## Application No. 7 Commission District 12 Community Council 10

## **APPLICATION SUMMARY**

Applicant/Representative:	107 <sup>th</sup> Avenue Gamma, LLC/ Jeffrey Bercow, Esq., Michael Larkin, Esq.,& Michael Gil, Esq.
Location:	Northwest corner of NW 107 Avenue and NW 12 Street
Total Acreage:	63.95 Gross Acres (54.24 Net Acres)
Current Land Use Plan Map Designation:	Business and Office, Metropolitan Urban Center, and Chapter 380 Regional Activity Center
Requested Change:	Delete and replace previously proffered and accepted Declaration of Restrictions for Application No. 3 of the April 2007 CDMP Amendment Cycle as indicated in the Restrictions Table on Page I-74.5 of the CDMP
Amendment Type:	Standard
Existing Zoning/Site Condition:	IU-2 (Heavy Industrial Manufacturing District), IU-C (Conditional Industrial District) and GU (Interim District) / Undeveloped with existing lake.

## RECOMMENDATIONS

Staff:	DENY AND DO NOT TRANSMIT (February 25, 2010)
Westchester Community Council:	TO BE DETERMINED (March 18, 2010)
Planning Advisory Board (PAB) acting as Local Planning Agency:	TO BE DETERMINED (April 5, 2010)
Board of County Commissioners:	TO BE DETERMINED (May 5, 2009)
Final Action of Planning Advisory Board:	TO BE DETERMINED
Final Action of Board of County Commissioners:	TO BE DETERMINED

The Staff recommends **DENY AND DO NOT TRANSMIT** the proposed standard amendment to delete in its entirety the previously proffered and accepted Declaration of Restrictions for Application No. 3 of the April 2007 CDMP Amendment Cycle from the Restrictions Table on Page I-74.5 of the Land Use Element and to replace it with a new proffered Declaration of Restrictions based on the Staff Conclusions and Principal Reasons for Recommendations summarized below:

#### Principal Reasons for Recommendations:

1. The Miami-Dade County Board of County Commissioners (BCC) on April 24, 2008 adopted by Ordinance No. 08-43 Application No. 3 of the April 2007 Cycle of applications to amend the Comprehensive Development Master Plan (CDMP) and accepted a proffered declaration of restrictions limiting development and providing for capital improvements for a 63.95 gross acre (54.24 Net Acres) site at the northwest corner of NW 12 Street and NW 107 Avenue. The CDMP amendment redesignated the subject site from "Industrial and Office" and "Business and Office" to "Business and Office" on the Land Use Plan (LUP), designated the site as a Regional Activity Center (RAC), and moved the symbol for the Metropolitan Urban Center on the LUP map from the site of the International Mall in the City of Doral to the subject property. The application also resulted in changes to text, figures and tables in the Land Use Element, Mass Transit Subelement and Capital Improvements Element of the CDMP. The applicant is requesting that the covenant recorded on June 17, 2008 and dated April 24, 2008 be deleted from the Restrictions Table on Page I-74.5 of the Land Use Element in the CDMP and be replaced by another proffered covenant.

The existing CDMP declaration of restrictions or covenant dated April 24, 2008 includes numerous provisions. The Maximum Development Program (MDP) is 1,050 dwelling units or 1,701,000 gross sq. ft. for residential development, 799,900 gross sq. ft. of retail/service space, 430 hotel rooms or 225,000 gross sq. ft. and 225,000 gross sq. ft. of office space. The existing CDMP covenant allows the densities and intensities for these land uses to be increased or decreased if certain conditions regarding cumulative impacts are addressed. The owner would fund and construct a Metrobus terminal with a 260-space parking garage within three years from the date that Application No. 3 of the April 2007 CDMP Amendment Application becomes final and nonappealable. The owner has the option of requesting an extension of time from the Director of Miami-Dade Transit or his designee for funding and constructing a Metrobus terminal. The owner funds and constructs certain roadway improvements to NW 12 Street, NW 111 Avenue, NW 14 Street and NW 107 Avenue. Other provisions in the existing CDMP covenant address workforce housing, design principles, a site plan, certificates of occupancy (COs) and school concurrency. Further details on these provisions can be found by referring to the CDMP covenant dated April 24, 2008 in the appendices.

Since the Application was filed in October 2009, two draft covenants have been submitted to the Department for review. The initial proposed covenant dated October 30, 2009 would allow the first 400,000 square feet of retail floor area to be built without the obligations set forth in the covenant except for the roadway improvements. In addition, it would change the date that the MetroBus Terminal shall be funded and constructed from three years of the date that Application No. 3 of the April 2007 CDMP Amendment Application becomes final and nonappealable to 15 years after the date that Application No. 7 of the October 2009 CDMP Amendment Application becomes final and nonappealable.

The applicant's representative submitted on February 5, 2010 a new revised draft covenant dated January 22, 2010 with changes to provisions on the MetroBus Terminal, workforce housing, commercial development, project design, and LEED Certification. For a detail analysis of these provisions, the Staff Analysis section of this application review has a table which compares the provisions in both the recorded covenant dated April 24, 2008 and the draft covenant dated January 22, 2010 and both of these covenants can be found in the Appendices.

The Department recognizes that economic conditions have changed since the BCC on April 24, 2008 adopted Application No. 3 of the April 2007 cycle of applications to amend the CDMP and accepted the proffered declaration of restrictions recorded on June 17, 2008 and dated April 24, 2008. The current economic environment is having a detrimental impact to the real estate and credit markets.

The Department is willing to work with the applicant to restructure the covenant provisions governing development of this property. However, it does object to several provisions currently being proposed in the draft covenant dated January 22, 2010.

Public Transportation Facility. Staff is especially concerned with those • provisions in the draft covenant impacting the public transportation facility, which is a location where several routes or lines, or different modes, converge. These facilities are designed to handle the movement of transit vehicles and the boarding, alighting and transferring of passengers between transit routes, lines or transit modes. The major concern is the delay in building the Multi-Modal Transit Center (also known as Dolphin Station MetroBus Terminal), which is currently identified on Table 11 (Mass Transit) of the adopted schedules of capital improvements in the Capital Improvements Element of the CDMP to be completed in 2012 at a cost of \$13,700,000 with funding from developer fees/donation. The current covenant states "The MetroBus Terminal shall be funded and constructed within three years from the date that Application No. 3 of the April 2007 CDMP Amendment Application becomes final and nonappealable" (See page 3 in the recorded covenant dated April 24, 2008 or the language being stricken through at the bottom of page 4 in the draft covenant dated January 22, 2010). Based on the above provision, August 13, 2012 would be the date the terminal is required to be completed unless the Owner requested a time extension and it was granted by the Director of Miami-Dade Transit or his designee. Based on provisions in the new revised draft covenant, the date the terminal is required to be completed could be in the 2020s (see table comparing covenants in Staff Analysis). The draft covenant provides that the completion date for Terminal building should occur within 10 years of effective date of the development agreement, which will be become effective after approval of the zoning application becomes final and nonappealable (See pages 6 and 8 in the draft covenant). Another provision in the draft covenant provides for an additional five-year time extension that could be granted by the Director of Miami-Dade Transit or his designee (See page 6 in the draft covenant). Thus, the terminal with the garage may not be built until 2026 ((see table comparing covenants in Staff Analysis).

According to Miami-Dade Transit, stretching out the build out date for the Dolphin Station Metrobus Terminal to the 2020s is unacceptable when balanced against

the transit needs for west Miami Dade County. Miami-Dade Transit's 2009 Transit Development Plan (TDP) in addition to the Miami-Dade County Metropolitan Planning Organization's 2010 Transportation Improvement Program (TIP) includes the planned Dolphin Station Metrobus Terminal within their planning programs. Additionally, the TDP identifies within its Recommended Service Plan a new express-bus service, the SR-836 Express, which would connect the west Miami-Dade community at the Dolphin Station Metrobus Terminal to the soon to be open Miami Intermodal Center (MIC). The MIC project includes a Metrorail station, currently under construction, that will link passengers to downtown Miami, the Health District area and other destinations along the Metrorail alignment. These projects are due to be completed and operational during the second calendar guarter of 2012. Planning for the SR-836 Express route is on-going and the implementation of this new route along with any realigning of existing service into the Dolphin Station Terminal could be implemented as early as 2011 in order to coincide with the opening of the MIC during the second calendar quarter of 2012. This new express route is also dependant on this transit facility because there is no other likely park-and-ride facility in the immediate west Miami-Dade area. A park-and-ride facility is critical for the success of this new express route. In addition to the projects listed in the 2009 Transit Development Plan, MDT is also proposing additional express and/or rapid bus projects which would link the west Miami-Dade area with downtown Miami. Additionally, the South Florida Regional Transportation Authority (SFRTA - Tri-Rail) is planning a new shuttle route linking the Airport West's employment base along NW 12<sup>th</sup> Street from the Tri-Rail Airport Station. This new service would also benefit from a bus terminal which would inter-connect several bus routes at the Dolphin Station Terminal and at the MIC.

According to the draft covenant dated January 22, 2010, the applicant seeks to construct the Public Transportation Facility in two phases (See pages 5 and 6). Staff had previously suggested that the project could be done in phases.

#### Phase 1

Phase 1 would include the construction of the roadway access, 10 saw-tooth bus bays, bus operator rest rooms and a temporary surface parking lot on the transit site. Phase 1 has a parking issue since the draft covenant did not identify the number of spaces and the site plan shown to staff had only 139 parking spaces for the facility. Metro-Dade Transit states at least 200 parking spaces are needed.

Another problem with the Phase 1 improvements is that they may not be completed in time to satisfy transit needs since SR-836 Express bus service will be operational by November 2011 and the MIC will be opened by 2012. Based on provisions in the draft covenant, the applicant has until December 2012-January 2013 or December 2013-January 2014 to construct Phase 1 if the certificate of completion is not obtain in time (See comparison table in the Staff Analysis Section for details on dates). A Phase 1 transit facility with at least 200 parking spaces needs to be completed by November 2011 since Metro-Dade Transit will be able to use the facility by that time.

#### Phase 2

The Phase 2 improvements would involve landscaping the transit site and building a three-story garage containing 260 parking spaces, 10 saw-tooth bus bays, a restroom facility for bus operators and transit users, transit lounge, a kiss-and-ride area and a transit-oriented commercial area with a maximum of 10,000 square feet. In addition, the support columns and other load bearing components within the building would be designed so that a forth story could be added to provide additional parking capacity. The primary problem with Phase 2 is the delay in getting the building constructed. The draft covenant states that the parking garage may not be built until 15 years after the development agreement is signed. Metro-Dade Transit states that the garage should be built within five years with a possible extension of three years. A park-and-ride facility with at least 260 parking spaces will be needed by that time.

While Phase 2 was being constructed on the transit site, a temporary staging area would be provided elsewhere on the application site. The problems with the provision on the temporary staging area are that the draft covenant did not identify how many parking spaces for commuters would be provided and it did not state where on this 54-acre property the temporary staging area would be located (See page 5 in the draft covenant dated January 22, 2010).

- LEED certification for Public Transportation Facility. A revision in the draft covenant deletes a requirement for Leadership in Energy and Environmental Design (LEED) certification for the Metrobus Terminal (See page 9 in the draft covenant dated January 22, 2010). This revision is not consistent with Policy LU-10C of the Land Use Element of the CDMP, which encourages energy conservation measures such as LEED Certification for County–owned facilities.
- First 400,000 square feet of retail floor area. The draft covenant allows the first 400,000 square feet of retail floor area to be built without the obligations set forth in it applying except for the roadway improvements and the development agreement (See page 9 in the draft covenant dated January 22, 2010). These obligations include provisions on project design, LEED certification, and water conservation regulations (See pages 6 and 7 and Exhibits C, D and E in the recorded covenant dated April 24, 2008). Deleting these obligations for the first 400,000 square feet of retail floor area would not be consistent with Policy LU-10E which encourages the incorporation of energy efficiency and other conservation measures in the design and construction of buildings.
- Certificates of Occupancy. The obtaining of certificates of occupancy (COs) for new buildings is restricted until certain public buildings are built. The recorded covenant dated April 24, 2008 states that the Owner agrees not to obtain a CO for any building (except the public transportation facility) unless the public transportation facility and the Dolphin Fire Station (or any other new fire station serving the property) have received temporary COs. The draft covenant dated January 22, 2010 revises the provision by making an exception for the first 400,000 square feet of floor area for retail use and its associated parking. (See page 8 in the draft covenant). Thus, the first 400,000 square feet of floor area for retail use and its associated parking could receive a CO before either the fire station or the public transportation facility receive a temporary CO. The Miami-Dade Fire and Rescue Department has agreed that the obligations requiring a a

temporary CO for Station No. 68 (Dolphin) shall not apply to the first 400,000 square feet of floor area for retail use except for the obligation for roadway improvements. However, at least the Phase 1 improvements of the public transportation facility with an adequate number of parking spaces need to have a temporary certificate of occupancy before the first 400,000 square feet of floor area for retail use and its associated parking can receive certificate of occupancy.

Workforce Housing. The applicant states in the draft covenant that 10 percent of the dwellings will be workforce housing but deletes the provision contained in the recorded covenant that provided a mechanism for identifying workforce units or ensuring that workforce housing units would remain as such for a period of 30 years (See page 10 in the draft covenant dated January 22, 2010). The specific language being deleted is "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. 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." The applicant replaced this text with new language that is consistent with County regulations for residential development but is a weaker commitment to workforce housing than the original covenant dated April 24, 2008 has.

## STAFF ANALYSIS

#### Land Use and Zoning History

The Miami-Dade County Board of County Commissioners (BCC) on April 24, 2008 adopted by Ordinance No. 08-43 Application No. 3 of the April 2007 cycle of applications to amend the Comprehensive Development Master Plan (CDMP) and accepted a proffered declaration of restrictions limiting development and providing for capital improvements for a 63.95 gross acre (54.24 Net Acres) site at the northwest corner of NW 12 Street and NW 107 Avenue. The CDMP amendment redesignated the subject site from "Industrial and Office" and "Business and Office" to "Business and Office" on the Land Use Plan (LUP), designated the site as a Regional Activity Center (RAC), and moved the symbol for the Metropolitan Urban Center on the LUP map from the site of the International Mall in the City of Doral to the subject property.

No zoning action has been taken to implement the land use changes that the BCC adopted on April 24, 2008. However, limited zoning action in the past has occurred on the application site. An unusual use to permit a lake excavation was approved on September 16, 1963 by resolution 2-ZAB-436-63) of the Zoning Appeals Board (ZAB) for the area bounded by NW 107 Avenue, NW 12 NW 12 Street, NW 110 Avenue and NW 25 Street. Additional resolutions in 1966 (3-ZAB-166-66) and 1971 (4-ZAB-438-71) extended the completion date of on-going excavations. On November 5, 1973, the ZAB approved an "unusual use" application (Resolution No. ZAB-573-73) to permit the completion of an existing lake excavation and fill the excavated area with debris from demolished buildings and cleared land. The ZAB on November 9, 1978 approved

zoning changes for 26.10 acres of the property (excluding the lake area) from GU to IU-C and IU-2 (Resolution No. Z-249-78).

#### Declarations of Restrictions

The applicant is requesting that the declarations of restrictions or covenant recorded on June 17, 2008 be deleted from the Restrictions Table on Page I-74.5 of the Land Use Element in the CDMP and be replaced by another proffered covenant. The change in CDMP covenants will have no effect on supply and demand for different land uses, environmental and historical resources and most public services since the development program for the property will not change from the program approved by the BCC. With either covenant, the Maximum Development Program (MDP) for this property remains 1,050 dwelling units or 1,701,000 gross sq. ft., 799,900 gross sq. ft. of retail/service space, 430 hotel rooms or 225,000 gross sq. ft. and 225,000 gross sq. ft. of office space. Both covenants state that 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) PM peak hour trips for roadways 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 equates to 0.361 million gallons per day and 0.812 million gallons per day, respectfully. However, there are significant differences between the covenant recorded on June 17, 2008 and the draft covenant transmitted to the Department on February 5, 2010. The Table below discusses these differences.

Provisions with Differences in the Two Covenants	Covenant Recorded on 6/17/2008	Draft Covenant Submitted to Staff on 2/5/2010 and Dated January 22, 2010
A. Public Transportation Facility (PTF)		
Completion Date for Terminal building with 10 bus bays, a 260-space parking garage, a driveway network to support the terminal, a restroom facility, transit lounge, kiss- and-ride area and transit- oriented commercial uses.	Terminal shall be funded and constructed within 3 years from the date that Application No. 3 of the April 2007 CDMP Amendment Application becomes final and nonappealable. (See page 3 in the recorded covenant or the language being stricken through at the bottom of page 4 in the draft covenant)	The completion date for Terminal building should occur within 10 years of effective date of the development agreement, which will be become effective after approval of the zoning application becomes final and nonappealable. (See pages 6 and 8 in the draft covenant)
	Comment- August 13, 2012 would be the date the terminal is required to be completed. The date that a CDMP amendment application can become final and	Comment- The specific completion date is unknown but could occur in 2021 or later. The maximum time period could be actually longer than ten years since the zoning action would take

Comparison of Provisions in the Declaration of Restrictions (Covenant) Recorded on 6/17/2008 and the Draft Covenant Submitted on February 5, 2010 to Staff and Dated January 22, 2010 for a 54.2 Net-Acre Parcel on the Northwest Corner of NW 12th Street and NW 107th Avenue (107<sup>th</sup> Avenue Gamma, LLC or Balzebre Tract)

Provisions with Differences in the Two Covenants	Covenant Recorded on 6/17/2008	Draft Covenant Submitted to Staff on 2/5/2010 and Dated January 22, 2010
	nonappealable is after the Florida Department of Community Affairs (DCA) issues a Notice of Intent (NOI) to find an amendment adopted by the Board of County Commissioners in compliance with state law and the following 21-day appeal period is over without anyone appealing. DCA issued on July 23, 2009 a NOI finding the amendment in compliance with state law and the appeal period ended on August 13, 2009.	place after the October 2009 Cycle CDMP amendment is finalized, which would be December 2010-January 2011 at the earliest. Zoning actions must be consistent with the CDMP.
Extension of Completion Date for Terminal	If the Owner is unable for good cause to construct the terminal improvements within 3 years from the date that Application No. 3 of the April 2007 CDMP Amendment Application 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 been issued prior to the end of the three-year period. <i>(i.e.,</i> August 13, 2012). (See page 3 in the recorded covenant or page 6 in the draft covenant) Comment- An unspecified time extension maybe granted	Prior to the expiration date of the 10-year period, the Owner may request an extension of time from the Director of Miami-Dade Transit or his designee for a maximum of 5 additional years if he is unable to obtain a certificate of occupancy for Phase II improvements [e.g., terminal building(s)] within 10 years of effective date of the development agreement. (See page 6 in the draft covenant) <i>Comment- A 5-year extension</i> maybe granted by the Director of Miami-Dade Transit or his designee. Theoretically, the Terminal could be completed in 2026 or later.
Phase I Development	No provision is included in the recorded covenant.	The Owner shall fund and construct 10 saw-tooth bus bays, bus operator rest rooms and a temporary surface parking lot capable of accommodating a minimum of parking spaces within 2 years of Application No. 7 in the October 2009 CDMP Amendment Cycle becoming

Provisions with Differences in the Two Covenants	Covenant Recorded on 6/17/2008	Draft Covenant Submitted to Staff on 2/5/2010 and Dated January 22, 2010
		final and nonappealable. (See
		page 5 in the draft covenant)
		Comment-
		Amendment Cycle becoming final and nonappealable, the Owner prior to the expiration
		of the time period may request an extension of time from the Director of Miami-Dade Transit or his designee for a maximum of 1 additional year. (See page 6 in the draft Covenant).

Provisions with Differences in the Two Covenants	Covenant Recorded on 6/17/2008	Draft Covenant Submitted to Staff on 2/5/2010 and Dated January 22, 2010
		Comment- The estimate date with an additional year for completing Phase I improvements would then be December 2013-January 2014, if the state finds the CDMP amendment in compliance with state law and there is no appeal.
Parking Garage	The Owner agrees to construct a parking garage where the bus bays, commercial Area and parking area will be located. The Owner shall coordinate the design of the parking structure with Miami-Dade Transit. (See page 3 in the recorded covenant or pages 4 and 5 in the draft covenant)	The Owner agrees to <u>either</u> <u>fund or fund and</u> construct a parking garage where the bus bays, commercial Area and parking area will be located. Construction of the garage will be in Phase II of the development schedule and in accordance with the development agreement. (See pages 4 and 5 in the draft covenant)
		Comment- The requirement that the design of the parking structure be coordinated with Miami-Dade Transit was deleted.
Temporary Staging Area for Bus Operations and Commuter Parking	No provision is included in the recorded covenant.	During the time period that the Phase II improvements are being constructed, the owner shall provide Miami-Dade transit with a temporary staging area on the portion of the Property to assure Miami- Dade Transit the continued capability to operate up to a maximum of 7 bus routes and accommodate a minimum of parking spaces. This Temporary Staging Area shall cease to exist once a temporary certificate of occupancy is obtained for the Phase II improvements. (See page 5 in the draft covenant)
		Comment- A specific minimum number of parking

Provisions with Differences in the Two Covenants	Covenant Recorded on 6/17/2008	Draft Covenant Submitted to Staff on 2/5/2010 and Dated January 22, 2010
		spaces is needed to be provided. In addition, the distance that the Temporary Staging Area is from site of the PTF needs to be identified in the covenant.
Development Agreement for Transit Improvements	No provision on a development agreement is included in the recorded covenant but transit improvements are subject to County approval.	Owner shall enter into a development agreement with the County pursuant to Section 33G-8 of the Code of Miami-Dade County in connection with the Public Transportation Facility (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 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 forgoing. Owner shall request approval of development agreement at the time it processes the first zoning application for the Property. 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

Provisions with Differences in the Two Covenants	Covenant Recorded on 6/17/2008	Draft Covenant Submitted to Staff on 2/5/2010 and Dated January 22, 2010
		application for the property becomes final and non- appealable. (See pages 7 and 8 in the draft covenant)
		Comment- Section 33G-8 allows the Board of County Commissioners(BCC) to enter development agreements with property owners proposing large projects(i.e., DIC scale) for the sole purpose of providing and reserving public facility capacity. These development agreements shall authorize issuance of building permits for a period not to exceed 10 years after issuance of affirmative concurrency findings pursuant to Section 33G-5(6)(c) if certain conditions are met. DP&Z shall review and make recommendations to the BCC on all development agreements.
Transportation Concurrency Requirements	No provision is included in the recorded covenant.	The issuance of a certificate of completion for Phase I of the PTF shall exempt the Property from any transportation concurrency requirements. (See page 7 in the draft covenant)
		Comment- Phase I of the PTF needs to be built prior to any exemption from any transportation concurrency requirements being granted for the first 400,000 square foot of floor area for retail use.
Funding Sources	Construction- Create a community development district to fund the construction of the transit facility and other improvements required by development approvals. If the	Construction- Create a community development district to fund the construction of the transit facility and other improvements required by development approvals. If the

Provisions with Differences in the Two Covenants	Covenant Recorded on 6/17/2008	Draft Covenant Submitted to Staff on 2/5/2010 and Dated January 22, 2010
	County does not permit the creation of a community development district, Owner shall identify an alternative source of funding. (See page 4 in the recorded covenant or pages 6 and 7 in the draft covenant) Comment- A community development district can use grants, loans, special assessments, and bonds issued by the district for funding infrastructure and maintenance. A community development district can collect ad valorem taxes on properties located within the district boundaries. The developer does not directly fund the improvements. Maintenance - The community development district would fund maintenance activities. If the County permits the creation of a 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 is maintenance obligations. (See page 4 in the recorded covenant or pages 6 and 7 in the draft covenant)	county does not permit the creation of a community development district, Owner shall identify <u>and be permitted</u> <u>to use</u> an alternative source of funding. (See pages 6 and 7 in the draft covenant) Maintenance- The community development district would fund maintenance activities. If the County permits the creation of a 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 is maintenance obligations. Once the certificate of completion is issued for Phase I of the PTF, the Owner is not obligated for maintaining any of the improvements that constitute Phase I of the PTF. (See pages 6 and 7 in the draft covenant)
Driveway network leading from NW 12 Street to MetroBus Terminal	At time of dedication of Metrobus Terminal to the County, the Owner shall grant an easement that will permit	Upon the issuance of a certificate of completion for Phase I of the PTF, the Owner shall grant an easement that

Provisions with Differences in the Two Covenants	Covenant Recorded on 6/17/2008	Draft Covenant Submitted to Staff on 2/5/2010 and Dated January 22, 2010
	ingress and egress from NW 12 Street to the PTF for all county employees and patrons of the facility. (See pages 4 and 5 in the recorded covenant or page 7 in the draft covenant)	will permit ingress and egress from NW 12 Street to the PTF for all county employees and patrons of the facility. (See page 7 in the draft covenant)
Transit-related Commercial Area in PTF	Commercial uses are allowed but no size requirements provided. (See page 3 in the recorded covenant or page 4 in the draft covenant)	Commercial uses are allowed but not to exceed a maximum of 10,000 square feet. (See page 4 in the draft covenant)
B. Commercial Development		
Definition of Retail/Service in Maximum Development Program	No definition is provided in the recorded covenant	Retail/Service shall mean any proposed retail, service, or wholesale business establishment or group of establishments which deals primarily with the general public onsite, including those uses permitted in the BU zoning districts, as amended. (See pages 3 and 4 in the draft covenant). <i>Comment- The new text</i> <i>states that all BU zoning</i> <i>districts would allowable for</i> <i>this development. The BU-3</i> <i>zoning district (Liberal</i> <i>Business District) allows some</i> <i>uses that may be</i> <i>inappropriate for the proposed</i> <i>development such as poultry</i> <i>markets, automobile repair</i> <i>establishments, paint and</i> <i>body shops and cold storage</i> <i>warehouses.</i>
Initial Retail Use	No provision is included in the recorded covenant	Waterrockses. With the exception of the roadway improvements and the development agreement, the obligations set forth in this covenant shall not apply to the first 400,000 square foot of floor area for retail use (See

Provisions with Differences in the Two Covenants	Covenant Recorded on 6/17/2008	Draft Covenant Submitted to Staff on 2/5/2010 and Dated January 22, 2010
		page 9 in the draft covenant). Comment- Several provisions of the covenant would not apply to the first 400,000 sq. ft. of floor area for retail use including project design, LEED certification, and water conservation regulations (See pages 6 and 7 and Exhibits C, D and E in the recorded covenant).
Restricting the obtaining of Certificates of Occupancy for new buildings until certain public buildings are built.	The Owner agrees not to obtain a certificate of occupancy for any building (except the PTF) unless the PTF and the Dolphin Fire Station (or any other new fire station serving the property) have received temporary certificates of occupancy. (See page 5 in the recorded covenant or page 8 in the draft covenant)	The draft covenant revises the provision by making an exception for the first 400,000 square feet of floor area for retail use and its associated parking. (See page 8 in the draft covenant)
C. Workforce Housing		
General	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. 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 applicant deletes the text in the recorded covenant regarding the identification of workforce units and the use of recorded declaration of restrictions as a means of ensuring workforce housing units remain as such for a period of 30 years and replaces it with the following text: "In the event the Owner seeks any density and intensity bonuses as provided by the Workforce Housing 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

Provisions with Differences in the Two Covenants	Covenant Recorded on 6/17/2008	Draft Covenant Submitted to Staff on 2/5/2010 and Dated January 22, 2010
	the time of recordation of the declaration of restrictive covenants. (See pages 6 and 7 in the recorded covenant or page 10 in the draft covenant)	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
	Comment- The recorded covenant provides a mechanism for identifying workforce units or ensuring that workforce housing units would remain as such for a period of 30 years.	the forgoing, the Owner shall ensure that a minimum of 10% of the residential units within the Property satisfy the criteria for workforce housing." (See page 10 in the draft covenant)
	penou or so years.	Comment- The applicant states that 10 percent of the dwellings will be workforce housing but does not provide a mechanism for identifying workforce units or ensuring that workforce housing units would remain as such for a period of 30 years. This change is consistent with County regulations for residential development but is a weaker commitment to workforce housing than the original covenant has.
Subdivision of Property	Responsibility for obligations related to the provision of work force housing on a pro- rata per acre basis would apply to all parcels in the development. (See page 7 in the recorded covenant or page 11 in the draft covenant)	Responsibility for obligations related to the provision of work force housing on a pro- rata per acre basis would apply only to parcels with residential units. (See page 11 in the draft covenant)
D. Other Provisions Project Design	Except for the PTF, the Owner agrees to seek and obtain site plan approval for the entire Property which reflects substantial conformity with the attached Design Guidelines prior to development approvals being sought for residential, retail, hotel, or	Delete from the provision the alternative of recording with the DP&Z Director's or designee's approval an architectural code or equivalent design standards which are substantially in accordance with the attached Design Guidelines. (See page

Provisions with Differences in the Two Covenants	Covenant Recorded on 6/17/2008	Draft Covenant Submitted to Staff on 2/5/2010 and Dated January 22, 2010			
	office uses. Or record with the DP&Z Director's or designee's approval an architectural code or equivalent design standards which are substantially in accordance with the attached Design Guidelines. (See page 6 in the recorded covenant or page 9 in the draft covenant)	9 in the draft covenant)			
LEED Certification	All buildings 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. (See page 6 in the recorded covenant or page 9 in the draft covenant)	The revised covenant adds to this provision by making an exception for the PTF as shown below: All buildings on the Property, with the exception of the PTF, will be Leadership in Energy and Environmental(See page 9 in the draft covenant)			
		Comment- This revision is not consistent with Policy LU-10C of the Land Use Element which encourages energy conservation measures such as LEED Certification for County–owned facilities.			
Maximum Development Program (MDP)	Notwithstanding any transportation concurrency exception 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) PM peak hour trips for roadways 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 equates to	The revised covenant deletes language regarding transportation concurrency exception and Metropolitan Urban Center as shown below: Notwithstanding the <u>foregoing</u> <u>limitations</u> any transportation concurrency exception that is granted for the Property, the Owner may 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			
	the MDP, which equates to 0.361 million gallons per day and 0.812 million gallons per	Metropolitan Urban Center, is based upon (See page 3 in the draft covenant)			

Provisions with Differences in the Two Covenants	Covenant Recorded on 6/17/2008	Draft Covenant Submitted to Staff on 2/5/2010 and Dated January 22, 2010		
	day, respectfully. 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 to the County (See page 2 in the recorded covenant or page 3 in the draft covenant)	Comment- As part of the amendment adopted by the BCC on April 24, 2008, the symbol for the Metropolitan Urban Center that was located at the site of the International Mall in the City of Doral was moved across NW 107 Avenue to the application site on the adopted Land Use Plan map.		
School Concurrency	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. (See page 5 in the recorded covenant or page 9 in the draft covenant)	The provision entitled "Residential Uses" was deleted because 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. (See (See page 5 in the recorded covenant or page 9 in the draft covenant).		

#### **Public Services**

The proposed changes to the covenant impacts only two public services, fire and rescue and transit. The implications to these services are discussed below.

#### Fire and Rescue Services

The proposed Declaration illustrates a maximum development program, not including the Public Transportation Facility that will generate approximately 700 annual alarms. The number of alarms will severely impact existing fire and rescue service. The subject application lies in an area which generates a high call volume; in particular, life-threatening emergencies.

However, the implementation of a condition stating that no structure within the subject application can obtain a certificate of occupancy until Station No. 68 has received a temporary

certificate of occupancy or there is a new Miami-Dade Fire Rescue Department (MDFR) station designated that can serve the project, will limit retail development to a total of 400,000 square feet which will generate approximately 120 alarms. Although the potential 120 alarms will result in a serve impact to the primary responding station, which is Station No. 29 (Sweetwater) located at 351 SW 107 Avenue, other stations in close proximity to the subject application are able to provide fire and emergency service. Unfortunately, as a result of the location of the other stations, response time may not be adequate. Other responding stations include Station No. 48 (Fontainebleau) located at 8821 NW 18<sup>th</sup> Terrace, Station No. 58 located at 12700 SW 6<sup>th</sup> Street and Station No. 45 located at 9710 NW 58 Street.

Moreover, MDFR will require that all corresponding roadway improvements in connection with the proposed development be open to traffic prior to the issuance of any certificate of occupancy for any building within the subject application area with the exception of those buildings which constitute the Public Transportation Facility.

The allocation of funds, including the possibility of financial assistance by the applicant, will allow MDFR to complete Station No. 68 (Dolphin) in a timely manner. As such, MDFR is respectfully requesting that the applicant explore the possibility of a monetary contribution towards the construction of Station No. 68. MDFR presently owns the subject land located at NW 111<sup>th</sup> Avenue and NW 17<sup>th</sup> Street.

MDFR supports the subject application with the following conditions: that the owner shall fund and construct the roadway improvements described in Exhibit B of the proffered Declaration; that the owner agree 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 Station No. 68 has received a temporary certificate of occupancy or any other new fire station designated by MDFR that will serve the application site; however, with the exception of the roadway improvements described above, the obligation set forth for Station No. 68 shall not apply to the first 400,000 square feet of floor area for retail use.

#### Transit

#### Existing Service

The area within Application 7 is served by Metrobus Routes 7, 36, 71, 137/West Dade Connection and 238/East-West Connection. Table 7-1 shows the existing service frequency in summary form.

7-19

Metrobus Route Service Summary								
	Service Headways (in minutes)					Provimity to		
Route(s)	Peak (AM/PM)	Off-Peak (middays)	Evenings (after 8pm)	Overnight	Saturday	Sunday	Proximity to Bus Route (miles)	
7	30	40	30	N/A	40	40	0.0	F
36	60	60	N/A	N/A	60	60	0.0	F
71	30	60	N/A	N/A	60	60	0.0	L
137/West Dade Connection	30	45	60	N/A	40	40	0.0	L
238/East-West Connection	50	60	N/A	N/A	N/A	N/A	0.0	F

Notes: L means Metrobus local route service

F means Metrobus feeder service to Metrorail E means Metrobus Express or Limited-Stop service

#### Future Conditions for the Immediate Area

Transit improvements to the existing Metrobus service, such as an extension and new service are being planned for the next ten years as noted in the 2019 Recommended Service Plan within the 2009 Transit Development Plan. Table 7-2 shows the Metrobus service improvements programmed for the existing routes serving this application.

Metrobus Recommended Service improvements			
Route(s)	Improvement Description		
7	No planned improvements.		
36	No planned improvements.		
71	No planned improvements.		
137/West Dade Connection	No planned improvements.		
238/East-West Connection	Extend westward to Beacon Lakes.		
SR-836 Express	This route would provide limited-stop service between west Miami-Dade and the Miami Intermodal Center or downtown Miami vis the Dolphin Expressway (SR-836) during the morning and afternoon peak periods only.		

#### Metrobus Recommended Service Improvements

The projected bus service improvements for these routes are estimated to cost approximately \$825,219 in annual operating costs and a one-time capital cost of \$4,888,570 for a total cost of \$5,713,789. These costs only reflect the percentage of improvements that are located within the Application area except for the new SR-836 Express service. The cost associated for this new route is divided between the two termini (the Dolphin Station Park/Ride Terminal and the MIC) because the service would operate closed-door along the Dolphin Expressway (SR-836). Planning for the SR-836 Express route is on-going and the implementation of this new route along with any realigning of existing service into the Dolphin Station Terminal could be implemented as early as 2011 in order to coincide with the opening of the MIC during the second calendar quarter of 2012. This new express route is also dependent on this application because there is no other likely park and ride facility in the immediate west Miami-Dade area. A park and ride facility is critical for the success of this new express route.

Additionally, the South Florida Regional Transportation Authority (SFRTA – Tri-Rail) is planning a new shuttle route linking the Airport West's employment base along NW 12<sup>th</sup> Street from the Tri-Rail Airport Station. This new service would also benefit from a bus terminal which would inter-connect several bus routes at the Dolphin Station Terminal and at the MIC.

#### Major Transit Projects

Regarding future transit projects within the west Miami-Dade area, Miami-Dade Transit intends to pursue incremental and affordable transit improvements along the East-West Corridor until heavy rail funding options are identified.

#### Application Impacts in the Traffic Analysis Zone

A preliminary analysis was performed in the Traffic Analysis Zones (TAZ) where the application was requested. In TAZ # 414 where Application 7 is being requested, if granted, the expected transit impact produced by this application can be absorbed by the scheduled improvements to transit in the area.

#### **Conclusions and Recommendations**

MDT is opposed to this application and to the deletion of the previously proffered Declaration of Restrictions. The April 24, 2008 final covenant voluntarily proffered to Miami-Dade County among other things: the funding and construction of a Metrobus Terminal that would accommodate 10 bus bays, a driveway network to support the terminal, a Bus Operator lounge with restroom facilities and a multi-level parking garage to accommodate 260 transit park and ride spaces. In addition, several roadway improvements would also be funded and constructed as well as at least 10% of the residential units would be designated for workforce housing.

This new application does not seek to delete the funding or construction of the Metrobus Terminal or of the multi-level parking structure. What the applicant seeks via the submitted January 22, 2010 draft covenant is to construct the Metrobus Terminal improvements in two phases. Phase 1 would include the construction of the roadway access, the bus bays, the operator facility and a temporary surface lot with fewer parking spaces than required in the previously adopted covenant. Miami-Dade Transit opposes the provision of substantially fewer spaces during the first phase of the Metrobus Terminal improvements. Under Phase 2, the developer seeks to increase the time period permitted to commence construction of the multi-level Metrobus Terminal improvements from the three years established in the existing covenant before it becomes final and non-appealable to ten years with the ability to ask for an extension for a maximum of an additional five years. Miami-Dade Transit recognizes that the current economic environment is having a detrimental impact to the real estate and credit markets; however, a 15-year build-out horizon for the Metrobus Terminal structured parking improvements is unreasonable when balanced against the current transit needs that the west Miami-Dade area is already experiencing.

Miami-Dade Transit's 2009 Transit Development Plan (TDP) in addition to the Miami-Dade County Metropolitan Planning Organization's 2010 Transportation Improvement Program (TIP) includes the planned Dolphin Station Metrobus Terminal within their planning programs. Additionally, the TDP identifies within its Recommended Service Plan a new express-bus service, the SR-836 Express, which would connect the west Miami-Dade community at the Dolphin Station Metrobus Terminal to the soon to be open Miami Intermodal Center (MIC). The MIC project includes a Metrorail station, currently under construction, that will link passengers to downtown Miami, the Health District area and other destinations along the Metrorail alignment. These projects are due to be completed and operational during the second calendar quarter of 2012.

In addition to the projects listed in the 2009 Transit Development Plan, MDT is also proposing additional express and/or rapid bus projects which would link the west Miami-Dade area with the Central Business District (CBD). Lastly, as listed in the TIP, the SR-826/SR-836 (Palmetto Expressway/Dolphin Expressway) interchange reconstruction project will severely impact mobility alternatives within the immediate area of this application. This project is anticipated to last 5-7 years further acerbating the mobility options of west Miami-Dade residents.

For these reasons, MDT opposes a change from 3 years to 10-15 years for the already approved Metrobus Terminal improvements. Miami-Dade Transit staff is willing to further discuss existing and future transit needs and any opportunities to partner together with the applicant; and has already met twice with the applicant's representatives to discuss MDT's reservations and objections to certain items in this new application; but their application as presented in the January 22, 2010 draft covenant is not acceptable.

#### Consistency Review with CDMP Goals, Objectives, Policies, Concepts and Guidelines

All CDMP amendment applications are evaluated for consistency with pertinent CDMP Objectives, Policies, Land Use Plan Concepts and other Plan provisions. The specific objectives, policies and Land Use Plan Concepts that materially apply to the requested amendment are indicated below in summary following the specific item. For the specific language see the Adopted Components Comprehensive Development Master Plan, October 2006 Edition, as amended through May, 2009.

The following CDMP goals, objectives, policies, concepts and guidelines will be impeded if the proposed text covenant is approved

- Objective MT-3. Provide a sound funding base utilizing public and private sources that will assure maintenance of existing service operations and timely implementation of the needed transportation improvement projects and services.
- 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.
- 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.
- 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.

# APPENDICES

- Appendix A Map Series
- Appendix B Amendment Application
- Appendix C Miami-Dade County Public Schools Analysis
- Appendix D Applicant's Traffic Study
- Appendix E Applicant's Economic Report
- Appendix F Fiscal Impact Analysis
- Appendix G Proposed Declaration of Restrictions
- Appendix H Photos of Site and Surroundings (from site visit)

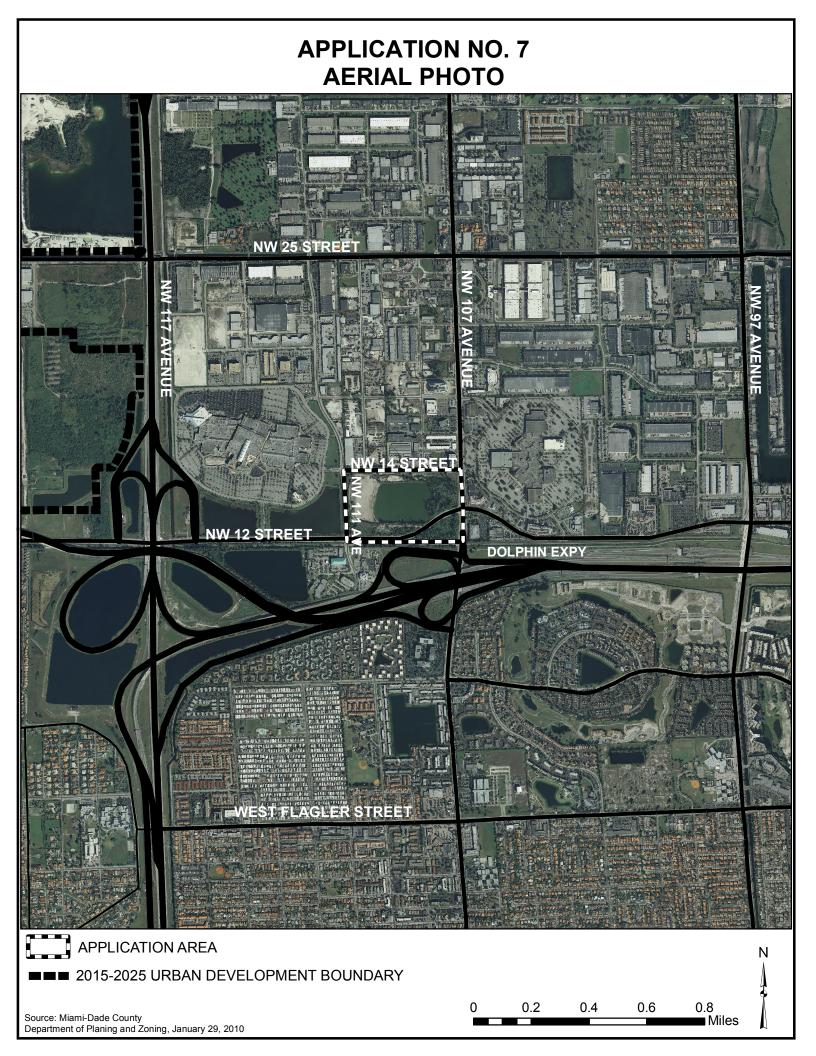
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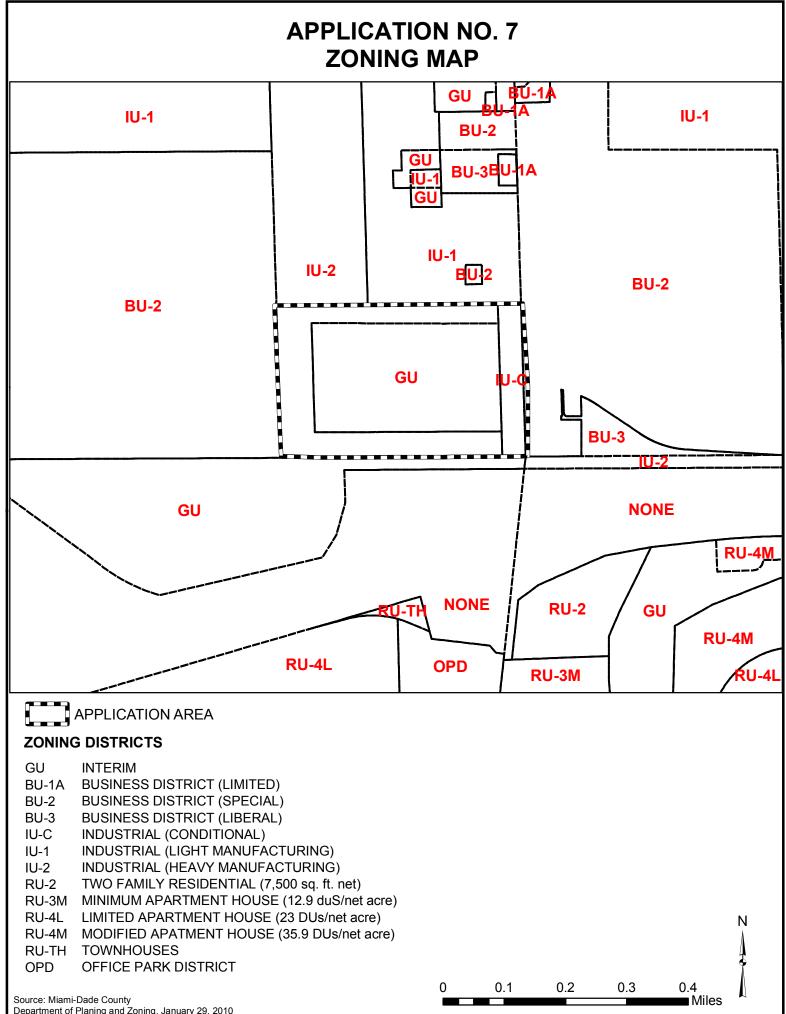
# **APPENDIX A**

### **Map Series**

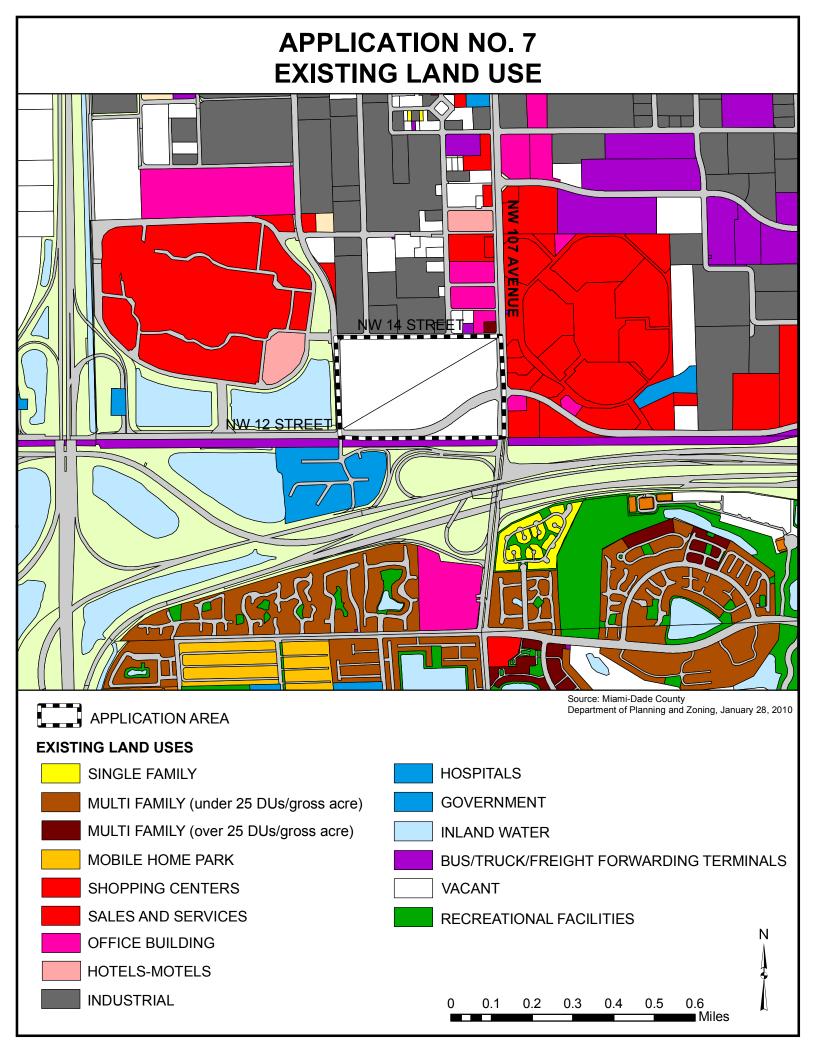
- Aerial Photo
- Current Zoning Map
- Existing Land Use Map
- CDMP Land Use Map

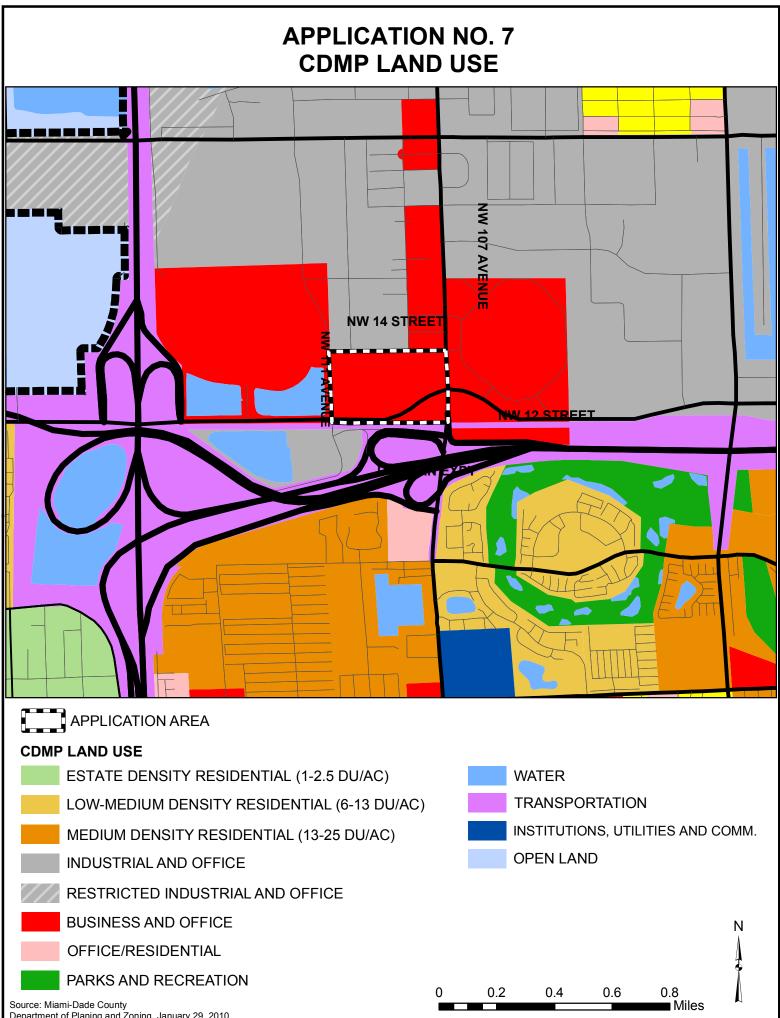
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Department of Planing and Zoning, January 29, 2010





Department of Planing and Zoning, January 29, 2010

# **APPENDIX B**

**Amendment Application** 

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#### STANDARD AMENDMENT REQUEST TO THE LAND USE ELEMENT/LAND USE PLAN MAP NOV -2 P 3 21 OCTOBER 2009-2010 AMENDMENT CYCLE PLANNING & ZONING MIAMI-DADE COUNTY METROPOLITAN PLANNING SECT COMPREHENSIVE DEVELOPMENT MASTER PLAN

#### 1. APPLICANT

107<sup>th</sup> Avenue Gamma, LLC 1717 Collins Avenue Miami Beach, FL 33139

#### 2. APPLICANT'S REPRESENTATIVES

Michael W. Larkin, Esq. Michael A. Gil, Esq. Bercow Radell & Fernandez, P.A. 200 South Biscayne Boulevard Suite 850 Miami, Florida 33131 (305) 374-5300

Bv:

Michael W. Larkin, Esq.

Date: November 2, 2009

By: Michael A. Gil, Eso.

Date: November 2, 2009

#### 3. DESCRIPTION OF REQUESTED CHANGES

A deletion in its entirety of the previously proffered Declaration of Restrictions submitted in connection with Application No. 3 of the April 2007 Comprehensive Development Master Plan (CDMP) Amendment Cycle and the proffer of a new Declaration of Restrictions is requested.

A. A deletion in its entirety of the Declaration of Restrictions accepted by the Board of County Commissioners ("BCC") in connection with Application No. 3 of the April 2007 CDMP Amendment Cycle ("Covenant") and the proffer of a new Declaration of Restrictions is requested.

B. Description of Application Area

The Application Area consists of 63.95 gross acres (54.20 net acres) located in Section 31, Township 53, Range 40 in unincorporated Miami-Dade County. See attached Sketch.

C. Acreage

Application Area: 63.95 gross acres (54.20 net acres). Acreage owned by Applicant: 54.20 net acres.

- D. Requested Changes
- The applicant requests a deletion in its entirety of the Declaration of Restrictions accepted by the BCC in connection with Application No. 3 of the April 2007 CDMP Amendment Cycle (O.R.B. 26433 Pg. 1633) as indicated on page 1-74.5 of the CDMP and the proffer of a new Declaration of Restrictions. Therefore, the request seeks a corresponding amendment to the table contained in the Land Use Element entitled "Restrictions accepted by Board of County Commissioners in association with Land Use Plan Amendments."

#### 4. REASONS FOR AMENDMENT

Description of Application Area

The Application Area consists of two parcels divided by NW 12<sup>th</sup> Street. The larger parcel is situated at the northwest corner of NW 12<sup>th</sup> Street and NW 107<sup>th</sup> Avenue. It is bounded by NW 107<sup>th</sup> Avenue to the east, NW 14<sup>th</sup> Street to the north, NW 111<sup>th</sup> Avenue to the west, and NW 12<sup>th</sup> Street to the south. The smaller parcel is irregularly shaped and situated at the southwest corner of NW 12<sup>th</sup> Street and NW 107<sup>th</sup> Avenue. The smaller parcel is bounded by NW 107<sup>th</sup> Avenue to the east, NW 12<sup>th</sup> Street to the north and west, and the State Road 836 (SR 836) ramp right-of-way to the south. The Application Area is currently designated as Business and Office and is zoned IU-2, IU-C and GU. Currently, the Application Area is vacant and has no existing use. There is a lake in the center of the Application Area that is currently being filled.

### Amendment No. 3 of April 2007 CDMP Amendment Cycle

The Application Area was the subject of a standard CDMP amendment in the April 2007 Amendment Cycle ("Application No. 3"). Specifically, 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. Moreover, during consideration of 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 Application Area 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 voluntary 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 Application Area sufficient area for a future possible Metrorail Station. Under the existing Covenant, the foregoing MetroBus Terminal improvements are required to be constructed within three years from the date that Application No. 3 became final and nonappealable. In addition, the MetroBus Terminal 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 MetroBus Terminal improvements include the following:
  - 10 saw-tooth busbays;
  - A driveway network serving the bus bays;
  - A parking garage with 260 parking spaces;
  - Landscaping;
  - A kiss and ride area;
  - Restroom facilities;
  - Enclosed transit lounge; and
  - 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 Application Area with the
  exception of those buildings that constitute the Public Transportation Facility.
- Submit a site plan that satisfies specific design guidelines, pedestrian accessways, building design, landscaping, and parking.
- Represent that all buildings located within the Application Area 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 Application Area.
- Reserve a minimum of 10% of the residential units that will be constructed within the Application Area for workforce housing.

See attached recorded Covenant.

### Proposed Modifications to Covenant

The Applicant is requesting a deletion of the existing Covenant and is proposing to proffer a new covenant to Miami-Dade County. However, please note that most of the language in the proposed covenant remains the same compared to the language in the original covenant. The following describes the modifications to the existing Covenant proposed by the Applicant:

# (1) Extension of Time to Construct MetroBus Terminal Improvements

The Applicant is requesting to increase the time period permitted to commence construction of the MetroBus Terminal improvements 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). In addition, prior to the expiration of the fifteen year period of time, the Applicant would be able to request an extension of time from the Direct of Miami-Dade Transit or his designee for a maximum of five additional years. Unfortunately, the current economic crisis continues to have a severe impact on the real estate and credit markets. This difficult economic climate has made it virtually impossible to finance the construction of the required MetroBus Terminal improvements. While the Applicant will fund and construct the required improvements, the Applicant is requesting additional time to do so in order to permit a recovery in the credit markets. The BCC has already recognized the difficult real estate and credit markets. The effect this lingering recession has had on the construction industry formed the basis on which the BCC adopted Ordinance No. 09-10, which provides emergency relief to the construction industry by permitting the extension of building permits. Here, the Applicant is requesting similar recognition with regard to the difficulty in obtaining financing for the construction of a multimillion dollar MetroBus Terminal.

### (2) Initial Retail Use

The Applicant is presently in negotiations with a very large retailer that is interested in constructing a store within the Application Area. This retailer may require up to 400,000 square feet of floor area for their business operations. Accordingly, the Applicant requests the ability to obtain a certificate of occupancy for the first 400,000 square feet of floor area for retail use within the Application Area without first having to obtain a temporary certificate of occupancy for the structures that will constitute the Public Transportation Facility. Moreover, as noted in the existing covenant, no structure within the Application (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. In order to permit this initial 400,000 square feet of retail use within the Applicant is requesting a similar exclusion from the prohibition on obtaining a certificate of occupancy prior to the issuance of a temporary certificate of occupancy or the prohibition on obtaining a certificate of occupancy prior to the issuance of a temporary certificate of occupancy certificate of occupancy certificate of occupancy certificate of occupancy for the prohibition on obtaining a certificate of occupancy prior to the issuance of a temporary certificate of occupancy for the prohibition on obtain the prohibition occupancy prior to the issuance of a temporary certificate of occupancy certificate of occupancy certificate of occupancy certificate of a temporary certificate of occupancy prior to the issuance of a temporary certificate of occupancy prior to the issuance of a temporary certificate of occupancy prior to the issuance of a temporary certificate of occupancy prior to the issuance of a temporary certific

occupancy for the Dolphin Fire Station or the designation of a new fire rescue facility to service the Application Area.

The initial 400,000 square feet of retail use within the Application Area 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. Similarly, as noted in a recent statement by Frank Nero, President and CEO of The Beacon Council, "stimulating our local economy must be a priority, it will not happen overnight and that is why we must be steadfast in our efforts to market the business assets of Miami-Dade County, being both aggressive and collaborative, in order to stem the hemorrhaging on the employment side." See press release from the Beacon Council (July 17. 2009), available at http://www.beaconcouncil.com/Web/NewsArticle.aspx?Page=newsArticle&id=369. Here, a large retailer is interested in opening a store within the Application Area at a time when the local economy is struggling to produce new jobs. 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.

# (3) Location of Parking Garage Associated with the MetroBus Terminal Improvements

The Applicant is requesting the flexibility to construct the parking garage associated with the MetroBus Terminal 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 MetroBus Terminal/Metrorail station provided that the Applicant agrees to fund and operate a shuttle service or construct a pedestrian bridge over N.W. 12<sup>th</sup> Street between the parking garage and the MetroBus Terminal/Metrorail station. If the parking garage is not located adjacent to the bus bays, the driveway network serving the bus bays, and the transit-oriented commercial uses, then the Applicant will not be required to dedicate to the County the portion of the Application Area upon which the parking garage is located. However, the Applicant would still be under an obligation to dedicate to the County the portion of the Application Area on the south side of N.W. 12<sup>th</sup> Street where the Public Transportation Facility will be located.

The Applicant remains committed to funding and constructing the parking garage for the use of transit users. However, for planning purposes, the Applicant is requesting the flexibility to locate the parking garage on the north side of N.W. 12<sup>th</sup> Street within the Application Area. Because the MetroBus Terminal will be located within a portion of the Application Area on the south side of N.W. 12<sup>th</sup> Street, should the parking garage be constructed on the north side of N.W. 12<sup>th</sup> Street, within a 1,500 foot radius of the MetroBus Terminal, the Applicant agrees to either fund and operate a shuttle service or to construct a pedestrian bridge over N.W. 12<sup>th</sup> Street linking together the parking garage and Public Transportation Facility.

### (4) Clarifications to Covenant

Finally, the Applicant is requesting 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 MetroBus Terminal improvements, the Applicant is clarifying 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.

Please refer to the attached original recorded covenant and the draft redlined covenant that is enclosed to more easily review the proposed covenant modifications.

### 5. ADDITIONAL MATERIAL SUBMITTED

- 1) Recorded Covenant
- 2) Draft Covenant (redlined version)
- 3) Proposed New Covenant
- 4) Aerial Photograph/Section Map

The Applicant reserves the right to supplement the application with additional documentation within the time permitted by the Code of Miami-Dade County.

## 6. COMPLETE DISCLOSURE FORMS: See attached.

#### LOCATION MAP FOR APPLICATION TO AMEND THE COMPREHENSIVE DEVELOPMENT MASTER PLAN

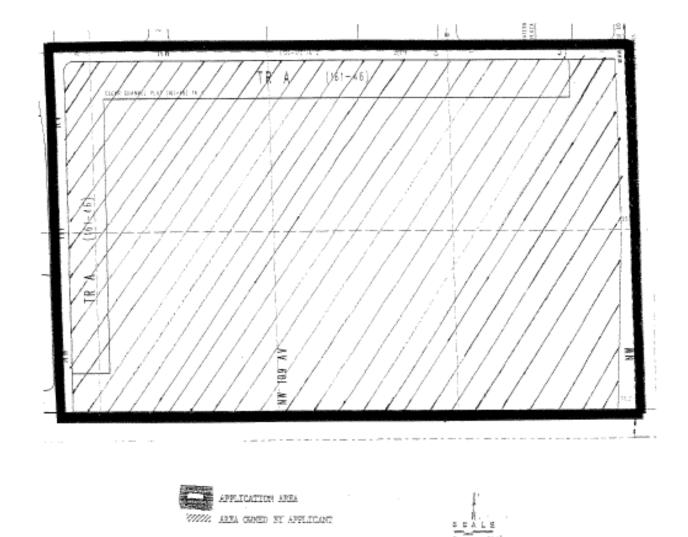
APPLICANT

107<sup>th</sup> Avenue Gamma, LLC 1717 Collins Avenue Miami Beach, Florida 33139 REPRESENTATIVES

Michael W. Larkin, Esq. & Michael A. Gil, Esq. Bercow Radell & Fernandez, P.A. 200 South Biscayne Boulevard, Suite 850 Miami, Florida 33131 (305) 374-5300

#### DESCRIPTION OF SUBJECT AREA

The Property consists of two parcels that collectively contain 54.20 net acres located in Section 31, Township 53, Range 40. The parcels are identified by Folio Nos. 30-3031-000-0021 and 30-3031-035-0010. The Applicant owns the parcels.



#### DISCLOSURE OF INTEREST

This form or a facsimile must be filed by all applicants having an ownership interest in any real property covered by an application to amend the Land Use Plan map. Submit this form with your application. Attach additional sheets where necessary.

APPLICANT (S) NAME AND ADDRESS:

APPLICANT A:	107th Avenue Gamma, LLC, 1717 Collins Ave., Miami Beach, FL 33139
APPLICANT B:	
APPLICANT C:	
APPLICANT D:	
APPLICANT E;	
APPLICANT F:	
APPLICANT G:	
APPLICANT H:	

Use the above alphabetical designation for applicants in completing Sections 2 and 3, below.

 PROPERTY DESCRIPTION: Provide the following information for all properties in the Application Area in which the applicant has an interest. Complete information must be provided for each parcel.

APPLICANT	<u>OWNE</u>	R OF RECORD	FOLIO NUMBER	ACRES IN SIZE (net)
4			30-3031-000-0021	
107 <sup>n</sup> Avenue Gamma, L	LC	Same	 30-3031-035-0010	54.20 acres

 For each applicant, check the appropriate column to indicate the nature of the applicant's interest in the property identified in 2., above.

		(1)	CONTRACTOR	OTHER
		(Attac		
APPLICANT	OWNER	LESSEE	FOR PURCHASE	Explanation )
A	X			

- DISCLOSURE OF APPLICANT'S INTEREST: Complete all appropriate sections and indicate N/A for each section that is not applicable.
  - a. If the applicant is an individual (natural person) list the applicant and all other individual owners below and the percentage of interest held by each.

INDIVIDU/	AL'S NAME AND ADDRESS	PERCENTAGE OF INTEREST
	N/A	
	address of the principal stockholders a where the principal officers or stockhol trustee(s), partnership(s) or other similar	, list the corporation's name, the name and and the percentage of stock owned by each. [Note: olders, consist of another corporation (5), ilar entities, further disclosure shall be required vidual(s) (natural persons) having the ultimate ned entity.]
	CORPORATION NAME: 107 <sup>th</sup> Avenu	ie Gamma, LLC
<u>NAME, AD</u>	DRESS, AND OFFICE (if applicable)	PERCENT AGE OF STOCK
	See enclosed disclosure of interest.	

c. If the applicant is a TRUSTEE, list the trustee's name, the name beneficiaries of the trust, and the percentage of interest held by each. [Note: where the beneficiary/beneficiaries consist of corporation(s), partnership(s), or other similar entities, further disclosure shall be required which discloses the identity of the individual (s) (natural persons) having the ultimate ownership interest in the aforementioned entity].

TRUSTEES NAME: N/A

BENEFICIARY'S NAME AND ADDRESS

PERCENTAGE OF INTEREST

d. If the applicant is a PARTNERSHIP or LIMITED PARTNERSHIP, list the name of the partnership, the name and address of the principals of the partnership, including general and limited partners and the percentage of interest held by each partner. [Note: where the partner (s) consist of another partnership(s), corporation (5) trust (5) or other similar entities, further disclosure shall be required which discloses the identity of the individual (s) (natural persons) having the ultimate ownership interest in the aforementioned entity].

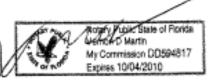
For any changes of ownership or changes in contract for purchase subsequent to the date of the application, but prior to the date of the final public hearing, a supplemental disclosure of interest shall be filed.

The above is a full disclosure of all parties of interest in this application to the best of my knowledge and behalf.

Applicant's Signatures and Printed Names

Sworn to and subscribed before me this <u>25</u> day of <u>Octobe</u>, 20 <u>0</u> 9

Notary Public, State of Florida at Large (SEAL) My Commission Expires:



Disclosure shall not be required of any entity, the equity interest in which are regularly traded on an established securities market in the United States or other country; or pension funds or pension trusts of more than five thousand (5,000) ownership interests; any entity where ownership interests are held in a partnership, corporation or trust consisting of more than five thousand (5,000) separate interests including all interests at each level of ownership, and no one pension or entity holds more than a total of five (5) percent of the ownership interest in the partnership, corporation or trust; or of any entity, the ownership interest of which are held in a partnership, corporation or trust consisting of more than a total of 5% of the ownership interests and where no one person or entity holds more than a total of 5% of the ownership interest in the partnership, corporation or trust. Entities whose ownership interests are held in partnership, corporation, or trust consisting of more than five thousand (5,000) separate interests, including all interests at every level of ownership, shall only be required to disclose those ownership interest which exceed five (5) percent of the ownership interest which exceed five (5) percent of the ownership interest in the partnership, corporation or trust.

## Disclosure of Interest 107th Avenue Gamma, LLC

107th Avenue Gamma, LLC is owned 100% by Balzebre Gamma LP.

Balzebre Gamma LP is owned 99% by the Anthony Balzebre Trust and 1% by Balzebre Gamma, LLC.

Balzebre Gamma, LLC is owned 100% by the Anthony Balzebre Trust.

The trustee of the Anthony Balzebre Trust is Dorothy Balzebre, and the beneficiaries of the trust are as follows:

Anthony F. Balzebre, Jr.	16.666 % (1/6)
Janet Balzebre Murray	16.666 % (1/6)
Richard W. Balzebre	16.666 % (1/6)
Susan Balzebre Gordon	16.666 % 1/6)
Robert P. Balzebre	16.666 % (1/6)
Thomas W. Balzebre	16.666 % (1/6)

The address for all of the above-described entities/individuals is 1717 Collins Avenue, Miami Beach, Florida 33139.

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# **APPENDIX C**

# Miami-Dade County Public Schools Analysis

A public school analysis is not applicable for this Application.

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# **APPENDIX D**

# Applicant's Traffic Study

The applicant did not submit a traffic study report on or prior to December 29, 2009, the deadline for submitting technical reports for the October 2009 Cycle of Amendments.

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# **APPENDIX E**

# **Applicant's Economic Analysis**

On February 10, 2010, the Applicant submitted to DP&Z Staff an economic report prepared by Miami Economic Associates, Inc., and is included herein.

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DIRECT LINE 305-377-6236 2000 FEB 10 P 4: 19

## VIA HAND-DELIVERY

PLANNING & ZONING METROPOLITAN PLANNING SECT

February 10, 2010

Marc C. LaFerrier, Director Department of Planning and Zoning Stephen P. Clark Center 111 NW 1<sup>st</sup> Street, 11<sup>th</sup> Floor Miami, Florida 33128

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

Dear Mr. LaFerrier:

This law firm represents 107th Avenue Gamma, LLC, the applicant in the abovecaptioned application (the "Application"). Please see the enclosed economic report by Miami Economic Associates, Inc., for the Application. If you have any questions, please contact me at (305) 377-6236.

Sincerely yours,

Matthew Amster

Enclosure

cc: Mr. Mark Woerner, Metropolitan Planning Section Michael W. Larkin, Esq. Michael A. Gil

# 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.

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.

Miami Economic Associates, Inc. 6861 S.W. 89th Terrace Miami, Florida 33156 Tel: (305) 669-0229 Fax: (866) 496-6107 Email: meaink@bellsouth.net

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 Oaklandbased 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.<sup>1</sup> 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;

<sup>1</sup> 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;
- o 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

- o 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 fulltime 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

Miami Economic Associates, Inc. 6861 S.W. 89th Terrace Miami, Florida 33156 Tel: (305) 669-0229 Fax: (866) 496-6107 Email: meaink@bellsouth.net

> 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.

anh Dolly

Andrew Dolkart President

# **APPENDIX F**

# **Fiscal Impact Analysis**

Not applicable for this Application.

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# **APPENDIX G**

# **Declaration of Restrictions**

- On April 24, 2008, the Miami-Dade County Board of County Commissioners adopted by Ordinance No. 08-43 Application No. 3 of the April 2007 Cycle of applications to amend the CDMP, and accepted a proffered Declaration of Restrictions limiting development on the subject property.
- The Applicant submitted to DP&Z a Declaration of Restrictions on or prior to January 28, 2010, the deadline for submitting Declaration of Restrictions, to be considered in this Initial Recommendations Report as a replacement covenant.

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CFN 2008R0495143 OR Bk 26433 Pss 1633 - 1650; (18pss) 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

(Space reserved for Clerk)

## 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

(Public Hearing)



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.

<u>Transit Improvements</u>. 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

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 12<sup>th</sup> 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 12<sup>th</sup> Street to the Public Transportation Facility for all county employees and

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.

<u>Certificate of Occupancy Date</u>. 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.

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

<u>Project Design</u>. 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.

<u>Workforce Housing</u>. 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

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.

<u>Water Conservation Regulations.</u> 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.

<u>Subdivision of Property</u>. 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.

<u>Covenant Running with the Land</u>. 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.

#### (Space reserved for Clerk)

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

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.

<u>Authorization for Miami-Dade County to Withhold Permits and Inspections</u>. 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.

<u>Election of Remedies</u>. 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.

<u>Presumption of Compliance</u>. 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.

<u>Severability</u>. 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.

<u>Recordation and Effective Date.</u> 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.

<u>**Owner.**</u> 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  $v^2$ 

day of PEBRUARY, 2008.

WITNESSES: Signature

san Gordo Print Name Signature

107th Avenue Gamma thC By: Prin Robert P. Balzebre

Title: Manager

Print Name

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

The foregoing instrument was acknowledged before me this  $12^{n}$  day of **FCB UARY**, 2008, by **Robert P. Balzebre, as Manager of the 107**<sup>th</sup> **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 FummA

VERNON D. MARTIN

Print Name



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

## Exhibit "A"

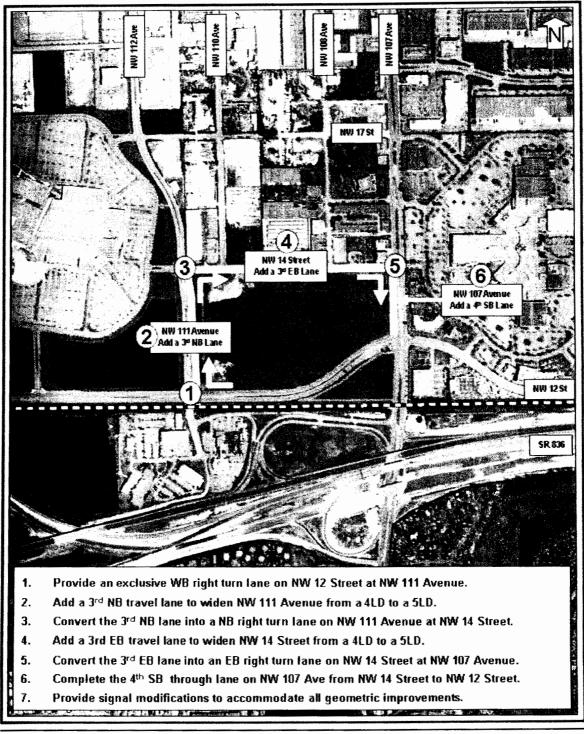
## Legal Description

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.

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## Exhibit "B"

#### **Roadway Improvements**



Legend

54.196 Acre Amendment Site

Business and Office – 54.196 acres With a RAC Overlay Designation Figure 8 Proposed Infrastructure Improvements Dolphin Station September 2007

Source : Cathy Sweetapple & Ass oclates

## 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. Subterrranean 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.

#### OPINION OF TITLE

#### To: Miami-Dade County

With the understanding that this Opinion of Title is furnished to Miami-Dade County, as inducement for acceptance of a Declaration of Restrictions and as an inducement for acceptance of a proposed final subdivision plat covering, covering the real property, hereinafter described, it is hereby certified that I have examined a complete Abstract of Title covering the period from the beginning to the 20th day of March, 2008, at the hour of 11:00 p.m., inclusive, of the following described property:

#### SEE ATTACHED EXHIBIT "A"

I am of the opinion that on the last mentioned date, the fee simple title to the above-described real property was vested in: 107<sup>TH</sup> AVENUE GAMMA, LLC. The sole member of the LLC is DOROTHY BALZEBRE, as Trustee of the BALZEBRE CHILDREN TRUST DATED AUGUST 21, 1979. The authorized individual to execute documents on behalf of the LLC is ROBERT P. BALZEBRE, Manager.

## Note: For Limited Partnership, Limited Liability Company or Joint Venture indicate parties comprising the Limited Partnership, Limited Liability Company or Joint Venture and identify who is authorized to execute.

Subject to the following encumbrances, liens and other exceptions (If "none" please indicate): 1.

1. <u>RECORDED MORTGAGES</u>:

NONE

## 2. <u>RECORDED CONSTRUCTION LIENS, CONTRACT LIENS AND JUDGMENTS</u>: NONE

3. **GENERAL EXCEPTIONS**:

SEE ATTACHED EXHIBIT B.

#### 4. <u>SPECIAL EXCEPTIONS</u>:

NONE

**Opinion** of Title

Page 2

/ HEREBY CERTIFY that I have reviewed all the aforementioned encumbrances and exceptions.

Therefore, it is my opinion that the following party(ies) must join in the agreement in order to make the agreement a valid and binding covenant on the lands described herein.

Name Interest Special Exception Number

NONE

The following is a description of the aforementioned abstract and its continuations:

Number	Company Certifying	No. of Entries	Period Covered
TSR			
01-2004-013278 AND	Attorneys' Title Insurance		9-7-79 to 3-20-08
TITLE SEARCH	Fund, Inc		

*I HEREBY CERTIFY* that the legal description contained in this Opinion of Title coincides with, and is the same as, the legal description in the proffered, recordable agreement.

I, the undersigned, further certify that I am an attorney-at-law duly admitted to practice in the State of Florida and a member in good standing of the Florida Bar.

Respectfully submitted this 3 day of April, 2008.

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RONALD G. BAKER Florida Bar No. 217174 RUSSO & BAKER, P.A. 2655 LeJeune Road, Suite 201 Coral Gables, Florida 33134 Telephone (305) 476-8300

STATE OF FLORIDA

COUNTY OF MIAMI-DADE : ss :

THE FOREGOING INSTRUMENT was acknowledged before me this  $\frac{3}{\sqrt{2}}$  day of April, 2008, by RONALD G. BAKER, who is personally known to me.

Notary Public - State of Florida Printed Notary Name: \_\_\_\_\_ My Commission Expires: \_\_\_\_\_

Elizabeth Martinez Commission #DD452548 Expires: JULY 19, 2009 WWW AARONNOTARY.com

[httoms/Opinion of Title to School Board\_BLANK (10/4/07)]

#### 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 Miaml-Dade County, Florida; Less existing Right of Way of Records., which is more particularly described as:

Commence at the Southeast corner of said Section 31; thence run South 89°42'12" West, along the South line of said Section 31, for 1,242:87 feet to the Point of ' Beginning; thence continue South 89°42'12" West, along the South line of said Section 31, for 830 01 feet; thence North 01°43'34" West, along the East right-ofway line of NW 111th Avenue according to Official Records Book 12977, Page 546 of the Public Records of Miami-Dade County, for a distance of 142.54 feet; thence South 46°00'33" East for 46 53 feet; thence North 89°42'12" East, along a line 110.00 feet North of and parallel with the South line of said Section 31, for s 800 25 feet, to the point of curvature of a circular curve, concave Northwesterly and having a radius of 899.93 feet; thence Easterly and Northeasterly along said circular curve through a central angle of 38°07'28" for an arc distance of 598.81 feet; thence North 51°34'44" East for 216.09 feet to the point of curvature of a circular curve concave Southeasterly and having a radius of 1,013.93 feet; thence Northeasterly and Easterly along said curve through a central angle of 27°00'15" for an arc distance of 477.88 feet; thence North 36°48'08" East for 40.31 feet; thence North 01°43'17" West, along a line 46 00 feet West of, and parallel with the East line of said Section 31, for 162.00 feet; thence North 04°33'21"East for 100.57 feet; thence South 01°43'17" East, along a line 35.00 feet West of, and parallel with the East line of said Section 31, for 250.47 feet to the point of curvature of a circular curve concave Westerly and having a radius of 7,583 44 feet; thence Southerly along said curve, through a central angle of 01°34'45", fcan arc distance of 209.00 feet; thence North 50°05'11" West for 49.66 feet to a point on a non-tangent circular curve concave Southeasterly, having a radius of 883.93 feet, the tangent circular curve through a central angle of 18°24'28" for an arc distance of 283.99 feet; thence South 70°32'46" West for 50 79 feet to a point on a non-tangent curve, concave Southeasterly, having a radius of 895.93 feet, the center of which lies South 34°42'11" East from the point last mentioned; thence Southwesterly along said curve through a central angel of 01°51'46" for an arc distance of 29.13 feet; thence South 53°26'04" West for 277.95 feet to the point of curvature of a circular curve, concave Northwesterly and having a radius of 1,009.93 feet; thence Southwesterly and Westerly along said curve, through a central angle of 36°16'08" for an arc distance of 639 30 feet to Point of Beginning;

#### And less:

The West 35.00 feet of the South 1/4 of the East 2/5 of Section 31, Township 53 South, Range 40 East, Miami-Dade County, Florida; LESS the North 35.00 feet thereof;

#### And:

The external area formed by a 25.00 foot radius arc concave to the Southeast, tangent to the South line of the North 35 00 feet of the South 1/4 of the East 2/5 of said Section 31 and tangent to the East line of the West 35 00 feet of the East 2/5 ; of said Section 31 1

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## SCHEDULE B

- 1. Plat Clear Channel recorded in O.R. Book 161 at Page 46.
- 2. Reservations in Deed recorded in D.B. 176, at Page 339.
- 3. Grant of Easement recorded in O.R. Book 11499, at Page 1804.
- 4. Permanent Easement recorded in O.R. Book 22165, at Page 0378.
- 5. Covenant recorded in O.R. Book 10973, at Page 1017.
- Lakefill Performance Bond, recorded in O.R. Book 22596, at Page 1036
- Environmental Resource Permit Notice, recorded in O.R. Book 26260, at Page 3443

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## 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.

STATE OF FLORIDA, COUNTY OF DADE I HEREBY CERTIFY that this is a true copy of the original filed in this office on\_\_\_\_ viay of Æ AD 201  $\sim$ WITNESS my hand and Omisial Seal. HARVEY RUVIN, CLERK, of Circuit and Courts Courts 017 50 Вv D.C

# Application 7

#### 2010 FEB - 6 P 2: 56

PLANNING & ZOHING METROPOLITAN PLANNING SECT

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

(Space reserved for Clerk)

#### **DECLARATION OF RESTRICTIONS**

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 <u>was</u> the subject of a standard Comprehensive Development Master Plan ("CDMP") Amendment Application No. 3 of <u>in</u> 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 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:

<u>Maximum Development Program.</u> 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. 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 <u>7 in the October 2009 CDMP Amendment Cycle</u> 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:

<u>Maximum Development Program.</u> 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 <u>the foregoing limitations</u> 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. <u>"Retail/Service" as set forth above shall</u> mean any proposed retail, service, or wholesale business establishment or group of

(Space reserved for Clerk)

establishments which deals primarily with the general public onsite, including those uses permitted in the BU zoning districts, as amended.

<u>Transit Improvements</u>. 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 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-" 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 <u>either fund or fund and</u> construct a parking garage where the bus bays, Commercial Area, and Parking Area will be located ("Parking Structure") <u>pursuant to the phased development schedule for the PTF set forth in this covenant</u>. 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.

<u>The foregoing described MetroBus Terminal improvements shall be constructed</u> 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 \_\_\_\_\_\_ parking spaces - Owner shall fund and construct the improvements that constitute Phase I of the PTF within two years of Amendment Application No. 7 in the October 2009 CDMP Amendment Cycle becoming 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 Commercial Area, transit lounge, and landscaping for this area. Owner shall either fund or fund and construct the improvements that constitute Phase II of the PTF. If Owner agrees to fund and construct, Owner shall do so within ten (10) years from the effective date of the development agreement referred to below.

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, 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 parking spaces (the "Temporary Staging Area"). This Temporary Staging Area shall cease to exist once a temporary 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 Owner is unable for good cause to construct to obtain a certificate of completion for the foregoing-Phase I improvements within three (3) two (2) years from the date that the current application Amendment Application No. 3 (Amendment Application No. 7 in the October 2009 CDMP Amendment Cycle) becomes final and nonappealable, prior to the expiration of the two year period of time, 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. provided that a building permit for the improvements has issued prior to the end of the three ten year period. Similarly, if Owner chooses to fund and construct and is unable to obtain a certificate of occupancy for the Phase II improvements within ten (10) years from the effective date of the development agreement, prior to the expiration of the ten year period of time, Owner may request an extension of time from the Director of Miami-Dade Transit or his designee for the Phase II improvements within ten (10) years from the effective date of the development agreement, prior to the expiration of the ten 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 five (5) additional years.

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 <u>and be permitted to use</u> 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 is not obligated for maintaining any of the improvements that constitute Phase I of the PTF. 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.

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. 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 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 <u>other</u> 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 for the first 400,000 square feet of floor area for retail use within the Property and its accessory <u>parking.</u>

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.

<u>Residential Uses</u>. 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.

<u>Fire Rescue</u>. 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 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, with the exception of the PTF, 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.

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. 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.

<u>Water Conservation Regulations.</u> 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.

<u>Subdivision of Property.</u> 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 <u>only for such parcels which are</u> <u>designated for residential uses</u>. Workforce housing units on any particular subparcel of the Property shall be developed simultaneously with any <u>market rate nondesignated workforce</u> housing units on that subparcel.

<u>Covenant Running with the Land</u>. 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.

<u>Term.</u> 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 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.

<u>Enforcement</u>. 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

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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.

<u>Authorization for Miami-Dade County to Withhold Permits and Inspections</u>. 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.

<u>Election of Remedies</u>. 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.

<u>Presumption of Compliance</u>. 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.

<u>Severability</u>. 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.

<u>Recordation and Effective Date.</u> 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

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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.

<u>Acceptance of Declaration.</u> 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.

<u>**Owner.</u>** The term Owner shall include all heirs, assigns, and successors in interest.</u>

[Execution Pages Follow]

## **APPENDIX H**

## Photos of Application Site and Surroundings

No photos of the Application area were taken.

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