

MEMORANDUM

Agenda Item No. 8(L)(4)

TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

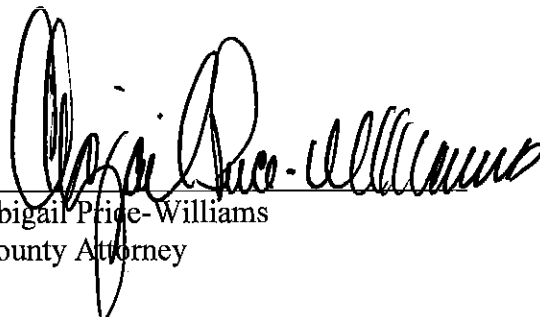
DATE: February 4, 2020

FROM: Abigail Price Williams
County Attorney

SUBJECT: Resolution approving a
Transportation Concurrency
Proportionate Share
Mitigation Agreement
between Miami-Dade County
and applicants, J. Khazen,
LLC., Gerardo Bravo, P.A.,
and Marco Padovan
International, Corp., to
address Transportation
Concurrency pursuant to
section 163.3180, Florida
Statutes; and authorizing the
County Mayor to execute said
agreement to exercise all
rights contained therein, and
take all actions necessary to
effectuate same

Resolution No. R-113-20

The accompanying resolution was prepared by the Regulatory and Economic Resources Department and placed on the agenda at the request of Prime Sponsor Commissioner Dennis C. Moss.



Abigail Price-Williams
County Attorney

APW/lmp

Memorandum



Date: February 4, 2020

To: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

A handwritten signature in black ink, appearing to read "Carlos A. Gimenez".

Subject: Resolution Authorizing Miami-Dade County to enter into a Transportation Concurrency Proportionate Share Mitigation Agreement with J. Khazen, LLC., Gerardo Bravo, P.A., and Marco Padovan International, Corp.

Recommendation

It is recommended that the Board of County Commissioners (Board) authorize the County Mayor or County Mayor's designee to enter into a Transportation Concurrency Proportionate Share Mitigation Agreement (Agreement) attached as Exhibit "1" with Miami-Dade County and the Applicants, J. Khazen, LLC., Gerardo Bravo, P.A., and Marco Padovan International, Corp. to construct 12 single family residential units.

Scope

The proposed Agreement will have an impact on Commission District 9, which is represented by Commissioner Dennis C. Moss.

Delegation of Authority

The County Mayor or County Mayor's designee is authorized to execute the proportionate share mitigation agreement on behalf of Miami-Dade County and to take all steps necessary to effectuate the same, including recording of the agreement.

Fiscal Impact/Funding Source

Fiscal Impact will be assessed at the time of Platting.

Track Record/Monitor

The Platting and Traffic Review Section in the Department of Regulatory and Economic Resources will administer and monitor the implementation of the Agreement and the person responsible for this function is Raul A. Pino, P.L.S.

Background

Section 163.3180 of the Florida Statutes requires local governments that apply concurrency to transportation facilities to include principles, guidelines, standards and strategies, such as adopted levels of service, in their comprehensive plans. Miami-Dade County has adopted roadway levels of service standards for all the unincorporated municipal service area. Objective TC-1 of the Transportation Element of Miami-Dade County's Comprehensive Development Master Plan (CDMP) sets forth the County's concurrency standards and Policies CIE-3C and TC-1B of the Miami-Dade County CDMP established level of service standards for all State and County roads in Miami-Dade County.

Section 33G-5 of the Code of Miami-Dade County, requires review for traffic circulation concurrency when an application for development order is received. As such, J. Khazen, LLC., Gerardo Bravo, P.A., and Marco Padovan International, Corp. filed a Tentative Plat, Plat No. 23702, seeking to develop 12 single family residential units on SW 149 Avenue and SW 179 Street, attached as Exhibit "2". Miami-Dade County's Regulatory and Economic Resources

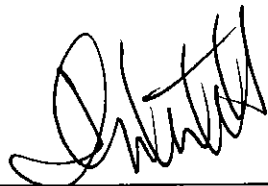
Department, Platting and Traffic Review Section reviewed the impact the proposed development would have on the existing surrounding roadways and determined that the adopted roadway level of service standard would not be met. Adequate roadway capacity is not available for two of the twelve PM peak hour trips anticipated to be generated by the proposed development, pursuant to the following:

- 1) Station 9879 located on SW 184 Street west of SW 147 Avenue has a maximum Level of Service (LOS) "D" of 1440 vehicles during the PM Peak Hour. It has a current Peak Hour Period (PHP) of 2025 vehicles and 12 vehicles have been assigned to this section of the road from previously approved Development Orders. Furthermore, Station 9879 with its PHP and assigned vehicles is at LOS "F". The 2 vehicle trips generated by this development when combined with the 2025 and those previously approved through Development Orders, 12, equal 2039 and will cause this segment to remain at LOS "F" whose range is over 1440.

In accordance with Section 33G-5(6) of the Code, when trips generated by the proposed development result in a failure to achieve the adopted roadway level of service standard, the applicant may satisfy the level of service standard through proportionate share mitigation as provided in Section 163.3180(5)(h), Florida Statutes. In order to mitigate the impact and proceed with the development, the applicants have elected to execute the attached Agreement with the County.

The Agreement requires the Applicants to provide a monetary proportionate share contribution in the amount of \$6,577.78 to mitigate the impacts of the proposed development. The contribution will be used to fund improvements to one or more of the following projects:

<u>RIF</u> <u>District</u>	<u>TPO Project</u> <u>No.</u>	<u>DTPW</u> <u>Project No.</u>	<u>Location</u>	<u>Type of work</u>
6	0001053	20180284	SW 184 Street and SW 157 Avenue	Signal
6	0001054	20180283	SW 184 Street and SW 152 Avenue	Signal
5	000832	20163112	SW 137 Avenue and SW 152 Street	Intersection Improvements



Jack Osterholt
Deputy Mayor

EXHIBIT " 1 "

TRANSPORTATION CONCURRENCY PROPORTIONATE SHARE MITIGATION AGREEMENT

This Transportation Concurrency Proportionate Share Mitigation Agreement (hereinafter "Agreement") is made and entered into this ____ day of _____, 20__, by and between Miami-Dade County, a political subdivision of the State of Florida (hereinafter "County"), and J. Khazen, LLC., Gerardo Bravo, P.A., and Marco Padovan International, Corp. (hereinafter the "Developer," which shall include the Developer's successors, grantees, and assigns) (collectively, the County and the Developer are referred to as the "Parties").

WITNESSETH

WHEREAS, the Developer is the current fee owner of that certain real property being approximately +/- 2.3 acres in size, 30-5933-000-0111 (folio number), and legally described in **Exhibit "A"** attached hereto (the "Property");

WHEREAS, the Developer joins in and consents to this Agreement so that the requirements herein are binding upon and run with the land concerning the Property;

WHEREAS, the Developer desires to develop the Property with 12 single family residential units (the "Project");

WHEREAS, on October 26, 2015, Developer filed an application for subdivision approval for the Property, which is currently pending under Tentative Plat No. 23702, and is incorporated herein by reference;

WHEREAS, transportation impacts resulting from the Project have been evaluated and studied by the Developer and the County;

WHEREAS, the Parties agree that certain roadway intersections and other transportation facilities are impacted by the Project and that improvements to those transportation facilities are needed to accommodate the transportation impacts to be generated by the Project;

WHEREAS, pursuant to Section 163.3180(5)(h), Florida Statutes, Miami-Dade County has provided for a transportation concurrency program within its Comprehensive Development Master Plan, as set forth in the Transportation Improvement Program (TIP) in both the Transportation Element and Capital Improvement Element, and as further detailed in Chapter 33G of the County Code;

WHEREAS, while the transportation impacts associated with the Project would reduce level-of-service standards, as established in the transportation concurrency program, Section 33G-5(6) nonetheless allows the County to issue development orders for the Project if the Developer enters into a binding agreement to pay for or construct its proportionate share of required improvements to one or more regionally significant transportation facilities, in accordance with Section 163.3180, Florida Statutes;

WHEREAS, the Parties agree that transportation concurrency shall be satisfied by the Developer's execution of this legally binding Agreement and full compliance therewith, to provide mitigation proportionate to the transportation impacts to be created by the Project;

WHEREAS, to accommodate the Project's transportation impacts, the Developer has offered to make a proportionate share contribution toward a regionally significant transportation facility as defined in Section 3; and

WHEREAS, in accordance with the requirements of the transportation concurrency program, and Section 33G-5(6) of the Code, the County and the Developer agree to the conditions, rights and obligations established in this Agreement.

NOW, THEREFORE, in consideration of the promises, mutual covenants, and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

Section 1. Recitals.

The above recitals are true and correct and form a part of this Agreement.

Section 2. Project Impacts.

The Project is located on SW 149 Avenue and SW 179 Street. It is anticipated to generate twelve (12) PM peak hour trips. Roadway capacity is not available for two (2) of these PM peak hour trips that will impact the following transportation facility: SW 184 Street west of SW 147 Avenue.

Section 3. Required Improvements to Regionally Significant Transportation Facilities.

The County has identified the following improvements to regionally significant transportation facilities within a three-mile radius of the Project that will mitigate the impacts of the Project:

<u>RIF District</u>	<u>TPO Project No.</u>	<u>DTPW Project No.</u>	<u>Location</u>	<u>Type of work</u>
6	0001053	20180284	SW 184 Street and SW 157 Avenue	Signal
6	0001054	20180283	SW 184 Street and SW 152 Avenue	Signal
5	000832	20163112	SW 137 Avenue and SW 152 Street	Intersection Improvements

Section 4. Proportionate Share Payment.

The Developer shall pay the following amount as its proportionate share payment for the required road improvement(s): six thousand five hundred seventy-seven and 78/100 Dollars (\$6,577.78) (the "Proportionate Share Payment"), which amount was calculated in accordance with the methodology provided for in Section 163.3180(5)(h), Florida Statutes. The County shall apply such Proportionate Share Payment to one or more of the mobility improvements identified in Section 3.

The Developer shall make the Proportionate Share Payment to the County within 14 days of approval by the County. The effective date of this Agreement (the "Effective Date") shall be the date the Proportionate Share Payment is received, unless otherwise extended in the County's sole and absolute discretion, by Cashier's Check or electronic payment. In the event the Developer fails to make the Proportionate Share Mitigation Payment as provided for herein, the County, in its sole and absolute discretion, may cancel this Agreement and revoke any development permits that have been issued in reliance on this Agreement.

Section 5. Term of Concurrency Approval.

In consideration for entering into this Agreement with the County, the Developer shall be deemed to have satisfied the transportation concurrency requirements; provided, however, that if the Developer fails to apply for a development permit within twenty four months of the date of this Agreement, then this Agreement, and the certificate of concurrency approval, shall be considered null and void, and the Developer shall be required to reapply to demonstrate compliance with concurrency standards. In the event the County denies the development approval or permit application that gave rise to this Agreement, or if the Developer for any reason withdraws the development approval or permit application, then this Agreement, and the concurrency approval, shall be void and of no further force and effect. Notwithstanding Section 9 below, upon written request within ninety (90) days of the denial or withdrawal of such development approval or permit application, the County shall within sixty (60) days from the receipt of a request refund to the Developer the full amount of the Proportionate Share Payment.

Section 6. Development Approvals and Compliance.

Nothing in this Agreement shall allow, or be construed to allow, the Developer to avoid or delay compliance with any or all provisions of the County's Comprehensive Plan, the County Code, County ordinances, resolutions, conditions of development orders or permits, and other requirements pertaining to the use and development of the Property. Nothing in this Agreement shall constitute or be deemed to constitute or require the County to issue any approval by the County of any rezoning, comprehensive plan amendment, variance, special exception, final site plan, preliminary subdivision plan, final subdivision plan, final plat, construction plan approval, site plan approval, building permit, concurrency certificate, grading permit, stormwater drainage permit, access permit, or any other land use or development approval. No building permits may be issued for the Property until the Proportionate Share Payment has been received.

Section 7. Increase in Project Trips.

The Developer acknowledges and agrees that any change or modification to the Project may result in an increase in transportation impacts to the County's transportation facilities. The Developer acknowledges and agrees that it shall be precluded from asserting that the additional transportation impacts are vested or otherwise permitted under this Agreement. In addition, Developer acknowledges and agrees that any such changes resulting in an increase in transportation impacts may cause this Agreement to be null and void, or may require additional traffic analysis and documentation, and the execution of an additional Proportionate Share Mitigation Agreement, along with the payment of additional mitigation.

Section 8. Road Impact Fee Credit.

Pursuant to Section 163.3180(5)(h)(2)(e), Florida Statutes, the amount of the Proportionate Share Payment shall entitle the Developer to a dollar-for-dollar credit against the road impact fees that will be assessed by the County in connection with the development of the Project under Chapter 33E of the County Code, regardless of how the County ultimately uses the Proportionate Share Payment. The Developer acknowledges and agrees that in no event shall the Developer be entitled to road impact fee credit in excess of the Proportionate Share Payment, and in the event the Proportionate Share Payment exceeds the amount of road impact fees owed in connection with the Project through buildout, the Developer shall not be entitled to a refund for the excess of the Proportionate Share Payment over the amount of the road impact fees.

Section 9. No Refund.

Except as provided in Section 5 of this Agreement, the Proportionate Share Payment is non-refundable.

Section 10. Governing Laws.

The Agreement and the rights and obligations created hereunder shall be interpreted, construed and enforced in accordance with the laws of the United States and the State of Florida. If any litigation should be brought in connection with this Agreement, venue shall lie in Miami-Dade County, Florida.

Section 11. Attorneys' Fees and Costs.

The Parties agree that, if it becomes necessary for either party to defend or institute legal proceedings as a result of the failure of either party to comply with the terms and provisions of this Agreement, each party in such litigation shall bear its own costs and expenses incurred and expended in connection therewith, including, but not limited to, reasonable attorneys' fees and court costs through all trial and appellate levels.

Section 12. Severability.

If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

Section 13. Entire Agreement.

This Agreement contains the entire agreement between the parties. No rights, duties or obligations of the parties shall be created unless specifically set forth in this Agreement.

Section 14. Amendment.

No modification or amendment of this Agreement shall be of any legal force or effect unless it is in writing and executed by both Parties.

Section 15. Binding Agreement.

This Agreement shall inure to the benefit of and shall bind the parties, their heirs, successors and assigns.

Section 16. Assignment.

This Agreement may not be assigned without the prior written consent of the other party, and all the terms and conditions set forth herein shall inure to the benefit of and shall bind all future assignees.

Section 17. Waiver.

Failure to enforce any provision of this Agreement by either party shall not be considered a waiver of the right to later enforce that or any provision of this Agreement.

Section 18. Covenant Running with the Land.

The rights conferred and obligations imposed pursuant to this Agreement upon the Developer and upon the Property shall run with and bind the Property as covenants running

with the land, and this Agreement shall be binding upon and enforceable by and against the Developer and its successors, grantees, and assigns.

Section 19. Notices.

Any notice, request, demand, instruction or other communication to be given to either party under this Agreement shall be in writing and shall be hand delivered, sent by Federal Express or a comparable overnight mail service, or by U.S. Registered or Certified Mail, return receipt requested, postage prepaid, to County and to Developer at their respective addresses below:

As to County:

Deputy Director, Department of Regulatory and Economic Resources

With a copy to Assistant County Attorney:

Dennis Kerbel

With a copy to Platting and Traffic Review Section, Department of Regulatory and Economic Resources:

Raúl A. Pino

As to Developer:

With a copy to Developer's Legal Representative:

Section 20. Counterparts.

This Agreement may be executed by the parties in any number of counterparts, each of which shall be deemed to be an original, and all of which shall be deemed to be one and the same Agreement.

[Remainder of page intentionally blank.]

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IN WITNESS WHEREOF, the parties hereunto have executed this Agreement on the date and year first above written.

ATTEST:

MIAMI-DADE COUNTY, FLORIDA, BY ITS
COUNTY MAYOR OR MAYOR'S DESIGNEE

Witness

By: _____
County Mayor or Designee

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

APPROVED AS TO TERMS
AND CONDITIONS:

Assistant County Attorney

By: _____

ATTEST:

DEVELOPER

Eduardo E. Dieppa
Witness EDUARDO E. DIEPPA

By: Gerardo Bravo, P.A.

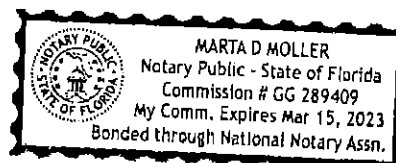
STATE OF Florida
COUNTY OF Dade

NOTARY CERTIFICATION

The foregoing instrument was acknowledged before me this 1st day of November 2019, by Gerardo Bravo P.A. Gerardo Bravo, P.A. He/She is personally known to me OR who produced _____ as identification.

March 15, 2023
My Commission Expires
GG 289409
Serial Number

M. D. Moller
Signature of Notary
Marta D. Moller
Typed, Printed or Stamped Name



ATTEST:

DEVELOPER

Witness

By:

J. Khazen, LLC

NOTARY CERTIFICATION

STATE OF Florida
COUNTY OF Dade

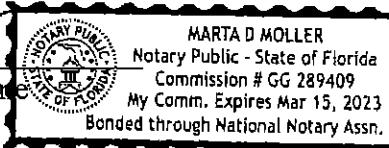
The foregoing instrument was acknowledged before me this 1st day of November 2019, by Marco Padovan for J. Khazen, LLC. He/She is personally known to me OR who produced _____ as identification.

March 15, 2023
My Commission Expires

GG 289409
Serial Number

M D Moller
Signature of Notary

Marta Moller
Typed, Printed or Stamped Name



ATTEST:

DEVELOPER

Eduardo E. Pieppa III
Witness

By:

Marco Padovan International, Corp -

NOTARY CERTIFICATION

STATE OF Florida
COUNTY OF Dade

The foregoing instrument was acknowledged before me this 1st day of November 2019, by Marco Padovan for Marco Padovan Int'l. Corp. He/She is personally known to me OR who produced _____ as identification.

March 15, 2023
My Commission Expires

GG 289409
Serial Number

M D Moller
Signature of Notary

Marta Moller
Typed, Printed or Stamped Name

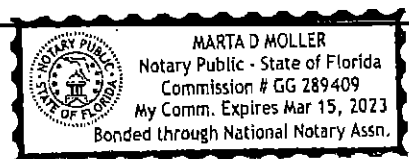
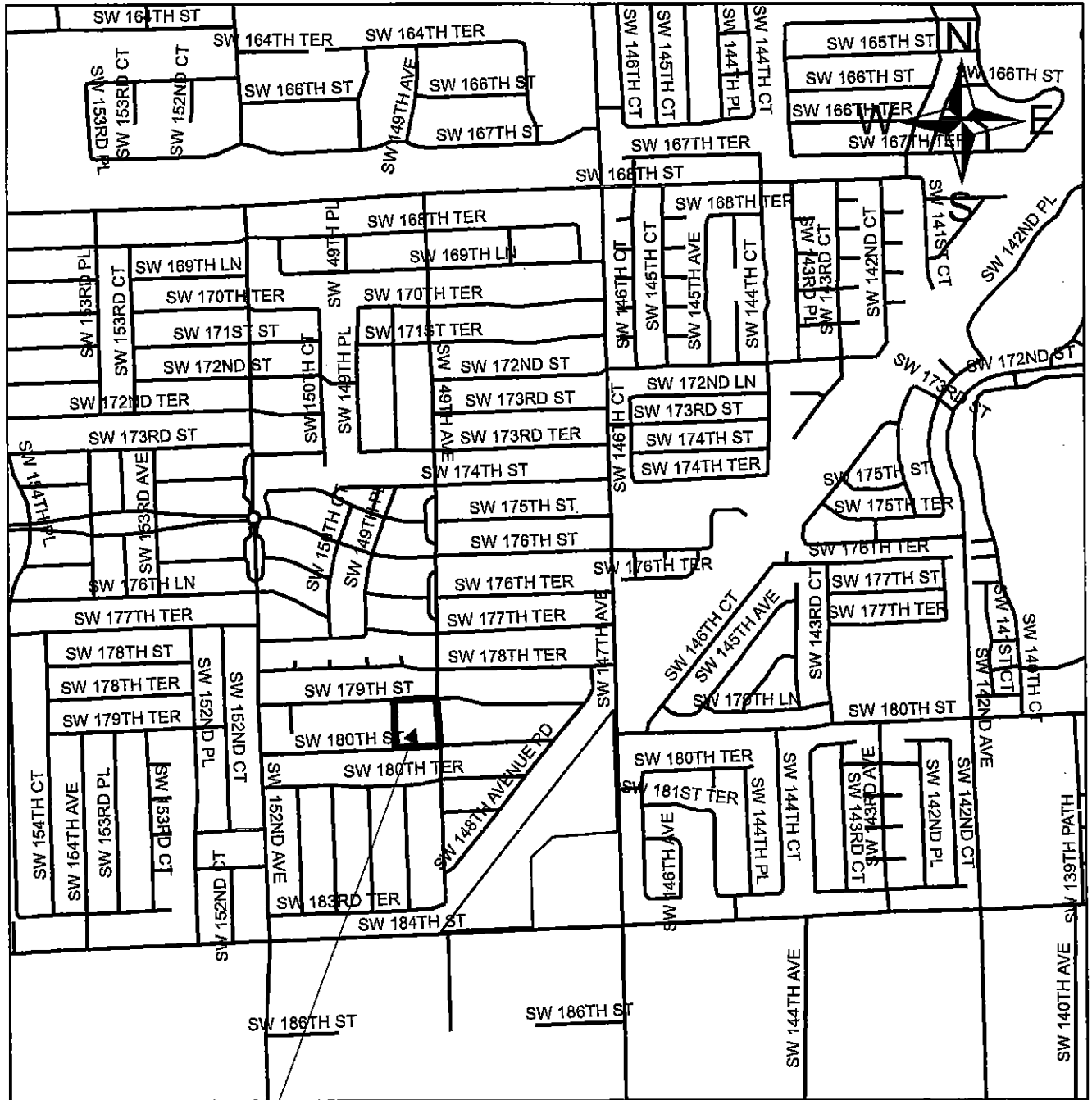


EXHIBIT "A"

Legal Description

The East $\frac{1}{2}$ of the East $\frac{1}{2}$ of the South $\frac{1}{2}$ of the South $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 33, Township 55 South, Range 39 East, LESS the East 25 feet and the North 25 feet for Road Purpose, lying and being in Miami-Dade County.

Exhibit " 2 "



Project Site



MEMORANDUM

(Revised)

TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE: February 4, 2020

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 8(L)(4)

Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Statement of social equity required
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☐ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____ to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(L)(4)

2-4-20

RESOLUTION NO. R-113-20

RESOLUTION APPROVING A TRANSPORTATION CONCURRENCY PROPORTIONATE SHARE MITIGATION AGREEMENT BETWEEN MIAMI-DADE COUNTY AND APPLICANTS, J. KHAZEN, LLC., GERARDO BRAVO, P.A., AND MARCO PADOVAN INTERNATIONAL, CORP., TO ADDRESS TRANSPORTATION CONCURRENCY PURSUANT TO SECTION 163.3180, FLORIDA STATUTES; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE SAID AGREEMENT TO EXERCISE ALL RIGHTS CONTAINED THEREIN, AND TAKE ALL ACTIONS NECESSARY TO EFFECTUATE SAME

WHEREAS, the Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby approves the Transportation Concurrency Proportionate Share Mitigation Agreement, in substantially the form attached to the Mayor's Memorandum as Exhibit "1", between Miami-Dade County, Florida, and the applicants, J. Khazen, LLC., Gerardo Bravo, P.A., and Marco Padovan International, Corp., to address transportation concurrency, and authorizes the County Mayor or County Mayor's designee to execute said agreement, exercise all rights contained therein, and take all actions necessary effectuate same.

The foregoing resolution was offered by Commissioner **Joe A. Martinez**, who moved its adoption. The motion was seconded by Commissioner **Sally A. Heyman** and upon being put to a vote, the vote was as follows:

Audrey M. Edmonson, Chairwoman	aye		
Rebeca Sosa, Vice Chairwoman	aye		
Esteban L. Bovo, Jr.	aye	Daniella Levine Cava	nay
Jose "Pepe" Diaz	aye	Sally A. Heyman	aye
Eileen Higgins	aye	Barbara J. Jordan	aye
Joe A. Martinez	aye	Jean Monestime	aye
Dennis C. Moss	aye	Sen. Javier D. Souto	absent
Xavier L. Suarez	aye		

The Chairperson thereupon declared this resolution duly passed and adopted this 4th day of February, 2020. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK



By: Linda L. Cave
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Lauren E. Morse