need for a Countywide Referendum, as required by the Miami-Dade County Home Rule Charter, to allow commercial development on the Metrozoo property. The referendum was approved by Miami-Dade County voters on November 7, 2006. On September 8, 2008, the SFRPC found the amendment re-designating 170 acres of the 1,203 acre DRI site, from Parks and Recreation to Miami Metrozoo Entertainment Area generally consistent.

The proposed amendment seeks to establish Area I and Area II within the "Miami Metrozoo Entertainment Area" future land use category. Miami Metrozoo Area I would apply to the site currently designated Miami Metrozoo Entertainment Area. Miami Metrozoo Area II would apply to approximately 216 acres of the 286-acre subject property. The remaining 71 acres would be designated as Environmentally Protected Parks.

The site's surrounding uses include the University of Miami's Center for Southeastern Tropical Advanced Remote Sensing to the south; military facilities, park and vacant to the west; Residential, Office and Commercial to the north; and Office, communications, Military and Industrial to the east. The Lindgren Canal flows to the south and east of the site providing a buffer for residential neighborhoods. The amendment proposes the subject site to be developed to allow for a theme park with ride and attractions and a resort hotel with a conferencing center, restaurant and bar. The hotel would be located along the northwestern portion of the site as a buffer between residential uses.

The proposed amendment would generate additional fire alarms, water and sewer services, and bus and roadway trips. The County is working with Miami-Dade County Fire and Rescue to construct a new Fire Rescue Station as well as include two first aid stations within the proposed development. The Miami-Dade Water and Sewer Department has indicated that a private sewer pump station would be needed.

The site is already served by potable water, wastewater and solid waste services, and transit facilities that have the capacity to accommodate the amount of development that would be allowed by the proposed change. While the change in land use designation would generate more peak hour traffic trips, roadway Level of Service Standards on the surrounding roadway network would not be adversely impacted.

The proposed project could impact environmental, historic and archeological resources. The County Planning Department is working with the Department of Environmental Resource Management and the Office of Historic Preservation to ensure impacts to archeological remnants of the Richmond Naval Air Station, Environmentally Endangered Lands, and Protected Parks are mitigated and minimized. The County would need to find a relocation site and an agreement from the Coast Guard that they are wiling to relocate because a portion of the U.S. Coast Guards operations/facilities are located on the subject property.

On May 5, 2010, the Miami-Dade County Commission voted (10-0) to adopt with changes and transmit Application 4 to the Florida Department of Community Affairs.

Staff analysis confirms that proposed Application 4 would be compatible with existing land uses; have minimal impact on natural and regional resources and generally consistent with the Goals and Policies of the *Strategic Regional Policy Plan for South Florida.*

Application 5

Proposed Application 5 would amend the Adopted 2015 and 2025 Land Use Plan to include a new Community Urban Center for an area of land that is bounded by NW 57th Avenue on the East, the Moors residential development on the west, NW 167th Street on the south, and NW 183rd Street to the north (see Attachment 4), an area known to its residents as Country Club/Palm Springs North.

The intent of a Community Urban Center is to encourage transit alternatives, provide more efficient land use, and create identifiable town centers for diverse communities. The proposed designation would implement the concepts identified in the Country Club/Palm Springs North Charrette Area Plan Report. The subject area is in close proximity to NW 5th Avenue, Miami Gardens Drive, and the Palmetto Expressway, with convenient access to transit and a significant amount of vacant properties for development. The area is currently serviced by Metrobus Routes 29, 49, 75, 183, and the 286/North Pointe Circulator.

On May 5, 2010, the Miami-Dade County Commission voted (9-0) to adopt and transmit Application 5 to the Florida Department of Community Affairs.

Staff analysis confirms that proposed Application 5 would be compatible with existing land uses; have minimal impact on natural and regional resources and generally consistent with the Goals and Policies of the *Strategic Regional Policy Plan for South Florida.*

Application 6

Proposed Application 6 would delete and replace a previously Proffered and Accepted Declaration of Restrictions for Application 7 of DCA Amendment #06-2. The Council reviewed the original application in July and November of 2006, and found it to be generally consistent with the *South Florida Regional Policy Plan.*

The revised Proffered and Accepted Declaration of Restrictions is associated with a 37.0 gross acre site at the southwest corner of NW 32nd Avenue and NW 79th Street (See Attachment 5). In 2006, the land use designation for the subject area was changed from Industrial and Office to Business and Office on the

Land Use Plan. The development potential for the site at that time was for 585,097 square feet of commercial or 2,014 multi-family dwelling units, but the development plan was for a big box retail operation.

The existing Declaration of Restrictions (dated October 30, 2006) restricts residential development and includes, at a minimum, a single retail use of at least 100,000 square feet. The revised proposed Declaration of Restrictions (dated January 28, 2010) would eliminate the requirement for a single retail use and the residential development restriction, and allow a maximum of 1,200 residential units or a mixture of both non-residential and residential uses on the site.

The proposed change would allow for mixed-use development that would be more supportive of public transit than a single use. The application site is in close proximity to Metrorail and Metrobus services, located in a premium transit corridor between the Northside and Tri-Rail Metrorail stations, and Tri-Rail and Amtrak stations are within a third of a mile of the site. The Northside and Tri-Rail Metrorail Stations are also designated as Community Urban Centers on the County Land Use Map.

On May 5, 2010, the Miami-Dade County Commission voted (9-0) to adopt and transmit Application 6 to the Florida Department of Community Affairs.

Staff analysis confirms that proposed Application 6 would be generally consistent with the Goals and Policies of the *Strategic Regional Policy Plan for South Florida*.

Application 7

Proposed Application 7 would delete and replace a previously Proffered and Accepted Declaration of Restrictions for Application 3 of DCA amendment #08-1. The Council reviewed the original application in January and July of 2008 and found it to be generally inconsistent with the *South Florida Regional Policy Plan* due to impacts to local schools. However, the current application was not subject to review by the School Board of Miami-Dade County since the development program remains the same.

The revised Proffered and Accepted Declaration of Restrictions is associated with a 54.24-net acre site at the Northwest corner of NW 107th Avenue and NW 12th Street (See Attachment 6). In 2008, the land use designation for the subject area was changed from Industrial and Office and Business and Office to Business and Office on the Land Use Plan; designated as a Regional Activity Center (RAC); and included the expansion of the Metropolitan Urban Center designation.

The existing Declaration of Restrictions (dated April 28, 2008) restricts development to 1,050 dwelling units or 1,701,000 gross square feet Residential; 799,900 gross square feet Retail; 430 Hotel rooms or 225,000 square feet; and 225,000 square feet Office. The applicant is charged to fund a Metrobus terminal (or a Public Transportation Facility, PTF) with a 260-space parking garage within three (3) years from the date that the amendment became final, with the option to request an extension of time for funding the construction. In addition, the applicant must fund specific roadway improvements (NW 12th Street, NW 111 Avenue, NW 14th Street, and NW 107th Avenue); address workforce housing; adhere to design principles, site plan, and certificates of occupancy; and address school concurrency.

The revised proposed Declaration of Restrictions (dated May 4, 2010) does not change the development program of the subject site. The major revisions would create a phased development schedule for the PTF as outlined below. The applicant would be responsible to fund and construct the PTF.

- Phase I: 10 saw-tooth bus bays, parking area, restrooms and temporary surface parking lot for a minimum of 189 spaces no later than August 12, 2012.

- Once Phase I is completed and the applicant is issued a Certificate of Completeness, the applicant shall not be responsible for any operational expenses associated with the improvements and the property will be exempt from any transportation concurrency requirements. In addition, the applicant may seek a Certificate of Occupancy for the first 400,000 square feet of floor area for retail use and its accessory parking and seek site plan approval for such retail space prior to site plan approval for the entire property.

- Phase II: Parking garage capable of 260 spaces for transit users, a kiss-and-ride area, restroom facilities, Commercial area (no more than 10,000 square feet), transit lounge, and landscaping to be constructed within five (5) years from the effective development agreement, which shall be executed once the first zoning application on the property becomes final.

Other changes would require that deed restrictions be recorded for the workforce housing units to remain as such for a period of 30 years.

On May 5, 2010, the Miami-Dade County Commission voted (8-1) to transmit Application 7, without a recommendation, to the Florida Department of Community Affairs.

Staff analysis confirms that proposed Application 7 would be generally consistent with the Goals and Policies of the *Strategic Regional Policy Plan for South Florida.*

Application 9

Proposed Application 9 would amend the Open Land Subarea 1 text in the Land Use Element to add nurseries and tree farms as allowable uses. The Open Land Subarea is approximately 7,577 acres and current uses include rural residential, limestone rock-mining and ancillary uses, seasonal agriculture, and compatible institutional uses, public facilities, utility facilities, communication facilities and recreation.

On May 5, 2010, the Miami-Dade County Commission voted (9-0) to adopt and transmit Application 9 to the Florida Department of Community Affairs.

Staff analysis confirms that proposed Application 9 would be generally consistent with the Goals and Policies of the *Strategic Regional Policy Plan for South Florida.*

Application 11

Proposed Application 11 would amend text in the Capital Improvements Element (CIE). Policy LU-2A would be revised to refer to provisions in the "Concurrency Management Program" in the CIE. Language on page IX-15 of the CIE would also be revised to reflect the level of public school facilities concurrency review for zoning actions for greater consistency with the Public School Facility Planning Interlocal Agreement.

On May 5, 2010, the Miami-Dade County Commission voted (9-0) to adopt and transmit Application 11 to the Florida Department of Community Affairs.

Staff analysis confirms that proposed Application 11 is generally consistent with the Goals and Policies of the *Strategic Regional Policy Plan for South Florida.*

Application 12

Proposed Application 12 would amend text in the Land Use Element to clarify that the super majority vote applies to text changes in the CDMP as well as the Land Use Plan map amendments.

On May 5, 2010, the Miami-Dade County Commission voted (7-1) to adopt and transmit Application 12 to the Florida Department of Community Affairs.

Staff analysis confirms that proposed Application 12 is generally consistent with the Goals and Policies of the *Strategic Regional Policy Plan for South Florida.*

Impact Analysis

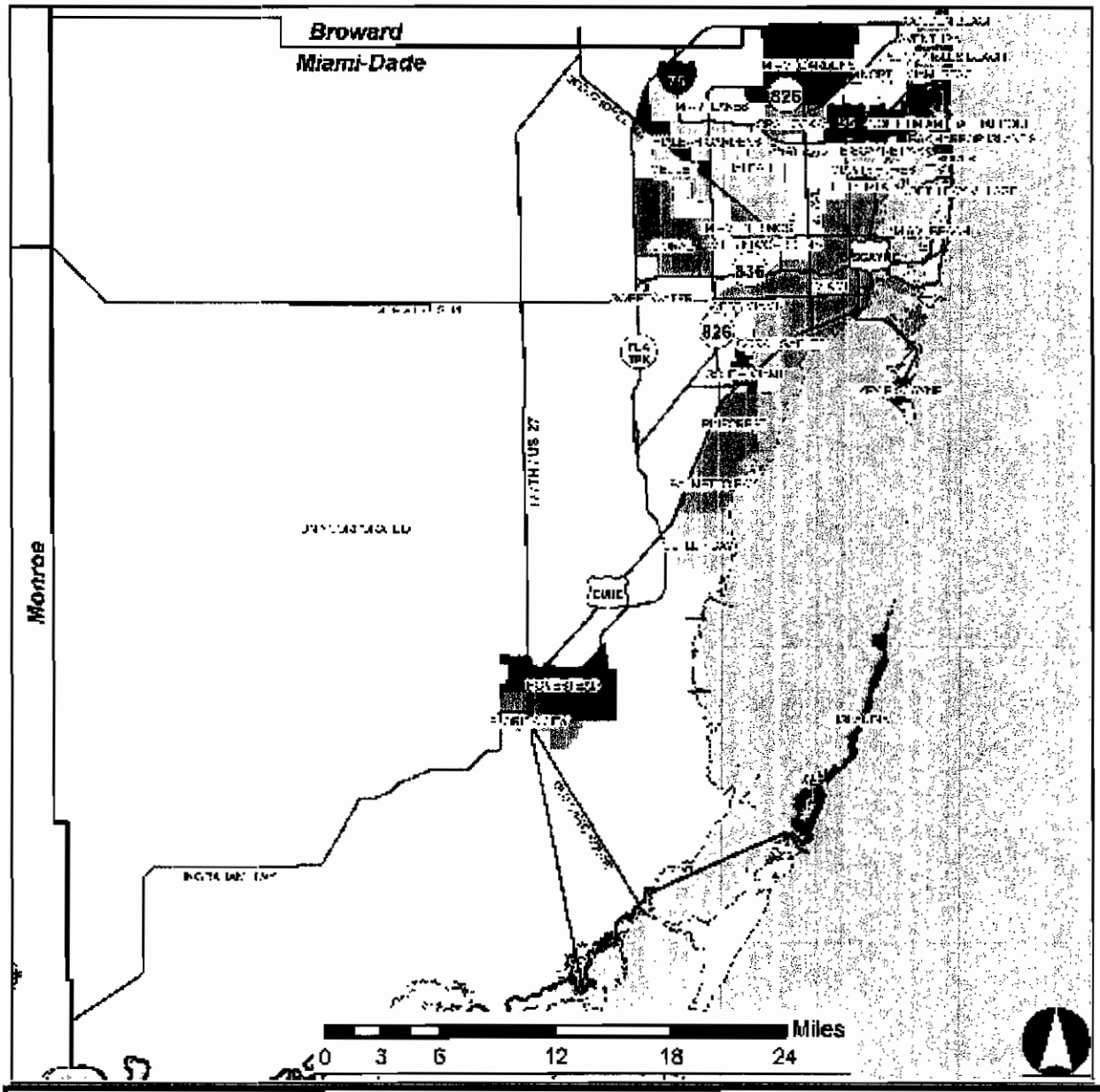
Staff analysis confirms Miami-Dade County proposed amendment package #10-2 would not result in compatibility, extra-jurisdictional, or affordable housing issues; or impact significant regional resources and facilities, natural resources, transportation systems, emergency preparedness plan and local mitigation strategies.

Since a further detailed impact analysis is not applicable to the review of the proposed amendments, the related analysis sections found in the Department of Community Affairs (DCA) Amendment Review Form C-7 (Sections 9 through 18) have not been included in this staff report.

Recommendations of Consistency with Strategic Regional Policy Plan *(SRPP)*

Find Miami-Dade County proposed amendment package #10-2 generally consistent with the *Strategic Regional Policy Plan for South Florida..* Approve this staff report for transmittal to the Florida Department of Community Affairs.

Attachment 1



COMPREHENSIVE PLAN AMENDMENTS

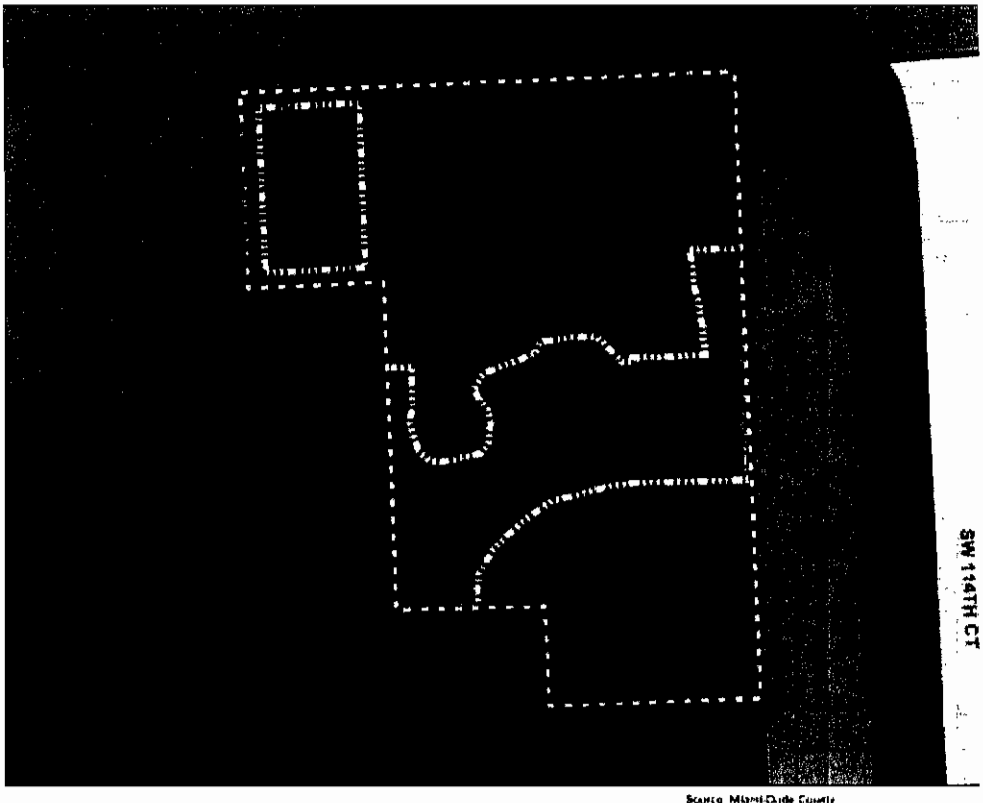
General Location Map

Miami-Dade County
Proposed Amendment Package #10-2

Sources: FDEP, SFWMD, Miami-Dade County, SFRPC.
Note: For planning purposes only. All distances are approximate.

Attachment 2

APPLICATION NO. 4
PROPOSED CDMP LAND USE



Source: Miami-Dade County
Department of Planning and Zoning, February 25, 2010

LEGEND

- APPLICATION AREA
- AREAS

CDMP LAND USE

- LOW DENSITY (2.5-6 DU/AC)
- LOW-MEDIUM DENSITY (6-13 DU/AC)
- MEDIUM DENSITY (13-25 DU/AC)
- INDUSTRIAL AND OFFICE
- BUSINESS AND OFFICE
- INSTITUTIONS, UTILITIES AND COMMUNICATION
- MIAMI METRO ZOO ENTERTAINMENT AREA

STREETS

- EXPRESSWAYS
- MAJOR ROADWAYS (3 OR MORE LANES)
- MINOR ROADWAYS (2 LANES)
- ENVIRONMENTALLY PROTECTED PARKS
- PARKS AND RECREATION
- WATER
- TRANSPORTATION

N

0 0.06 0.16 0.24 0.32 Miles

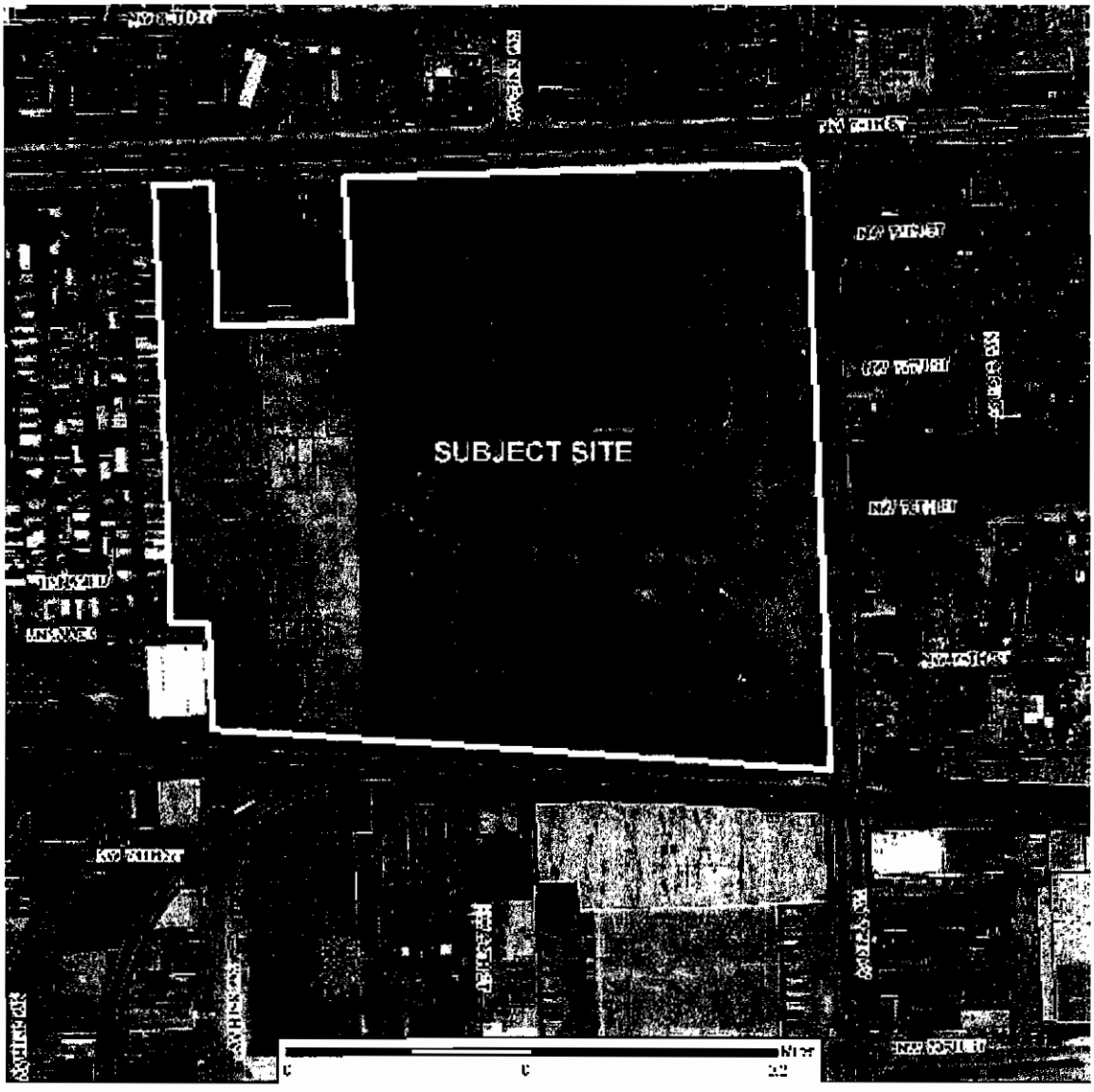
COMPREHENSIVE PLAN AMENDMENTS

Aerial Map
Miami-Dade County
Proposed Amendment Package #10-2

County Amendment No. 4
Miami Metrozoo Entertainment Areas proposed designations.

Sources: Miami-Dade County proposed amendment package #10-2, County Amendment No. 4.
Note: For planning purposes only. All distances are approximate.

Attachment 3



COMPREHENSIVE PLAN AMENDMENTS

Aerial Map
Miami-Dade County
Proposed Amendment Package #10-2

County Application No. 6
Proposed revision to Declaration of Restrictions of subject site.

Sources: Miami-Dade County, SFRPC.
Note: For planning purposes only. All distances are approximate.

Attachment 4

COMPREHENSIVE PLAN AMENDMENTS

Aerial Map
Miami-Dade County
Proposed Amendment Package #10-2

County Application No. 7
Proposed revision to Declaration of Restrictions of subject site.

Sources: Miami-Dade County, SFRPC.
Note: For planning purposes only. All distances are approximate.

11 BD
7/16/10

South
Florida
Regional
Planning
Council

MEMORANDUM

AGENDA ITEM #6c

DATE: JULY 12, 2010

TO: COUNCIL MEMBERS

FROM: STAFF

SUBJECT: MIAMI-DADE COUNTY PROPOSED COMPREHENSIVE PLAN AMENDMENT DCA #10-2

Community Profile

With a 2009 population estimated at 2,472,344, Miami-Dade County is the most populous county in Florida. The County's population grew by 9.7 percent during this decade, although it experienced a small decline of almost 5,000 between 2008 and 2009, according to estimates of the Bureau of Economic and Business Research (BEBR). The most recent BEBR projections show the County's population increasing by approximately 17,000 new residents per year through 2020, reaching a little under 2.7 million in that year. The percentage of the population that is of working age or younger is larger in Miami-Dade County than the state average.

The structure of the County's economy is heavily service and trade oriented, with approximately 57 percent of total employment in these sectors. The County has established itself as a wholesaling and financial center and major tourist destination. Miami-Dade County ranks ninth in export sales among all metropolitan areas in the country. Almost a quarter of the state's total employment in transportation is located in the county. The Port of Miami is the largest cruise ship port in the world and one of the largest container ports in the southeast. The urbanized portion of the county lies between two national parks, Everglades and Biscayne National Parks. The close relationship of tourism to the preservation of Miami-Dade County's unique native plants and wildlife has been recognized as an economic as well as an environmental issue. In order to manage growth, the County's Comprehensive Development Master Plan (CDMP) establishes an Urban Development Boundary (UDB), which distinguishes the area where urban development may occur from areas where it should not occur. The general location of the County is shown in Attachment 1

Amendment Review

The South Florida Regional Planning Council (SFRPC) review of proposed Comprehensive Plan amendments for consistency with the *Strategic Regional Policy Plan for South Florida (SRPP)* primarily addresses effects on regional resources or facilities identified in the *SRPP* and extra-jurisdictional impacts that would be inconsistent with the Comprehensive Plan of the affected local government (§163.3184(5), Fla. Stat.). The Council's review of amendments is conducted in two stages: (1) proposed or transmittal and (2) adoption. Council staff reviews the contents of the amendment package once the Department of Community Affairs certifies its completeness.

Objections and Comments relate to specific inconsistencies with relevant portions of the *SRPP*, which was adopted pursuant to Rule 29J-2.009, Fla. Administrative Code. Council staff will work with local govern-

3440 Hollywood Boulevard, Suite 140, Hollywood, Florida 33021
Broward (954) 985-4416, State (800) 985-4416
FAX (954) 985-4417, e-mail: sfadmin@sfrpc.com, website: www.sfrpc.com

ments to address Objections and Comments identified during the review of a proposed amendment between the transmittal and the adoption of the amendment.

The SFRPC did not prepare the amendment package and, therefore, is not precluded from commenting on the proposed Plan or Element pursuant to Section 163.3184(5), Florida Statutes (F.S.), or Rule 9J-11.0084, Florida Administrative Code (F.A.C.); or commenting on the adopted amendment pursuant to Section 163.32465(4)(b), F S.

The Florida Department of Community Affairs (DCA) notified SFRPC that the amendment package was complete on June 10, 2010.

The amendment review must be transmitted to DCA on July 10, 2010.

Staff review of the amendment will be transmitted to DCA on July 2, 2010. The Council will take final action on the amendment, with a copy transmitted to DCA, on July 12, 2010.

Staff Analysis

Proposed amendment package #10-2 to the Miami-Dade County Comprehensive Development Master Plan (CDMP) contains one (1) site-specific change to the Land Use Plan (LUP) map, one (1) combined LUP map and text amendment, and five (5) text amendments. Detailed locations of site-specific map amendments or amendment areas are shown in Attachments 2 through 4.

A summary table of the proposed amendments in this package is shown below. For the purposes of this review, the amendments retain their County Application numbers.

SUMMARY OF PROPOSED CDMP MAP AND TEXT AMENDMENTS						
County App. No.	**Size (gross acres)**	**General Location**	**Proposed Land Use or Text Change**	**Attach-ment**	**Staff Recommendation**	**BCC[1] Vote**
4	286	Southwest corner of SW 152 St & SW 117 Ave to the northeast of the existing Miami Metrozoo	Land Use Element: would revise the Miami Metrozoo Entertainment Area land use designation to establish Areas I and II; designate four (4) area sites to Miami Metrozoo Entertainment Areas I and II on the adopted Land Use Plan; and change the land use designations of four (4) areas on the subject property.	2	General Consistency with the *SRPP*	10-0
5	N/A	Area bounded by NW 57Ave, NW 167 St and NW 183 Street	Land Use Plan: would incorporate a new Community Urban Center land use designation.	N/A	General Consistency with the *SRPP*	9-0
6	37.0	Southwest corner of NW 32nd Avenue and NW 79th Street	Delete and replace a previously Proffered and Accepted Declaration of Restrictions for Application 7 of DCA amendment #06-2.	3	General Consistency with the *SRPP*	9-0

SUMMARY OF PROPOSED CDMP MAP AND TEXT AMENDMENTS						
County App. No.	**Size (gross acres)**	**General Location**	**Proposed Land Use or Text Change**	**Attach-ment**	**Staff Recommendation**	**BCC[1] Vote**
7	N/A	Northwest corner of NW 107th Avenue and NW 12th Street	Delete and replace a previously Proffered and Accepted Declaration of Restrictions for Application 3 of DCA amendment #08-1.	4	General Consistency with the *SRPP*	8-1
9	N/A	N/A	Land Use Element: would modify the Open Land Subarea 1 to allow nurseries and farms.	N/A	General Consistency with the *SRPP*	9-0
11	N/A	N/A	Text amendments to the Future Land Use and Capital Improvements Element would revise the County Concurrency Management Program related to public school facility planning.	N/A	General Consistency with the *SRPP*	9-0
12	N/A	N/A	Land Use Element: would amend Policies to clarify that the super majority vote applies to text and Land Use Plan map amendments.	N/A	General Consistency with the *SRPP*	7-1

[1] BCC = Board of County Commissioners; N/A = Not Applicable

The Miami-Dade County Board of County Commissioners unanimously approved the transmittal of adopted amendment package #10-2 at its May 5, 2010 meeting.

For the purposes of this review, the amendments retain their County Application numbers. A detailed analysis with recommendation of consistency with the *Strategic Regional Policy Plan for South Florida (SRPP)* of the Miami-Dade County adopted amendment package #10-2 is included in the attached staff report.

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

11 BD
7/16/10

DIVISION OF COMMUNITY PLANNING

July 9, 2010

Ray Eubanks, Administrator
Plan Review and Processing
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, FL 32399-2100

Dear Mr. Eubanks:

Subject: Miami-Dade County, DCA #10-2
Comments on Proposed Comprehensive Plan Amendment Package

The South Florida Water Management District (District) has completed its review of the proposed amendments from Miami-Dade County (County). The District's comments focus on Application No. 9. Under this application, White Rock Quarries, Inc. is proposing to modify the text of Future Land Use Element Open Land Subarea 1 (Snake-Biscayne Canal Basin) to allow nurseries and tree farms. Under the County's revised recommendations, "agricultural production" and "limited raising of livestock" would also be allowed. The County is proposing changes to its land development regulations to better regulate these proposed land uses subsequent to adoption of the proposed text amendments.

As currently proposed, the amendment does not address the potential for the activities to impact water quality, District canals and right of ways, and downstream water bodies including the C-9 Canal and Biscayne Bay. Activities of concern related to nurseries include stock piling material (mulch, raw manure, soil, etc.), extensive use of impervious plastic covering, soil disturbance, increased vehicle traffic and increased irrigation. Activities of concern related to raising livestock include manure management, pasture management, concentrated feed areas and erosion control.

The District offers the following recommendations, which we request be incorporated into your response to the County:

Stormwater:

- Revise the amendment to require total on-site retention of stormwater runoff.

Water Quality:

- Require implementation of best management practices, pursuant to the criteria of the Florida Department of Agricultural and Consumer Services.

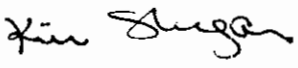
- Address and ensure the compatibility and consistency of the proposed development's surface water management plan and resulting water quality with Total Maximum Daily Load (TMDL) criteria for the C-9 Canal and Biscayne Bay.

Right Of Way:

- Prohibit any use and/or occupancy of District rights-of-way, especially along the C-9 Canal, unless the District has issued a Right Of Way Occupancy Permit authorizing the proposed activities.

The District offers its technical assistance to the County and the Department of Community Affairs in developing sound, sustainable solutions to meet the County's future water supply needs and protect the region's water resources. For assistance or additional information, please contact Rod Braun, Director, Intergovernmental Policy and Planning Division, at (561) 682-2925 or rbraun@sfwmd.gov.

Sincerely,



Kim Shugar
Department Director
Intergovernmental Programs
South Florida Water Management District

c: Rod Braun, SFWMD
Bob Dennis, DCA
Rachel Kalin, SFRPC
Marc LaFerrier, Miami-Dade County
Jim Quinn, DEP

11 BD
7/16/10

FLORIDA DEPARTMENT OF STATE
Dawn K. Roberts
Interim Secretary of State
DIVISION OF HISTORICAL RESOURCES

July 15, 2010

Mr. Ray Eubanks
Department of Community Affairs
Bureau of State Planning
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

Re: Historic Preservation Review of the Miami-Dade County 10-2 Comprehensive Plan Amendment

Dear Mr. Eubanks:

According to this agency's responsibilities under Section 163, *Florida Statutes*, and Chapter 9J-5, *Florida Administrative Code*, we reviewed the above document to determine if data regarding historic resources were given sufficient consideration in the request to amend the Miami-Dade County Comprehensive Plan.

We reviewed proposed text and land use amendments to the Miami-Dade County Comprehensive Plan to consider the potential effects of these actions on historic resources. We note that for Amendment Application #4, Miami Metrozoo Entertainment Area, the county preservation staff recommends that a cultural resource assessment survey be conducted prior to any construction activities. We concur with this recommendation.

Nevertheless, while our cursory review suggests that many of the proposed changes may have no adverse effects on historic resources, it is the county's responsibility to ensure that none of the proposed revisions will have an adverse effect on significant archaeological or historic resources.

If you have any questions regarding our comments, please feel free to contact Susan M. Harp of the Division's Compliance Review staff at 850.245.6333.

Sincerely,

Laura A. Kammerer

Laura A. Kammerer, Historic Preservationist Supervisor
Compliance Review Section
Bureau of Historic Preservation

xc: Mr. Bob Dennis

500 S. Bronough Street • Tallahassee, FL 32399-0250 • http://www.flheritage.com

☐ Director's Office 850.245.6300 • FAX: 245.6436
☐ Archaeological Research 850.245.6444 • FAX: 245.6452
✓ Historic Preservation 850.245.6333 • FAX: 245.6437

11 BD

"Card, Carlton"
<Carlton.Card@dot.state.fl.us
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07/21/2010 05:42 PM

To "DCPexternalagencycomments@dca.state.fl.us"
<DCPexternalagencycomments@dca.state.fl.us>
cc "Bill.Pable@dca.state.fl.us" <Bill.Pable@dca.state.fl.us>
bcc
Subject Florida Department of Transportation District 6 Comments to the Miami-Dade County CDMP Amendments 10-2

In accordance with your request, and the provisions of Chapter 163, Florida Statutes and Chapter 9J-5, Florida Administrative Code, this office has completed a review of the Miami-Dade October 2009 Applications to Amend the Comprehensive Development Master Plan (CDMP), which was forwarded to our office on June 16, 2010. There are no impacts anticipated to the State Highway System facilities resulting from amendment applications 1 through 12. The District makes the following comments in regards to Application #7:

- The deletion and replacement of the previously accepted Declaration of Restriction for this location could potentially impact the existing and planned transit routes along the corridor of NW 107th Ave and NW 12th St.
- The deletion and replacement of the previously accepted Declaration of Restrictions will not remove the applicant's obligation of roadway improvements to NW 12th Street, NW 111th Avenue, NW 14th Street, and NW 107th Avenue.
- The applicant's desire to be granted an exemption from any transportation concurrency requirements after the issuance of a certificate of completion for the proposed Phase 1 improvements in the newly recommended draft covenant dated January 22nd, 2010 could potentially be in conflict with F.S. 163.3180.

The District has no other specific objections or recommendations at this time. Please contact Carlton Card at 305-470-5875, if you have any questions concerning our response.

Carlton S. Card
Transportation Planner
Florida Department of Transportation District VI
1000 NW 111th Ave
Miami, FL 33172
(305) 470-5875

BERCOW RADELL & FERNANDEZ
ZONING, LAND USE AND ENVIRONMENTAL LAW
DIRECT LINE: (305) 377-6231
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Miami-Dade Co.
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DIVISION OF COMMUNITY PLANNING

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VIA E-MAIL AND UPS

June 21, 2010

Mike McDaniel, Chief
Office of Comprehensive Planning
Division of Community Planning
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399

Re: Application No. 7, 107th Avenue Gamma, LLC
Miami-Dade County October 2009 CDMP Amendment Cycle

Dear Mr. McDaniel:

This law firm represents 107th Avenue Gamma, LLC ("Applicant") with regard to the above-captioned application ("Application") to amend Miami-Dade County's Comprehensive Development Master Plan (CDMP). Specifically, the Application seeks to delete in its entirety the Declaration of Restrictions accepted by the Board of County Commissioners (BCC) of Miami-Dade County in connection with Application No. 3 of the April 2007 CDMP Amendment Cycle ("Covenant") and to proffer of a new Declaration of Restrictions. On May 5, 2010, the BCC moved to recommend transmittal of the Application to the Department of Community Affairs (DCA) without a recommendation. This letter shall serve to provide the DCA with the background and merits of the Application.

Description of Property. The property is 54.20 net acres in size and located on the northwest corner of the intersection of NW 107th Avenue and NW 12th Street/SR 836 ramp in Section 31, Township 53, Range 40, of unincorporated Miami-Dade County ("Property"). Aerial photographs of the Property are attached as Exhibit A. The Property consists of two parcels divided by NW 12th Street. The larger parcel is situated at the northwest corner of NW 12th Street and NW 107th Avenue. The smaller parcel is irregularly shaped and situated at the southwest corner of NW 12th Street and NW 107th Avenue. The Property is currently designated as Business and Office on the CDMP's Future Land Use Plan (LUP) Map and is zoned IU-2 (Industrial, Heavy Manufacturing District), IU-C (Industrial District, Conditional) and GU (Interim District).

The Property is located between two regional shopping centers - International Mall to the east and Dolphin Mall to the west. The area north of the site is a mix of office and light industrial developments, while the area south of the Property serves as headquarters to the Florida Department of Transportation, District VI. Currently, the Property is vacant and has no existing use. There is a lake in the center of the Property that is currently being filled.

Amendment No. 3 of April 2007 CDMP Amendment Cycle. The Property was the subject of a standard CDMP amendment in the April 2007 Amendment Cycle ("Application No. 3"). Specifically, Application No. 3 sought (1) a LUP amendment to change the designation of the Property from "Industrial and Office" and "Business and Office" to "Business and Office" and (2) an amendment to the Land Use Plan Map and a text amendment to the Land Use Element of the CDMP to designate the Property as a Regional Activity Center. Moreover, during consideration of Application No. 3, the Department of Planning and Zoning (DP&Z) recommended to the BCC that the graphic symbol for the Metropolitan Urban Center (MUC) designation on the LUP map of the CDMP be relocated to the Property from Miami International Mall which is now located within the boundaries of the City of Doral. On April 24, 2008, the BCC voted to adopt Application No. 3 with acceptance of the Covenant and with DP&Z's recommendation to relocate the graphic symbol for the MUC designation on the LUP map of the CDMP to the Property.

Proffered Covenant in Connection with Application No. 3. The Covenant voluntarily proffered to Miami-Dade County during consideration of Application No. 3 required the Applicant to, among other things:

- Fund and construct within the development a MetroBus Terminal for multiple MetroBus routes and to reserve within the Property sufficient area for a future possible Metrorail Station (hereinafter referred to as the "Public Transportation Facility" or "PTF"). Under the Covenant, the foregoing PTF improvements are required to be constructed within three years from the date that Application No. 3 became final and nonappealable. In addition, the PTF improvements are required to receive a temporary certificate of occupancy prior to the issuance of any certificate of occupancy for any building within the Property. The PTF improvements include the following:

    a. 10 saw-tooth busbays;
    b. A driveway network serving the bus bays;
    c. A parking garage with 260 parking spaces;
    d. Landscaping;

e. A kiss and ride area;
f. Restroom facilities;
g. Enclosed transit lounge; and
h. Transit-oriented commercial uses.

- Fund and construct several roadway improvements. The foregoing roadway improvements are required to be open to traffic prior to the issuance of any certificate of occupancy for any building within the Property with the exception of those buildings that constitute the PTF.

- Submit a site plan that satisfies specific design guidelines, pedestrian accessways, building design, landscaping, and parking.

- Represent that all buildings located within the Property will be "green" buildings and certified in accordance with the standards set forth by the United States Green Building Council.

- Incorporate, where practicable, water conservation measures into the design, construction, and operation of any residential and commercial development on the Property.

- Reserve a minimum of 10% of the residential units that will be constructed within the Property for workforce housing.

See Covenant, attached as Exhibit B.

Initial Modification Requests to Covenant. The Applicant is requesting a deletion of the existing Covenant and is proposing to proffer a new covenant to Miami-Dade County. The current proposed modifications to the Covenant are significantly different from the proposed modifications to the Covenant when the application was initially filed. The Applicant's initial requests, as set forth in the original application, were generally described as follows:

(1) **Extension of Time to Construct the PTF Improvements** -- The Applicant requested to increase the time period permitted to commence construction of the PTF to fifteen years from the date the current application becomes final and nonappealable (as opposed to three years from the date that Application No. 3 became final and nonappealable).

(2) **Initial Retail Use** -- The Applicant requested the ability to obtain a certificate of occupancy for the first 400,000 square

feet of floor area for retail use within the Property without first having to obtain a temporary certificate of occupancy for the structures that will constitute the PTF. Moreover, in order to permit this initial 400,000 square feet of retail use within the Property to move forward, the Applicant requested a similar exclusion from the prohibition on obtaining a certificate of occupancy prior to the issuance of a temporary certificate of occupancy for the Dolphin Fire Station or the designation of a new fire rescue facility to service the Property.

(3) **Location of Parking Garage Associated with the PTF Improvements** -- The Applicant requested the flexibility to construct the parking garage associated with the PTF Improvements either where the bus bays, the driveway network serving the bus bays, and the transit-oriented commercial uses will be located or within a maximum radius of 1,500 feet from the PTF provided that the Applicant agrees to fund and operate a shuttle service or construct a pedestrian bridge over N.W. 12th Street between the parking garage and the PTF.

(4) **Clarifications to Covenant**. Finally, the Applicant requested to clarify the Covenant's language in a few instances. For example, with regard to the Applicant's obligation to fund the construction of the PTF improvements, the Applicant requested to clarify in the Covenant that if Miami-Dade County does not permit the creation of a community development district, then the Applicant will be permitted to not only identify, but also to use an alternative source of funding for the construction of the improvements.

Covenant Version No. 2. Shortly after filing the Application with DP&Z, the Applicant met with DP&Z staff and Miami-Dade Transit ("MDT") staff regarding the merits of the application. At this meeting, MDT expressed concern not only about the fifteen year extension of time to construct the PTF, but also about the Applicant's request to have the flexibility to construct the parking garage within 1,500 feet from the PTF. Instead, MDT suggested for the Applicant to consider a phased development program for construction of the PTF, and to consider withdrawing the request associated with the possible relocation the parking garage. The Applicant heeded these suggestions, and revised the

proposed covenant accordingly.[1] This version of the proposed covenant, known as Covenant Version No. 2, was the version of the covenant used by DP&Z staff to prepare their analysis and recommendation for the Application.

Current Status of Modifications to Covenant. As noted in DP&Z's recommendation, DP&Z and MDT staff had several additional concerns regarding Covenant Version No. 2. These concerns included, but were not limited to, the number of parking spaces provided by the Applicant during Phase 1 of the PTF's development program, the ten-year timeframe to construct the parking garage in Phase 2, the absence of having to obtain Leadership in Energy and Environmental Design (LEED) for the PTF, and the deletion from the Covenant of language relating to certain aspects of the workforce housing program.

Following the submittal of Covenant Version No. 2, the Applicant continued (and continues) to work very closely with DP&Z and MDT staff to address their concerns. The most recent version of the proposed covenant is Covenant Version No. 7.[2] See Exhibit C. This latest version of the covenant significantly bridges the differences between staff and the Applicant. To summarize, Covenant Version No. 7 now provides that the Applicant will fund and construct the PTF pursuant to the phased development schedule described below:

- Phase I -- Ten (10) saw-tooth bus bays, the driveway network, bus operator restrooms, and a temporary surface parking lot capable of accommodating a minimum of 189 parking spaces – Owner shall fund and construct the improvements that constitute Phase I of the PTF no later than August 31, 2012.[3]

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[1] The phased development schedule would permit MDT to have a fully functional PTF by August 31, 2012. In the first phase of the development schedule, the parking areas would be located on a surface parking lot. Then, as part of phase 2, the Applicant would construct a parking garage capable of accommodating 260 parking spaces. The Applicant would fund and construct phase 2 of the PTF within ten (10) years from the date that the first zoning application for the Property becomes final.

[2] Covenant Version No. 7 is the version of the proposed covenant considered by the BCC during the transmittal hearing.

[3] In the event of such a challenge, the August 31, 2012 deadline shall be tolled until such time as Application No. 7 in the October 2009 CDMP Amendment Cycle or any subsequent development approvals become final and nonappealable.

- Phase II -- Parking garage capable of accommodating 260 parking spaces designated for transit users, a restroom facility for bus operators and transit users, a kiss-and-ride area, the transit-oriented retail, transit lounge, and landscaping for this area. Owner will fund and construct the improvements that constitute Phase II of the public transportation facility within five (5) years from the effective date of a development agreement between the County and the Applicant. The development agreement, in turn, shall be executed once the first zoning application on the Property becomes final.

In addition to the foregoing modifications with regard to the PTF's phased development schedule, Covenant Version No. 7 also addresses DP&Z's other concerns by requiring the PTF to be LEED certified, by reintroducing the relevant workforce housing language, and by requiring the issuance of a certificate of completion for the Phase 1 improvements before the first 400,000 square feet of floor area for the retail use can receive a certificate of occupancy.

It is our understanding that the remaining differences between staff and the Applicant are as follows:

- Whether the County will agree that the Applicant will not be responsible for any application fees associated with the development approvals for the Phase I improvements, including, but no limited to, zoning, platting, and permitting;

- Whether the County will agree that the Applicant will not be responsible for any operational expenses associated with the Phase I improvements, including, but not limited to, property taxes for the Triangular Parcel, insurance, and maintenance costs (i.e. utilities and repairs); and

- Whether the County will agree that the issuance of a certificate of completion for Phase I of the Public Transportation Facility shall exempt the Property from any transportation concurrency requirements.

The Applicant is confident that the foregoing remaining differences will be resolved by the time the BCC considers whether to adopt the application in October 2010.

Justification for Modifications to Covenant. The Covenant modifications currently proposed by the Applicant are generally categorized into the following two requests: (1) extension of time to construct the PTF improvements and (2) a

carve out to permit an initial 400,000 square feet of retail use to move forward. These modifications to the Covenant are appropriate for the following reasons:

(1) Practical Reasons. The Applicant remains committed to funding and constructing the PTF improvements. Under the proposed covenant, however, the Applicant is requesting additional time to construct the multimillion dollar parking garage in Phase 2 of the PTF's phased development schedule. The Applicant will self-finance the approximately $4 million cost associated with construction of the improvements associated with Phase I of the PTF. The current economic crisis continues to have a severe impact on the real estate and credit markets. As noted in the economic report prepared by Miami Economic Associates, Inc., "the current economic climate as reflected in the real estate and credit markets makes it virtually impossible to finance and construct the proposed transit facilities at the present time." See Exhibit D. This difficult economic climate has made it virtually impossible to finance the construction of the parking garage at the present time.

With regard to the request for the initial retail use, several retailers and developers have expressed interest to the Applicant in connection with the potential development of the southwestern corner of the Property. As noted in the existing Covenant, no structure within the Property can obtain a certificate of occupancy until either the Dolphin Fire Station (No. 68) has received a temporary certificate of occupancy or there is a new Fire Rescue Station designated by the Fire Rescue Department that can service the project. Accordingly, in order to permit this initial 400,000 square feet of retail use within the Property to move forward, the Applicant is requesting an exclusion from the prohibition on obtaining a certificate of occupancy prior to the issuance of a temporary certificate of occupancy for the Dolphin Fire Station or the designation of a new fire rescue facility to service the Property.

The initial 400,000 square feet of retail use within the Property will provide an immediate and significant stimulant to the County's job market. Miami-Dade County's unemployment rate pushed past eleven (11) percent in July 2009 for the first time since 1983. In fact, Miami-Dade County's jobless rate is the highest among Florida's major urban counties. See http://www.miamiherald.com/business/story/1197365.html. Here, a large retail development within the Property will provided a significant boost to the local employment market. As a result, the current application seeks to amend the Covenant in order to permit this initial retail use to move forward in the near future.

Moreover, the initial 400,000 square feet of retail use will be critical in order to obtain financing for the multimillion dollar parking garage that the Applicant will construct in Phase 2 of the PTF's phased development schedule. If the Property does not generate income, no lending institution will lend the funds required for construction of the parking garage. The positive cash flow generated by the initial retail use will help the Applicant secure the necessary financing for construction of the parking garage.

Finally, please note that Miami-Dade Fire Rescue ("MDFR") does not object to the Application. MDFR indicates in their recommendation that existing fire stations are able to provide fire and emergency service for the potential alarms generated by the 400,000 square feet of retail use. While the Applicant has development rights to construct nearly 3 million square feet on the Property, the Application seeks to carve-out only 400,000 square feet from the foregoing MDFR prohibition. As a result of this, and because the Applicant remains committed to funding and constructing the roadway improvements indicated in Exhibit B of the Covenant prior to the issuance of any certificate of occupancy for any building on the Property, MDFR is supportive of the application.

(2) Consistency with the CDMP. The proposed modifications to the Covenant are consistent with several objective goals and policies of the CDMP. Specifically, the approval of the Application will be consistent with the following objectives, goals, and policies within the CDMP:

POLICY MT-2A

Transit system improvements shall be coordinated with, and support the staging and shaping of development as planned in the Land Use Element, through Miami-Dade County's transportation planning process.

MDT staff has indicated to the Applicant that they have service plans to implement an express bus service connecting the Airport West area to the Miami Intermodal Center (MIC) to coincide with the MIC opening currently scheduled for May 2012. Covenant Version No. 7 agrees to complete Phase 1 of the PTF by August 2012. Due to the length of time involved with securing the necessary development approvals and the time involved with constructing the facility, August 2012 is the earliest that the Applicant is able to complete Phase 1 of the PTF. As a result, MDT will have a fully functional PTF within two months of the opening of the MIC. Clearly, the Application supports the staging and shaping of Property's development through MDT's transportation planning process.

OBJECTIVE LU-7

Miami-Dade County shall require all new development and redevelopment in existing and planned transit corridors and urban centers to be planned and designed to promote transit-oriented development (TOD), and transit use, which mixes residential, retail, office, open space and public uses in a pedestrian-friendly environment that promotes the use of rapid transit services.

Because the Property will incorporate a PTF, the Property's development entitlements will permit a transit-oriented development that will mix residential, retail, office and open spaces within a pedestrian-friendly environment that will promote transit use.

POLICY LU-10C

Miami-Dade County shall encourage energy conservation by adopting Florida Green Building Coalition, US Green Building Council Leadership in Energy and Environmental Design (LEED), or other acceptable commercial building standards for County-owned facilities.

All buildings developed on the Property, including the PTF, will be LEED certified in accordance with the standards set forth by the United States Green Building Council.

POLICY LU-10E

Miami-Dade County shall investigate incentives for developers and building owners to incorporate energy efficiency and other conservation measures that meet recognized green building standards into the design, construction or rehabilitation of their buildings.

All buildings developed on the Property, including the PTF, will be LEED certified in accordance with the standards set forth by the United States Green Building Council.

(3) Consistency with the Strategic Regional Policy Plan. The Application is consistent with several goals and policies of the Strategic Regional Policy Plan. Specifically, the Application is consistent with the following goals and policies: Goal 4, Policy 4.1, Policy 4.11, Goal 8, Policy 8.4, Policy 8.5, Policy 8.8, Goal 11, Policy 11.1, Policy 11.2, and Policy 11.5. While all of the foregoing goals and policies are significant issues addressed by the Application, the most relevant to the Covenant's proposed modifications relating to the PTF are listed below:

Goal 8 – Enhance the Region's mobility, efficiency, safety, quality of life, and economic health through improvements to road, port, and public transportation infrastructure.

The proposed PTF will greatly enhance the mobility and quality of life for residents of west Miami-Dade County. The PTF similarly enhances MDT's transportation infrastructure.

Policy 8.4 – Expand use of public transportation, including buses, commuter rail, waterborne transit, and alternative transportation modes that provide services for pedestrians, bikers, and the transportation disadvantaged, and increase its role as a major component in the overall regional transportation system.

The PTF expands the use of public transportation in Miami-Dade County.

Policy 8.5 – Identify all possible existing and future funding sources at the local, state, and federal levels and from the private sector, and facilitate access to these sources in order to meet the Region's transportation needs.

The PTF will be completely funded by the Applicant, and therefore the private sector will be helping address Miami-Dade County's transportation needs.

Policy 8.8 – Ensure the safety of the transportation system by implementing measures to reduce vehicle, pedestrian, and bicycle crashes, and increase the safety of commercial vehicle operations.

The PTF will provide a safe and convenient alternative for commuters traveling throughout various parts of County. A new PTF in west Miami-Dade County will increase the ridership of public transportation. This will help alleviate traffic congestion and ultimately lead to fewer vehicle, pedestrian, and bicycle crashes.

Conclusion. The proposed modifications to the Covenant are necessary in order to ultimately realize a model urban infill development in the County, which will provide the County's West Dade region with a needed central gathering place for its residents. The PTF's phased development schedule will enable the Applicant to meet his obligations under the Covenant, while providing the County with a fully functional PTF in the very near future. Also, please note that the County's Community Zoning Appeals Board for Area 10 and the Planning Advisory Board recommended adoption and transmittal of the

Application. For all of the foregoing reasons, we request that DCA determine the Application to be in compliance with Chapter 163, Florida Statutes and applicable law.

If you have any questions or comments in the interim with regard to the foregoing, please give me a call at (305) 377-6231.

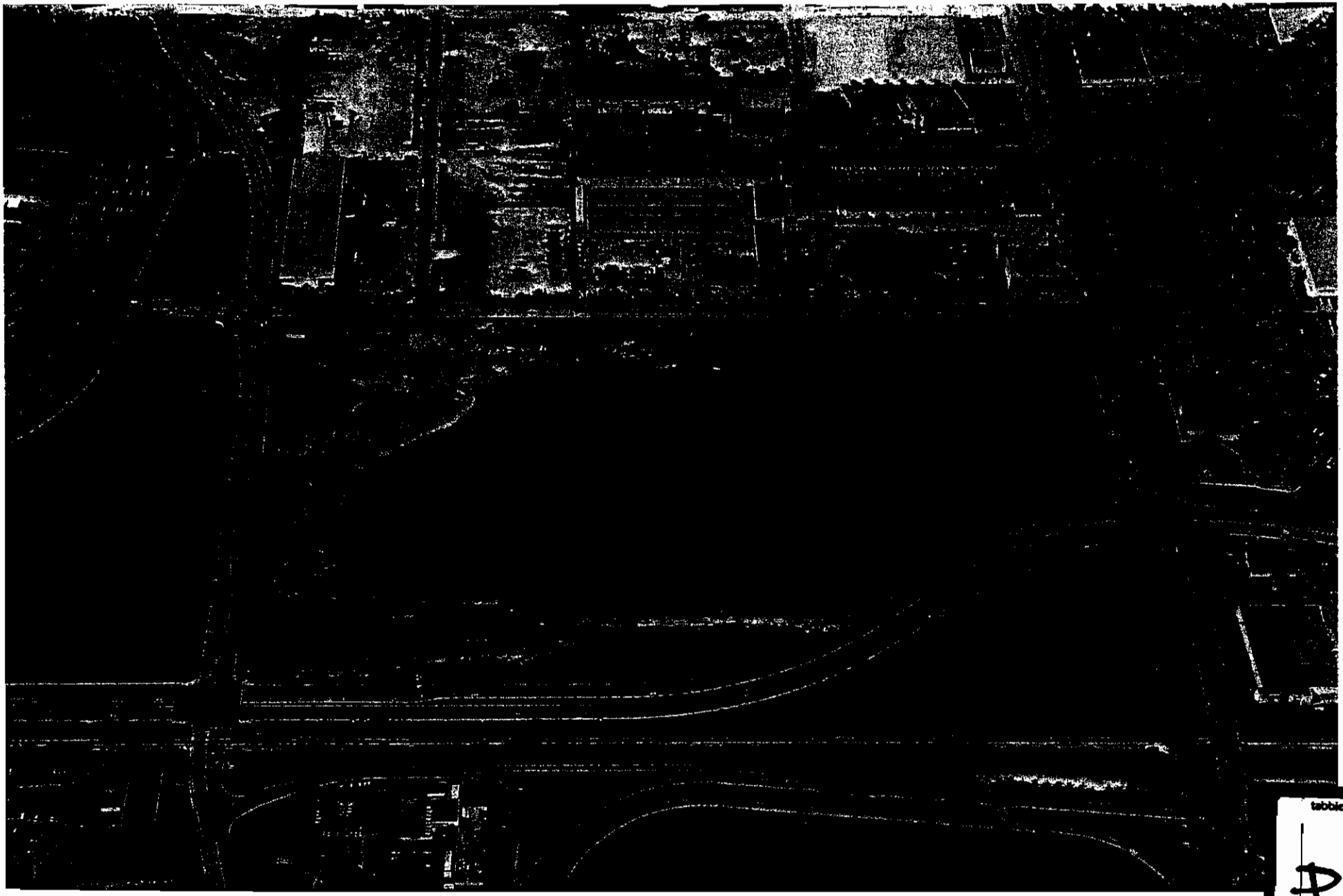
Sincerely yours,

Michael W. Larkin

Enclosures

cc: Bill Pable - DCA
Carolyn Dekle – SFRPC
Bob Cambric – SFRPC
Marc LaFerrier – MDC DP&Z
Robert Balzebre
Michael A. Gil, Esq.

Aerial Photograph of Property



EXHIBIT

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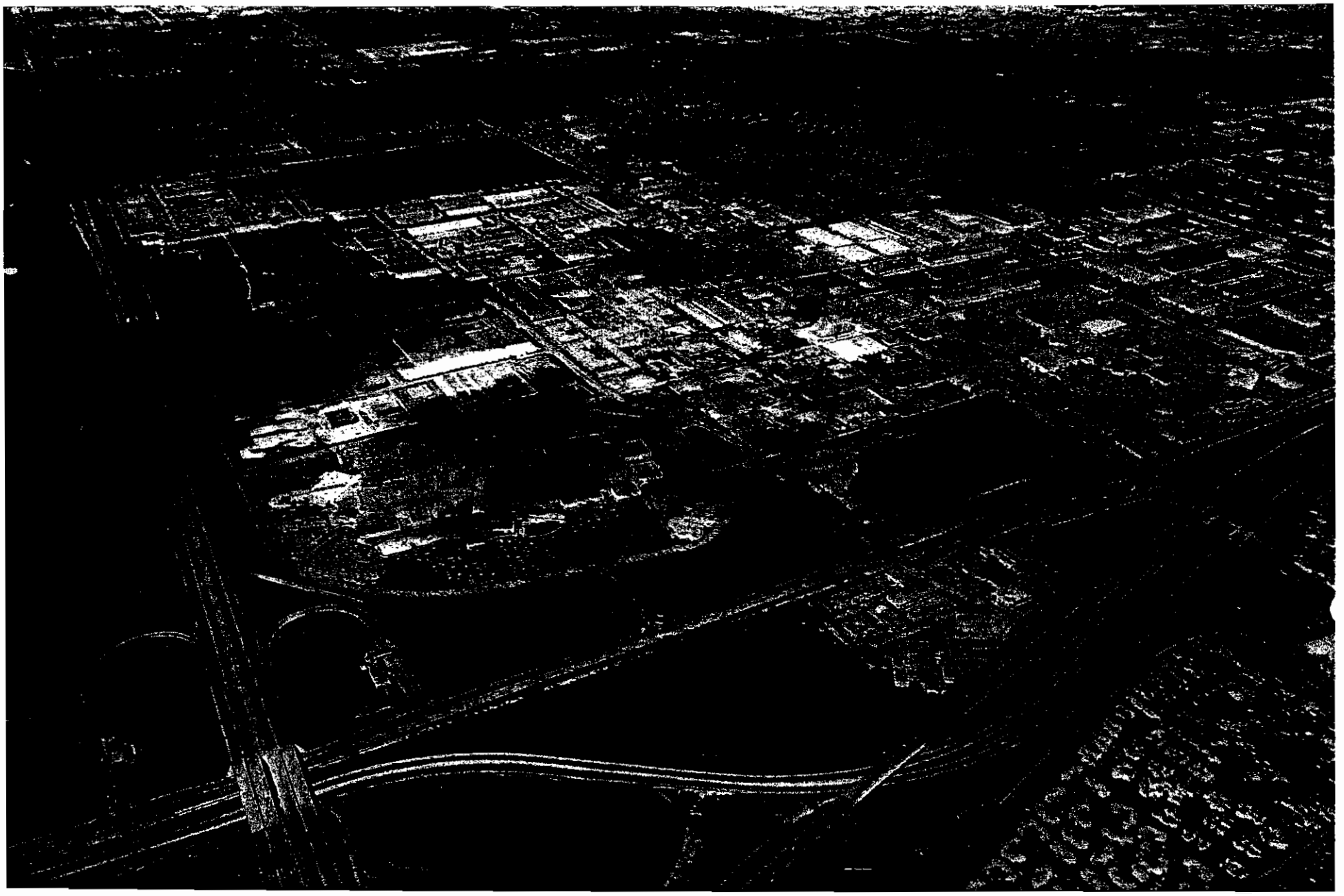
Aerial Photograph of Property Looking Northeast



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RECORDED 06/17/2008 10:12:17
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

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

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DECLARATION OF RESTRICTIONS

WHEREAS, the undersigned Owner, 107th Avenue Gamma, LLC ("Owner") holds the fee simple title to a 54.20 net acre parcel of land in Miami-Dade County, Florida, described in Exhibit "A," attached hereto, and hereinafter called the "Property," which is supported by the attorney's opinion; and

WHEREAS, the Property is the subject of a standard Comprehensive Development Master Plan ("CDMP") Amendment Application No. 3 of the April 2007 Amendment Cycle; and

WHEREAS, the Owner has sought a Land Use Plan amendment to change the designation of the Property from "Industrial and Office" and "Business and Office" to "Business and Office"; and

WHEREAS, the Owner has sought an amendment to the Land Use Plan Map and a text amendment to the Land Use Element of the CDMP to designate the Property as a Regional Activity Center ("RAC") in accordance with relevant Florida Statutes and provisions of the Miami-Dade County Comprehensive Development Master Plan; and

WHEREAS, the Owner desires to promote public transportation by incorporating within the Property a public transportation facility; and

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NOW THEREFORE, in order to assure **Miami-Dade County** (the "County") that the representations made by the Owner during consideration of Amendment Application No. 3 will be abided by the Owner, its successors and assigns, freely, voluntarily, and without duress, makes the following Declaration of Restrictions covering and running with the Property:

Maximum Development Program. The maximum development program for the Property ("MDP") shall be:

Residential	1050 dwelling units or 1,701,000 gross square feet
Retail/Service	799,900 gross square feet
Hotel	430 rooms or 225,000 gross square feet
Office	225,000 gross square feet

Notwithstanding any transportation concurrency exemption that is granted for the Property, the Owner may simultaneously increase and decrease the MDP's land use categories provided that the cumulative impacts of the reallocated land uses may not exceed (a) the PM peak hour trips established for the MDP, which equates to 2,807 net PM peak hour trips, or (b) average daily potable water demand or maximum daily potable water demand of the MDP, which equate to .361 million gallons per day and .812 million gallons per day, respectively. The square footage (or floor area) in the MDP, as the MDP may be amended in the future if the Property is designated as a Metropolitan Urban Center, is based upon the entirety of the Property, including the portion of the Property that Owner will dedicate in the future to the County as described below.

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Transit Improvements. The Owner intends to develop the Property as a project that promotes public transportation, and subject to County approval, the Owner shall incorporate within the development of the Property a MetroBus Terminal for multiple MetroBus routes. Additionally, Owner agrees to reserve within the portion of the Property that will be dedicated to the County as described below sufficient area for a future possible MetroRail Station, to be built only if and when all Federal Transit Administration requirements are met, so as not to preclude any future transit service enhancements to the Property. Such MetroRail station or MetroBus Terminal shall be referred to as the "Public Transportation Facility."

If the Public Transportation Facility is a MetroBus Terminal, the terminal shall include a maximum of ten (10) saw-tooth bus bays, the driveway network serving the bus bays, ("Parking Area"), 260 parking spaces designated for transit users, a restroom facility for bus operators and transit users, a kiss-and-ride area, transit-oriented commercial uses ("Commercial Area"), transit lounge, and landscaping for this area. The Owner agrees to construct a parking garage where the bus bays, Commercial Area, and Parking Area will be located ("Parking Structure"). The support columns and other structural and load bearing components within the Parking Structure shall be designed in a manner so that a fourth story can be added to the Parking Structure in the future.

Owner shall fund and construct the foregoing described MetroBus Terminal improvements within three (3) years from the date that Amendment Application No. 3 becomes final and nonappealable. Owner shall coordinate the design of the Parking Structure with Miami-Dade Transit. If Owner is unable for good cause to construct the foregoing improvements within three (3) years from the date that Amendment Application No. 3 becomes final and nonappealable, the Owner may request an extension of time from the Director of Miami-Dade Transit or his designee provided that a building permit for the improvements has issued prior to the end of the three

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year period. If all or a portion of the funding is provided through local, state, or federal grant or similar subsidy, this shall reduce the Owner's responsibility to fund the construction of the MetroBus Terminal improvements by a proportionate amount.

Owner's obligation to fund and construct the foregoing described transit improvements is contingent upon the creation of a community development district, as defined by Florida Statutes, for the Property by the County. The community development district's powers may include, but not be limited to, the funding and construction of any other project, facility, or service required by a development approval, interlocal agreement, zoning condition, or permit issued by a governmental authority with jurisdiction in the district. If the County permits the creation of the community development district, the Owner agrees to apply for the creation of a multipurpose special taxing district to maintain the development's infrastructure such as roadways, storm drainage, water, sewer, and landscape should the community development district be dissolved or fail to fulfill its maintenance obligations. The special taxing district shall remain dormant until such time as Miami-Dade County determines to implement it. If the County does not permit the creation of a community development district, Owner shall identify an alternative source of funding for the construction of the foregoing described improvements.

With the exception of the area of the Property on which the driveway network leading from NW 12th Street to the MetroBus Terminal Improvements will be located, Owner shall dedicate to the County on terms acceptable to the County and subject to County approval the portion of the Property on which the MetroBus Terminal Improvements will be located once the foregoing described improvements have received a certificate of occupancy from the County. For the purpose of joint use of the foregoing described driveway network by Owner and County, at time of dedication, Owner shall grant an easement to the County that will permit ingress and egress from NW 12th Street to the Public Transportation Facility for all county employees and

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patrons of the facility. The Owner shall retain the right to install signage with regard to any use within the Property on the Parking Structure. The Owner shall retain exclusive lease rights to the Commercial Area, which include, but are not limited to, the right to all rent monies.

Roadway Improvements. The Owner shall fund and construct the roadway improvements described in Exhibit B. The foregoing roadway improvements shall be open to traffic prior to the issuance of any Certificate of Occupancy for any building within the Property, except for those buildings that constitute the Public Transportation Facility. The roadway improvements described in Exhibit B shall be accepted by the County as a contribution in lieu of payment of all or a portion of the required Road Impact fees under Section 33E of the Code of Miami-Dade County.

Certificate of Occupancy Date. Owner agrees not to obtain a certificate of occupancy for any building within the Property, except for those buildings that constitute the Public Transportation Facility, until such time as either the Dolphin Fire Rescue Station (No. 68) has received a temporary certificate of occupancy or any other new Fire Rescue Station designated by the Fire Rescue Department that will service the Property. Finally, Owner agrees not to obtain a certificate of occupancy for any building within the Property until such time as all of the buildings that constitute the Public Transportation Facility have received a temporary certificate of occupancy.

Residential Uses. Owner agrees not to file a zoning application proposing a residential use on the Property until such time as Miami-Dade County has adopted a public school facilities element, entered into an Interlocal Agreement with the Miami-Dade County Public School System with regard to school concurrency, and amended its Comprehensive Development Master Plan to implement school concurrency.

Fire Rescue. Owner agrees to support the creation of a non ad valorem fire assessment fee.

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Project Design. The Owner represents that the Property will be developed in a manner that assures a high quality, unified development design in accordance with coordinated and cohesive design principles which reflect the general guidelines contained in Exhibit "C" ("Design Guidelines"). In that regard, with the exception of those buildings that will constitute the Public Transportation Facility, prior to any development approvals being sought for residential, retail, hotel, or office uses on the Property, the Owner agrees to seek and obtain site plan approval for the entire Property which reflects substantial conformity with the Design Guidelines or, alternatively, submit for approval to the Director of the Planning and Zoning Department (or its successor planning agency), or his/her designee, and upon receiving said approval, record an architectural code or equivalent design standards to govern development of the entire Property, which are substantially in accordance with the attached Design Guidelines.

LEED Certification. All buildings developed on the Property will be Leadership in Energy and Environmental Design (LEED) certified in accordance with the standards set forth by the United States Green Building Council.

Workforce Housing. Owner agrees that a minimum of 10% of the residential units on the Property shall be designated for workforce housing and shall meet the criteria of workforce housing in Miami-Dade County. Workforce housing shall be deemed to be the sale or rental of property for persons within the income range of 65% to 140% of the median family income for Miami-Dade County as published annually by the U.S. Department of Housing and Urban Development. Notwithstanding anything to the contrary in this Declaration of Restrictions, the Owner may utilize any residential density bonuses granted by Miami-Dade County, or successor municipality, for the development of workforce housing on the Property.

The Owner shall, upon site plan approval or prior to obtaining the initial building permit for a residential structure on the Property, whichever is the required

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date according to the relevant County regulation, identify those units within such structure, if any, that satisfy this workforce housing requirement. A declaration of restrictive covenants, in form acceptable to the County, shall be recorded in the public records of Miami-Dade County, Florida stating that the unit is a workforce housing unit and shall remain as such for a period of 30 years from the time of recordation of the declaration of restrictive covenants.

Water Conservation Regulations. The Owner shall incorporate the measures listed in Exhibit D, where practicable, into the design, construction and operation of any residential development on the Property. Similarly, the Owner shall incorporate the measures listed in Exhibit E, where practicable, into the design, construction and operation of any commercial development on the Property.

Subdivision of Property. In the event the Property is subdivided into multiple ownerships, responsibility for the obligations contained in this Declaration that are related to the provision of workforce housing units in the absence of a duly enacted ordinance shall be allocated on a pro-rata per acre basis. Workforce housing units on any particular subparcel of the Property shall be developed simultaneously with any market rate housing units on that subparcel.

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, at Owner's expense, in the public records of Miami-Dade County, Florida and shall remain in full force and effect and be binding upon the undersigned Owner, and their 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 real property and for the benefit of Miami-Dade County and the public welfare. The Owner, and their heirs, successors and assigns, acknowledge that acceptance of this Declaration does not in any way obligate or provide a limitation on the County.

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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, 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 Miami-Dade County.

Modification, Amendment, Release. 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 the fee simple title to the Property, provided that the same is also approved by the Board of County Commissioners of Miami-Dade County, Florida. Any such modification or release shall be subject to the provisions governing amendments to Comprehensive Plans, as set forth in Chapter 163, Part II, Florida Statutes or successor legislation that may, from time to time, govern amendments to Comprehensive Plans (hereinafter "Chapter 163"). Such modification or release shall also be subject to the provisions governing amendments to the CDMP as set forth in Section 2-116.1 of the Code of Miami-Dade County, or successor regulations governing modifications to the CDMP. In the event that the Property is incorporated within a new municipality that amends, modifies, or declines to adopt the provisions of Section 2-116.1 of the Miami-Dade County Code, then modifications or releases of this Declaration shall be subject to Chapter 163 and the provisions of such ordinances as may be adopted by such successor municipality for the adoption of amendments to its comprehensive plan; or, in the event that the successor municipality does not adopt such ordinances, subject to Chapter 163 and the provisions of the municipality's ordinances that apply to the adoption of district boundary changes. Should this Declaration be so modified, amended, or released, the Director of the Department of Planning and Zoning or the executive officer of a

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successor department, or, in the absence of such Director or executive officer, by his or her assistant in charge of the office in his/her office, shall execute a written instrument effectuating and acknowledging such modification, amendment, or release.

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 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 his attorney. This enforcement provision shall be in addition to any other remedies available at law, in equity or both.

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.

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.

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.

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.

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However, if any material portion is invalidated, the County shall be entitled to revoke any approval predicated upon the invalidated portion.

Recordation and Effective Date. This Declaration shall be filed of record in the public records of Miami-Dade County, Florida at the cost of the Owner following the approval of the Application. This Declaration shall become effective immediately upon recordation. Notwithstanding the previous sentence, if any appeal is filed, and the disposition of such appeal results in the denial of the Application, in its entirety, then this Declaration shall be null and void and of no further effect. Upon the disposition of an appeal that results in the denial of the Application, in its entirety, and upon written request, the Director of the Planning and Zoning Department or the executive officer of the successor of said department, or in the absence of such director or executive officer by his/her assistant in charge of the office in his/her absence, shall forthwith execute a written instrument, in recordable form, acknowledging that this Declaration is null and void and of no further effect.

Acceptance of Declaration. The Owner acknowledges that acceptance of this Declaration does not obligate the County in any manner, nor does it entitle the Owner to a favorable recommendation or approval of any application, zoning or otherwise, and the Board of County Commissioners retains its full power and authority to deny each such application in whole or in part and decline to accept any conveyance.

Owner. The term Owner shall include all heirs, assigns, and successors in interest.

[Execution Pages Follow]

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 12th day of FEBRUARY, 2008.

WITNESSES:

Signature

Susan Gordon

Print Name

Signature

ROSIE TAYLOR

Print Name

107th Avenue Gamma LLC

By:

Print: Robert P. Balzebre

Title: Manager

STATE OF FLORIDA)
) **SS**
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 12th day of FEBRUARY, 2008, by **Robert P. Balzebre, as Manager of the 107th Avenue Gamma LLC**, who is personally known to me or has produced _____ as identification, and acknowledged that he did execute this instrument freely and voluntarily for the purposes stated herein.

My Commission Expires:

Notary Public, State of FLORIDA

VERNON D. MARTIN

Print Name

Notary Public State of Florida
Vernon D Martin
My Commission DD594817
Expires 10/04/2010

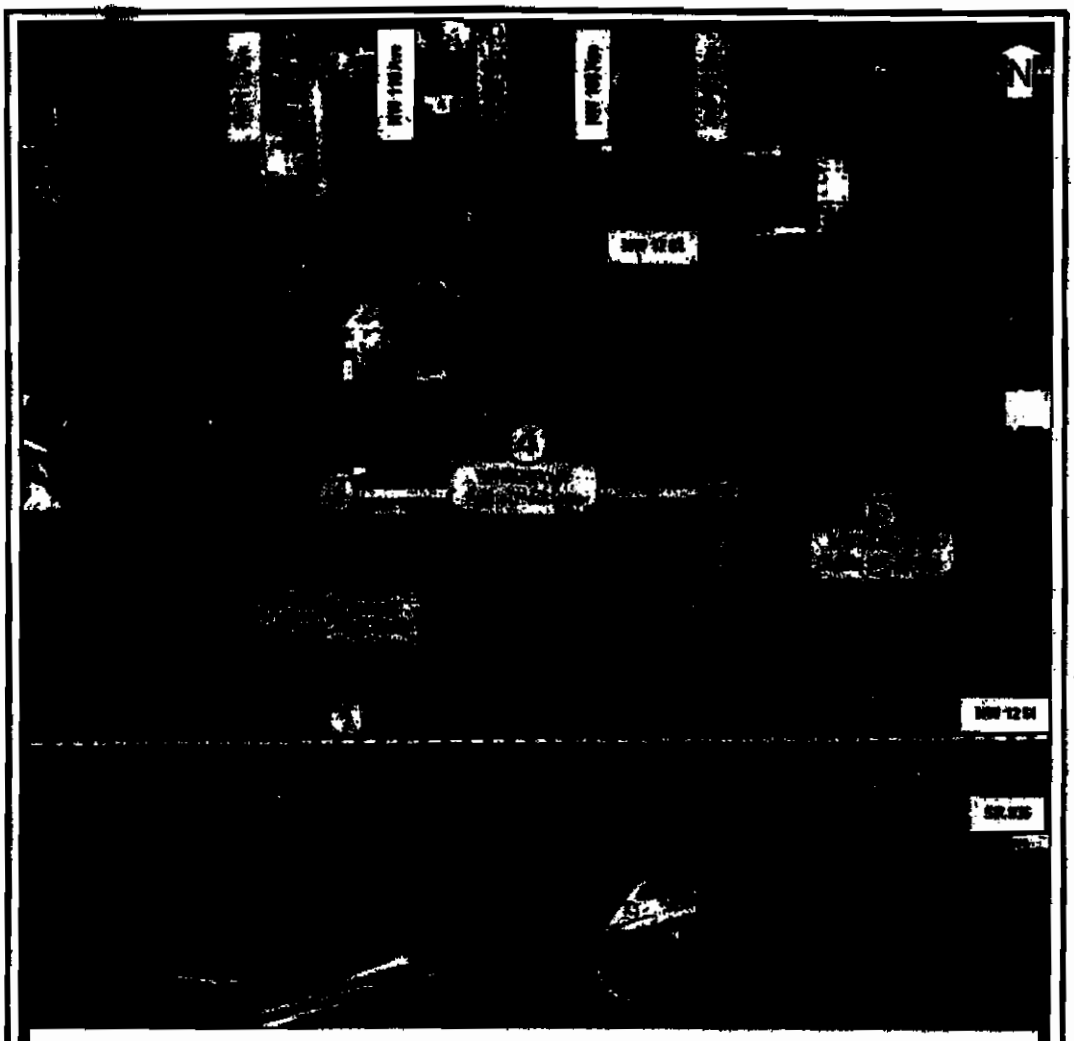
Exhibit "A"

Legal Description

The South 1/2 of the South 1/2 of the East 2/5 of Section 31, Township 53 South, Range 40 East of Miami-Dade County, Florida; Less existing Right of Way of Records.

Exhibit "B"

Roadway Improvements



1. Provide an exclusive WB right turn lane on NW 12 Street at NW 111 Avenue.
2. Add a 3rd NB travel lane to widen NW 111 Avenue from a 4LD to a 5LD.
3. Convert the 3rd NB lane into a NB right turn lane on NW 111 Avenue at NW 14 Street.
4. Add a 3rd EB travel lane to widen NW 14 Street from a 4LD to a 5LD.
5. Convert the 3rd EB lane into an EB right turn lane on NW 14 Street at NW 107 Avenue.
6. Complete the 4th SB through lane on NW 107 Ave from NW 14 Street to NW 12 Street.
7. Provide signal modifications to accommodate all geometric improvements.

Legend

54.196 Acre Amendment Site

Business and Office – 54.196 acres
With a RAC Overlay Designation

Figure 6
Proposed Infrastructure Improvements
Delphin Station
September 2007

Source: Cathy Sweetapple & Associates

Exhibit "C"

Design Guidelines

1. The plan for development of the Property shall allow for a mix of uses, which will include commercial and residential uses.

2. The proposed buildings shall be designed using compatible and complementary architectural styles and designs.

3. Design features shall be included at appropriate locations of the buildings, in order to maintain architectural and design continuity.

4. Consistent sign criteria and standards shall be established at the time of initial rezoning to encourage aesthetic compatibility within the sign program.

5. Large expanses of opaque or blank building wall shall be minimized and shall have landscaped areas providing a visual barrier, to the maximum extent feasible.

6. Uniform street furniture and lighting standards shall be provided throughout the Property.

7. Pedestrian crosswalks shall be clearly delineated on any proposed private roads within the Property.

8. The development pattern shall incorporate elements of the Miami-Dade County Urban Design Guidelines.

9. The streets shall be designed for pedestrian mobility, interest, safety, and comfort as well as vehicular mobility.

10. The proposed development shall contain open spaces that may include public squares, greens, and pedestrian promenades.

11. The buildings and their landscapes within the proposed development shall be built to the sidewalk edge to the greatest extent possible in a manner that frames the adjacent street to create a public space in the street corridor that is comfortable, interesting, as well as safe for pedestrians.

12. The architectural elements of the buildings at street level shall have a human scale, abundant windows and doors, and design variations at short intervals to create interest for the passing pedestrian.

13. Parking areas shall be minimized at grade between the street and main building entrances to the extent possible. Subterranean parking between the street and main building entrances is, however, permitted.

Exhibit "D"

Water Conservation Measures for Residential Development

- Installing only High Efficiency Toilets (HET), which shall be defined as 1.2 gallons per flush, that meet the standard specifications of the Unified North America Requirements (UNAR) and display the Environmental Protection Agency's WaterSense label.
- Using only one control valve, or one set of hot and cold valves required for each High Efficiency Showerhead, which shall be defined to provide no more than 1.5 gallon per minute (gpm).
- Using Efficiency faucets which shall be defined to provide 1.0 gpm.
- Using High Efficiency (HE) Clothes Washer(s) with a water factor of 6 or less (Tier 3b) as identified by the Consortium for Energy Efficiency at http://www.ceel.org/reid/seha/rwsh.rwsh-prod.pdf, Energy Star (and WaterSense certified when available) for residential units equipped with clothes washer connections.
- Using dishwashers rated with use of 6.5 gallons/cycle or less, Energy Star and WaterSense certified.
- Installing sub-metering for all multi-unit residential development which shall include separate meter and monthly records kept of all major water-using functions such as cooling towers and individual buildings.
- Applying Florida Friendly Landscapes guidelines and principles to all landscape installations in compliance with Florida Yards & Neighborhoods criteria.
- Using gutter downspouts, roof runoff, and rain harvesting to encourage increased recharge and other non-potable uses on the property, thru the use of elements and features such as rain barrels and directing runoff to landscaped areas.
- Providing "Florida Friendly Landscapes" within all public rights-of-way.
- Using drip irrigation or micro-sprinklers when appropriate.
- Using porous surfaces (bricks, gravel, turf block, mulch, pervious concrete, etc) whenever possible on walkways, driveways, and patios.

- Including Florida Yards and Neighborhoods Program information on "Florida Friendly Landscapes" in the sales literature provided to homebuyers.
- Developing the landscape plan and plant palette based on site characteristics (soil, drainage, structural limitations, utilities, overhangs, lights, etc.), which shall include:
    - Per the County's Landscaping Ordinance, existing native trees, palms and associated native understory, shall be retained and preserved along with identified undergrowth and be a focal point of the landscape.
    - 80% of plant materials to be utilized on site shall be from the Florida-Friendly Plant List and shall have a moderate to high drought tolerance.
    - All plants will be grouped in the landscape plan by similar water and maintenance requirements and shall be spaced to allow for maturation.
    - Turf areas will be evenly shaped for ease of maintenance and will be no less than 4 feet wide and will not be placed on any berms.
    - No more than 30% of the total area required for landscaping may be turf or grass.
    - Soils analysis should be completed and used in the plant selection process where applicable and a copy should be provided to the home buyer.
    - Limit use of rock mulch due to heat loading: rock mulch shall not exceed 5% of total landscaped area.
    - Use of environmentally friendly organic mulches that are applied 3 inches deep around plants and trees with two inches clear around each plant.
- Using a low volume irrigation system to irrigate all landscape beds.
- Irrigating turf by zones separate from zones for irrigation of shrubs and ground cover plantings.
- Using swing joints or flex pipe when installing sprinklers to help prevent broken pipes and sprinklers.
- Designing irrigation systems for minimum overlap.
- Installing soil moisture sensors or other water saving technologies.

Exhibit "E"

Water Conservation Measures for Commercial Development

- Using waterless technologies where available.
- Maximizing use of on-site sources of water.
- Choosing equipment that is water and energy efficient.
- Installing automatic shut offs, solenoids and controllers to turn water off when not in use.
- Installing flow restrictors when possible.
- Eliminating once-through cooling.

EXHIBIT

C

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

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DECLARATION OF RESTRICTIONS

WHEREAS, the undersigned Owner, 107th Avenue Gamma, LLC ("Owner") holds the fee simple title to a 54.20 net acre parcel of land in Miami-Dade County, Florida, described in Exhibit "A," attached hereto, and hereinafter called the "Property," which is supported by the attorney's opinion; and

WHEREAS, the Property ~~is~~ was the subject of a standard Comprehensive Development Master Plan ("CDMP") Amendment Application No. 3 ~~of~~ in the April 2007 Amendment Cycle; and

WHEREAS, CDMP Amendment Application No. 3 sought (1) a Land Use Plan (LUP) amendment to change the designation of the Property from "Industrial and Office" and "Business and Office" to "Business and Office" and (2) an amendment to the Land Use Plan Map and a text amendment to the Land Use Element of the CDMP to designate the Property as a Regional Activity Center ("RAC") in accordance with relevant Florida Statutes and provisions of the Miami-Dade County Comprehensive Development Master Plan; and

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~~*WHEREAS*, the Owner has sought a Land Use Plan (LUP) amendment to change the designation of the Property from "Industrial and Office" and "Business and Office" to "Business and Office"; and~~

~~*WHEREAS*, the Owner has also sought an amendment to the Land Use Plan Map and a text amendment to the Land Use Element of the CDMP to designate the Property as a Regional Activity Center ("RAC") in accordance with relevant Florida Statutes and provisions of the Miami-Dade County Comprehensive Development Master Plan; and~~

WHEREAS, during consideration of CDMP Amendment Application No. 3, the Department of Planning and Zoning ("DP&Z") recommended to the Board of County Commissioners ("BCC") that the graphic symbol for the Metropolitan Urban Center (MUC) designation on the LUP map of the CDMP be relocated to the Property from Miami International Mall which is now located within the boundaries of the City of Doral; and

WHEREAS, on April 24, 2008, the BCC voted to adopt CDMP Amendment Application No. 3 with acceptance of the proffered covenant and with DP&Z's recommendation to relocate the graphic symbol for the MUC designation on the LUP map of the CDMP to the Property; and

WHEREAS, the Owner desires to promote public transportation by incorporating within the Property a public transportation facility; and

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NOW THEREFORE, in order to assure **Miami-Dade County** (the "County") that the representations made by the Owner during consideration of Amendment Application No. ~~3~~ 7 in the October 2009 CDMP Amendment Cycle will be abided by the Owner, its successors and assigns, freely, voluntarily, and without duress, makes the following Declaration of Restrictions covering and running with the Property:

Maximum Development Program. The maximum development program for the Property ("MDP") shall be:

Residential	1050 dwelling units or 1,701,000 gross square feet
Retail/Service	799,900 gross square feet
Hotel	430 rooms or 225,000 gross square feet
Office	225,000 gross square feet

Notwithstanding the foregoing limitations ~~any transportation concurrency exemption that is granted for the Property~~, the Owner may simultaneously increase and decrease the MDP's land use categories provided that the cumulative impacts of the reallocated land uses may not exceed (a) the PM peak hour trips established for the MDP, which equates to 2,807 net PM peak hour trips, or (b) average daily potable water demand or maximum daily potable water demand of the MDP, which equate to .361 million gallons per day and .812 million gallons per day, respectively. The square footage (or floor area) in the MDP~~, as the MDP may be amended in the future if the Property is designated as a Metropolitan Urban Center,~~ is based upon the entirety of the Property, including the portion of the Property that Owner will dedicate in the future to the County as described below. "Retail/Service" as set forth above shall mean any proposed retail, service, or wholesale business establishment or group of

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establishments which deals primarily with the general public onsite, including those uses permitted in the BU zoning districts, as amended. Notwithstanding the foregoing, only those uses permitted in the BU-1 (Neighborhood Business District), BU-1A (Limited Business District), and BU-2 (Special Business District) zoning districts shall be permitted within the Property.

Transit Improvements. The Owner intends to develop the Property as a project that promotes public transportation, ~~and subject to County approval,~~ and therefore the Owner shall incorporate within the portion of the Property legally described in Exhibit A.1 ("Triangular Parcel") a MetroBus Terminal for multiple MetroBus routes. Additionally, Owner agrees to reserve within the portion of the Property that will be dedicated to the County as described below sufficient area for a future possible MetroRail Station, to be built only if and when all Federal Transit Administration requirements are met, so as not to preclude any future transit service enhancements to the Property. Such MetroRail station or MetroBus Terminal shall be referred to as the "Public Transportation Facility." or "PTF."

If the Public Transportation Facility is a MetroBus Terminal, the terminal shall include a maximum of ten (10) saw-tooth bus bays, the driveway network serving the bus bays, ("Parking Area"), 260 parking spaces designated for transit users, a restroom facility for bus operators and transit users, a kiss-and-ride area, transit-oriented commercial uses ("Commercial Area") not to exceed a maximum of 10,000 square feet, transit lounge, and landscaping for this area. The Owner agrees to fund and construct a parking garage where the bus bays, Commercial Area, and Parking Area will be located ("Parking Structure") pursuant to the phased development schedule for the PTF set forth in this covenant. The support columns and other structural and load bearing components within the Parking Structure shall be designed in a manner so that a fourth story can be added to the Parking Structure in the future.

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~~Owner shall fund and construct the foregoing described MetroBus Terminal improvements within three (3) years from the date that Amendment Application No. 3 becomes final and nonappealable.~~

The foregoing described MetroBus Terminal improvements shall be constructed pursuant to the phased development schedule described below:

- Phase I -- Ten (10) saw-tooth bus bays, the Parking Area, bus operator restrooms, and a temporary surface parking lot capable of accommodating a minimum of 189 parking spaces - Owner shall fund and construct the improvements that constitute Phase I of the PTF no later than August 31, 2012. Notwithstanding the foregoing, this timeframe shall be tolled if Application No. 7 in the October 2009 CDMP Amendment Cycle or any of the necessary development approvals becomes challenged by a third party. In the event of such a challenge, the August 31, 2012 deadline shall be tolled until such time as Application No. 7 in the October 2009 CDMP Amendment Cycle or any subsequent development approvals become final and nonappealable. Moreover, Owner shall not be responsible for any application fees associated with the development approvals for the Phase I improvements, including, but no limited to, zoning, platting, and permitting.
- Phase II -- Parking garage capable of accommodating 260 parking spaces designated for transit users, a restroom facility for bus operators and transit users, a kiss-and-ride area, the Commercial Area, transit lounge, and landscaping for this area. Owner shall fund and construct the improvements that constitute Phase II of the PTF within five (5) years from the effective date of the development agreement referred to below.

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During the period of time that the improvements that constitute Phase II are being constructed, in an effort to avoid interruption of the MetroBus Terminal, if necessary, the Owner shall provide Miami-Dade Transit with a temporary staging area on a portion of the Property to assure Miami-Dade Transit the continued capability to operate up to a maximum of seven (7) bus routes and accommodate a minimum of 139 parking spaces (the "Temporary Staging Area"). Specifically, the Temporary Staging Area shall be located either within the Triangular Parcel or, if located within the southeastern corner of the Property's parent tract (the portion of the Property located on the north side NW 12th Street), the Temporary Staging Area shall be located no more than a maximum radius of 700 feet from the northern boundary of the Triangular Parcel. This Temporary Staging Area shall cease to exist once a certificate of occupancy is obtained for the improvements that constitute Phase II of the PTF. ~~Owner shall coordinate the design of the Parking Structure with Miami-Dade Transit.~~ If all or a portion of the funding is provided through local, state, or federal grant or similar subsidy, this shall reduce the Owner's responsibility to fund the construction of the MetroBus Terminal improvements by a proportionate amount.

If the improvements that constitute Phase I of the PTF are substantially constructed prior to August 31, 2012, ~~the~~ Owner may request an extension of time from the Director of Miami-Dade Transit or his designee for a maximum of one (1) additional year. Owner agrees that the decision of whether to grant the foregoing extension of time shall be at the sole discretion of the Director of Miami-Dade Transit or his designee. ~~provided that a building permit for the improvements has issued prior to the end of the three ten year period.~~ Similarly, if Owner is unable to obtain a certificate of occupancy for the Phase II improvements within five (5) years from the effective date of the development agreement, prior to the expiration of the five year period of time, Owner may request an extension of time from the Director of Miami-Dade Transit or his designee for a maximum of three (3) additional years.

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Owner's obligation to fund and construct the foregoing described transit improvements is contingent upon the creation of a community development district, as defined by Florida Statutes, for the Property by the County. The community development district's powers may include, but not be limited to, the funding and construction of any other project, facility, or service required by a development approval, interlocal agreement, zoning condition, or permit issued by a governmental authority with jurisdiction in the district. If the County permits the creation of the community development district, the Owner agrees to apply for the creation of a multipurpose special taxing district to maintain the development's infrastructure such as roadways, storm drainage, water, sewer, and landscape should the community development district be dissolved or fail to fulfill its maintenance obligations. The special taxing district shall remain dormant until such time as Miami-Dade County determines to implement it. If the County does not permit the creation of a community development district, Owner shall identify and be permitted to use an alternative source of funding for the construction of the foregoing described improvements.

With the exception of the area of the Property on which the driveway network leading from NW 12th Street to the MetroBus Terminal Improvements will be located, Owner shall dedicate to the County ~~on terms acceptable to the County and~~ subject to County approval the portion of the Property on which the MetroBus Terminal Improvements will be located once the foregoing described improvements that constitute Phase II of the PTF have received a certificate of occupancy from the County. For the purpose of joint use of the foregoing described driveway network by Owner and County, ~~at time of dedication~~, Owner shall grant an easement to the County that will permit ingress and egress from NW 12th Street to the Public Transportation Facility for all county employees and patrons of the facility upon the issuance of a certificate of completion for Phase I of the PTF. Once the certificate of completion issues for Phase I of the PTF, Owner shall not be responsible for any operational expenses associated

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with the Phase I improvements, including, but not limited to, property taxes for the Triangular Parcel, insurance, and maintenance costs (i.e. utilities and repairs). The Owner shall (1) retain the right to install signage with regard to any use within the Property on the Parking Structure. ~~The Owner~~ and (2) shall retain exclusive lease rights to the Commercial Area, which include, but are not limited to, the right to all rent monies. The issuance of a certificate of completion for Phase I of the Public Transportation Facility shall exempt the Property from any transportation concurrency requirements.

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Development Agreement. Owner shall enter into a development agreement with the County pursuant to Section 33G-8 of the Code of Miami-Dade County, as amended, in connection with the PTF. The development agreement will, at a minimum, address the following subjects: operation of the PTF; maintenance of the PTF; design of the PTF; the location, size, design and other related details of the Temporary Staging Area; any County or other public funding for Phase II; the dedication of land for the MetroBus Terminal; as well as dedication of land for the future possible MetroRail Station; either funding or funding and construction of Phase II of the PTF; design, construction and funding of the future possible MetroRail Station; and any other terms and conditions necessary to address the foregoing. Owner shall request approval of the development agreement at the time it processes the first zoning application for the Property, which shall not include any application for zoning approval, if necessary, plat approval, or building permit approval for Phase I of the PTF. The development agreement shall be reviewed by the County contemporaneously with the processing of such zoning application, and shall be executed by the Owner and the County after the approval of such zoning application for the Property becomes final and non-appealable.

Roadway Improvements. The Owner shall fund and construct the roadway improvements described in Exhibit B. The foregoing roadway improvements shall be

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open to traffic prior to the issuance of any Certificate of Occupancy for any building within the Property, except for those buildings that constitute the Public Transportation Facility. The roadway improvements described in Exhibit B shall be accepted by the County as a contribution in lieu of payment of all or a portion of the required Road Impact fees under Section 33E of the Code of Miami-Dade County.

Certificate of Occupancy Date. Owner agrees not to obtain a certificate of occupancy for any building within the Property, except for those buildings that constitute the Public Transportation Facility, until such time as either the Dolphin Fire Rescue Station (No. 68) has received a temporary certificate of occupancy or any other new Fire Rescue Station designated by the Fire Rescue Department that will service the Property. ~~Finally,~~ Owner agrees not to obtain a certificate of occupancy for any other building within the Property until such time as all of the buildings that constitute the Public Transportation Facility have received a temporary certificate of occupancy. Notwithstanding the foregoing, Owner may seek a certificate of occupancy for the first 400,000 square feet of floor area for retail use within the Property and its accessory parking ("Retail Square Footage"). Owner agrees that the certificate of completion for the improvements that constitute Phase I of the PTF must issue prior to the issuance of the certificate of occupancy for the Retail Square Footage.

~~**Residential Uses.** Owner agrees not to file a zoning application proposing a residential use on the Property until such time as Miami-Dade County has adopted a public school facilities element, entered into an Interlocal Agreement with the Miami-Dade County Public School System with regard to school concurrency, and amended its Comprehensive Development Master Plan to implement school concurrency.~~

Deleted: Initial Retail Use. With the exception of the roadway improvements and the development agreement described in this covenant, the obligations set forth in this covenant shall not apply to the first 400,000 square feet of floor area for retail use.¶

Fire Rescue. Owner agrees to support the creation of a non ad valorem fire assessment fee.

Project Design. The Owner represents that the Property will be developed in a manner that assures a high quality, unified development design in accordance with

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coordinated and cohesive design principles which reflect the general guidelines contained in Exhibit "C" ("Design Guidelines"). In that regard, with the exception of those buildings that will constitute the Public Transportation Facility, prior to any development approvals being sought for residential, retail, hotel, or office uses on the Property, the Owner agrees to seek and obtain site plan approval for the entire Property which reflects substantial conformity with the Design Guidelines. Notwithstanding the foregoing, Owner may obtain site plan approval for the Retail Square Footage prior to obtaining site plan approval for the entire Property. Owner agrees that any site plan approval with regard to the Retail Square Footage will be in substantial conformity with the Design Guidelines. ~~or, alternatively, submit for approval to the Director of the Planning and Zoning Department (or its successor planning agency), or his/her designee, and upon receiving said approval, record an architectural code or equivalent design standards to govern development of the entire Property, which are substantially in accordance with the attached Design Guidelines.~~

LEED Certification. All buildings developed on the Property, will be Leadership in Energy and Environmental Design (LEED) certified in accordance with the standards set forth by the United States Green Building Council.

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Workforce Housing. Owner agrees that a minimum of 10% of the residential units on the Property shall be designated for workforce housing and shall meet the criteria of workforce housing in Miami-Dade County. Workforce housing shall be deemed to be the sale or rental of property for persons within the income range of 65% to 140% of the median family income for Miami-Dade County as published annually by the U.S. Department of Housing and Urban Development. Notwithstanding anything to the contrary in this Declaration of Restrictions, the Owner may utilize any residential density bonuses granted by Miami-Dade County, or successor municipality, for the development of workforce housing on the Property. A declaration of restrictive covenants, ~~in form acceptable to the County~~, shall be recorded in the public records of

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Miami-Dade County, Florida stating that the unit is a workforce housing unit and shall remain as such for a period of 30 years from the time of recordation of the declaration of restrictive covenants.

In the event the Owner seeks any density and intensity bonuses as provided by the Workforce Housing Development Program ("Program"), Chapter 33, Article XIIA of the Code of Miami-Dade County, then the Owner shall voluntarily comply with the provisions of the Program. If the Owner does not seek any density and intensity bonuses as provided by the Program, then the Owner is not obligated to comply with the provisions of the Program. Notwithstanding the foregoing, the Owner shall ensure that a minimum of 10% of the residential units within the Property satisfy the criteria for workforce housing.

~~The Owner shall, upon site plan approval or prior to obtaining the initial building permit for a residential structure on the Property, whichever is the required date according to the relevant County regulation, identify those units within such structure, if any, that satisfy this workforce housing requirement.~~

Water Conservation Regulations. The Owner shall incorporate the measures listed in Exhibit D, where practicable, into the design, construction and operation of any residential development on the Property. Similarly, the Owner shall incorporate the measures listed in Exhibit E, where practicable, into the design, construction and operation of any commercial development on the Property.

Subdivision of Property. In the event the Property is subdivided into multiple ownerships, responsibility for the obligations contained in this Declaration that are related to the provision of workforce housing units in the absence of a duly enacted ordinance shall be allocated on a pro-rata per acre basis only for such parcels which are designated for residential uses. Workforce housing units on any particular subparcel of the Property shall be developed simultaneously with any ~~market-rate~~ non-designated workforce housing units on that subparcel.

Deleted: A declaration of restrictive covenants, in form acceptable to the County, shall be recorded in the public records of Miami-Dade County, Florida stating that the unit is a workforce housing unit and shall remain as such for a period of 30 years from the time of recordation of the declaration of restrictive covenants.

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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, at Owner's expense, in the public records of Miami-Dade County, Florida and shall remain in full force and effect and be binding upon the undersigned Owner, and their 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 real property and for the benefit of Miami-Dade County and the public welfare. The Owner, and their heirs, successors and assigns, acknowledge that acceptance of this Declaration does not in any way obligate or provide a limitation on the County.

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, 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 Miami-Dade County.

Modification, Amendment, Release. 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 the fee simple title to the Property, provided that the same is also approved by the Board of County Commissioners of Miami-Dade County, Florida. Any such modification or release shall be subject to the provisions governing amendments to Comprehensive Plans, as set forth in Chapter 163, Part II, Florida Statutes or successor legislation that may, from time to time, govern amendments to Comprehensive Plans (hereinafter "Chapter 163"). Such modification or release shall also be subject to the provisions governing amendments to the CDMP as set forth in Section 2-116.1 of the Code of Miami-Dade

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County, or successor regulations governing modifications to the CDMP. In the event that the Property is incorporated within a new municipality that amends, modifies, or declines to adopt the provisions of Section 2-116.1 of the Miami-Dade County Code, then modifications or releases of this Declaration shall be subject to Chapter 163 and the provisions of such ordinances as may be adopted by such successor municipality for the adoption of amendments to its comprehensive plan; or, in the event that the successor municipality does not adopt such ordinances, subject to Chapter 163 and the provisions of the municipality's ordinances that apply to the adoption of district boundary changes. Should this Declaration be so modified, amended, or released, the Director of the Department of Planning and Zoning or the executive officer of a successor department, or, in the absence of such Director or executive officer, by his or her assistant in charge of the office in his/her office, shall execute a written instrument effectuating and acknowledging such modification, amendment, or release.

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 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 his attorney. This enforcement provision shall be in addition to any other remedies available at law, in equity or both.

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.

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

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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.

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.

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. However, if any material portion is invalidated, the County shall be entitled to revoke any approval predicated upon the invalidated portion.

Recordation and Effective Date. This Declaration shall be filed of record in the public records of Miami-Dade County, Florida at the cost of the Owner following the approval of the Application. This Declaration shall become effective immediately upon recordation. Notwithstanding the previous sentence, if any appeal is filed, and the disposition of such appeal results in the denial of the Application, in its entirety, then this Declaration shall be null and void and of no further effect. Upon the disposition of an appeal that results in the denial of the Application, in its entirety, and upon written request, the Director of the Planning and Zoning Department or the executive officer of the successor of said department, or in the absence of such director or executive officer by his/her assistant in charge of the office in his/her absence, shall forthwith execute a written instrument, in recordable form, acknowledging that this Declaration is null and void and of no further effect.

Acceptance of Declaration. The Owner acknowledges that acceptance of this Declaration does not obligate the County in any manner, nor does it entitle the Owner to a favorable recommendation or approval of any application, zoning or otherwise,

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and the Board of County Commissioners retains its full power and authority to deny each such application in whole or in part and decline to accept any conveyance.

Owner. The term Owner shall include all heirs, assigns, and successors in interest.

[Execution Pages Follow]

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Exhibit "A"

Legal Description

The South 1/2 of the South 1/2 of the East 2/5 of Section 31, Township 53 South, Range 40 East of Miami-Dade County, Florida; Less existing Right of Way of Records.

Exhibit A.1

"SKETCH TO ACCOMPANY LEGAL DESCRIPTION"

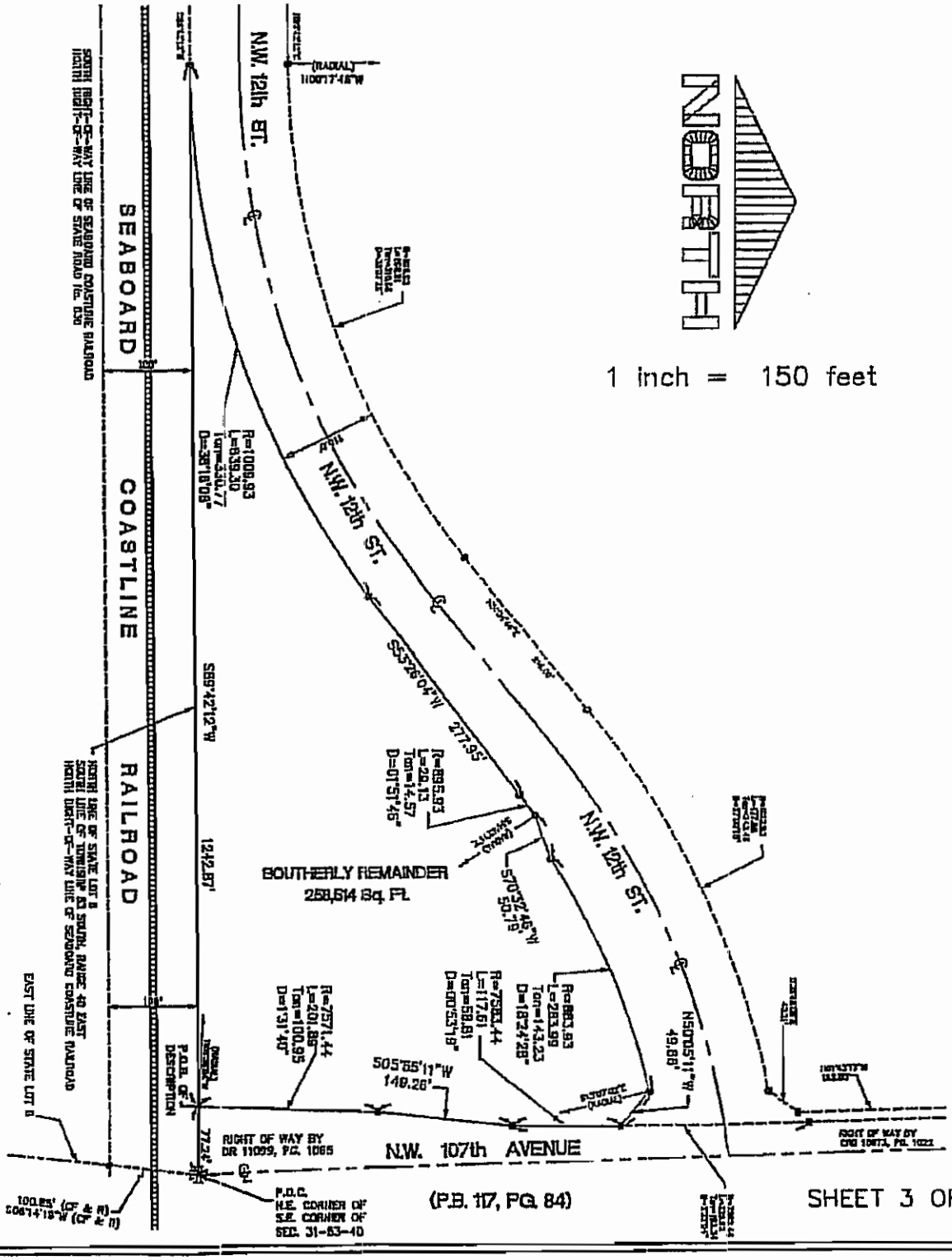
LEGAL DESCRIPTION:

All that portion lying Southerly of NW 12th Street right-of-way in the South ½ of the South ½ of the East 2/5, Section 31, Township 53 South, Range 40 East, less Official Records Book 11099, Page 1065, lying and being in Miami-Dade County, Florida; more particularly described as follows:

Commence at the Southeast corner of Southeast ¼, Section 31, Township 53 South, Range 40 East, Thence South 89°42'12" West along the South line of said Southeast ¼, Section 31, Township 53 South, Range 40 East for a distance of 77.24 feet to the Point of Beginning; thence Northerly along a circular curve concave to the West; said curve being the Westerly right-of-way line of NW 107th Avenue; said curve radius point bears North 86°36'04" West, having a radius of 7,571.44 feet, a central angle of 01°31'40" an arc distance of 201.89 feet, to a point; thence North 05°55'11" East along the Westerly right-of-way line of NW 107 Avenue for a distance of 149.26 feet to a point of commence of a circular curve concave to the West; thence Northerly along said curve and the Westerly right-of-way line of NW 107 Avenue; said curve having a radius of 7,583.44 feet, a central angle of 00°53'19" for an arc distance of 117.60 feet to a point; thence North 50°05'11" West along the Southerly right-of-way line of N.W. 12 Street for a distance of 49.66 feet to a point of commence on a non-tangent circular curve concave to the South; thence Southwesterly along said curve and the Southerly right-of-way line of N.W. 12th Street. Said curve radial point bears South 13°07'02" East having a radius of 883.93 feet, a central angle of 18°24'28", an arc distance of 283.99 feet to a point; thence South 70°32'46" West along the Southerly right-of-way line of N.W. 12th Street for a distance of 50.79 feet to a point of commence on a non-tangent circular curve concave to the Southeast; thence Southwesterly along the Southerly right-of-way line of N.W. 12th Street; said curve radial point bears South 34°42'11" East having a radius of 895.93 feet, a central angle of 01°51'46", an arc distance of 29.13 feet to a point; thence South 53°26'04" West along the Southerly right-of-way line of NW 12th Street for a distance of 277.95 feet to a point of commence of a circular curve concave to the Northwest; thence Westerly along the Southerly right-of-way line of N.W. 12th Street, said curve having a radius of 1,009.93 feet, a central angle of 36°16'08", an arc distance of 639.30 feet to a point on the South line of S.E. ¼ of Section 31, Township 53 South, Range 40 East; thence North 89°42'12" East along the South line of S.E. ¼, of Section 31, Township 53 South, Range 40 East for a distance of 1,242.87 feet to the Point of Beginning.

Said land containing 258,514 square feet more or less.

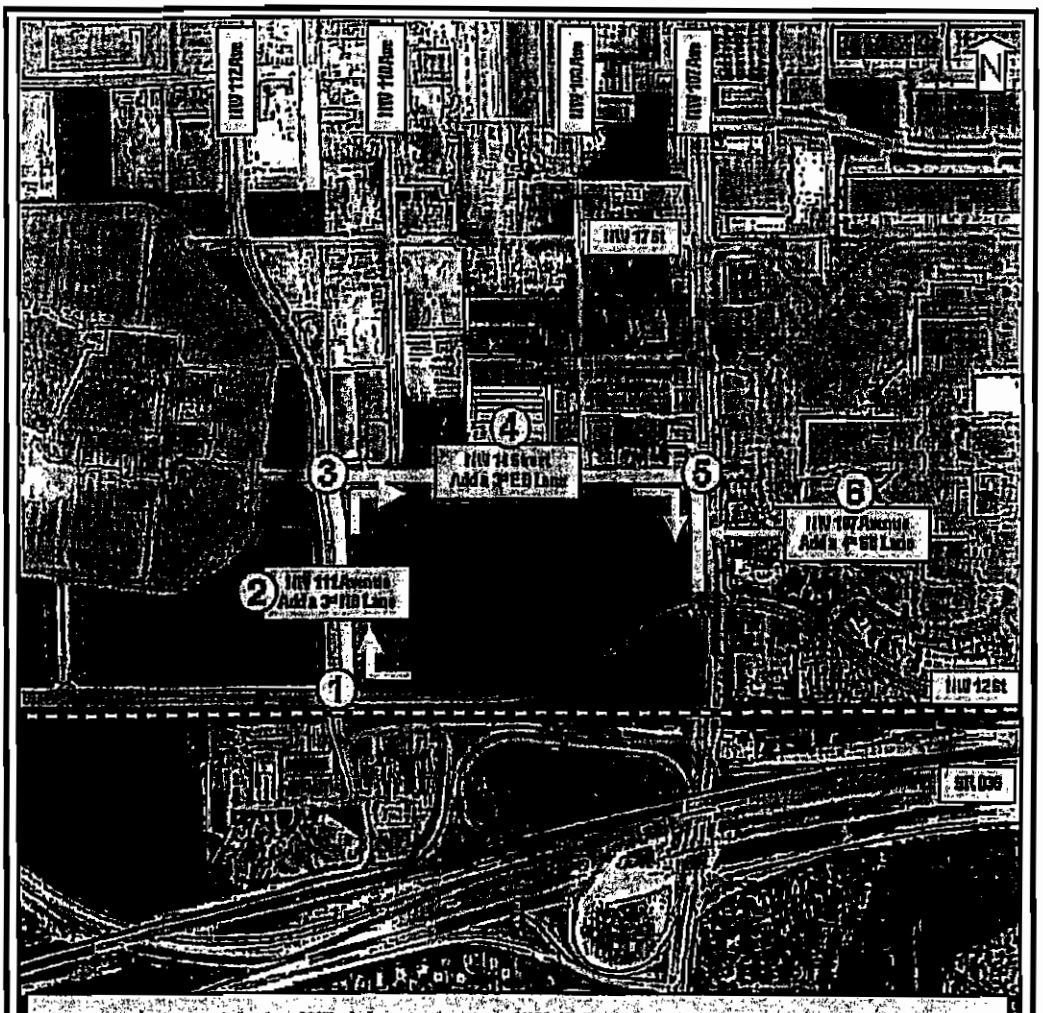
"SKETCH TO ACCOMPANY LEGAL DESCRIPTION"



SHEET 3 OF 3

Exhibit "B"

Roadway Improvements



1. Provide an exclusive WB right turn lane on NW 12 Street at NW 111 Avenue.
2. Add a 3rd NB travel lane to widen NW 111 Avenue from a 4LD to a 5LD.
3. Convert the 3rd NB lane into a NB right turn lane on NW 111 Avenue at NW 14 Street.
4. Add a 3rd EB travel lane to widen NW 14 Street from a 4LD to a 5LD.
5. Convert the 3rd EB lane into an EB right turn lane on NW 14 Street at NW 107 Avenue.
6. Complete the 4th SB through lane on NW 107 Ave from NW 14 Street to NW 12 Street.
7. Provide signal modifications to accommodate all geometric improvements.

Legend

54.196 Acre Amendment Site

Business and Office – 54.196 acres
With a RAC Overlay Designation

Figure 0
Proposed Infrastructure Improvements
Dolphin Station
September 2007

Source: Cathy Sanchez & Associates

Exhibit "C"

Design Guidelines

1. The plan for development of the Property shall allow for a mix of uses, including commercial and residential uses.

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2. The proposed buildings shall be designed using compatible and complementary architectural styles and designs.

3. Design features shall be included at appropriate locations of the buildings, in order to maintain architectural and design continuity.

4. Consistent sign criteria and standards shall be established at the time of initial rezoning to encourage aesthetic compatibility within the sign program.

5. Large expanses of opaque or blank building wall shall be minimized and/or articulated and shall have landscaped areas providing a visual barrier, to the maximum extent feasible.

6. Uniform street furniture and lighting standards shall be provided throughout the Property.

7. Pedestrian crosswalks shall be clearly delineated on any proposed private roads within the Property.

8. The development pattern shall respect the general concepts of the Miami-Dade County Urban Design Guidelines to the extent practicable.

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9. The streets shall be designed for pedestrian mobility, interest, safety, and comfort as well as vehicular mobility.

10. The proposed development shall contain open spaces that may include public squares, greens, and pedestrian promenades.

11. The buildings and their landscapes within the proposed development shall be built to the sidewalk edge to the greatest extent possible in a manner that frames the adjacent street to create a public space in the street corridor that is comfortable, interesting, as well as safe for pedestrians.

12. The architectural elements of the buildings at street level shall have a human scale, abundant windows and doors, display windows, and design variations at short intervals to create interest for the passing pedestrian.

13. Parking areas shall be minimized at grade between the street and main building entrances to the extent possible. Subterranean parking between the street and main building entrances is, however, permitted.

- Including Florida Yards and Neighborhoods Program information on "Florida Friendly Landscapes" in the sales literature provided to homebuyers.
- Developing the landscape plan and plant palette based on site characteristics (soil, drainage, structural limitations, utilities, overhangs, lights, etc.), which shall include:
    - Per the County's Landscaping Ordinance, existing native trees, palms and associated native understory, shall be retained and preserved along with identified undergrowth and be a focal point of the landscape.
    - 80% of plant materials to be utilized on site shall be from the Florida-Friendly Plant List and shall have a moderate to high drought tolerance.
    - All plants will be grouped in the landscape plan by similar water and maintenance requirements and shall be spaced to allow for maturation.
    - Turf areas will be evenly shaped for ease of maintenance and will be no less than 4 feet wide and will not be placed on any berms.
    - No more than 30% of the total area required for landscaping may be turf or grass.
    - Soils analysis should be completed and used in the plant selection process where applicable and a copy should be provided to the home buyer.
    - Limit use of rock mulch due to heat loading: rock mulch shall not exceed 5% of total landscaped area.
    - Use of environmentally friendly organic mulches that are applied 3 inches deep around plants and trees with two inches clear around each plant.
- Using a low volume irrigation system to irrigate all landscape beds.
- Irrigating turf by zones separate from zones for irrigation of shrubs and ground cover plantings.
- Using swing joints or flex pipe when installing sprinklers to help prevent broken pipes and sprinklers.
- Designing irrigation systems for minimum overlap.
- Installing soil moisture sensors or other water saving technologies.

Exhibit "E"

Water Conservation Measures for Commercial Development

- Using waterless technologies where available.
- Maximizing use of on-site sources of water.
- Choosing equipment that is water and energy efficient.
- Installing automatic shut offs, solenoids and controllers to turn water off when not in use.
- Installing flow restrictors when possible.
- Eliminating once-through cooling.

EXHIBIT
D

Miami Economic Associates, Inc.

February 10, 2010

Mr. Marc C. LaFerrier
Director
Department of Planning & Zoning
Miami-Dade County
Miami, Florida

Re: CDMP Application No. 7
October 2009 Application Cycle

Dear Mr. LaFerrier:

Miami Economic Associates, Inc. (MEAI) has performed an analysis to evaluate whether the subject application to amend the Miami-Dade County Comprehensive Development Plan (CDMP) is justified by economic considerations. The proposed application, which was filed on behalf of 107th Avenue Gamma, LLC, applies to two parcels located west of N.W. 107th Avenue, between State Road 836 on the south and N.W. 14th Street on the north. It seeks to delete in its entirety a Declaration of Restrictions accepted by the Board of County Commissioners in connection with Application No.3 of the April 7, 2007 Amendment Cycle, which also applied to the two parcels of land referenced above, and replace it with a new Declaration of Restrictions. The specific focus of MEAI's analysis related to the issue of when the Applicant would be required to fund and construct a MetroBus Terminal and associated parking.

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Tel: (305) 669-0229 Fax: (866) 496-6107 Email: meaink@bellsouth.net

The existing Restrictive Covenant requires that these facilities be constructed within 3 years of the date on which the approval of Application No.3 of the April 2007 Amendment Cycle became final and non-appealable, which occurred on September 18, 2009. The Board of County Commissioners approved that application together with its Declaration of Restrictions in April, 2008; however, due to issues relating to the adoption of a school concurrency provision into the CDMP and execution of an Inter-local Agreement between Miami-Dade County and the Miami-Dade County School Board, it did not become final and non-appealable until the date in 2009 just indicated. The current CDMP application now seeks to extend the timeframe permitted to construct the MetroBus terminal and associated parking to 15 years from the date the current application becomes final and non-appealable It would further allow the Applicant prior to the end of the 15 year period to seek an extension of up to 5 years. Finally, it seeks to allow the applicant to construct up to 400,000 square feet of retail space prior to the issuance of a certificate of occupancy for the proposed transit facilities as long as fire services can be appropriately provided

According to the subject application, the request to delete the existing Declaration of Restrictions and replace it with the new one outlined above with respect to the time frame in which the proposed transit improvements need to be developed results from the severe adverse impact that the current economic crisis has had on the real estate and credit market. The subject application states that in the current environment it is "virtually impossible" to finance the proposed transit improvements. The application further points out that these conditions have been previously acknowledged by the Board of County Commissioners, citing in this regard Ordinance 09-10 which provided emergency relief to the development/construction industry by permitting the extension of building permits. Finally, it points out that allowing the construction of up to 400,000 square feet of retail space prior to the time the proposed transit facilities are certified for occupancy would be economically and fiscally beneficial to the community by providing both construction and permanent job opportunities and increased ad valorem revenues for the Miami-Dade County and the Miami-Dade County Public School District that are needed to fund the levels of services that existed prior to the current economic downturn but which may now need to be severely cut.

The purpose of this letter is to provide you with the findings of the analysis performed by MEAI with respect to the subject application.

Summary of Findings

MEAI concurs with the Applicant that the current economic climate as reflected in the real estate and credit markets does make it "virtually impossible" to finance and construct the proposed transit facilities at the present time; hence extending the time frame in which their development should be required is justified from an economic prospective. We further believe that allowing a retail facility of up to 400,000 square feet to be constructed prior to occupancy of the proposed transit facilities being certified would be fiscally and economically beneficial to Miami-Dade County.

The bulleted paragraphs that follow provide the basis for MEAI's above stated conclusions:

- The United States Federal Reserve System reports on the status of economic conditions nationally and each of its 12 Districts 8 times each year in a document known as the Beige Book. Copies of the analyses provided in the Beige Book issued January 13, 2010, for the nation and for the Atlanta District, which includes the State of Florida, are contained in Appendix 1. Among the salient conclusions presented were the following:

    - Toward the end of 2009, home sales increased in most districts, especially in lower-priced homes, but residential construction remained at low levels in most districts and new home sales decreased including in the Atlanta District. The uptick in sales activity was primarily attributed to the first-time home buyer tax credit, which disproportionately benefited lower-priced homes

    - Nonresidential real estate conditions remained soft in nearly all Districts, with vacancy rates rising and rents declining. The Atlanta District reported that many new projects were put on hold as landlords focused on tenant retention, allowing tenants to negotiate lease extensions at low rents and with favorable allowances for improvements.

    - Loan demand continued to decline or remained weak in most districts perhaps because, as the Atlanta District reported, credit standards remained relatively tight for most types of loans, particularly commercial real estate loans. Notwithstanding credit quality continued to deteriorate and several districts reported on-going increases in delinquency and default rates for all types of loans.

- MEAI as well as a number of other economists believe that the weakness in the nonresidential real estate markets is the result of other weaknesses in the economic climate, notably the currently high rates of unemployment and underemployment. The high rates of unemployment and underemployment together with the reduced levels of consumer credit currently available have resulted in declining levels of retail sales. In this regard, the following points are noted:

    - Appendix 2 contains an article discussing the fact that the National Retail Federation projected in January 2009 that retail sales during 2009 would decline, in large part in anticipation of declining employment. A second article in the Appendix shows that the Federation's concern was well founded as sales for the year fell 6.2 percent compared with 2008 to $4.14 trillion. The decline was the largest on record, dating back to 1992. It was also the second decline on record with the first occurring in 2008 when sales dropped 0 5 percent from the prior year.

    - Appendix 3 contains a press release issued by the Florida Agency for Workforce Innovation that shows that in November 2009 the national

unemployment rate approximated 10 percent while rate of unemployment within the State of Florida was higher, 11.5 percent, the highest level since May 1975. The construction industry has been most severely impacted in Florida; however, among the other industry sectors that also suffered during the November 2008 to November 2009 period are retail trade (49,400 fewer jobs), professional and business services (58,500 fewer jobs) and finance, insurance and real estate (25,300 fewer jobs). These industry sectors are key to the health of the nonresidential real estate market in terms of space occupancy. The unemployment rate in Miami-Dade County in November 2009 was 10.5 percent, up from 6.2 percent in November 2009.

- Appendix 4 contains data compiled by the Federal Reserve that shows that the amount of revolving consumer credit, such as that provided through credit cards outstanding has continuously declined since the 3rd quarter of 2008

- As discussed in the introductory paragraph of this letter, the subject application applies to two parcels of property located west of N.W. 107th Avenue between S.R. 836 on the south and N.W. 14th Street on the north. As also discussed, the two parcels of land were also the subject of Application No. 3 of the April 2007 Application Cycle that essentially re-designated one of the two parcels from Industrial and Office to Business and Office use, thereby providing the basis to be developed in accordance with a conceptional plan that envisaged a mixture of use being constructed that would primarily be comprised of retail space and mid-to-high rise condominium units. Office space and transient lodging were also included in the plan. At the time Application 3 of the April 2007 Application Cycle was considered, it was anticipated that the two parcels would be developed with 1,050 residential condominium units and 799,900 square feet of retail space together with 225,000 square feet of office space and 430 lodging units.

  MEAI understands that there have been discussions with a prospective user for up to 400,000 square feet of retail space. That prospective user has been seeking to establish a presence in Miami-Dade County for more than 5 years and has a credit rating of sufficiently high quality to access financing even in the current market environment. However, the fact that an individual deal involving up to 400,000 square feet of retail space could potentially proceed for a highly credit-worthy tenant should not be extrapolated to conclude that an additional 399,900 square feet of retail space or the other proposed uses could also be successfully developed in the foreseeable future. In fact, even if a deal could be made with the prospective user, the Applicant would be unable to deliver the space because in the current real estate market and financing environment, it would be impossible to finance and construct the requisite transit facilities solely based on the revenues that would be generated satisfying that single user.

  In this regard, the following points are noted:

Retail

- In April 2009, Reis, Inc., a firm well-respected for its reporting on trends in real estate markets throughout the United States, reported that vacancies in U.S. malls and shopping centers rose to their highest levels in more than 10 years. As shown in materials contained in Appendix 5, that firm estimated that at the end of the 3rd Quarter of 2009, retail vacancy rates nationally approximated 11.3 percent, a level that was also approximated in the West Miami-Dade County market where the subject property is located. MEAI believes that developers will want a market to exhibit a vacancy rate below 10 percent and positive levels of absorption before considering undertaking a new project. REIS further reported that the rental rates had declined during 2008 and continued to do so during the 3rd quarter of 2009. Finally, it reported that there was essentially no measurable net new absorption within the West Dade market area during the 2008 to 2009 period.

  In the retail market just described, it is unlikely that any proposed project, unless it was to be fully occupied by highly credit-worthy tenants, would be able to obtain financing. In this regard, we direct attention to the article contained in Appendix 6 that was written by Tyler Graf for publication in the August 17, 2009 Daily Journal of Commerce (Portland, Oregon) that discussed the fact that lenders are no longer considering a project for financing solely based on its level of pre-leasing; rather, they are also taking into consideration type of tenants that are committing to space, showing reluctance to lease to high-end projects as well as those whose prospective occupants include movie theaters and a high percentage of restaurants.

  Appendix 7 contains additional articles regarding the status of commercial real estate lending at the current time. In summary, the articles state the amount of new loan originations has been declining since late 2007 or early 2008. Certainly one reason for the decline has been the reluctance of developers to proceed with projects in the current economic environment; however, the articles discuss other factors as well that include the following:

  - The fact that the Commercial Mortgage-backed Security (CMBS) market, which had been funding up to 25 percent of the originations nationally prior to its collapse in 2008, has effectively disappeared, thereby significantly reducing the amount of capital available

  - The fact that the rate of default on commercial mortgages rose steadily from just over 1 percent in the 1st quarter of 2006 to 8.74 percent in the 3rd quarter of 2009 when it was at its highest level the 2nd quarter of 1993. In fact, the default rate has been consistently below 2 percent from the first quarter of 1999 through the 2nd quarter of 2007, a period of 34 quarters or 8.5 years. Then, in 2.5 years it went from 2 percent to the current level of 8.74 percent

- The fact that 47 banks and saving and loans have failed since late 2007, in part because unusually high commercial loan exposure and that, according to Foresight Analytics, a respected Oakland-based banking consulting firm, as many as 700 could.

- The fact that commercial banks and savings and loans have experienced erosion of their loss coverage ratios, a trend that Sheila Bair, the Chairman of Federal Deposit Insurance Corporation, considered in 2008 to be "worrisome". MEAI believes it may be more than worrisome in 2010 when over $35 billion of existing debt will need to rolled over into new commercial mortgages, much of it on properties that may not be worth their current loan balances due to the higher vacancy rates and lower rents levels that currently characterize the market.

- The fact that in the face of the conditions described in the 3 bulleted paragraphs immediately above the overwhelming majority of banks and savings and loans have significantly tightened their loan underwriting standards so that only very low risk loans will be originated.

The tightness of the current credit markets was recognized in testimony by Jon. D. Greenlee before the Congressional Joint Economic Committee in July 2009. In that testimony, Mr. Greenlee, who is the Associate Director of the Federal Reserve's Division of Banking Supervision and Regulation, discussed actions that the Federal Reserve was taking to revitalize the commercial real estate financing market.

Office

- Appendix 8 contains information compiled by Reis, Inc. with respect to the condition of the office market in the Airport West area where the subject property which subject is located. As evidenced, the vacancy rate in the area exceeded 10 percent at the end of the 3rd Quarter of 2009 --- it was over 14 percent ---and is expected to continue to increase for several more quarters. Rent levels are also declining. Accordingly, the prospects are poor for the development of new office space for the foreseeable future. particularly in the financing environment described above.

Residential Condominiums

- The plight of home building in the current market, referred to in a story in *Miami Herald* on January 20, 2009, as the "deepest slump since the Great Depression" has been well -documented. In the story just referenced, a copy of which is contained in Appendix 9, David Crowe, the chief economist of the National Association of Home Builders, states that "the stage is set for the

consumer to return. It won't be a strong recovery but it will be a recovery." Mr. Crowe's comments and those of others quoted in the article, hardly euphoric in nature, focus on the single family home building sector. There is no evidence to believe that a rebound is in the offing with respect to the construction of kind of mid-to-high rise condominium that were envisaged on the subject parcels at the time Application No. 3 of the April 2007 Amendment Cycle was approved.

Appendix 10 contains information that shows that during the 6-month period ending January 20, 2010, 509 condominium units that were built between 2005 and 2009 were sold in the central portion of Miami-Dade County. Sales activity on the barrier islands, inclusive of Miami Beach, Key Biscayne and Fisher Island, is not included in the list of sales provided. Review of the data shows that only about 10 percent of the units, just over 50 of the 509, sold at a price per square foot that exceeded $300 per square feet, all but a few of which are located in buildings that provide bay views.[1] Those selling at prices above $300 per square foot without bay views were located in Coral Gables. Less than 10 units sold for prices exceeding $400 per square foot.

The "hard" cost to construct mid-to-high rise condominium units of the type envisaged on the subject parcels inclusive of the their requisite structured parking exceeds $200 per square. When "soft" costs and land cost are included the total cost to develop such units will likely substantially exceed $300 per square foot, which means that prices per square foot in excess in the range of $400 to $500 would be required for the developer to achieve an acceptable level of return. Based on these economics, it is unlikely that the envisaged condominium units will be constructed in the foreseeable future.

Lodging

- Based on its experience, MEAI believes that it is highly unlikely that there will be any construction of transient lodging facilities on-site until demand generators in the form of office and retail space are developed on-site

- The existing Declaration of Restrictions — as well as that being proposed to replace it --- require 107th Avenue Gamma, LLC to construct a MetroBus terminal that would include the elements outlined below at a cost that was estimated at the time the covenant was proffered in 2007 to be nearly $14.0 million.

  - 10 saw-tooth bus bays;
  - A driveway network to serve the bus bays;

1 It should be noted that sales 350 through 353, sales 395 though 413 and sales 480 through 590 were parts of bulk sales of units. The price per square foot information shown in the Appendix is misleading because it was calculated taking the square footage of each individual unit against the price for the entire package of units of which it was part. When the price per square foot is calculated correctly by taking the total square footage of the units in the package against the package price the resultant figure for the average square foot sold is below $300 except in the case of sales 350 through 353. For those 4 units it exceeds $300 per square foot but not $400 per square foot

- An enclosed transit lounge;
- Restrooms;
- Transit-oriented commercial uses;
- Landscaping;
- A kiss and ride area; and
- A parking garage with 260 parking spaces.

In order for 107th Avenue Gamma LLC to build the transit facility and parking just described would require that it to be able to successfully access the capital markets. Unfortunately, this will not be possible because the only revenues that will potentially be available to repay such a debt obligation in the foreseeable future would be the net proceeds that would result from the development of retail space of up to 400,000 square feet. The amount of those net proceeds would not be adequate even in easy credit environment. In the current tight credit environment, it would be, as stated in the application, "virtually impossible" to access the requisite financing.

- As discussed in the subject application, allowing the construction of up to 400,000 square feet prior to the time that the proposed transit facilities are certified for occupancy will be economically and fiscally beneficial to Miami-Dade County and the Miami-Dade Public School District. In this regard, MEAI notes the following:

  Economic Benefits

  - The cost to developed the proposed retail facility will approximate $65.0 million exclusive of land cost. This figure assumes that the facility is developed in the urban manner envisaged in the conceptual master plan for the site with the 1,600 structured parking spaces, which equates to the 1 space per 250 square feet required by code. Assuming the 90 percent of the funds required are initially spent in Miami-Dade County, the total economic impact on the County would equate to nearly $100.0 million after the multiplier effect is taken into account.

  - Approximately $25.0 million of the moneys spent to construct the proposed retail facility will be expended for labor, an amount sufficient to support 400 construction workers at the average wage and salary level of construction workers in Miami-Dade County of $62,325 per year.

  - A retail facility of the size indicated for the type of retailer with whom negotiations are on-going will approximately employ equivalent of 600 full-time workers per year, who will earn in excess $18.0 million annually.

  Fiscal Benefits

  - The table below shows that amount of ad valorem taxes that are currently being generated from the subject parcels of land and the amount be generated by the proposed retail facility. Clearly, construction of the proposed retail facility on just a small portion of the two parcels will increase the amount

of ad valorem taxes being collected substantially. The proposed retail facility will also generate significant amounts of non-ad valorem revenues for the Miami-Dade County on annual basis in the form of franchise fees, utility taxes occupational license fees and sales taxes, with a portion of the latter being dedicated to transit.

Entity	Current	Proposed Retail
Miami-Dade County		
Countywide Fund	$ 60,160	$ 387,032
Debt Service Fund	$ 3,543	$ 22,800
UMSA Fund	$ 24,973	$ 160,664
Library Fund	$ 4,762	$ 30,576
Fire Operating Fund	$ 27,171	$ 174,808
Fire Debt	$ 522	$ 3,360
Children's Trust	$ 6,217	$ 40,000
Miami-Dade Public School District		
Operating Fund	$ 95,727	$ 615,840
Debt Service Fund	$ 3,697	$ 23,760

Closing

Based on the findings of our analysis presented above, MEAI believes that approval of the subject application to CDMP is highly justified based on economic and fiscall considerations.

Sincerely,
Miami Economic Associates, Inc.

Andrew Dolkart
President

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