MEMORANDUM

Agenda Item No. 14(A)(2)

TO:	Honorable Chairman Oliver G. Gilbert, III and Members, Board of County Commissioners	**DATE:**	March 19, 2024
FROM:	Geri Bonzon-Keenan County Attorney	**SUBJECT:**	Resolution approving a Transportation Concurrency Proportionate Share Mitigation Agreement between Miami-Dade County and Applicant, Aper, LLC, a Florida Limited Liability Company, to address transportation concurrency pursuant to section 163.3180, Florida Statutes; providing that Aper, LLC, a Florida Limited Liability Company, shall pay a proportionate share payment of $115,160.25 to the County; and authorizing the County Mayor to execute said agreement, exercise all rights contained therein, and take all actions necessary to effectuate same

Resolution No. R-227-24

The accompanying resolution was prepared by the Regulatory and Economic Resources Department and placed on the agenda at the request of Prime Sponsor Commissioner Kionne L. McGhee.

Gerald Sanchez for
Geri Bonzon-Keenan
County Attorney

GBK/ks

Memorandum

MIAMI-DADE COUNTY

Date: March 19, 2024

To: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor

Daniella Levine Cava

Subject: Resolution Authorizing Miami-Dade County to enter into a Transportation Concurrency Proportionate Share Mitigation Agreement with Aper, LLC, a Florida Limited Liability Company

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Executive Summary

This item authorizes a Transportation Concurrency Proportionate Share Mitigation Agreement between Miami-Dade County and the Applicant, Aper, LLC, a Florida Limited Liability Company, to mitigate transportation concurrency impacts for the construction of Central Parc Villas, a 125-unit multifamily development along SW 192 Avenue north of SW 358 Street, by paying a proportionate share payment of $115,160.25 to the County, which the County shall apply to one or more of the mobility improvements outlined in the agreement. The improvements will provide a benefit to the area and relief to the increased vehicular traffic generated by the development.

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 to this memorandum, between Miami-Dade County and the Applicant, Aper, LLC, a Florida Limited Liability Company, to address concurrency for the construction of 125 attached multifamily residential units.

Scope

The proposed Agreement will have an impact on Commission District 9, which is represented by Commissioner Kionne L. McGhee.

Delegation of Authority

The resolution delegates authority to the Mayor or Mayor's designee to execute the Agreement, exercise all rights contained in the Agreement, and to take all actions necessary to effectuate the Agreement.

Fiscal Impact/Funding Source

The proposed Agreement would require the Applicant to mitigate in the amount of $115,160.25 that would contribute to the county roadway improvements that are detailed further in this memorandum.

Track Record/Monitor

The Platting and Traffic Review Division within 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 establish level of service standards for all State and County roads in Miami-Dade County.

Section 33G-5 of the Code of Miami-Dade County (Code) requires review for traffic circulation concurrency when an application for development order is received. APER, LLC, filed a Tentative Plat, Plat No. 25009, seeking to develop 125 attached multifamily residential units along SW 192 Avenue north of SW 358 Street, a location sketch of which is attached as Exhibit 2 to this memorandum.

The Platting and Traffic Division within the Department of Regulatory and Economic Resources 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 31 of the 74 PM peak hour trips anticipated to be generated by the proposed development, pursuant to the following:

1) Station 9957 located on SW 344 Street west of SW 182 Avenue has a maximum Level of Service (LOS) “E” of 1,410 vehicles during the PM Peak Hour. It has a current Peak Hour Period (PHP) of 1,329 vehicles and 267 vehicles have been assigned to this section of the road from previously approved Development Orders. Furthermore, Station 9957 with its PHP and assigned vehicles is at LOS “F”. The 31 vehicle trips generated by this development when combined with the current PHP of 1,329 and those previously approved through Development Orders, 267, equal 1,627 vehicles and will cause this segment to have an LOS “F” whose range is over 1,410 vehicles.

In 2011, the Florida Legislature adopted the Community Planning Act, which revised Florida’s growth management laws to, among other changes, eliminate the requirement that public transportation facilities be in place at the time that they are needed for new development. As amended, section 163.3180(5)(h)1.c., Florida Statutes, instead requires local governments that continue to implement a transportation concurrency system, as the County does, to allow each development applicant to satisfy transportation concurrency requirements by paying the applicant’s proportionate share of transportation improvements to address transportation deficiencies attributable to the application, as determined by a set formula. In accordance with Florida Statutes and 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. To mitigate the impact and proceed with the development, the applicant has elected to execute the attached Agreement with the County.

The Agreement requires the Applicant to provide a monetary proportionate share contribution in the amount of $115,160.25 to mitigate the impacts of the proposed development. The contribution will be used to fund improvements to the following project:

RIF District	TIP Project No.	DTPW Project No.	Location	Type of work
6	PW000723		SW 328 Street from SW 187 Avenue to US 1	Road Improvements

Jimmy Morales
Chief Operations Officer

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 Aper, LLC, a Florida Limited Liability Company (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 +/- 10.34 acres in size, which is identified by the Miami Dade County Property Appraiser's Office as Folio Number 30-7826-000-0180 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 125 attached multifamily residential units (the "Project");

WHEREAS, on August 18th, 2023, the Developer filed an application for subdivision approval for the Property, which is currently pending under Tentative Plat No. 25009, 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. <u>Recitals</u>.

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

Section 2. <u>Project Impacts</u>.

The Project is located on SW 192 Avenue north of SW 358 Street. It is anticipated to generate seventy-four (74) PM peak hour trips. Roadway capacity is not available for thirty-one (31) of these PM peak hour trips that will impact the following transportation facility: SW 344 Street west of SW 182 Avenue.

Section 3. <u>Required Improvements to Regionally Significant Transportation Facilities</u>.

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:

RIF District	TIP Project No.	DTPW Project No.	Location	Type of work
6	PW000723		SW 328 Street from SW 187 Avenue to US 1	Road Improvements

Section 4. Proportionate Share Payment.

The Developer shall pay the following amount as its proportionate share payment for the required road improvement(s): one hundred fifteen thousand, one hundred sixty dollars and twenty-five cents ($115,160.25) (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 (24) 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. **<u>Attorneys' Fees and Costs</u>.**

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. **<u>Severability</u>.**

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. **<u>Entire Agreement</u>.**

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. **<u>Amendment</u>.**

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. **<u>Binding Agreement</u>.**

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

Section 16. **<u>Assignment</u>.**

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. **<u>Waiver</u>.**

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
111 NW 1 Street, 11th Floor
Miami, FL 33128

With a copy to Assistant County Attorney:

Dennis Kerbel
Assistant County Attorney
111 NW 1 Street, Ste. 2810
Miami, FL 33128
(305) 375-5229
dkerbel@miamidade.gov

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

Raúl A. Pino, P.L.S., Chief
Department of Regulatory and Economic Resources
111 NW 1 Street, 11th Floor
Miami, FL 33128

As to Developer:

Aper, LLC
2950 SW 27th Avenue., #100
Miami, FL 33133

With a copy to Developer's Legal Representative:

Pedro Gassant, Esq
Holland & Knight, LLP
701 Brickell Avenue, Suite 3000
Miami, FL 33131
305.789.7430
Pedro.gassant@hklaw.com

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.]

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
Print Name ____________________

By:_________________________________
County Mayor or Designee
Print Name ____________________________

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

____
Assistant County Attorney
Print Name ____________________

ATTEST:

Witness
Print Name Pedro Hernandez

DEVELOPER

By:______________________________

Print Name Jose I. Garcia.
For: APER, LLC

NOTARY CERTIFICATION

STATE OF FLORIDA
COUNTY OF MIAMI DADE

The foregoing instrument was acknowledged before me by means of physical presence [✓] or online notarization [ ] by Jose I. Garcia for Century Parc Villas, LLC, who is personally known to me or have produced ______________________________, as identification. Witness my signature and official seal this 7 day of December, 2023, in the County and State aforesaid.

Notary Public State of Florida
Sandra Maria Albo
My Commission GG 981778
Expires 04/26/2024

Notary Public-State of Florida

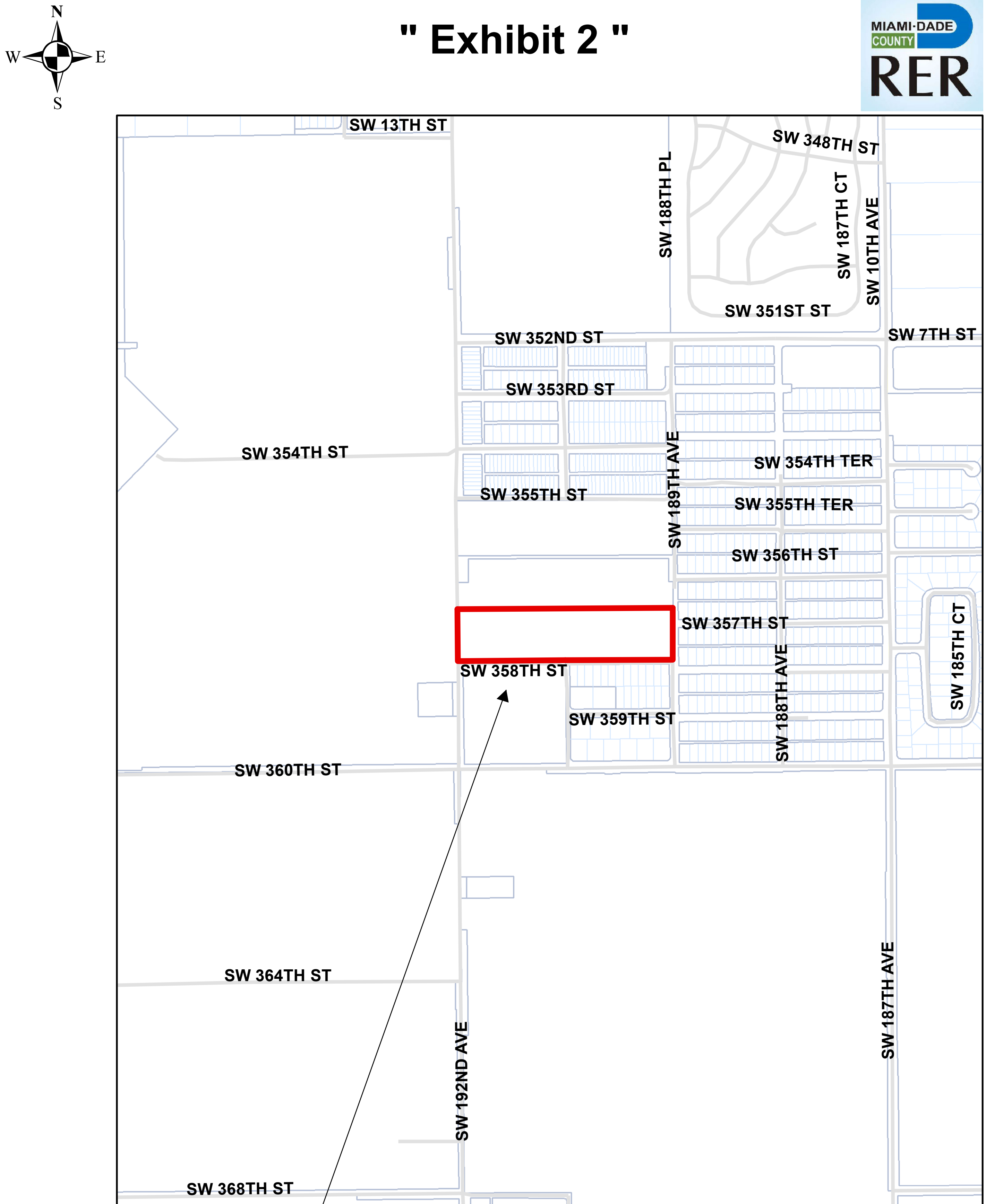
Print Name Sandra Maria Albo

My Commission Expires: 04/26/2024

Exhibit A

The South 1/2 of the North 1/2 of the Southwest 1/4 of the Southeast 1/4, in Section 26, Township 57 South, Range 38 East, lying and being in Miami-Dade County, Florida

" Exhibit 2 "



Project Site

LEGEND

Century Parc Villas

North T25009

MDC015

MEMORANDUM

(Revised)

TO: Honorable Chairman Oliver G. Gilbert, III and Members, Board of County Commissioners

DATE: March 19, 2024

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 14(A)(2)

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. 14(A)(2)
3-19-24

RESOLUTION NO. R-227-24

RESOLUTION APPROVING A TRANSPORTATION CONCURRENCY PROPORTIONATE SHARE MITIGATION AGREEMENT BETWEEN MIAMI-DADE COUNTY AND APPLICANT, APER, LLC, A FLORIDA LIMITED LIABILITY COMPANY, TO ADDRESS TRANSPORTATION CONCURRENCY PURSUANT TO SECTION 163.3180, FLORIDA STATUTES; PROVIDING THAT APER, LLC, A FLORIDA LIMITED LIABILITY COMPANY, SHALL PAY A PROPORTIONATE SHARE PAYMENT OF $115,160.25 TO THE COUNTY; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE SAID AGREEMENT, 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 County Mayor's 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 County Mayor's memorandum as Exhibit "1," between Miami-Dade County, Florida, and the Applicant, Aper, LLC, a Florida Limited Liability Company, to address transportation concurrency, and by which Aper, LLC, a Florida Limited Liability Company, shall pay a proportionate share payment of $115,160.25 to the County, which the County shall apply to one or more of the mobility improvements specified in the Agreement; 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 **Eileen Higgins**, who moved its adoption. The motion was seconded by Commissioner **Anthony Rodriguez** and upon being put to a vote, the vote was as follows:

Oliver G. Gilbert, III, Chairman **aye**
Anthony Rodríguez, Vice Chairman **aye**

Marleine Bastien	**aye**	Juan Carlos Bermudez	**aye**
Kevin Marino Cabrera	**aye**	Sen. René García	**aye**
Roberto J. Gonzalez	**aye**	Keon Hardemon	**aye**
Danielle Cohen Higgins	**aye**	Eileen Higgins	**aye**
Kionne L. McGhee	**aye**	Raquel A. Regalado	**aye**
Micky Steinberg	**aye**		

The Chairperson thereupon declared this resolution duly passed and adopted this 19th day of March, 2024. 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

JUAN FERNANDEZ-BARQUIN, CLERK

By: **Basia Pruna**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Lauren E. Morse