

Town of Cutler Bay

Town Council Meeting
May 4, 2006

TOWN OF CUTLER BAY

Mayor Paul S. Vrooman
Council Member Timothy J. Meerbott
Council Member Ernest N. Sochin
Council Member Peggy R. Bell

Interim Town Manager Steve Alexander
Interim Town Attorney Richard Weiss
Interim Town Clerk Elizabeth Sewell

In accordance with the American with Disabilities Act of 1990, persons needing special accommodation, a sign language interpreter or hearing impaired to participate in this proceeding should contact the Interim Town Clerk at (305) 677-7015 for assistance no later than four days prior to the meeting.

TOWN COUNCIL MEETING AGENDA

Thursday, May 4, 2006

7:00 PM

South Governmental Center
10701 SW 211 Street, Room 203
(305) 677-7015

INVOCATION: (Peggy R. Bell)

- I. CALL TO ORDER, ROLL CALL, PLEDGE OF ALLEGIANCE:**
- II. PROCLAMATIONS, AWARDS, PRESENTATIONS**
 - A. Remembrance of former Mayor Cosgrove- Mayor Vrooman and Council
 - B. Color Guard Village of Pinecrest
- III. TOWN MANAGER'S REPORT**
- IV. TOWN ATTORNEY'S REPORT**
- V. BOARD AND COMMITTEE REPORTS**
 - A. Town Clerk/Communications Committee
- VI. ADDITIONS, DELETIONS, AND DEFERRALS**
 - A. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING CHAPTER 33, "ZONING" ARTICLE VI, "SIGNS," DIVISION 2, "GENERAL PROVISIONS" OF THE TOWN'S CODE OF ORDINANCES, BY PROVIDING FOR THE PROHIBITION OF OFF-PREMISES SIGNAGE WITHIN THE TOWN; PROVIDING FOR SEVERABILITY;

PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

- B. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A MODIFICATION TO AN APPROVED SITE PLAN TO ALLOW FOR REDEVELOPMENT OF A MOVIE THEATER INTO A COMMERCIAL BUILDING AND APPROVAL OF AN UNUSUAL USE FOR OUTDOOR DINING FOR THE SHOPPING CENTER LOCATED AT 18403 SOUTH DIXIE HIGHWAY; AND PROVIDING FOR AN EFFECTIVE DATE.

VII. CONSENT AGENDA

- A. Minutes of the April 6, 2006 Council Meeting .
- B. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, ENCOURAGING THE DEPARTMENT OF TRANSPORTATION TO INSTALL HIGHWAY SIGNAGE ALONG THE FLORIDA TURNPIKE FROM SW 152 STREET TO SW 216 STREET TO EFFECT THE CO-DESIGNATION OF THE TURNPIKE IN HONOR OF FORMER STATE REPRESENTATIVE/MAYOR OF THE TOWN OF CUTLER BAY JOHN F. COSGROVE; AND PROVIDING FOR AN EFFECTIVE DATE.
- C. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA GRANTING THE TOWN CLERK AUTHORITY TO PAY FOR THE ADVERTISING OF PUBLIC HEARINGS; AND PROVIDING FOR AN EFFECTIVE DATE.
- D. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING AN AGREEMENT WITH THE INSTITUTE FOR COMMUNITY COLLABORATION, INC. FOR THE FACILITATION OF A COUNCIL WORKSHOP; PROVIDING FOR A DETERMINATION OF IMPRACTIBILITY AS TO COMPETITIVE BIDDING AND PROVIDING FOR AN EFFECTIVE DATE.
- E. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A CONSULTING AGREEMENT WITH THE NONPROFIT ASSISTANCE CENTER FOR ACCOUNTING AND FINANCIAL SERVICES; PROVIDING FOR A DETERMINATION OF IMPRACTIBILITY AS TO COMPETITIVE BIDDING AND PROVIDING FOR AN EFFECTIVE DATE.

- F. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO PROCUREMENT; PROVIDING FOR A DETERMINATION OF IMPRACTIBILITY AS TO COMPETITIVE BIDDING AND AUTHORIZING THE ACTING TOWN MANAGER TO PROCURE A LARGE CAPACITY COLOR COPIER, WITH SERVICE AND SUPPLY BY LEASE AT A REASONABLE COST TO BE DETERMINED BY THE MANAGER; AND PROVIDING FOR AN EFFECTIVE DATE.
- G. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO PROCUREMENT; PROVIDING FOR A DETERMINATION OF IMPRACTIBILITY AS TO COMPETITIVE BIDDING AND AUTHORIZING THE ACTING TOWN MANAGER TO REMIT PAYMENT FOR TRAVEL BY COUNCIL TO TALLAHASSEE; AND PROVIDING FOR AN EFFECTIVE DATE.
- H. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A CONSULTING AGREEMENT WITH THE GOVERNMENT SERVICES GROUP, INC. FOR STRATEGIC BUDGET SERVICES; PROVIDING FOR A DETERMINATION OF IMPRACTIBILITY AS TO COMPETITIVE BIDDING AND PROVIDING FOR AN EFFECTIVE DATE.

VIII. RESOLUTIONS

- A. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, FILLING THE VACANCY OF VICE MAYOR; AND PROVIDING FOR AN EFFECTIVE DATE.

IX. RESOLUTIONS REQUIRING PUBLIC HEARING

- A. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING ADMINISTRATIVE ORDER NO. 06-1; AND PROVIDING FOR AN EFFECTIVE DATE.
- B. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A REQUEST TO WAIVE 15 FEET OF THE ZONED RIGHT-OF-WAY LOCATED APPROXIMATELY 200 FEET SOUTH OF S.W. 212TH STREET & NORTHWEST OF OLD CUTLER ROAD; AND PROVIDING FOR AN EFFECTIVE DATE.

- C. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A REQUEST TO WAIVE 15 FEET OF THE ZONED RIGHT-OF-WAY FOR THE NORTHWEST CORNER OF S.W. 213TH STREET & OLD CUTLER ROAD; AND PROVIDING FOR AN EFFECTIVE DATE.
- D. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A REQUEST TO WAIVE 15 FEET OF THE ZONED RIGHT-OF-WAY FOR THE NORTHWEST CORNER OF S.W. 215TH STREET & OLD CUTLER ROAD; AND PROVIDING FOR AN EFFECTIVE DATE.

X. ORDINANCES FOR FIRST READING AND EMERGENCY ORDINANCES

- A. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CREATING THE SECTION ENTITLED, "FLOODPLAIN MANAGEMENT REGULATIONS"; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.
- B. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, PROVIDING FOR A MORATORIUM ON THE ISSUANCE OF DEVELOPMENT ORDERS AND DEVELOPMENT PERMITS WITHIN THE AREA GENERALLY LOCATED SOUTH OF THE INTERSECTION OF THE HOMESTEAD EXTENSION OF THE FLORIDA TURNPIKE (HEFT) AND U.S. 1, WEST OF THE HEFT TO THE TOWN LIMITS, AND NORTH OF THE C-1 CANAL (BLACK CREEK CANAL); EXEMPTING CERTAIN DEVELOPMENT; PROVIDING FOR WAIVERS; PROVIDING FOR SEVERABILITY; PROVIDING PROCEDURES FOR VESTED RIGHTS AND JUDICIAL REVIEW FOR THE SPECIFIC MATTERS ADDRESSED HEREIN; PROVIDING FOR A TERM; PROVIDING FOR A REPEALER; PROVIDING FOR ORDINANCES IN CONFLICT, SEVERABILITY, AND AN EFFECTIVE DATE.
- C. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA CREATING A CHAPTER OF THE TOWN CODE OF ORDINANCES, ENTITLED "VENDORS' CAMPAIGN CONTRIBUTION DISCLOSURE," PROVIDING FOR PROCEDURES FOR DISCLOSURE OF CAMPAIGN CONTRIBUTIONS; PROVIDING FOR SEVERABILITY; PROVIDING

FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

- D. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CREATING THE SECTION ENTITLED, "NUISANCE VEGETATION ABATEMENT"; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.
- E. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING THE TOWN COUNCIL AGENDA FORMAT; CREATING TOWN COUNCIL MEETING PROCEDURES; CREATING ADVERTISEMENT AND NOTICE REQUIREMENTS; PROVIDING FOR A REPEALER; PROVIDING FOR ORDINANCES IN CONFLICT, SEVERABILITY AND AN EFFECTIVE DATE.

XI. ORDINANCES FOR SECOND READING AND PUBLIC HEARING

- A. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CREATING A COST RECOVERY ADMINISTRATIVE PROGRAM; PROVIDING FOR A REPEALER; PROVIDING FOR ORDINANCES IN CONFLICT, SEVERABILITY AND AN EFFECTIVE DATE.
- B. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, IMPLEMENTING THE PROVISIONS OF SECTION 286.0115, FLORIDA STATUTES, TO ESTABLISH A PROCEDURE GOVERNING EX PARTE COMMUNICATIONS WITH LOCAL PUBLIC OFFICIALS CONCERNING QUASI-JUDICIAL MATTERS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE TOWN CODE; AND PROVIDING FOR AN EFFECTIVE DATE.
- C. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO THE OFFICIAL SEAL OF THE TOWN OF CUTLER BAY; DESIGNATING THE TEMPORARY OFFICIAL SEAL OF THE TOWN OF CUTLER BAY; PROVIDING FOR USE AND PENALTIES; PROVIDING FOR ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.

ORDINANCE NO. 06-_____

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING CHAPTER 33, "ZONING" ARTICLE VI, "SIGNS," DIVISION 2, "GENERAL PROVISIONS" OF THE TOWN'S CODE OF ORDINANCES, BY PROVIDING FOR THE PROHIBITION OF OFF-PREMISES SIGNAGE WITHIN THE TOWN; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay (the "Town") finds and determines that, in order to maintain and improve the aesthetics, quality of life, and safety of the Town and its residents, the Town must adopt regulations prohibiting off-premises signage; and

WHEREAS, sign regulation to advance the governmental purpose of aesthetics has long been upheld by the state and federal courts; and

WHEREAS, as long ago as 1954, the U.S. Supreme Court recognized that "the concept of the public welfare is broad and inclusive," that the values it represents are "spiritual as well as physical, aesthetic as well as monetary," and that it is within the power of the Town Council to determine that the community should be "beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled," in *Berman v. Parker*, 348 U.S. 26, 33 (1954), which was followed by *State v. Miami Beach Redevelopment Agency*, 392 So. 2d 875 (Fla. 1980); and

WHEREAS, sign regulations have been held to advance these aesthetic purposes and advance the public welfare in *City of Lake Wales v. Lamar Advertising Ass'n of Lakeland, Florida*, 414 So. 2d 1030 (Fla. 1982); and

WHEREAS, the Town Council finds and determines that the Town has consistently adopted severability provisions in connection with its Code of Ordinances, and that the Town

wishes to assure that its severability provisions will be applied to its land development regulations, including its off-premises sign regulations; and

WHEREAS, in several recent judicial decisions, the courts have failed to give full effect to severability provisions applicable to sign regulations, and expressed uncertainty over whether local governments intended that severability would apply to certain factual situations despite the plain and ordinary meaning of the severability clauses; and

WHEREAS, the Town Council is aware that the failure of some courts to apply severability clauses has led to an increase in litigation by billboard developers and other applicants seeking to strike down sign regulations in their entirety, so that they may argue that their applications to erect billboards or other signs must be granted; and

WHEREAS, the Town Council desires that there be an ample and unequivocal record of its intention that the severability clauses it has adopted related to its off-premises sign regulations shall be applied to the maximum extent possible, even if less speech would result from a determination that any exceptions, limitations, variances or other provisions are invalid or unconstitutional for any reason whatsoever; and

WHEREAS, the Town Council desires that its prohibition of billboards be given full effect, regardless of the invalidity or unconstitutionality of any or all of the Town's other regulations; and

WHEREAS, the Town Council further intends to allow noncommercial speech to appear wherever commercial speech appears, and codifies this intention through the adoption of a substitution clause that expressly allows non-commercial messages to be substituted for commercial messages as set forth in the body of this Ordinance; and

WHEREAS, the Town Council specifically intends that this substitution clause be applied so that its sign regulations can never be construed to impermissibly favor commercial messages over noncommercial messages; and

WHEREAS, the Town further provides for the political expression of its residents, as required by *City of Ladue v. Gilleo*, 512 U.S. 43 (1994), by allowing a permanent noncommercial sign to be posted in any residential zoning district.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above Recitals are true and correct and are incorporated herein by this reference.

Section 2. Amendment to Sign Regulations. The sign regulations contained Chapter 33, "Zoning," Article VI, "Signs," Division 2, "General Provisions," Sections 33-83 "Purpose," 33-84 "Definitions," and 33-95, "Prohibited Signs," are hereby amended as follows:

* * *

Sec. 33-83. Purpose Scope, Purpose, Substitution and Severability.

(a) *Purpose.* The purpose of this ~~chapter~~ {article} is to permit signs that will not, because of size, location, method of construction and installation, or manner of display:

- (1) Endanger the public safety; or
 - (2) Create distractions that may jeopardize pedestrian or vehicular traffic safety;
- or
- (3) Mislead, confuse, or obstruct the vision of people seeking to locate or identify uses or premises; or

- (4) Destroy or impair aesthetic or visual qualities of Miami-Dade County which is so essential to tourism and the general welfare; and

The purpose of this article is also to permit, regulate and encourage the use of signs with a scale, graphic character, and type of lighting compatible with buildings and uses in the area, so as to support and complement land use objectives as set forth in the Comprehensive Development Master Plan. It shall be further the purpose of this article to promote the aesthetics, safety, health, and general welfare and the assurance of protection of adequate light and air within the Town by regulation of the general posting, displaying, erection, use, and maintenance of signs. In the event of any conflict between this code and any declaration of covenants, bylaws, or other restrictions applying to any property within the town, the language affording the more restrictive interpretation shall apply.

(b) Scope. The provisions of this article shall govern the number, size, location, and character of all signs which may be permitted either as a main or accessory use under the terms of this article. No signs shall be permitted on a plot or parcel either as a main or accessory use except in accordance with the provisions of this article.

(c) Substitution of Noncommercial Speech for Commercial Speech. Notwithstanding any provisions of this article to the contrary, to the extent that this article permits a sign containing commercial copy, it shall permit a noncommercial sign to the same extent. The noncommercial message may occupy the entire sign area or any portion thereof, and may substitute for or be combined with the commercial message. The sign message may be changed from commercial to noncommercial messages, or from one noncommercial message to another, as frequently as desired by the sign's owner, provided that the sign is not prohibited, and the sign continues to comply with all requirements of this article.

(d) Severability.

(1) Generally. If any part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of this article is declared unconstitutional by the final and valid judgment or decree of any court of competent jurisdiction, this declaration of unconstitutionality or invalidity shall not affect any other part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of this article.

(2) Severability where less speech results. This subsection (2) shall not be interpreted to limit the effect of subsection (1) above, or any other applicable severability provisions in the code of ordinances or any adopting ordinance. The town council specifically intends that severability shall be applied to these regulations even if the result would be to allow less speech in the town, whether by subjecting currently exempt signs to permitting or by some other means.

(3) Severability of provisions pertaining to prohibited signs. This subsection (3) shall not be interpreted to limit the effect of subsection (1) above, or any other applicable severability provisions in the code of ordinances or any adopting ordinance. The town council specifically intends that severability shall be applied to section 33-95, entitled "Prohibited signs," so that each of the prohibited sign types listed in that section shall continue to be prohibited irrespective of whether another sign prohibition is declared unconstitutional or invalid.

(4) Severability of prohibition on off-premises signs. This subsection (4) shall not be interpreted to limit the effect of subsection (1) above, or any other applicable severability provisions in the code of ordinances or any adopting ordinance. If any or all of this article or any other provision of the town's code of ordinances is declared

unconstitutional or invalid by the final and valid judgment of any court of competent jurisdiction, the town council specifically intends that that declaration shall not affect the prohibition of off-premises signs in Section 33-95(k).

Sec. 33-84. Definitions.

For the purposes of this article the following words and phrases are hereby defined as provided in this section, unless the context clearly indicates otherwise. Where there is a question as to the correct classification or definition of a sign, it shall be the prerogative of the Director to place said sign in the strictest category and/or classification.

* * *

Noncommercial sign: A sign containing only noncommercial copy. "Noncommercial" shall mean not-for-profit or commercial gain. Regardless of the content of the copy, a noncommercial sign shall not be construed to be an off-premises sign.

Non-conforming sign: A sign located within the town limits on the effective date of this code or existing in an area annexed by the town after the effective date of this code (or amendments hereto) which, by its height, type, area, design, colors, materials, location, use, or structural support, conformed to the town code prior to the effective date of this ordinance, but does not conform to the requirements of this code. This shall include signs that had been granted variances that were approved, and signs that were issued a construction permit by Miami-Dade County prior to the effective date of this ordinance.

Off-premises sign: A sign that directs attention to a commercial business, commodity, service, product, or activity not conducted, sold, offered, or available on the premises where such sign is located, the copy of which may be intended to be changed periodically. An off-premises sign is the principal use of the property on which it is located. It may also be referred to as a "billboard."

This definition includes a sign displayed on a trailer or the bed of a truck that advertises something other than the identity of the truck, the driver or its contents.

On-premises sign: A sign that is located on the premises of the occupant, business, or property identified on the sign. The occupant, business, or property is the principal use of the property, and the sign is an accessory use of the property on which it is located.

* * *

Sec. 33-95. Prohibited signs.

* * *

(k) Except for non-conforming signs, off-premises signs or billboard signs are prohibited in the town. Any off-premises sign or billboard sign erected after the effective date of this article as amended shall be removed at the sole expense of the sign owner and shall be subject to code enforcement proceedings as provided in the town code.

Section 3. Severability.

The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 4. Inclusion In The Code.

It is the intention of the Town Council that the provisions of this Ordinance shall become and made a part of the Town of Cutler Bay Code; that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 5. Effective Date.

This Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this ____ day of _____, 2006.

PASSED and ADOPTED on second reading this ____ day of _____, 2006.

Paul Vrooman
MAYOR

ATTEST:

Elizabeth Sewell
INTERIM TOWN CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

Weiss Serota Helfman
Pastoriza Cole & Boniske, P.A.
INTERIM TOWN ATTORNEY

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman _____

Council Member Timothy J. Meerbott _____

Council Member Ernest N. Sochin _____

Council Member Peggy R. Bell _____

RESOLUTION NO. 06-____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A MODIFICATION TO AN APPROVED SITE PLAN TO ALLOW FOR REDEVELOPMENT OF A MOVIE THEATER INTO A COMMERCIAL BUILDING AND APPROVAL OF AN UNUSUAL USE FOR OUTDOOR DINING FOR THE SHOPPING CENTER LOCATED AT 18403 SOUTH DIXIE HIGHWAY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Woolbright Pembroke Ltd (the "Applicant") has submitted an application to the Town of Cutler Bay (the "Town") for a modification of an approved site plan and approval of an unusual use for the shopping center located at 18403 South Dixie Highway (Application No. Z05-262); and

WHEREAS, the Applicant seeks to modify the approved site plan for the shopping center by replacing an existing movie theater with a commercial building, which will include retail and office uses and two proposed restaurants; and

WHEREAS, the Applicant also seeks approval of an unusual use for this shopping center to permit outdoor dining areas for the two proposed restaurants and an existing restaurant; and

WHEREAS, Town staff has reviewed the requirements of Sections 33-311(A)(7) and 33-311(A)(3) of the Town Code of Ordinances (the "Code") and has recommended approval of these requests with conditions; and

WHEREAS, public notice was provided in accordance with law; and

WHEREAS, the Town Council finds that this modification of the site plan for the shopping center and the unusual use are consistent with the provisions of the Town's Comprehensive Plan.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Approval of Modification of Site Plan. The Town Council, pursuant to Section 33-311(A)(7) of the Town Code, hereby approves the request by the Applicant, subject to the conditions below, to replace an existing movie theater with a commercial building, which will include retail and office uses and two proposed restaurants.

Section 3. Approval of an Unusual Use for Outdoor Dining. The Town Council, pursuant to Section 33-311(A)(3) of the Town Code, hereby approves the request by the Applicant, subject to the conditions below, for an unusual use for outdoor dining.

Section 4. Conditions. The approvals granted by this Resolution are subject to the Applicant's compliance with the following conditions, to which the Applicant stipulated at the public hearing:

1. That the Applicant apply for and obtain a Certificate of Use from the Town for the outdoor dining, upon compliance with all terms and conditions, the same subject to cancellation upon violation of any of the conditions.
2. That the outdoor dining areas be arranged in a manner so as not to obstruct pedestrian and wheelchair access to the entrance of the premises.
3. That all conditions of Miami-Dade County Resolutions Nos. Z-231-83 and 5-ZAB-57-95 remain in full force and effect, except as herein modified.
4. That a revised Declaration of Restrictions be submitted to the Town within 90 days after public hearing approval of this application, unless a time extension is granted by the Town, for good cause shown.

Section 5. Effective Date. This Resolution shall be effective immediately upon adoption.

PASSED and ADOPTED this ____ day of May, 2006.

PAUL VROOMAN
Mayor

Attest: _____
ELIZABETH SEWELL
Interim Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

2. WOOLBRIGHT PEMBROKE LTD.
Applicant

06-5-TCB-2 (05-262)
TCB/District 8
Hearing Date: 5/4/06

Property Owner (if different from applicant) **Same.**

Is there an option to purchase /lease the property predicated on the approval of the zoning request? Yes No

Disclosure of interest form attached? Yes No

Previous Zoning Hearings on the Property:

<u>Year</u>	<u>Applicant</u>	<u>Request</u>	<u>Board</u>	<u>Decision</u>
1983	Jean Barber Godwin	- Zone change from RU-1, BU-1, AU, and EU-1 to BU-1A. - Non-Use variance for wall.	BCC	Approved w/conds.
1984	Dr. Raul Gonzalez	Special exception spacing requirements for liquor package store.	ZAB	Approved
1984	Freddie Walker Assoc.	- Use variance and special exception for nightclub. - Special exception spacing.	ZAB	Approved w/conds.
1984	Jean Barber	- Modification of conditions. - Non-Use variances parking & sign.	BCC	Approved
1985	G.G.G. Investments, Inc.	Special exception relocation of liquor package store; spacing.	ZAB	Approved w/conds.
1986	G.G.G. Investments, Inc.	- Special exception lounge in conjunction with package store; spacing. - Modification of conditions.	ZAB	Approved w/conds.
1987	Zackli's Restaurant Systems, Inc.	Special exception for cocktail lounge in conjunction with restaurant; spacing.	ZAB	Approved w/conds.
1989	Hooligans Pig City BBQ.	Special exception lounge in connection with restaurant; spacing.	ZAB	Approved w/conds.
1995	The Old Cutler Oyster Co.	- Use variance nightclub in conjunction with a restaurant. - Special exception of spacing requirements.	ZAB	Approved w/conds.

Action taken today does not constitute a final development order, and one or more concurrency determinations will subsequently be required. Provisional determinations or listings of needed facilities made in association with this Initial Development Order shall not be binding with regard to future decisions to approve or deny an Intermediate or Final Development Order on any grounds.

RECOMMENDATION TO THE TOWN OF CUTLER BAY

APPLICANT: Woolbright Pembroke Ltd.

PH: Z05-262

SECTION: 05-56-40

DATE: May 4, 2006

ITEM NO.: 2

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A. INTRODUCTION

o REQUESTS:

- (1) MODIFICATION of a plan approved pursuant to Resolution Z-231-83, passed and adopted by the Board of County Commissioners, last modified by Condition #2 of Resolution 5-ZAB-57-95, passed and adopted by the Zoning Appeals Board, reading as follows:

FROM: "2. That in the approval of the plan, the same be substantially in accordance with that submitted for the hearing entitled 'Old Cutler Oyster Company,' as prepared by Michael Alan Fine, dated revised 11-16-94, consisting of five sheets and a liquor survey as prepared by Jose E. Fuxa, P. L. S., dated Sept. 30, 1994."

TO: "2. That in the approval of the plan, the same be substantially in accordance with that submitted for the hearing entitled 'Towers at Cutler Ridge,' as prepared by Gallo Architects, consisting of 13 pages, AS101 and AS104 dated stamped received 9/2/05, AS101A dated stamped received 1/23/06 and the remaining 11 pages dated stamped received 7/20/05."

- (2) MODIFICATION of Condition #1 of a Covenant recorded in Official Record Book 12025 at Pages 125 through 133 and reading as follows:

FROM: "1. Notwithstanding any zoning designation placed upon the real property herein described, Owner hereby agrees, on behalf of itself, its successors and assigns, that the areas designated for landscaping shall be developed and maintained substantially in accordance with the spirit and intent of the plans previously submitted, prepared by O'Leary, Shafer and Cosio, entitled South Dade Plaza Planting Plan dated the 7th day of December, 1983 (hereinafter 'Landscape Plan')."

TO: "1. Notwithstanding any zoning designation placed upon the real property herein described, owner hereby agrees, on behalf of itself, its successors and assigns, that the areas designated for landscaping shall be developed and maintained substantially in accordance with the spirit and intent of the plans previously submitted, as prepared by Gallo Architects entitled 'Towers at Cutler Ridge,' consisting of 13 pages, AS101 and AS104 dated stamped received 9/2/05, AS101A dated stamped received 1/23/06 and the remaining 11 pages dated stamped received 7/20/05."

The purpose of these requests is to permit the applicant to submit revised plans for an office building in lieu of a movie theater as shown on the previously approved plans and to show revised landscape plans for the office building site only.

(3) UNUSUAL USE to permit outdoor dining.

Upon a demonstration that the applicable standards have been satisfied, approval of requests #1 & #2 may be considered under §33-311(A)(7) (Generalized Modification Standards) or §33-311(A)(17) (Modification or Elimination of Conditions or Covenants After Public Hearing).

The aforementioned plans are on file and may be examined in the Zoning Department. Plans may be modified at public hearing.

o **SUMMARY OF REQUESTS:**

This application seeks to modify plans of an existing shopping center by replacing an existing movie theater with a commercial building, which will include retail and office uses and two proposed restaurants. An unusual use to permit outdoor dining areas for the two proposed restaurants and an existing restaurant with lounge is also sought.

o **LOCATION:**

18403 South Dixie Highway, Town of Cutler Bay, Florida.

o **SIZE:** 28.17 acres

o **IMPACT:**

The proposed outdoor dining service areas will provide an additional dining option for the community. However, the proposed use could visually and aurally impact the surrounding area. The replacement of the movie theater with a commercial/office building with restaurants will bring different entertainment options than the movie theater would have provided for the community.

B. ZONING HEARINGS HISTORY:

In 1983, the subject property was granted a district boundary change from BU-1, Neighborhood Business District, EU-1, One Acre Estates District, AU, Agricultural District, and RU-1, Single-Family Residential District, to BU-1A, Limited Business District, pursuant to Resolution No. Z-231-83. A required 5' high decorative masonry wall along the rear (east) property line was also waived. In October 1984, a modification of plans and a non-use variance of parking requirements to permit less parking and a non-use variance of signs to permit a second oversized sign were granted, pursuant to Resolution No. Z-154-84. In that same year, a special exception of spacing requirements to permit a liquor package store to be located within 2,500 feet of churches was approved, pursuant to Resolution No. 4-ZAB-399-84. In November 1984, a use variance and special exception to permit a nightclub in the BU-1A zone as would be permitted in the BU-2 zone and to allow said nightclub to be spaced less than required from churches and from another alcoholic

beverage use was granted, pursuant to Resolution No. 4-ZAB-478-84. In 1985, the package liquor store relocated within the shopping center and was granted a special exception of spacing requirements, pursuant to Resolution No. 4-ZAB-85-85. In 1986, the subject property was granted 1) a special exception to permit a lounge in conjunction with an existing package store, 2) a special exception of spacing requirements for the proposed lounge, and 3) a modification of a Condition of Resolution No. 4-ZAB-85-85 to indicate the aforementioned use, pursuant to Resolution No. 4-ZAB-25-86. In 1986, additional special exceptions were granted to permit a cocktail lounge in conjunction with a restaurant and to permit the proposed cocktail lounge to be spaced less than required from churches and alcoholic beverage uses, pursuant to Resolution No. 4-ZAB-354-87. In 1989, pursuant to Resolution No. 4-ZAB-467-89, a special exception to permit a lounge in connection with an existing restaurant, a special exception of spacing requirements to permit said lounge to be spaced less than required from churches and from another alcoholic beverage use and a non-use variance of hours and days of operation for the lounge were granted on the subject site. In 1995, a use variance to permit a nightclub in conjunction with a restaurant in the BU-1A District was granted. A special exception of spacing requirements to permit said nightclub to be located closer than permitted to other existing alcoholic beverage uses and from churches and schools was also approved, pursuant to Resolution No. 5-ZAB-57-95.

C. COMPREHENSIVE DEVELOPMENT MASTER PLAN (CDMP):

1. The Adopted 2005 and 2015 Land Use Plan designates the subject property as being within the Urban Development Boundary for **Business and Office**. This category accommodates the full range of sales and service activities. Included are retail, wholesale, personal and professional services, commercial and professional offices, hotels, motels, hospitals, medical buildings, nursing homes (also allowed in the institutional category), entertainment and cultural facilities, amusements and commercial recreation establishments such as private commercial marinas. These uses may occur in self-contained centers, high-rise structures, campus parks, municipal central business districts or strips along highways. In reviewing zoning requests or site plans, the specific intensity and range of uses, and dimensions, configuration and design considered to be appropriate will depend on locational factors, particularly compatibility with both adjacent and adjoining uses, and availability of highway capacity, ease of access and availability of other public services and facilities. Uses should be limited when necessary to protect both adjacent and adjoining residential use from such impacts as noise or traffic, and in most wellfield protection areas uses are prohibited that involved the use, handling, storage, generation or disposal of hazardous material or waste, and may have limitations as to the maximum buildable area, as defined in Chapter 24 of the County Code.

2. Other Land Uses Not Addressed.

Certain uses are not authorized under any LUP map category, including many of the uses listed as "unusual uses" in the zoning code. Uses not authorized in any LUP map category may be requested and approved in any LUP category that authorizes uses substantially similar to the requested use. Such approval may be granted only if the requested use is consistent with the objectives and policies of this Plan, and provided that the use would be compatible and would not have an unfavorable effect on the surrounding area: by causing an undue burden on transportation facilities including roadways and mass transit or other utilities and services including water, sewer,

drainage, fire, rescue, police and schools; by providing inadequate off-street parking, service or loading areas; by maintaining operating hours, outdoor lighting or signage out of character with the neighborhood; by creating traffic, noise, odor, dust or glare out of character with the neighborhood; by posing a threat to the natural environment including air, water and living resources; or where the character of the buildings, including height, bulk, scale, floor area ratio or design would detrimentally impact the surrounding area. However, this provision does not authorize such uses in Environmental Protection Areas designated in this Element.

3. Some existing lawful uses and zoning are not specifically depicted on the LUP map. However, all such existing lawful uses and zoning are deemed to be consistent with this Plan as provided in the section of this chapter titled "Concepts and Limitations of the Land Use Plan Map."

D. NEIGHBORHOOD CHARACTERISTICS:

ZONING

LAND USE PLAN DESIGNATION

Subject Property:

BU-1A; shopping center

Business and Office

Surrounding Properties:

NORTH: BU-3; offices
 BU-1A; retail businesses and
 vacant land

Business and Office

SOUTH: BU-2; retail businesses
 BU-1A; gas station
 RU-3; townhouse style condos
 RU-2; duplexes
 RU-1; single-family residences

Business and Office
 Low Density Residential, 2.5 to 6 dua

EAST: RU-4L; multi-family apartments
 GP; park
 RU-1; single-family residences

Business and Office
 Low Density Residential, 2.5 to 6 dua

WEST: BU-1A; gas station
 BU-2; commercial building
 BU-3; gas station

Business and Office

The subject property is located at 18403 South Dixie Highway. The area is characterized by mixed uses including single-family residences, duplexes, multi-family apartments, gas stations, offices and retail businesses. A vacant parcel is located to the north.

E. SITE AND BUILDINGS:

Site Plan Review:

(Site plan submitted.)

Scale/Utilization of Site:

Acceptable

Location of Buildings:	Acceptable
Compatibility:	Acceptable
Landscape Treatment:	Acceptable
Open Space:	Acceptable
Buffering:	Acceptable
Access:	Acceptable
Parking Layout/Circulation:	Acceptable
Visibility/Visual Screening:	N/A
Energy Considerations:	N/A
Roof Installations:	N/A
Service Areas:	N/A
Signage:	N/A
Urban Design:	N/A

F. PERTINENT REQUIREMENTS/STANDARDS:

Section 33-311(A)(3) Special Exceptions, Unusual Uses and New Uses. The Board shall hear an application for and grant or deny special exceptions; that is, those exceptions permitted by regulations only upon approval after public hearing, new uses and **unusual uses** which by the regulations are only permitted upon approval after public hearing; provided the applied for exception or use, including exception for site or plot plan approval, in the opinion of the Community Zoning Appeals Board, would not have an unfavorable effect on the economy of Miami-Dade County, Florida, would not generate or result in excessive noise or traffic, cause undue or excessive burden on public facilities, including water, sewer, solid waste disposal, recreation, transportation, streets, roads, highways or other such facilities which have been constructed or which are planned and budgeted for construction, are accessible by private or public roads, streets or highways, tend to create a fire or other equally or greater dangerous hazards, or provoke excessive overcrowding or concentration of people or population, when considering the necessity for and reasonableness of such applied for exception or use in relation to the present and future development of the area concerned and the compatibility of the applied for exception or use with such area and its development.

Section 33-311(A)(7) Generalized Modification Standards. The Board shall hear applications to modify or eliminate any condition or part thereof which has been imposed by any final decision adopted by resolution; provided, that the appropriate Board finds after public hearing that the modification or elimination, in the opinion of the Community Zoning Appeals Board, would not generate excessive noise or traffic, tend to create a fire or other equally or greater dangerous hazard, or provoke excessive overcrowding of people, or would not tend to provoke a nuisance, or would not be incompatible with the area concerned, when considering the necessity and reasonableness of the modification or elimination in relation to the present and future development of the area concerned.

Section 33-311(A)(17) Modification or Elimination of Conditions and Covenants After Public Hearing. The Community Zoning Appeals Board shall approve applications to modify or eliminate any condition or part thereof which has been imposed by any zoning action, and to modify or eliminate any restrictive covenants, or parts thereof, accepted at public hearing, upon demonstration at public hearing that the requirements of at least one of the paragraphs under this section has been met. Upon demonstration that such requirements have been met, an application may be approved as to a portion of the

property encumbered by the condition or the restrictive covenant where the condition or restrictive covenant is capable of being applied separately and in full force as to the remaining portion of the property that is not a part of the application, and both the application portion and the remaining portion of the property will be in compliance with all other applicable requirements of prior zoning actions and of this chapter.

G. NEIGHBORHOOD SERVICES:

DERM	No objection*
Public Works	No objection
Parks	No objection
MDTA	No objection
Fire Rescue	No objection
Police	No objection
Schools	No comment

*Subject to conditions indicated in their memorandum.

H. ANALYSIS:

The subject property is a commercial shopping center that is zoned BU-1A and is located at 18403 South Dixie Highway. The applicant is requesting Modifications of previously approved plans pursuant to Resolution Z-231-83 and of a condition of a Covenant restricting the development of the property to a specific site plan. The applicant intends to redevelop the site with a new commercial building consisting of retail and office space and two proposed restaurants. An unusual use to permit outdoor dining service areas for the two proposed restaurants and an existing restaurant with lounge within the shopping center is also being requested. The surrounding area is characterized by a mixture of uses including an established residential area to the south; multi-family apartments, single-family residences and a park to the east; gas stations and commercial buildings to the west and offices, apartment buildings and a vacant parcel to the north.

The Department of Environmental Resources Management (**DERM**) has **no objections** to this application and states that it meets the minimum requirements of Chapter 24 of the Code of Miami-Dade County, Florida. However, the applicant will have to comply with all DERM conditions as set forth in their memorandum pertaining to this application. The **Public Works Department** also has **no objections** to this application. They indicate that this application will generate less vehicle trips than the existing usage and will not generate any new additional daily peak hour vehicle trips and therefore meets traffic concurrency.

Approval of this application would allow the applicant to provide to the community additional retail uses and office space, two new restaurants with outdoor dining services and outdoor dining for an existing restaurant and lounge. The Land Use Plan (LUP) map of the Comprehensive Development Master Plan (CDMP) designates the subject property for **Business and Office** use. This category accommodates a full range of sales and services activities, including retail, wholesale, personal and professional services, commercial and professional offices, hotels and motels, hospitals, medical buildings, entertainment and cultural facilities and commercial recreational establishments. A vacant movie theater building exists on the site of the subject property, which will be

demolished and replaced with a three-story building to contain retail, office and two restaurants with outdoor dining service. A third outdoor dining area is proposed for an existing restaurant and lounge located on the northwest portion of the site. The subject site's existing BU-1A zoning and uses and the proposed retail, office, restaurants and outdoor dining service uses, are **consistent** with the LUP Map of the CDMP.

The applicant is seeking an unusual use to permit outdoor dining in connection with an existing restaurant and lounge and two proposed restaurants (request #3). The Master Plan specifies that certain uses are not authorized under any LUP map category, including many of the uses listed as "unusual uses" in the Zoning Code. Uses not authorized in any LUP map category may be requested and approved in any LUP category that authorizes uses substantially similar to the requested use. Such approval may be granted only if the requested use is consistent with the objectives and policies of this Plan, and provided that the use would be compatible with and would not have an unfavorable effect on the surrounding area: by causing an undue burden on transportation facilities including roadways and mass transit or other utilities and services; by providing inadequate off-street parking, service or loading areas; by maintaining operating hours, outdoor lighting or signage out of character with the neighborhood; by creating traffic, noise, odor, dust or glare out of character with the neighborhood; by posing a threat to the natural environment including air, water and living resources; or where the character of the buildings, including height, bulk, scale, floor area ratio or design would detrimentally impact the surrounding area. The unusual use request for outdoor dining is similar to a children's accessory playing facility that can be found outside restaurants. The site is a commercial shopping center consisting of several buildings located on all sides of the property and the majority of the parking area is located in the center of the site. The subject property is bounded by South Dixie Highway to the west, SW 184 Street (Eureka Drive) to the north and SW 186 Street (Quail Roost Road) to the south, which facilitates transportation to the site by patrons. A 95' wide berm exists along the south property line. To the south of the subject property is an established residential development consisting of single-family residences, duplexes, and townhouse-style apartments; to the west is a commercial building and a gas station; to the east are multi-family apartments, a park and single-family residences and to the north are offices and a vacant parcel. The applicant will be demolishing a vacant theater located on the southwest portion of the subject property and replacing it with a commercial building that will include offices, retail uses, and two restaurants with outdoor dining areas on the first floor. Staff supports the proposed outdoor dining in conjunction with the proposed restaurants. The site plan submitted indicates that the two proposed restaurants with outdoor dining areas will be oriented towards South Dixie Highway. A 75'4" wide parking area will act as a buffer from said major roadway and will lessen any visual or aural impacts generated by the outdoor dining areas. The 95' wide landscaped berm located along the south portion of the property and the additional 65' wide SW 186 Street (Quail Roost Road) is, in staff's opinion, an adequate buffer for the residential community located to the south from the visual and aural impacts of the proposed outdoor dining areas. Staff also supports the third proposed outdoor dining area for an existing restaurant with lounge which is located on the northwest portion of the site near SW 184 Street (Eureka Drive). Across this roadway to the north are offices and a vacant parcel, which staff opines, will not be impacted by the proposed use. When considering the necessity for and reasonableness of such applied for use in relation to the present and future development of the area concerned and the compatibility of the applied for use with such area and its development, staff is of the opinion that the proposed outdoor dining is **consistent** with the Master Plan and **compatible** with the surrounding

area. As such, staff recommends approval with conditions of request #3 to permit outdoor dining under Section 33-311(A)(3), Standards For Special Exceptions, Unusual Uses And New Uses.

When analyzed under the Generalized Modification Standards, Section 33-311(A)(7), the proposed modifications of a plan previously approved pursuant to Resolution Z-231-83 (request #1) and of Condition #1 of a Covenant (request #2) to allow the redevelopment of the southwest portion of the site with a new commercial building consisting of retail and office spaces and two proposed restaurants with outdoor dining service areas and to permit an outdoor dining service area for an existing restaurant with lounge will not generate excessive noise or traffic, provoke excessive overcrowding of people, or tend to provoke a nuisance, and will not be contrary to the public interest. As previously mentioned, the Public Works Department has indicated that the proposed uses would generate less traffic than the previously approved uses. The submitted plans indicate that the theater building will be demolished and a three-story commercial and office building will be constructed that includes two restaurants with outdoor dining service areas on the first floor. The difference between the previously approved plans and the proposed plans is that the setback of the theater building from the west property line was 30', whereas the proposed building will be setback 75'4" from the west (South Dixie Highway) property line. This significant change will allow additional parking area to be provided for the proposed retail and office uses and restaurants with outdoor dining service areas and buffer the proposed building from South Dixie Highway. Also, the plans indicate a third proposed outdoor dining service area for an existing restaurant with lounge that is located towards the northwest portion of the site, which staff opines will not negatively impact the office building and vacant parcel to the north nor the residential areas to the south and west. The landscape plans submitted indicate that substantial landscaping will be provided along the west side of the property which will help lessen the visual impact of the proposed building and uses onto South Dixie Highway. The existing live oaks and cocoplum hedge lined along the west property line and the proposed added ficus hedge and redtip cocoplum hedge on the perimeter of the commercial building where the proposed restaurants will be located will enhance the aesthetics of the property. Staff is of the opinion that approval of these modifications to the site will not cause an undue burden on the surrounding area. As such, staff recommends approval of requests #1 and #2 under the Generalized Modification Standards, Section 33-311(A)(7).

The standards under Section 33-311(A)(17), Modification or Elimination of Conditions and Covenants After Public Hearing, provide for the approval of a zoning application which demonstrates at public hearing that the modification or elimination of conditions of a previously approved resolution or restrictive covenant complies with one of the applicable modification or elimination standards and does not contravene the enumerated public interest standards as established. However, the applicant has not submitted documentation to indicate which modification or elimination standards are applicable to requests #1 and #2. Due to the lack of information, staff is unable to properly analyze requests #1 and #2 under said standards and, as such, said requests should be denied without prejudice under these standards.

Accordingly, staff recommends approval with conditions of requests #1 and #2 under Section 33-311(A)(7)(Generalized Modification Standards); approval with conditions of request #3 under Section 33-311(A)(3) (Standards For Special Exceptions, Unusual Uses

And New Uses) and denial without prejudice of requests #1 and #2 under Section 33-311(A)(17) (Modification or Elimination of Conditions and Covenants After Public Hearing).

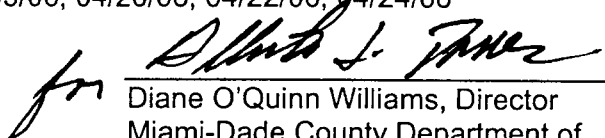
I. RECOMMENDATION:

Approval with conditions of requests #1 and #2 under Section 33-311(A)(7) (Generalized Modification Standards); approval with conditions of request #3 under Section 33-311(A)(3) (Standards For Special Exceptions, Unusual Uses And New Uses) and denial without prejudice of requests #1 and #2 under Section 33-311(A) (17) (Modification or Elimination of Conditions and Covenants After Public Hearing).

J. CONDITIONS:

1. That the applicants apply for and obtain a Certificate of Use from the Town of Cutler Bay for the outdoor dining, upon compliance with all terms and conditions, the same subject to cancellation upon violation of any of the conditions.
2. That the outdoor dining areas be arranged in a manner so as not to obstruct pedestrian and wheelchair access to the entrance of the premises.
3. That all conditions of Resolutions Nos. Z-231-83 and 5-ZAB-57-95 remain in full force and effect, except as herein modified.
4. That a revised Declaration of Restrictions be submitted to the Town of Cutler Bay within 90 days after public hearing approval of this application, unless a time extension is granted by the Town of Cutler of Bay, for good cause shown.

DATE INSPECTED: 03/30/06
DATE TYPED: 03/31/06
DATE REVISED: 04/03/06; 04/05/06; 04/20/06; 04/22/06; 04/24/06
DATE FINALIZED: 04/24/06
DO'QW:AJT:MTF:LVT:JV:CSE


for Diane O'Quinn Williams, Director
Miami-Dade County Department of
Planning and Zoning



Memorandum

Date: October 4, 2005

To: Diane O'Quinn-Williams, Director
Department of Planning and Zoning

From: Jose Gonzalez, P.E., Assistant Director
Environmental Resources Management

Subject: C-15 #Z2005000262
Woolbright Pembroke, Ltd.
18403 S. Dixie Highway
Modification of a Resolution to Permit a Revised Site Plan & Unusual Use to Permit
Outdoor Tables
(BU-1A) (28.17 Ac.)
05-56-40

The Department of Environmental Resources Management (DERM) has reviewed the subject application and has determined that it meets the minimum requirements of Chapter 24 of the Code of Miami-Dade County, Florida (the Code). Accordingly, DERM may approve the application, and the same may be scheduled for public hearing.

Potable Water Supply and Wastewater Disposal:

Public water and public sanitary sewers can be made available to the subject property. Therefore, connection of the proposed development to the public water supply system and sanitary sewer system shall be required in accordance with Code requirements.

Existing public water and sewer facilities and services meet the Level of Service (LOS) standards set forth in the Comprehensive Development Master Plan (CDMP). Furthermore, the proposed development order, if approved, will not result in a reduction in the LOS standards subject to compliance with the conditions required by DERM for this proposed development order.

Notwithstanding the foregoing, in light of the fact that the County's sanitary sewer system has limited sewer collection, transmission, and treatment capacity, no new sewer service connections can be permitted, unless there is adequate capacity to handle the additional flows that this project would generate. Consequently, final development orders for this site may not be granted if adequate capacity in the system is not available at the point in time when the project will be contributing sewage to the system. Lack of adequate capacity in the system may require the approval of alternative means of sewage disposal. Use of an alternative means of sewage disposal may only be granted in accordance with Code requirements, and shall be an interim measure, with connection to the public sanitary sewer system required upon availability of adequate collection/transmission and treatment capacity.

Stormwater Management:

A Surface Water Management General Permit from DERM shall be required for the construction and operation of the required surface water management system. This permit shall be obtained prior to site development, final plat or public works approval of paving and drainage plans. The applicant is advised to contact DERM for further information regarding permitting procedures and requirements.

All stormwater shall be retained on site utilizing properly designed seepage or infiltration drainage structures. Drainage must be provided for the 5-year/1-day storm event with full on-site retention of the 25-year/3-day storm. Pollution Control devices shall be required at all drainage inlet structures.

Site grading and development shall comply with the requirements of Chapter 11C of the Code.

Any proposed development shall comply with County and Federal flood criteria requirements. The proposed development order, if approved, will not result in a reduction in the LOS standards for flood protection set forth in the CDMP subject to compliance with the conditions required by DERM for this proposed development order.

Operating Permits:

Section 24-18 of the Code authorizes DERM to require operating permits from facilities that could be a source of pollution. The applicant should be advised that due to the nature of some land uses permitted under the existing zoning classification, operating permits from DERM may be required. It is therefore suggested that the applicant contact DERM concerning operating requirements.

Pollution Remediation:

The subject property contains the following sites with records of current contamination assessment or remediation on the property:

Dry Clean USA
18515 S. Dixie Highway
PCD tracking #IW5-4680
Chlorinated solvents contaminated site. Currently in a state administered program awaiting funding for cleanup.

Main Moon Chinese Buffet (former Dry Clean USA)
18423 S. Dixie Highway
PCD tracking #IW5-3764
Chlorinated solvents contaminated site. Currently in a state administered cleanup program awaiting funding for cleanup.

Wetlands:

The subject property does not contain jurisdictional wetlands as defined by Section 24-5 of the Code; therefore, a Class IV Wetland Permit will not be required.

The applicant is advised that permits from the Army Corps of Engineers (305-526-7181), the Florida Department of Environmental Protection (561-681-6600) and the South Florida Water Management District (1-800-432-2045) may be required for the proposed project. It is the applicant's responsibility to contact these agencies.

Tree Preservation:

The site contains specimen-sized (trunk diameter 18" or greater) trees. According to Section 24-49 of the Code, specimen-sized trees must be preserved on site whenever reasonably possible. Any future development plans must take into consideration the preservation of said trees. Tree Removal Permit 2005-254 was issued to Woolbright Pembroke, Ltd., on May 26, 2005. All approved tree removal and replanting must be completed prior to the scheduled expiration date of this permit on May 26, 2006. A Miami-Dade County tree removal permit is required prior to the removal or relocation of any other trees on the property. The applicant is advised to contact DERM staff for permitting procedures and requirements prior to development of site and landscaping plans.

Enforcement History:

DERM has reviewed the Permits and Enforcement database and the Enforcement Case Tracking System and has found no open or closed formal enforcement records for the subject properties identified in the subject application.

Concurrency Review Summary:

DERM has conducted a concurrency review for this application and has determined that the same meets all applicable LOS standards for an initial development order, as specified in the adopted CDMP for potable water supply, wastewater disposal and flood protection. Therefore, the application has been approved for concurrency subject to the comments and conditions contained herein.

This concurrency approval does not constitute a final concurrency statement and is valid only for this initial development order as provided for in the adopted methodology for concurrency review. Additionally, this approval does not constitute any assurance that the LOS standards would be met by any subsequent development order applications concerning the subject property.

In summary, the application meets the minimum requirements of Chapter 24 of the Code and therefore, it may be scheduled for public hearing; furthermore, this memorandum shall constitute DERM's written approval to that effect as required by the Code.

cc: Lynne Talleda, Zoning Evaluation- P&Z
Ron Connally, Zoning Hearings- P&Z
Franklin Gutierrez, Zoning Agenda Coordinator-P&Z

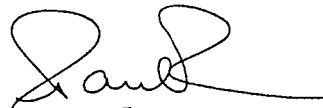
PH# Z2005000262
CZAB - C15

PUBLIC WORKS DEPARTMENT COMMENTS

Applicant's Names: WOOLBRIGHT PEMBROKE LTD

This Department has no objections to this application.

The proposed use of this application will generate less vehicle trips than the existing usage and will not generate any new vehicle trips; therefore this application meets the Initial Traffic Concurrency Criteria.



Raul A Pino, P.L.S.

19-SEP-05

RESOLUTION NO. 5-ZAB-57-95

WHEREAS, OLD CUTLER OYSTER COMPANY had applied for the following:

- (1) USE VARIANCE to permit a nightclub in conjunction with a restaurant in the BU-1A district.
- (2) SPECIAL EXCEPTION of spacing requirements as applied to alcoholic beverage establishments to permit the aforementioned nightclub to be spaced less than the required 1,500' from other existing alcoholic beverage establishments and to be spaced less than the required 2,500' from an existing school and houses of worship.
- (3) MODIFICATION of Condition #2 of Resolution 4-ZAB-85-85, last modified by Resolution 4-ZAB-25-86, passed and adopted by the Zoning Appeals Board on the 29th day of January, 1986, reading as follows:

FROM: "2. That in the approval of the plan, the same be substantially in accordance with that submitted for the hearing entitled 'South Dade Shopping Center,' as prepared by Miami Group 2, Architecture and Land Planning, dated revised 8-13-84, and a floor plan entitled 'Proposed Lounge for South Dade Liquors-South Dade Shopping Center,' as prepared by Ivonne Barrera, Architect, dated September 14, 1985."

TO: "2. That in the approval of the plan, the same be substantially in accordance with that submitted for the hearing entitled 'Old Cutler Oyster Company,' as prepared by Michael Alan Fine, dated revised 11-16-94, consisting of five sheets and a liquor survey as prepared by Jose E. Fuxa, P.L.S., dated Sept. 30, 1994."

The purpose of this request is to allow the applicant to submit a revised plan for the shopping center.

The aforementioned plans are on file and may be examined in the Zoning Department. Plans may be modified at public hearing.

SUBJECT PROPERTY: Tract "A", SOUTH DADE SHOPPING CENTER, Plat book 123, Page 68.

LOCATION: Lying east of U.S. #1, between S.W. 184 Street & S.W. 186 Street, Dade County, Florida, and

WHEREAS, a public hearing of the Metropolitan Dade County Zoning Appeals Board was advertised and held, as required by law, and all interested parties concerned in the matter were given an opportunity to be heard, and

WHEREAS, this Board has been advised that the subject application has been reviewed for compliance with concurrency requirements for levels of services and, at this stage of the request, the same was found to comply with the requirements, and

WHEREAS, upon due and proper consideration having been given to the matter, it is the opinion of this Board that the requested use variance, special exception and modification would be compatible with the area and its development and would be in harmony with the general purpose and intent of the regulations and would conform with the requirements and intent of the Zoning Procedure Ordinance, and

WHEREAS, the following motion was offered by Jonathan Rubin seconded by Humberto Amaro and upon a poll of the members present, the vote was as follows:

Humberto Amaro	aye	Barbara Hardemon	aye
Willie Barnett	aye	Herminia Herrera	aye
Wilfredo Calvino, Jr.	aye	Eric Jacobs	aye
Frank Colunga	aye	Charlie McGarey	absent
Raul Del Portillo	aye	Jonathan Rubin	aye
Colleen Griffin	aye	June Stevens	absent
	Mavel Cruz	aye	

NOW THEREFORE BE IT RESOLVED by the Metropolitan Dade County Zoning Appeals Board that the application be and the same is hereby approved, subject to the following conditions:

1. That a plot use plan be submitted to and meet with the approval of the Zoning Director; said plan to include among other things but not be limited thereto, location of building or buildings, type and location of signs, light standards, parking areas, exits and entrances, drainage, walls, fences, landscaping, etc.
2. That in the approval of the plan, the same be substantially in accordance with that submitted for the hearing entitled 'Old Cutler Oyster Company,' as prepared by Michael Alan Fine, dated revised 11-16-94, consisting of five sheets and a liquor survey as prepared by Jose E. Fuxa, P.L.S., dated Sept. 30, 1994.

3. That the use be established and maintained in accordance with the approved plan.
4. That the applicant obtain a Certificate of Use and Occupancy from and promptly renew the same annually with the Dade County Building and Zoning Department; upon compliance with all terms and conditions, the same subject to cancellation upon violation of any of the conditions.
5. That the applicant comply with all applicable conditions and requirements of the Department of Environmental Resources Management for applications of this type.
6. That a fully executed affidavit be submitted to the Department prior to Certificate of Use and Occupancy issuance stating that the subject alcoholic beverage use complies with Section 33-255.1 of the Code of Metropolitan Dade County and is not an adult entertainment establishment.

BE IT FURTHER RESOLVED that all conditions of Resolution No. 4-ZAB-85-85 shall remain in full force and effect, except as herein modified.

BE IT FURTHER RESOLVED, notice is hereby given to the applicant that the request herein constitutes an initial development order and does not constitute a final development order and that one, or more, concurrency determinations will subsequently be required before development will be permitted.

The Zoning Director is hereby directed to make the necessary notations upon the maps and records of the Dade County Building and Zoning Department and to issue all permits in accordance with the terms and conditions of this resolution.

PASSED AND ADOPTED this 15th day of February, 1995.

Hearing No. 94-12-32
Typed bn

RESOLUTION NO. 2-231-83

The following resolution was offered by Commissioner Clara Oesterle, seconded by Commissioner Beverly B. Phillips, and upon poll of members present the vote was as follows:

Barbara M. Carey	aye	Barry D. Schreiber	absent
Clara Oesterle	aye	Ruth Shack	absent
Beverly B. Phillips	aye	Jorge (George) Valdes	aye
James F. Redford, Jr.	nay	Stephen P. Clark	aye
Harvey Ruvin	absent		

WHEREAS, JEAN BARBER GODWIN had applied for the following:

- (1) A district boundary change from BU-1 (Neighborhood Business), EU-1 (One Acre Estates), AU (Agricultural) and RU-1 (Single Family Residential) to BU-1A (Limited Business);
- (2) NON-USE VARIANCE REQUIRING a 5' high decorative masonry wall along the rear (east) property line; to waive same.

Plans are on file and may be examined in the Zoning Department entitled "South Dade Plaza", as prepared by Miami Group 2, revised dated 11-8-83 on sheet 1, revised dated 11-1-83 on sheet 2, and revised dated 9-12-83 on sheet 3.

SUBJECT PROPERTY: Lots 2, 3, and 4, PERRINE GRANT SUBDIVISION, Section 5, Township 56 South, Range 40 East, Plat book 1, Page 4; property lying east of State Road 5, less the South 42' for road and less the beginning 42' north of the South line, Lot 4 East line of State Road 5; thence NE/ly 187.9', East 150', SW/ly 187.9', West 150' to the Point of beginning.

LOCATION: The East side of U.S. #1, between S.W. 184 Street and S.W. 186 Street, Dade County, Florida, and

WHEREAS, a public hearing of the Board of County Commissioners, Dade County, Florida, was advertised and held, as required by law, and all interested parties concerned in the matter were heard, at which time the applicant by her attorney proffered a covenant pertaining to the maintenance of landscaping and agreeing to contribute \$25,000.00 for fire service improvements in the area, and upon due and proper consideration having been given to the matter and to the recommendation of the Developmental Impact Committee, it is the opinion of this Board that the requested district boundary change to BU-1A would be compatible with the neighborhood and area concerned and would not be in conflict with the principles and intent of the plan for the development of Dade County, Florida, and should be approved, subject to conditions, and that the requested non-use variance would be in harmony with the general purpose and intent of the regulations and would conform with the requirements and intent of the Zoning Procedure Ordinance and should be approved and that the proffered Covenant should be accepted;

NOW THEREFORE BE IT RESOLVED by the Board of County Commissioners, Dade County, Florida, that the requested district boundary change to BU-1A be and the same is hereby approved and said property is hereby zoned accordingly, subject

to the following conditions:

1. That a plot use plan, including among other things but not limited to, the location of buildings and structures, type, size and location of signs, light standards, parking areas, exits and entrances, drainage, walls, fences, landscaping and sprinkler systems, shall be submitted for approval as required by, and pursuant to, Section 33-314 of the Code Of Metropolitan Dade County.
2. That the use be established and maintained in accordance with the, then, approved plan.

BE IT FURTHER RESOLVED that the request to waive the non-use variance requiring a 5' high decorative masonry wall along the rear (east) property line be and the same is hereby approved.

BE IT FURTHER RESOLVED that the Board does hereby accept the proffered contribution for fire service improvements in the area.

The Zoning Director is hereby directed to make the necessary changes and notations upon the maps and records of the Dade County Building and Zoning Department and to issue all permits in accordance with the terms and conditions of this resolution.

PASSED AND ADOPTED this 8th day of December, 1983.

December, 1983
No. 83-12-CC-2
vp
12/9/83

DADE COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS
Richard P. Brinker, Clerk

By _____
Deputy Clerk

This resolution transmitted to the Clerk of the Board of County Commissioners on the 21st day of December 1983.

COVENANT

THIS COVENANT, made and entered into this 7th day of December, 1983, by and between JEAN BARBER GODWIN, hereinafter referred to as "Owner", and THE BOARD OF COUNTY COMMISSIONERS, METROPOLITAN DADE COUNTY, FLORIDA, hereinafter referred to as "County";

W I T N E S S E T H:

WHEREAS, Owner is the fee simple owner of certain property described on Exhibit "A" attached hereto and incorporated herein by reference;

WHEREAS, the property is presently the subject of a public hearing before the Dade County Board of County Commissioners under Public Hearing No. 83-12-CC-2(83-494);

WHEREAS, Owner is desirous of giving assurance to the County that landscaped areas on the subject property will be developed and maintained substantially in accordance with the spirit and intent of plans submitted to the County;

WHEREAS, the Developmental Impact Committee has issued its report and identified certain fire protection improvements needed to support the proposed development;

NOW, THEREFORE, the said Owner hereby voluntarily delivers this, its Covenant, to Dade County, Florida, and agrees that the real property herein described shall be subject to the following restrictions:

1. Notwithstanding any zoning designation placed upon the real property herein described, Owner hereby agrees, on behalf of itself, its successors and assigns, that the areas designated for landscaping shall be developed and maintained substantially in accordance with the spirit and intent of the plans previously submitted, prepared by O'Leary, Shafer and Cosio, entitled South Dade Plaza Planting Plan dated the 7th day of December, 1983 (hereinafter "Landscape Plan").

2. Owner hereby covenants that Owner will provide for the perpetual maintenance of said landscaped areas in a healthy, orderly condition and in accordance with the Landscape Plan, and that said maintenance shall be sufficient to ensure that all plant materials shall continually remain in the condition speci-

filed in Section 18A (b) and (c) of the Code of Metropolitan Dade County, Florida, attached hereto as Exhibit B and incorporated herein by reference, regardless of any subsequent modification or repeal of said section.

3. As a means of ensuring that the landscaped areas are maintained in the manner set forth in paragraph 2 above, Owner hereby agrees that, notwithstanding any regulation to the contrary, all certificates of use and occupancy issued, for each use in the proposed shopping center shall have an initial term of one year and are required to be subsequently renewed for consecutive one year terms. Regardless of the actual date of issuance of said certificates of use and occupancy, they shall all annually expire on the anniversary of the date of issuance of the first certificate of occupancy obtained for any use within the proposed shopping center. Renewal of all said certificates of use and occupancy shall be automatically granted by the Dade County Building and Zoning Department, unless a notice of unacceptable corrective action is in effect pursuant to paragraph 4 hereof in which event said certificates shall not be renewed except as hereinafter provided. Owner shall be responsible for assuring that said certificates of use and occupancy are renewed as a group annually on the aforementioned anniversary date. In the event that a complaint is being processed pursuant to paragraph 4 hereof as of the expiration date of said certificates of use and occupancy, but a notice of unacceptable corrective action has not as yet been issued, renewal shall be granted on a temporary basis pending the completion of the enforcement proceeding as set forth in paragraph 4, at which time said certificates shall be fully renewed for a term ending on the pre-established expiration date or shall expire, and not be renewed pursuant to the terms of paragraph 4 hereof.

4. Upon receipt by the County of a written complaint, including complaints from County staff, regarding the appearance of the landscaped areas, the Dade County Committee of Adjustment, or its successor (Section 18-6, Dade County Code, hereinafter the "Committee"), shall make an on-site inspection of the property, consider the complaint, and shall determine if said landscaped areas are being maintained in an acceptable manner as specified

in paragraph 2 above. The Committee shall notify the owner of record of the subject property of its findings, in writing, by certified mail, return receipt requested. In the event the landscaped areas are found to be in a condition which is not in compliance with the standards set forth in paragraph 2 herein, said notice shall state the corrective action which should be provided by Owner to be in compliance. The owner indicated on the current tax rolls shall be presumed to be the owner of record for purposes of this notice of findings. Said Owner shall have thirty (30) days from receipt of said notice to show evidence of corrective action to the Committee. If, after proper consideration at a meeting of the Committee which is held after giving at least ten (10) days written notice to Owner, the Committee decides that the corrective action is not acceptable, the Committee shall issue a notice of unacceptable corrective action and send same to the record owner and to the Director of the Dade County Building and Zoning Department (hereinafter the "Director"). Said notice shall provide that all previously issued certificates of use and occupancy on the subject property shall not be renewed upon their annual expiration unless and until the Committee notifies the Director that the Owner has provided acceptable corrective action. Said notice shall further provide for the immediate termination of any temporary certificates of use and occupancy issued pursuant to paragraph 3. Upon receipt of the notice of unacceptable corrective action, the Director shall send a letter to the Owner and all holders of certificates of use and occupancy for uses within the proposed shopping center. Said letter shall: indicate the Director's intent not to renew said certificates of use and occupancy upon their annual expiration; advise of the termination of any temporary certificates of use and occupancy issued pursuant to paragraph 3 hereof; state that not less than thirty (30) days from said expiration and non-renewal of said certificates the Director may notify the Florida Power and Light Company (hereinafter "FP&L") to discontinue electrical service to those uses; and provide that the aforementioned notice of unacceptable corrective action shall remain in effect until the Director is notified by the Committee that the notice of unac-

ceptable corrective action has been satisfied and withdrawn. It is hereby agreed that the Director shall have the authority to so notify FP&L if necessary and appropriate; provided, however, that the Director shall notify the Owner and all holders of said certificates of use and occupancy of his intention to so notify FP&L, in writing, at least thirty (30) days before sending said notification to FP&L, and the Director shall further send a copy of the letter so notifying FP&L to the Owner and all holders of said certificates, simultaneously therewith. Any time after the receipt of the Director's letter of intent not to renew, Owner shall have the right to submit new and/or additional evidence of corrective action to the Committee for its reconsideration in the manner prescribed for their initial consideration. Immediately upon a determination by the Committee that Owner has undertaken acceptable corrective action, the Committee will notify the Director in writing that the outstanding notice of unacceptable corrective action has been satisfied and the same is to be withdrawn. Upon receipt of this notice of satisfaction and withdrawal, the Director shall send a letter to the Owner, certified mail, return receipt requested, stating the Director's intent to renew the aforementioned certificates of use and occupancy.

5. The Owner hereby agrees that all leases with tenants of the proposed shopping center shall contain a reference to the effect that the center operates subject to this Covenant and shall include in said reference the official records book and page number for said Covenant as recorded.

6. In recognition of the need for additional fire protection service as a result of the proposed development, Owner hereby agrees to voluntarily contribute \$25,000 to the Dade County Fire Department for fire service improvement in Fire District No. 4. Said sum will be paid directly to the Metropolitan Dade County Fire Department by Owner, its successors and assigns, as a prerequisite to the issuance of the first building permit for the proposed development, but in no event shall said contribution be paid later than December 31, 1988.

7. As further part of this agreement, it is hereby understood and agreed that the Committee may have the privilege at any time during normal working hours of entering and investigating

the use of the premises to determine whether or not the covenants herein-agreed to are being complied with.

8. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of 30 years from the date these covenants are recorded, after which time they shall be extended automatically for successive periods of ten years, unless an instrument signed by a majority of the, then, owner(s) of the real property has been recorded agreeing to change the covenants in whole, or in part, provided that the covenants have first been released by Dade County.

9. This Covenant may be modified, amended or released as to the land herein described, or any portion thereof, by a written instrument executed by the current owners of the fee simple title to the lands to be affected by such modification, amendment or release, provided that the same has first been approved by the Dade County Board of County Commissioners after public hearing.

10. Should this Covenant be so modified, amended or released, the Director of the Dade County Building and Zoning Department, or his successor, shall forthwith execute a written instrument effectuating and acknowledging such modification, amendment or release.

11. Remedies otherwise provided herein shall not be exclusive and enforcement may also be by action at law or in equity against any parties or persons violating, or attempting to violate, any covenants, either to restrain violation, require compliance or to recover damages. The prevailing party 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.

12. Invalidation of any one of these covenants, by judgment or court, in no wise shall affect any of the other provisions which shall remain in full force and effect.

13. Notwithstanding the foregoing, this Agreement shall not become effective unless and until the County Commission approves Owner's application under Public Hearing No. 83-12-CC-2 (83-494) for rezoning of the subject property.

IN WITNESS WHEREOF, the Owner has caused these presents to be executed the day and year first above set forth.

WITNESS:

Carrie Alland

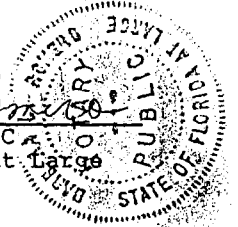
Jean Barber Godwin
JEAN BARBER GODWIN

Victori Casbo

STATE OF FLORIDA)
) SS:
COUNTY OF DADE)

BEFORE ME, the undersigned authority, personally appeared JEAN BARBER GODWIN, known to me and known by me to be the person herein described, who executed the foregoing Covenant for the purposes therein expressed on the 7th day of December, 1983.

Barbara L. Rosen
NOTARY PUBLIC
State of Florida at Large



My Commission Expires:
NOTARY PUBLIC STATE OF FLORIDA
BONDED THRU GENERAL INSURANCE UND.
MY COMMISSION EXPIRES JULY 16 1986

Prepared by:

DEBBIE R. MALINSKY
Greenberg, Traurig, Askew, Hoffman,
Lipoff, Rosen & Quentel, P.A.
1401 Brickell Avenue, PH-1
Miami, Florida 33131
(305) 579-0500

EXHIBIT A.

Lots 2, 3 and 4 of PERRINE GRANT SUBDIVISION, in Section 5, Township 56 South, Range 40 East according to the Plat thereof, recorded in Plat Book 1 at Page 4 of the Public Records of Dade County, Florida, lying East State Road 5 less South 42 feet for Road and less Beginning 42 feet North of South line Lot 4 East line State Road 5 thence NELY 187.9 feet East 150 feet SWly 187.9 feet West 150 feet to the Point Of Beginning.

LESS AND EXCEPT

A portion of Lot 3 of A.A. Dooley Survey of PERRINE GRANT Subdivision of Section 5, Township 56 South, Range 40 East, according to the plat thereof recorded in Plat Book 1 at Page 4 of the Public Records of Dade County, Florida, being more particularly described as follows:

Begin at the Northeast corner of said Lot 3; thence run S 87°48'20" W along the North line of said Lot 3, said line also being the North line of the NE 1/4 of said Section 5, for a distance of 591.46 feet to the point of intersection with the Easterly right of way line of State Road 5 as shown on the State of Florida Department of Transportation Right of Way Map, Section No. 37020-2512 and recorded in Road Plat Book 83 at Page 51 of the Public Records of Dade County, Florida; thence run S 22°32'25" W along the Easterly right of way line of State Road 5 for a distance of 54.54 feet; thence run W 55°10'23" E for a distance of 26.96 feet to the point of intersection with the South line of the North 35.00 feet of said Lot 3; thence run N 87°48'20" E along the South line of the North 35.00 feet of said Lot 3 for a distance of 590.57 feet to the point of intersection with the East line of said Lot 3; thence run W 00°32'46" W along the East line of said Lot 3 for a distance of 35.01 feet to the Point of Beginning.

EXHIBIT "B"

**Sec. 18A-5. Landscaping requirements for certain yard areas,
off-street parking and other vehicular use areas.**

All areas used for the display or parking of any and all types of vehicles, boats or heavy construction equipment, whether such vehicles, boats or equipment are self-propelled or not, and all land upon which vehicles traverse the property as a function of the primary use, hereinafter referred to as "other vehicular uses" including but not limited to activities of a drive-in nature such as, but not limited to, filling stations, grocery and dairy stores, banks, restaurants, and the like, shall conform to the minimum landscaping requirements hereinafter provided, save and except areas used for parking or other vehicular uses under, on or within buildings, and parking areas serving single and two-family uses as normally such residential areas are voluntarily landscaped:

- (a) *Installation.* All landscaping shall be installed in a sound workmanship like manner and according to accepted good planting procedures with the quality of plant materials as hereinafter described. All elements of landscaping exclusive of plant material except hedges shall be installed so as to meet all other applicable ordinances and code requirements. Landscaped areas shall require protection from vehicular encroachment as herein provided in section 18A-5(e) and (f). A qualified representative of the agency charged with the issuance of building permits shall inspect all landscaping and no certificate of occupancy or similar authorization will be issued unless the landscaping meets the requirements herein provided.
- (b) *Maintenance.* The owner, tenant and their agent, if any shall be jointly and severally responsible for the maintenance of all landscaping which shall be maintained in good condition so as to present a healthy, neat and orderly appearance and shall be kept free from refuse and debris. All landscaped areas shall be provided with a readily available water supply with at least one outlet located within one hundred fifty feet (150') of all plant material to be maintained.
- (c) *Plant material.*
 - (1) *Quality.* Plant materials used in conformance with provisions of this chapter shall conform to the Standards for Florida No. 1 or better as given in "Grades & Standards for Nursery Plants", Part I, 1963 and Part II, State of Florida, Department of Agriculture, Tallahassee, or equal thereto. Grass sod shall be clean and reasonably free of weeds and noxious pests or diseases. Grass seed shall be

delivered to the jobsite in bags with Florida Department of Agriculture tags attached indicating the seed growers compliance with the department's quality control program.

(2) Trees shall be species having an average mature spread of crown of greater than fifteen (15) feet in Dade County and having trunk(s) which can be maintained in a clean condition over five (5) feet of clear wood. Trees having an average mature spread of crown less than fifteen (15) feet may be substituted by grouping the same so as to create the equivalent of a fifteen (15) foot crown spread. Palms shall be considered trees in accord with standards promulgated by Dade County building and zoning department and approved by the county commission.

Tree species shall be a minimum of seven (7) feet overall height immediately after planting. Trees of species whose roots are known to cause damage to public roadways or other public works shall not be planted closer than twelve (12) feet to such public works, unless the tree root system is completely contained within a barrier for which the minimum interior containing dimensions shall be five (5) feet square and five (5) feet deep, and for which the construction requirements shall be four (4) inch thick concrete reinforced with #6 road mesh (6X6X6) or equivalent. A list of such tree species shall be maintained by the building and zoning department for the guidance of the public.

(3) Shrubs and hedges. Shrubs shall be a minimum of two (2) feet in height when measured immediately after planting. Hedges, where required, shall be planted and maintained so as to form a continuous, unbroken, solid, visual screen within a maximum of one (1) year after time of planting.

(4) Vines. Vines shall be a minimum of thirty (30) inches in height immediately after planting and

may be used in conjunction with fences, screens, or walls to meet physical barrier requirements as specified.

(5) Ground covers. Ground covers used in lieu of grass in whole or in part shall be planted in such a manner as to present a finished appearance and reasonably complete coverage within three (3) months after planting.

(6) Lawn grass. Grass areas shall be planted in species normally grown as permanent lawns in Dade County. Grass areas may be sodded, plugged, sprigged or seeded except that solid sod shall be used in swales or other areas subject to erosion, and providing that in areas where other than solid sod or grass seed is used, nursegrass seed shall be sown for immediate effect and protection until coverage is achieved.

(7) Prohibited plant species. The following plant species are prohibited from use as live landscaping material:

1. Cajeput (*Melaleuca quinquenervia*).
2. Australian pine (*Casuarina spp.*).
3. Brazilian pepper (*Schinus terebinthifolius*).

(d) Required landscaping adjacent to public rights-of-way. On the site of a building or structure or open lot use providing an off-street parking area or other vehicular use area, where such area will not be entirely screened visually by an intervening building or structure from any abutting right-of-way, excluding dedicated alleys, there shall be provided landscaping between such area and such right-of-way, as follows:

(1) A strip of land at least five (5) feet in depth located between the abutting right-of-way and the off-street parking area or other vehicular use area which is exposed to an abutting right-of-way shall be landscaped, such landscaping to include one tree for each fifty (50) lineal feet or

Memorandum



Date: 21-OCT-05
To: Diane O'Quinn Williams, Director
Department of Planning and Zoning
From: Herminio Lorenzo, Fire Chief
Miami-Dade Fire Rescue
Subject: Z2005000262

Fire Prevention Unit:

Fire Water & Engineering has no objection to plans presented with letter of intent dated July 20 2005. Applicant must submit changes to this plan for review and approval.

Service Impact/Demand:

Development for the above Z2005000262
located at 18403 SOUTH DIXIE HIGHWAY, MIAMI-DADE COUNTY, FLORIDA.
in Police Grid 2147 is proposed as the following:

<u>single</u>	dwelling units	<u>industrial</u>	square feet
<u>multifamily</u>	dwelling units	<u>institutional</u>	square feet
<u>52,500</u> commercial	square feet	<u>nursing home</u>	square feet

Based on this development information, estimated service impact is: 13.86 alarms-annually.

Existing services:

The Fire station responding to an alarm in the proposed development will be:
Station 50 - Perrine, 9798 Hibiscus Street
Rescue

Planned Service Expansions:

The following stations/units are planned in the vicinity of this development:
None

Fire Planning Additional Comments:

Current service impact calculated based on letter of intent dated July20 2005. Substantial changes to the letter of intent will require additional service impact analysis.

DATE: 04/03/06

REVISION 1

TEAM METRO

ENFORCEMENT HISTORY

WOOLBRIGHT PEMBROKE LTD.

18403 SOUTH DIXIE HIGHWAY,
MIAMI-DADE COUNTY, FLORIDA.

APPLICANT

ADDRESS

Z2005000262

HEARING NUMBER

CURRENT ENFORCEMENT HISTORY:

3-29-06 No violations.

DISCLOSURE OF INTEREST*

If a **CORPORATION** owns or leases the subject property, list principal stockholders and percent of stock owned by each. [Note: Where principal officers or stockholders consist of other corporation(s), trust(s), partnership(s) or similar entities, further disclosure shall be made to identify the natural persons having the ultimate ownership interest].

CORPORATION NAME: _____

<u>NAME AND ADDRESS</u>	<u>Percentage of Stock</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

If a **TRUST or ESTATE** owns or leases the subject property, list the trust beneficiaries and percent of interest held by each. [Note: Where beneficiaries are other than natural persons, further disclosure shall be made to identify the natural persons having the ultimate ownership interest].

TRUST/ESTATE NAME: _____

<u>NAME AND ADDRESS</u>	<u>Percentage of Interest</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

If a **PARTNERSHIP** owns or leases the subject property, list the principals including general and limited partners. [Note: Where partner(s) consist of other partnership(s), corporation(s), trust(s) or similar entities, further disclosure shall be made to identify the natural persons having the ultimate ownership interests].

PARTNERSHIP OR LIMITED PARTNERSHIP NAME: Woolbright Pembroke Ltd.

<u>NAME AND ADDRESS</u>	<u>Percent of Ownership</u>
<u>3200 N. Military Trail Boca Raton FL 33431</u>	<u>100 %</u>
<u>Woolbright South Dade LLC - Pres - Duane Stiller</u>	<u>80 %</u>
<u>(Shopping Ctr owner) VP - Michael Fimiani</u>	<u>20 %</u>
<u>Woolbright South Dade Two LLC - Pres - Duane Stiller</u>	<u>80 %</u>
<u>(Office/theater owner) VP - Michael Fimiani</u>	<u>20 %</u>

If there is a **CONTRACT FOR PURCHASE** by a Corporation, Trust or Partnership, list purchasers below, including principal officers, stockholders, beneficiaries or partners. [Note: Where principal officers, stockholders, beneficiaries or partners consist of other corporations, trusts, partnerships or similar entities, further disclosure shall be made to identify natural persons having ultimate ownership interests].

NAME OF PURCHASER: _____

NAME, ADDRESS AND OFFICE (if applicable)	Percentage of Interest
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Date of contract: _____

If any contingency clause or contract terms involve additional parties, list all individuals or officers, if a corporation, partnership or trust:

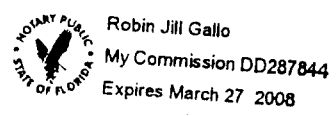
NOTICE: For changes of ownership or changes in purchase contracts after the date of the application, but prior to the date of final public hearing, a supplemental disclosure of interest is required.

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

Signature: Mark G. [Signature]
(Applicant)

Sworn to and subscribed before me this 19 day of July, 2005. Affiant is personally known to me or has produced _____ as identification.

Robin Jill Gallo
(Notary Public)

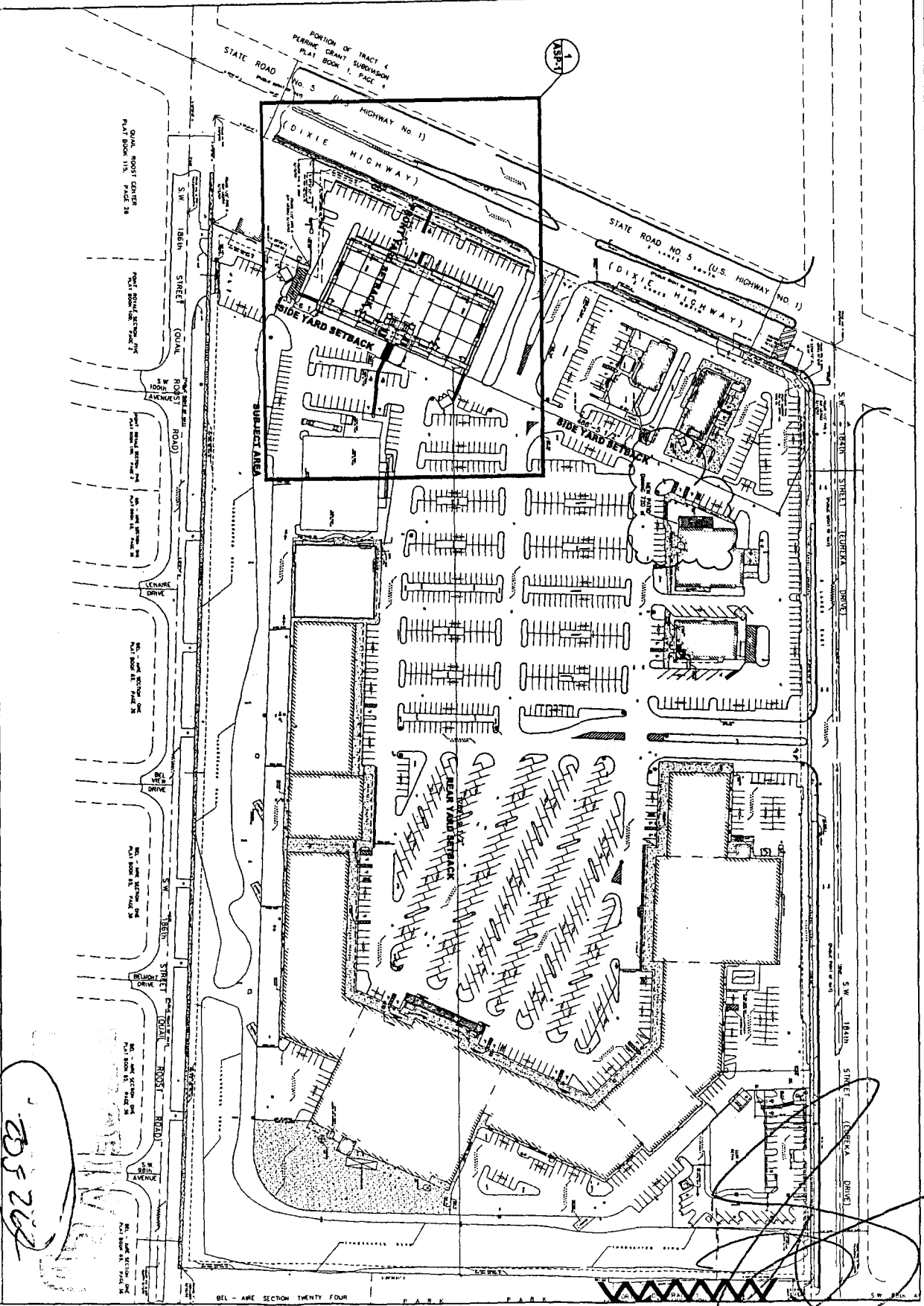


My commission expires 3/27/08

*Disclosure shall not be required of: 1) any entity, the equity interests in which are regularly traded on an established securities market in the United States or another country; or 2) pension funds or pension trusts of more than five thousand (5,000) ownership interests; or 3) 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 every level of ownership and where no one (1) person or entity holds more than a total of five per cent (5%) of the ownership interest in the partnership, corporation or trust. Entities whose ownership interests are held in a 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 in the partnership, corporation or trust.

CONTRACTOR(S) SHALL VERIFY EXISTING CONDITIONS AND CORRELATE DIMENSIONS PRIOR TO PROVIDING THE WORK DETAILED IN THESE DRAWINGS, AND SHALL PROMPTLY NOTIFY THE ARCHITECT OF ANY DISCREPANCIES

1 SITE PLAN
SCALE: 1/8" = 1'-0"



205-212

7/18/05

AS-1101

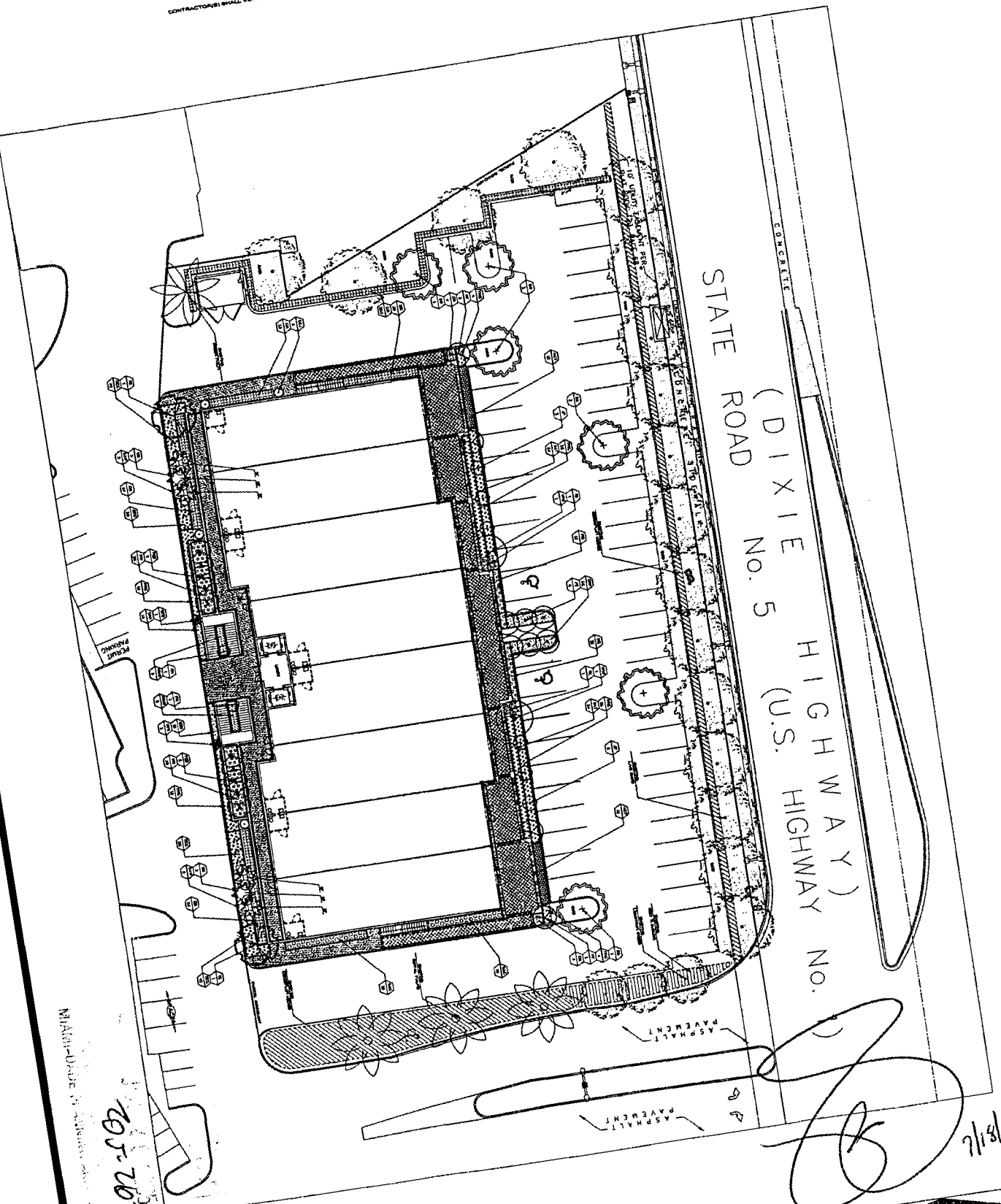
NO.	DATE	DESCRIPTION	BY	CHKD.
1	07/18/05	ISSUED FOR PERMIT	WJG	WJG
2	07/18/05	ISSUED FOR PERMIT	WJG	WJG
3	07/18/05	ISSUED FOR PERMIT	WJG	WJG
4	07/18/05	ISSUED FOR PERMIT	WJG	WJG
5	07/18/05	ISSUED FOR PERMIT	WJG	WJG
6	07/18/05	ISSUED FOR PERMIT	WJG	WJG
7	07/18/05	ISSUED FOR PERMIT	WJG	WJG
8	07/18/05	ISSUED FOR PERMIT	WJG	WJG
9	07/18/05	ISSUED FOR PERMIT	WJG	WJG
10	07/18/05	ISSUED FOR PERMIT	WJG	WJG

PROJECT NAME & LOCATION:
TOWERS AT CUTLER RIDGE
 SOUTH DADE PLAZA
 18000 SOUTH US1
 MIAMI, FLORIDA

WILLIAM J. GALLO
 FL ARCH 000440
 BRIAN P. HERBERT
 FL LANDSCAPE

GALLO ARCHITECTS
 & DEVELOPMENT CONSULTANTS, INC.
 ALL RIGHTS RESERVED
 1311 W. NEWPORT CENTER DRIVE, DEERFIELD BEACH, FL 33442
 (561) 882-6970 FAX (561) 882-6221 EMAIL: GJG@GALLOARCH.COM

CONTRACTOR SHALL VERIFY EXISTING CONDITIONS AND CORRELATE DIMENSIONS PRIOR TO PROVIDING THE WORK DETAILS IN THESE DRAWINGS, AND SHALL PROMPTLY NOTIFY THE ARCHITECT OF ANY DISCREPANCIES.



STATE ROAD (DIXIE HIGHWAY) No. 5 (U.S. HIGHWAY) No. 1

205-202
MIAMI-DIXIE ST. SIDEWALK

ASPHALT PAVEMENT
ASPHALT PAVEMENT
7/18/05

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PROJECT NAME & LOCATION:
TOWERS AT CUTLER RIDGE
SOUTH DADE PLAZA
1860 SOUTH US1
MIAMI, FLORIDA

Professional Seal
SEAL

GALLO ARCHITECTS
DEVELOPMENT CONSULTANTS, INC.

1111 REPORT CENTER DRIVE WEST DEERFIELD BEACH, FL 33442
TEL: 561-482-2800 FAX: 561-482-2800 Email: info@galloarchitects.com

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CONTRACTOR SHALL VERIFY EXISTING CONDITIONS AND CORRELATE DIMENSIONS PRIOR TO REMOVING THE WORK DETAILED IN THESE DRAWINGS, AND SHALL PROMPTLY NOTIFY THE ARCHITECT OF ANY DISCREPANCIES.

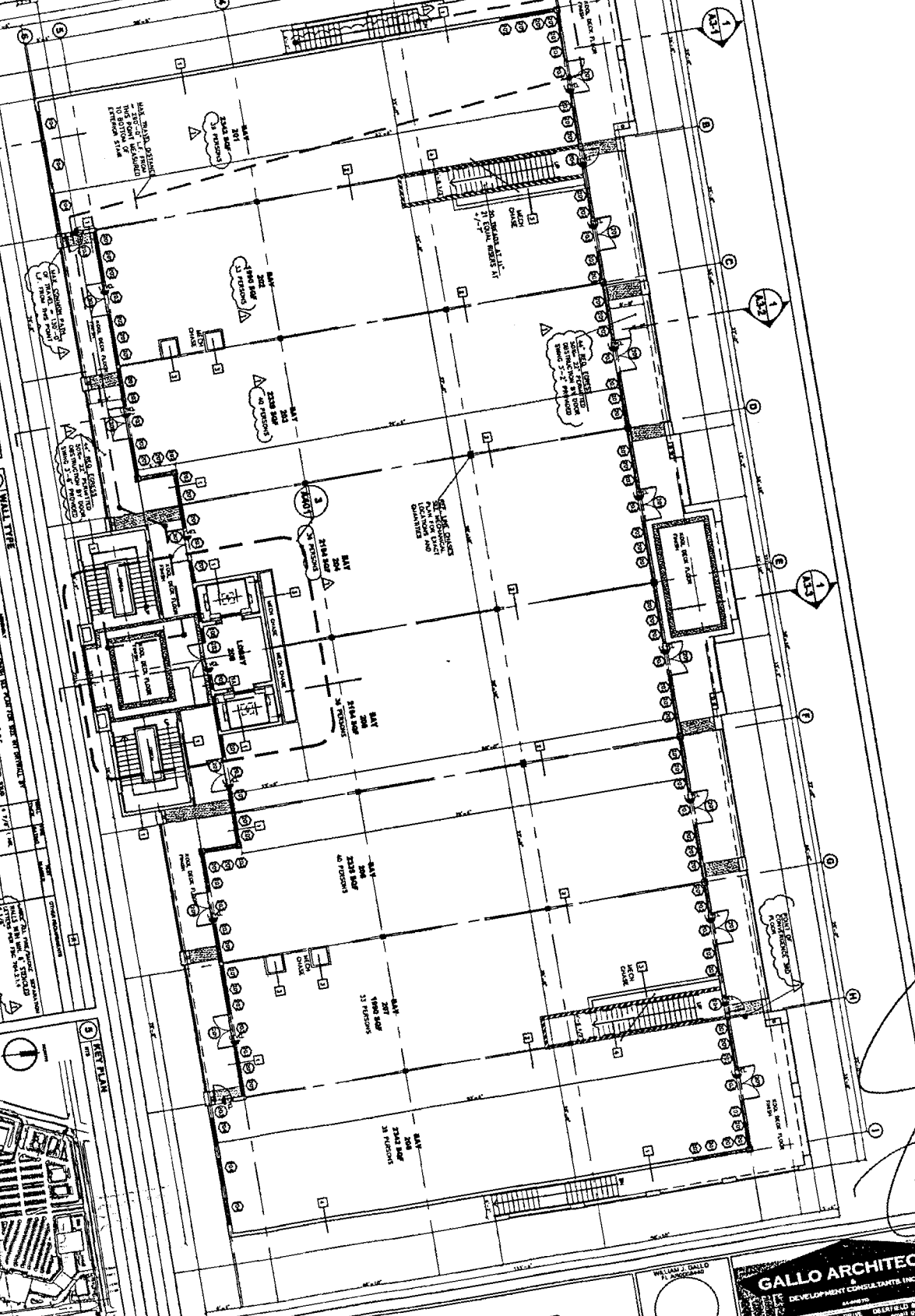
SYMBOL	DESCRIPTION
(1)	EXISTING WALL
(2)	EXISTING WINDOW
(3)	EXISTING DOOR
(4)	EXISTING STAIR
(5)	EXISTING ELEVATOR
(6)	EXISTING MECHANICAL
(7)	EXISTING ELECTRICAL
(8)	EXISTING PLUMBING
(9)	EXISTING ROOF
(10)	EXISTING FLOOR
(11)	EXISTING CEILING
(12)	EXISTING LIGHTING
(13)	EXISTING SIGNAGE
(14)	EXISTING LANDSCAPE
(15)	EXISTING UTILITY
(16)	EXISTING STRUCTURE
(17)	EXISTING SITEWORK
(18)	EXISTING PAVING
(19)	EXISTING FENCE
(20)	EXISTING DRIVEWAY
(21)	EXISTING PARKING
(22)	EXISTING TRAILER
(23)	EXISTING SIGN
(24)	EXISTING LIGHT
(25)	EXISTING TREE
(26)	EXISTING SHRUB
(27)	EXISTING GRASS
(28)	EXISTING DRIVE
(29)	EXISTING WALKWAY
(30)	EXISTING BIKEWAY
(31)	EXISTING RAMP
(32)	EXISTING STAIRCASE
(33)	EXISTING ELEVATOR SHAFT
(34)	EXISTING MECHANICAL ROOM
(35)	EXISTING ELECTRICAL ROOM
(36)	EXISTING PLUMBING ROOM
(37)	EXISTING ROOF MECHANICAL
(38)	EXISTING FLOOR MECHANICAL
(39)	EXISTING CEILING MECHANICAL
(40)	EXISTING LIGHTING FIXTURE
(41)	EXISTING SIGNAGE
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(43)	EXISTING UTILITY
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(53)	EXISTING TREE
(54)	EXISTING SHRUB
(55)	EXISTING GRASS
(56)	EXISTING DRIVE
(57)	EXISTING WALKWAY
(58)	EXISTING BIKEWAY
(59)	EXISTING RAMP
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(65)	EXISTING ROOF MECHANICAL
(66)	EXISTING FLOOR MECHANICAL
(67)	EXISTING CEILING MECHANICAL
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SECOND FLOOR PLAN

CALCULATIONS

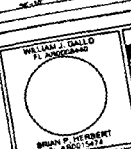
WALL TYPE

SECTION



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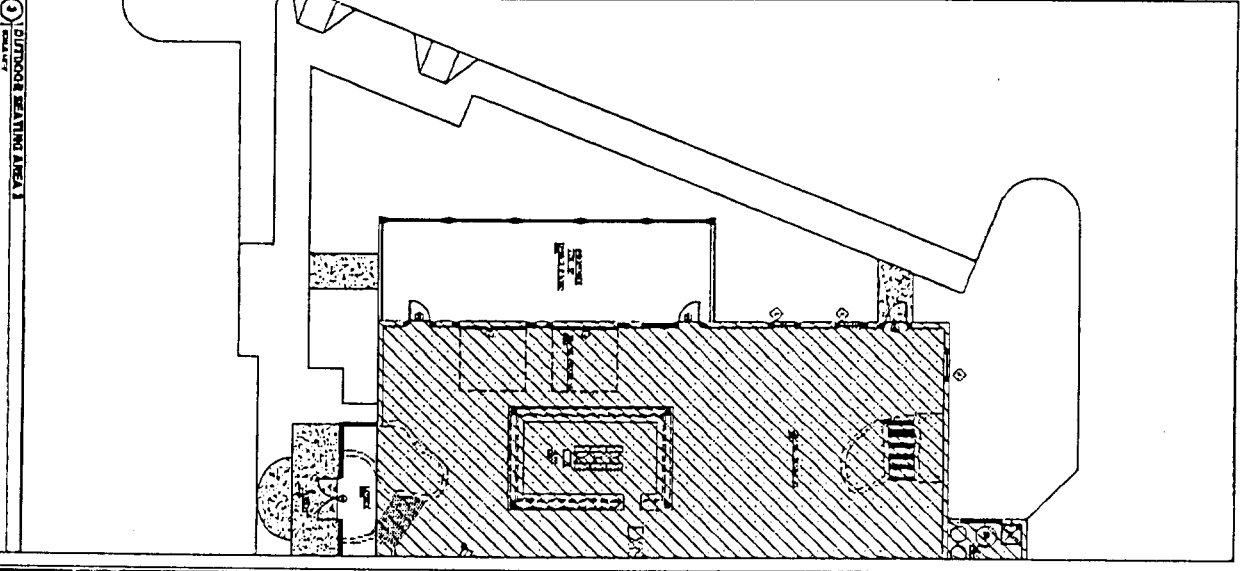
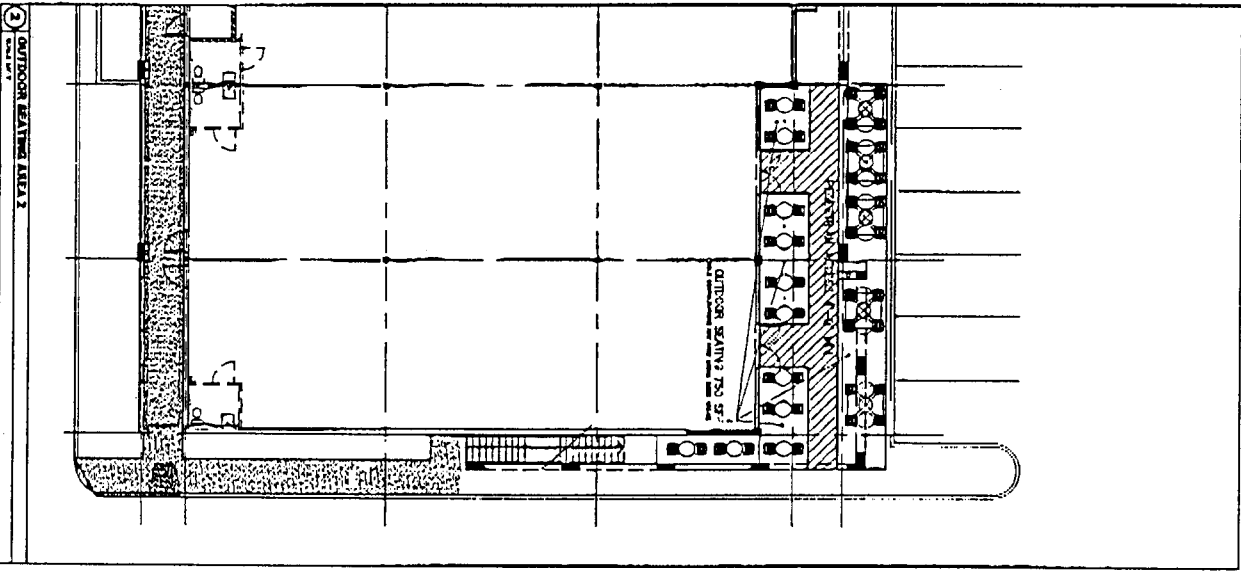
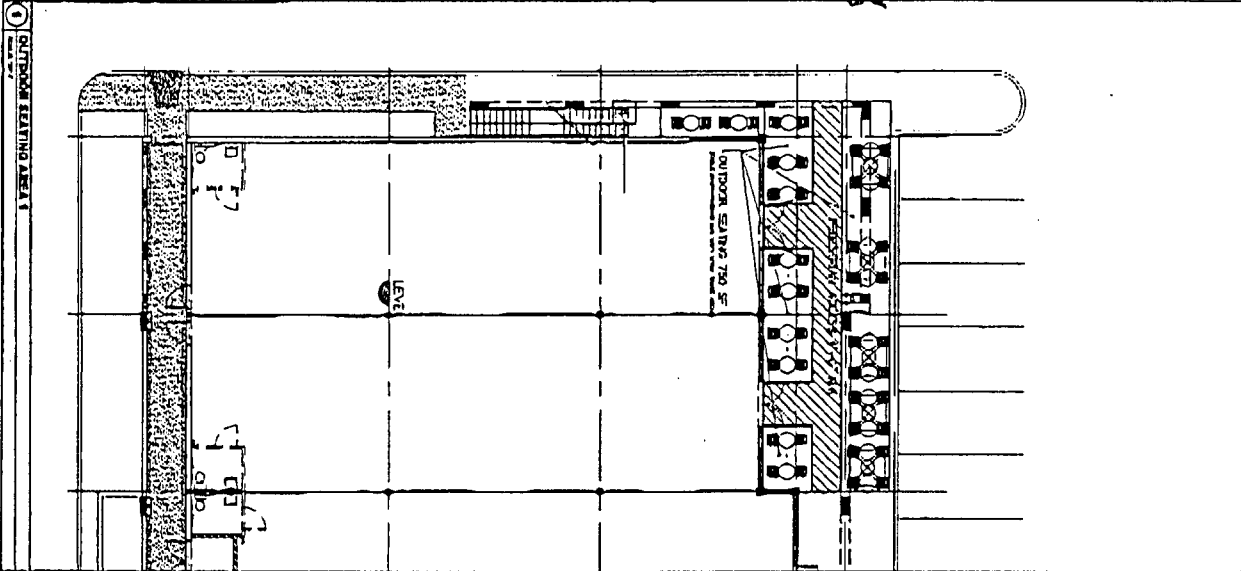
TOWERS AT CUTLER RIDGE
SOUTH DADE PLAZA
1800 SOUTH US1
MIAMI, FLORIDA



GALLO ARCHITECTS
DEVELOPMENT CONSULTANTS, INC.
123 NEWPORT CENTER DRIVE, MIAMI BEACH, FL 33411
TEL: 305.555.1234 FAX: 305.555.5678
WWW.GALLOARCHITECTS.COM

NO.	DATE	DESCRIPTION
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3	11/15/11	REVISION 2
4	12/01/11	REVISION 3
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6	01/01/12	REVISION 5
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101	12/15/15	REVISION 100

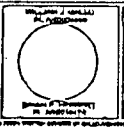
CONTRACTOR SHALL VERIFY EXISTING CONDITIONS AND ADJUSTMENTS PRIOR TO PROCEEDING THE WORK SHOWN ON THESE PLANS, AND SHALL BE RESPONSIBLE FOR THE ACCURACY OF ALL DIMENSIONS.



717

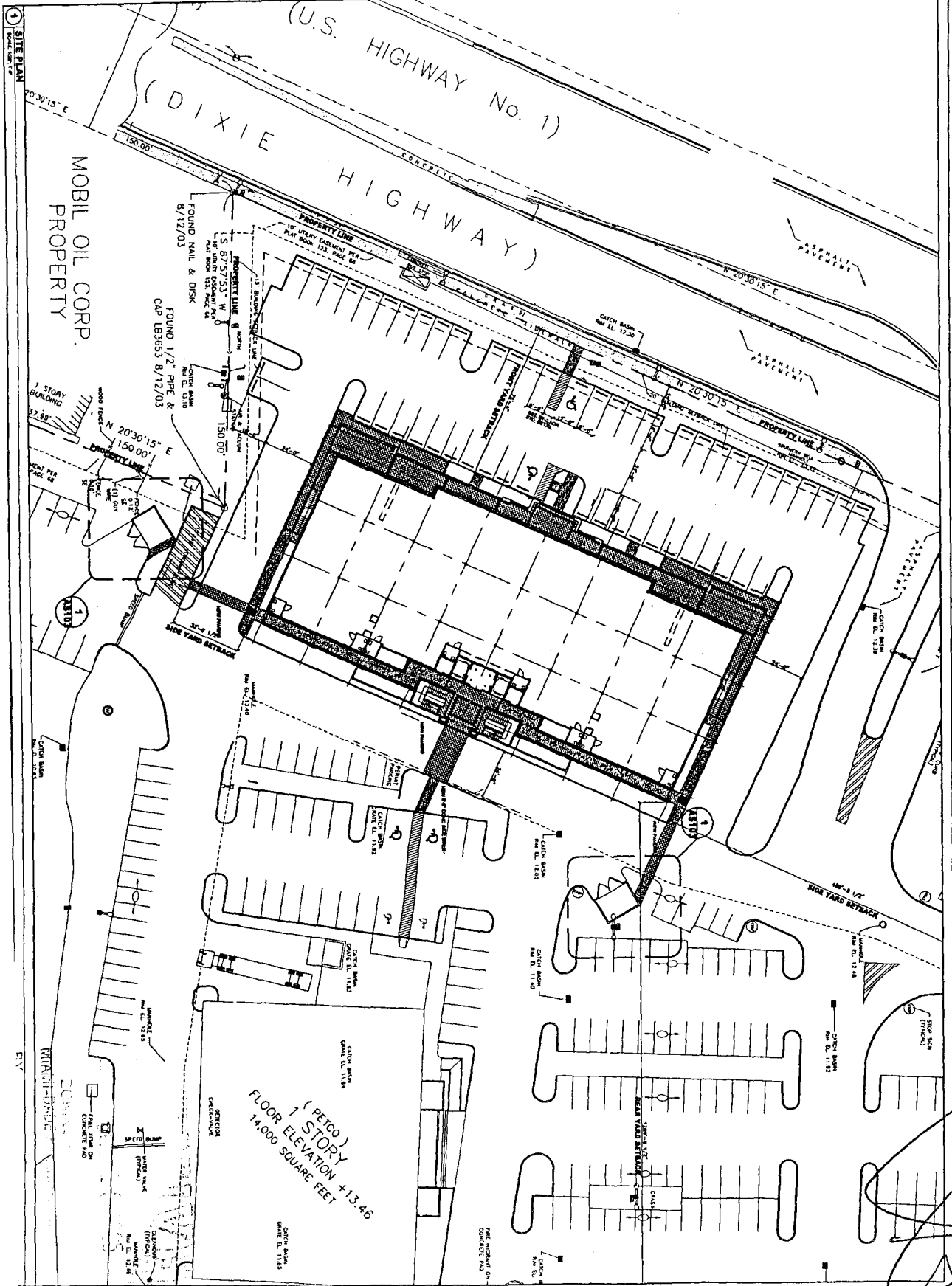
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PROJECT NO.	AST104
DATE	08/11/11
DESIGNER	ALYSON B. GALLO
CHECKED BY	ALYSON B. GALLO
DATE	08/11/11
SCALE	AS SHOWN
PROJECT NO.	AST104
DATE	08/11/11
DESIGNER	ALYSON B. GALLO
CHECKED BY	ALYSON B. GALLO
DATE	08/11/11
SCALE	AS SHOWN

PROJECT NAME & LOCATION
TOWERS AT CUTLER RIDGE
 SOUTH DIXIE PLAZA
 1800 SQU/111 UNIT
 MIAMI, FLORIDA



GALLO ARCHITECTS
 ENVIRONMENTAL DESIGN PARTNERS, INC.
 11111 SOUTH DIXIE AVENUE, SUITE 11111
 MIAMI, FLORIDA 33156
 TEL: 305.555.1111 FAX: 305.555.1111

CONTRACTOR(S) SHALL VERIFY EXISTING CONDITIONS AND CORRELATE DIMENSIONS PRIOR TO PROVIDING THE WORK DETAIL IN THESE DRAWINGS, AND SHALL PROMPTLY NOTIFY THE ARCHITECT OF ANY DISCREPANCIES.



1 SITE PLAN
 10/18/05

MOBIL OIL CORP.
PROPERTY

(PETCO)
1 STORY
FLOOR ELEVATION +13.46
14,000 SQUARE FEET

Handwritten signature and date: 10/18/05

NO.	DESCRIPTION	DATE	BY	CHECKED
1	ISSUED FOR PERMIT	10/18/05	WJG	WJG
2	ISSUED FOR CONSTRUCTION			
3	ISSUED FOR OCCUPANCY			

PROJECT NAME & LOCATION:
TOWERS AT CUTLER RIDGE
 SOUTH DADE PLAZA
 1800 SOUTH LUST
 MIAMI, FLORIDA

WILLIAM J. GALLO
FLA0000460

GALLO ARCHITECTS
DEVELOPMENT CONSULTANTS, INC.

1811 W. NEWPORT CENTER DRIVE DEERFIELD BEACH, FL 33442
 VOICE: 561-490-2800 FAX: 561-784-5091 email: gallo@galloarch.com

CONTRACTORS SHALL VERIFY EXISTING CONDITIONS AND CORRELATE DIMENSIONS PRIOR TO PROMISING THE WORK DETAIL IN THESE DRAWINGS, AND SHALL PROMPTLY NOTIFY THE ARCHITECT OF ANY DISCREPANCIES.

1 THIRD FLOOR PLAN

2 LEGEND

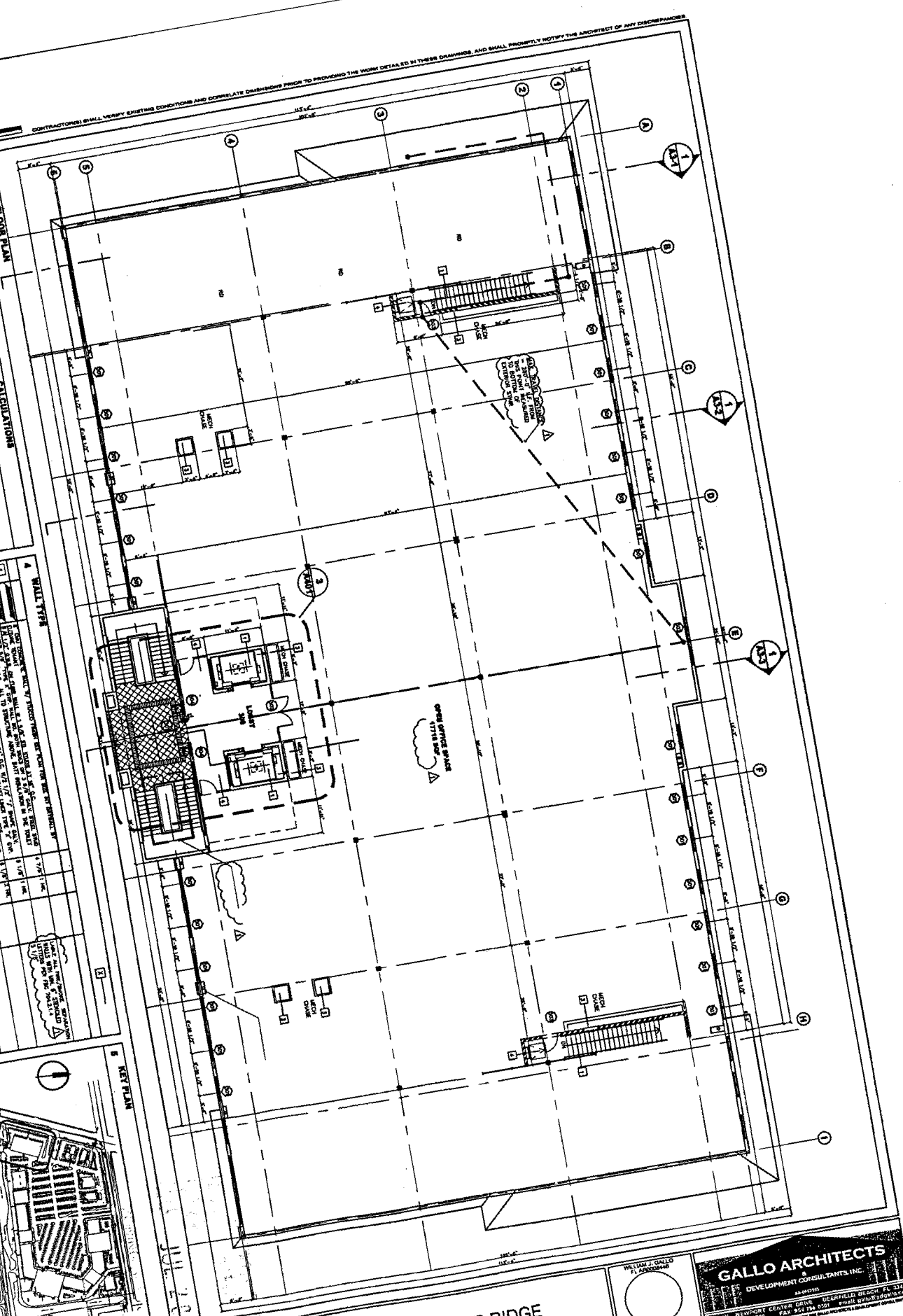
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(Symbol)	NEW DOOR
(Symbol)	EXISTING WINDOW
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(Symbol)	EXISTING STAIR
(Symbol)	NEW STAIR
(Symbol)	EXISTING ELEVATOR
(Symbol)	NEW ELEVATOR
(Symbol)	EXISTING MECHANICAL
(Symbol)	NEW MECHANICAL
(Symbol)	EXISTING ELECTRICAL
(Symbol)	NEW ELECTRICAL
(Symbol)	EXISTING PLUMBING
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(Symbol)	EXISTING FURNITURE
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(Symbol)	NEW FLOOR
(Symbol)	EXISTING ROOF
(Symbol)	NEW ROOF
(Symbol)	EXISTING EXTERIOR
(Symbol)	NEW EXTERIOR

3 CALCULATIONS

ALL CALCULATIONS SHALL BE SUBMITTED TO THE ARCHITECT FOR REVIEW AND APPROVAL PRIOR TO CONSTRUCTION.

4 WALL TYPE

NO.	DESCRIPTION	THICKNESS	WEIGHT
1	CONCRETE WALL WITH FINISH	12"	150
2	CONCRETE WALL WITH FINISH	12"	150
3	CONCRETE WALL WITH FINISH	12"	150
4	CONCRETE WALL WITH FINISH	12"	150
5	CONCRETE WALL WITH FINISH	12"	150
6	CONCRETE WALL WITH FINISH	12"	150
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48	CONCRETE WALL WITH FINISH	12"	150
49	CONCRETE WALL WITH FINISH	12"	150
50	CONCRETE WALL WITH FINISH	12"	150



285-202

6 REVISIONS

NO.	DATE	DESCRIPTION
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PROJECT NAME & LOCATION:
TOWERS AT CUTLER RIDGE
 SOUTH DADE PLAZA
 1800 SOUTH US1
 MIAMI, FLORIDA



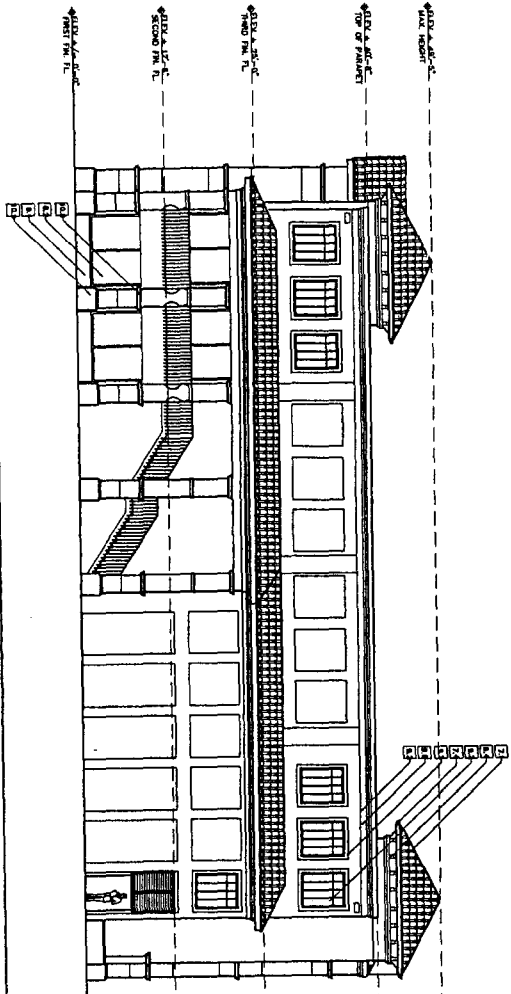
GALLO ARCHITECTS
 DEVELOPMENT CONSULTANTS, INC.
 1818 W. NEWPORT CENTER DRIVE, DEERFIELD BEACH, FL 33442
 PHONE: 561.672.8200 FAX: 561.672.8201 email: gallo@gallo.com
 WWW: www.gallo.com

A103

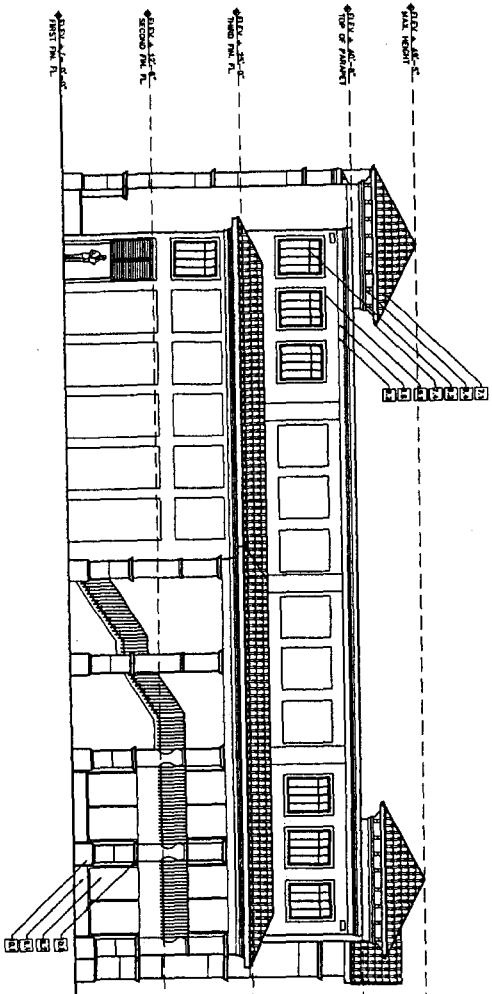
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1 SOUTH BUILDING ELEVATION
SCALE: 3/8" = 1'-0"



2 NORTH BUILDING ELEVATION
SCALE: 3/8" = 1'-0"



DEVELOPMENT REVIEW SHEET

NO.	DESCRIPTION	DATE	BY	CHKD.
1	REVISION			
2	REVISION			
3	REVISION			
4	REVISION			
5	REVISION			
6	REVISION			
7	REVISION			
8	REVISION			
9	REVISION			
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44	REVISION			
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49	REVISION			
50	REVISION			

© U.S. IN PROTECT. ARCHITECT. APPROVAL. APPROXIMATE

PROJECT NAME & LOCATION:
TOWERS AT CUTLER RIDGE
SOUTH DADE PLAZA
18000 SOUTH US1
MIAMI, FLORIDA

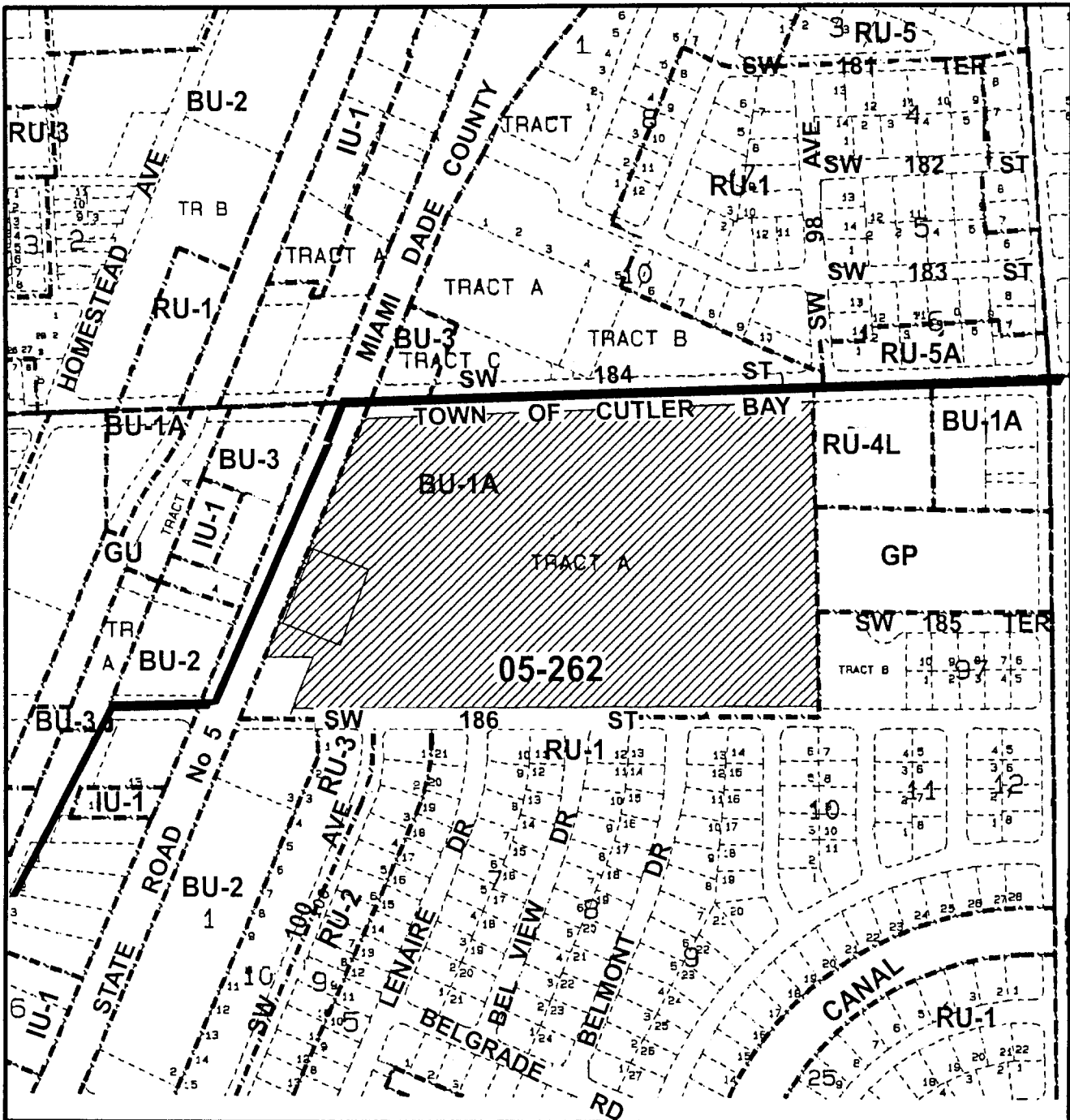
WILLIAM J. GALLO
FL ARCH 0000446

GALLO ARCHITECTS
& DEVELOPMENT CONSULTANTS, INC.
44 OFFICES

1311 W. NEWSPORT CENTER DRIVE DEERFIELD BEACH FL 33442
MIAMI 305 430 2900 MIAMI 305 430 4200 MIAMI 305 430 4200

205-202

Handwritten signature and initials
45



**MIAMI-DADE COUNTY
HEARING MAP**

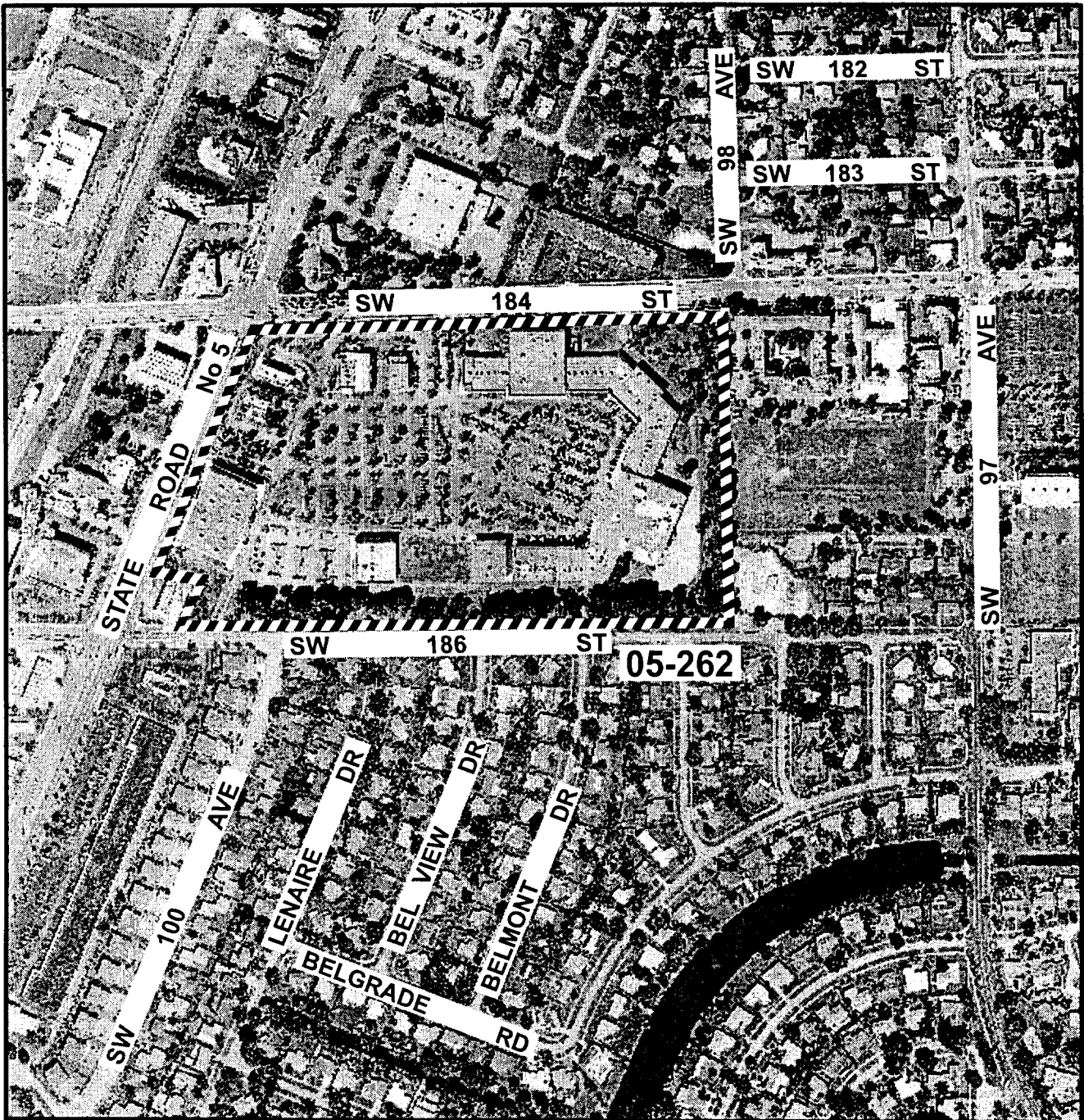


 SUBJECT PROPERTY

Section: 05 Township: 56 Range: 40
 Process Number: 05-262
 Applicant: WOLBRIGHT PEMBROKE LTD
 Zoning Board: TCB
 District Number: 8
 Drafter ID: JEFFER
 Scale: 1:200'



46




MIAMI-DADE COUNTY
AERIAL

Section: 05 Township: 56 Range: 40
 Process Number: 05-262
 Applicant: WOLBRIGHT PEMBROKE LTD
 Zoning Board: TCB
 District Number: 8
 Drafter ID: JEFFER
 Scale: NTS

S C A L E
 0 NTS

↑
 N

 SUBJECT PROPERTY



TOWN OF CUTLER BAY
MINUTES OF THE COUNCIL MEETING
Thursday, April 6, 2006
South Dade Governmental Center
10701 SW 211 Street, Room 203
Miami, FL

Meeting commenced at 7:00 PM

INVOCATION: Lisa Siegel, Temple Beth Tham provided the invocation.

I. CALL TO ORDER, ROLL CALL, PLEDGE OF ALLEGIANCE

Mayor Cosgrove called the meeting to order. The following members of the Town Council were present:

Mayor John F. Cosgrove
Vice Mayor Paul S. Vrooman
Council Member Timothy J. Meerbott
Council Member Ernest N. Sochin
Council Member Peggy R. Bell

The following staff members were present:

Interim Town Manager Steven Alexander
Interim Town Clerk Elizabeth Sewell
Interim Town Attorney Mitchell Bierman
Interim Town Attorney John Quick
Interim Town Attorney Chad Friedman

Girl Scout Troop Pack 709 led the pledge of allegiance

II. PROCLAMATIONS, AWARDS, PRESENTATIONS

A. Proclamation for Donna Masson: Vice Mayor Vrooman and the Council formally acknowledged the public service of Ms. Masson and presented her with a proclamation.

Ms. Masson thanked the Mayor, Council and public for the proclamation honoring her.

Mayor Cosgrove thanked Ms. Masson for her years of service to the South Dade Area.

B. Council Member Bell introduced Mrs. Katherine Rohan the 8th Grade teacher, Andres Patino and Clive Lindo, students from Centennial Middle School that is involved with a competition regarding issues from their communities to the

Mayor, Council and the public. Mrs. Rohan and her students provided a brief presentation of their project.

- C. Presentation by Jeff Schottenstein, Schottenstein Realty. Mr. Schottenstein provided a brief presentation of the renovation projects at Southland Mall. He advised that they are completing a major renovation of the mall. Their goal has been to develop a retail entertainment complex for the Town as well as the South Miami Dade trade area. Towards this project they have been successful in bringing a State of the Art Regal Theater, several restaurants, stores and a fitness center.
- D. Presentation by Chuck Barrentine on Hurricane/Disaster Preparedness: Mr. Barrentine advised that seventeen people of the community expressed interest in being involved with the Hurricane/Disaster Preparedness Citizens Committee. A meeting is scheduled for April 20, 2006. The purpose for this meeting is to gather ideas from the members of the community and to form the Citizen Emergency Response Team. He provided a brief summary of the components of the National Incident Management System. He advised that the town has to be NIMS compliant in order to received Federal Funding.

III. APPROVAL OF MINUTES

Minutes of the March 16, 2006 Council Meeting: Vice Mayor Vrooman moved to approve. Seconded by Council Member Sochin. All voted in favor. The Minutes were approved unanimously.

IV. TOWN MANAGER'S REPORT

Mr. Alexander reported that Town Hall had moved into new office space and utilizing furniture donated by Kid's Hope United. He advised that he was meeting with the architect next week to work on the design for the layout of the new office space.

The Town Manager reported that he had several negotiating meetings with Miami-Dade County. However, still missing were vital financial information necessary to create the Town's budget.

The Town Manager provided a brief report regarding the Council's Trip to Tallahassee to meet with Legislators important to the Town.

He advised that he was working the South Florida Water Management District for funding. He also worked with Mr. Chuck Barrantine regarding Hurricane/Disaster Preparedness.

The Town Manager explained that staff will be posting the official notices for upcoming committee meetings at the Town Hall office building.

The Town Manager advised that the Finance Director informed him that he had some serious health problems and would not be able to fulfill his contract.

V. TOWN ATTORNEY'S REPORT

Attorney Bierman introduced the newest attorney on their team, Mr. Andrew Mai, to the Town Council.

Attorney Bierman provided information regarding the Miami-Dade County Sexual Predator Ordinance to the Council. Council Member Bell asked for the Miami-Dade County Sexual Predator Ordinance to be read into the record. Attorney Bierman advised that the Town Council was not prohibited from adopting a more restricted ordinance.

VI. BOARD AND COMMITTEE REPORTS

- A. Council Member Sochin noted that Town Hall Citizens Committee will meet in approximately a month to discuss long range plans for a permanent location for Town Hall.
- B. Mayor Advisory Citizens Committee Structure Report. Mr. David Bader provided a presentation regarding how Citizens Advisory Committees are formed and developed.

VII. CONSENT AGENDA: None at this time.

VIII. RESOLUTIONS

- A. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE CORRADINO GROUP AS INTERIM TOWN PLANNING AND ZONING STAFF; PROVIDING FOR A DETERMINATION OF IMPRACTIBILITY AS TO COMPETITIVE BIDDING AND PROVIDING FOR AN EFFECTIVE DATE.

Council Member Bell moved to approve. Seconded by Council Member Meerbott. All voted in favor. Resolution No. 06-32 was adopted unanimously (5-0).

- B. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, ESTABLISHING THE MEETING SCHEDULE OF THE TOWN COUNCIL; ESTABLISHING THE LOCATION; PROVIDING AN EFFECTIVE DATE.

Mayor Cosgrove provided a brief explanation of this resolution regarding changing Council Meeting from first and third Thursday to second and fourth Thursday.

Council Member Bell offered a substitute resolution changing the Council Meetings from the first and third Thursday to the first and third Wednesday of each month beginning from June to December, 2006.

Council Member Sochin noted that there may be a conflict with religious groups meeting on Wednesday evenings.

Council Member Meerbott advised that those religious group meetings commenced at 6:00 pm. Therefore, he did not think there would be a conflict.

Council Member Bell moved to approve Substitute Resolution No. 06-33 Seconded by Vice Mayor Vrooman. All voted in favor. Resolution No. 06-33 was adopted unanimously (5-0).

- C. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AUTHORIZING THE TOWN MANAGER TO ENTER INTO THE "INTERLOCAL AGREEMENT FOR PUBLIC SCHOOL FACILITY PLANNING IN MIAMI-DADE COUNTY;" AND PROVIDING FOR EFFECTIVE DATE

Attorney Susan Trevarthen provided an explanation that the State Statute requires the Town of Cutler Bay to adopt this agreement to provide for future growth and development.

Council Member Sochin moved to approve. Seconded by Council Member Meerbott. All voted in favor. Resolution No. 06-34 was adopted unanimously (5-0).

- D. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AUTHORIZING THE INTERIM TOWN MANAGER TO APPOINT A LIAISON TO THE MIAMI-DADE COUNTY EMERGENCY OPERATIONS CENTER; PROVIDING AN EFFECTIVE DATE.

Interim Town Manager advised that he appoint Mayor Cosgrove and himself as the liaisons to the Miami-Dade County Emergency Operations Center because of the limited number of staff available. He explained that as the Town hires more staff then he would consider designating other personnel.

Vice Mayor Vrooman moved to approve. Seconded by Council Member Sochin. All voted in favor. Resolution No. 06-35 was adopted unanimously (5-0).

- E. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO PUBLIC HEALTH; REQUESTING THAT MIAMI-DADE COUNTY RELEASE FIVE MILLION DOLLARS FROM THE MIAMI-DADE COUNTY GENERAL OBLIGATION BOND PROGRAM TO COMMUNITY HEALTH OF SOUTH DADE, INC.; PROVIDING AN EFFECTIVE DATE.

Mr. Michael Skesti, CHI Director provided a brief explanation that the general obligation fund that had been voted on last September by the citizens of Miami-Dade County had included a line item for Community Health of South to receive 5 million dollars. He advised that in order for them to receive this money the Town of Cutler Bay had to adopt this resolution.

Mayor Cosgrove provided a brief explanation regarding this funding.

Council Member Bell moved to approve. Seconded by Council Member Meerbott. All voted in favor. Resolution No. 06-36 was adopted unanimously (5-0).

- F. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA RELATING TO FINANCE; REQUESTING FUNDING FROM MIAMI-DADE COUNTY IN THE AMOUNT OF \$600,000; PROVIDING AN EFFECTIVE DATE

The Town Manager provided a brief explanation regarding utilities franchise fees that has to be transferred from Miami-Dade County to the Town of Cutler Bay.

Mayor Cosgrove noted that the Town Attorney was negotiating with the County for transfer of these funds. He explained that this amount of money was a partial distribution.

Council Member Sochin moved to approve. Seconded by Vice Mayor Vrooman. All voted in favor. Resolution No. 06-37 was adopted unanimously (5-0).

- G. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, URGING THE FLORIDA LEGISLATURE TO AMEND THE FWUA LEGISLATION TO AMEND THE ARBITRARY WINDSTORM "LINE" OF EAST OF U.S. HIGHWAY 1 AND EAST OF I-95 SO AS TO FAIRLY DISTRIBUTE RISK THROUGHOUT THE STATE; AND SEEKING SUPPORT FROM ALL NEIGHBORING

COMMUNITIES WITH THIS INITIATIVE; PROVIDING AN EFFECTIVE DATE.

Council Member Bell moved to approve. Seconded by Council Member Sochin. All voted in favor. Resolution No. 06-38 was adopted unanimously (5-0).

- H. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO PROCUREMENT; PROVIDING FOR A DETERMINATION OF IMPRACTICABILITY AS TO COMPETITIVE BIDDING; AUTHORIZING THE INTERIM TOWN MANAGER TO UTILIZE A TEMPORARY STAFFING AGENCY TO HIRE STAFF NECESSARY TO CONDUCT TOWN BUSINESS; PROVIDING AN EFFECTIVE DATE.

Town Manager explained that this will provide staffing for the Town Hall office quickly.

Mayor Cosgrove asked the Town Manager to find local people that are interested and qualified to fill those temporary staff positions.

Town Manager explained that he was working through a temporary staffing service.

Council Member Meerbott moved to approve. Seconded by Council Member Sochin. All voted in favor. Resolution No. 06-39 was adopted unanimously (5-0).

IX. RESOLUTIONS REQUIRING PUBLIC HEARING

- A. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, GRANTING FINAL PLAT APPROVAL FOR HOMESTAR AT CUTLER BAY PALMS LLC, GENERALLY LOCATED NORTH OF SW 212TH STREET, WEST OF SW 92ND AVENUE, SOUTH OF SW 208TH STREET, AND EAST OF 97TH AVENUE, AS LEGALLY DESCRIBED IN EXHIBIT "A;" CONSISTING OF 104 SINGLE FAMILY HOMES ON APPROXIMATELY 22 ACRES; AND PROVIDING FOR AN EFFECTIVE DATE.

Town Attorney, Chad Friedman provided a brief explanation regarding this Final Plat approval for the Homestar at Cutler Bay Palms, LLC.

Attorney Felix Lasarte representing the developers of Homestar at Cutler Bay Palms, LLC.; provided a brief presentation regarding this development to the Mayor and Council.

Council Member Bell asked Attorney Lasarte what size were the lots and if the development was consistent with the adjacent development.

Attorney Lasarte answered that the standard lot sizes were 50' x 100' and 60' x 100'. He noted that the development was consistent with the adjacent development.

Council Member Sochin asked if Miami-Dade County had approved this plat.

Town Attorney Friedman answered that Miami-Dade County had approved the plat.

Council Member Meerbott asked if it was five (5) units per acre?

Attorney Lasarte answered that there was 5.5 units per acre in this development.

Mr. Ed Wolmer; 9370 Dominican Drive, spoke in regards to this matter.

Council Member Bell moved to approve. Seconded by Vice Mayor Vrooman. All voted in favor. Resolution No. 06-40 was adopted unanimously (5-0)

X. ORDINANCES FOR FIRST READING AND EMERGENCY ORDINANCES

- A. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CREATING A COST RECOVERY ADMINISTRATIVE PROGRAM; PROVIDING FOR A REPEALER; PROVIDING FOR ORDINANCES IN CONFLICT, SEVERABILITY AND AN EFFECTIVE DATE.

Town Manager explained that this would provide an opportunity to charge administrative fees for certain applications which would assist in recovering cost for processing those applications.

No one from the public spoke in regards to this ordinance.

Council Member Meerbott moved to adopt. Seconded by Council Member Sochin.

A roll call vote was taken as follows: Mayor John F. Cosgrove: Yes; Vice Mayor Vrooman: Yes; Council Member Meerbott: Yes; Council Member Sochin: Yes; Council Member Bell: Yes. The proposed Ordinance passed on first reading.

- B. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, IMPLEMENTING THE PROVISIONS OF SECTION 286.0115, FLORIDA STATUTES, TO ESTABLISH A PROCEDURE GOVERNING EX PARTE COMMUNICATIONS WITH LOCAL PUBLIC OFFICIALS CONCERNING QUASI-JUDICIAL MATTERS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE TOWN CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Cosgrove provided a brief explanation regarding this emergency ordinance.

No one from the public spoke in regards to this matter.

Vice Mayor Vrooman expressed that he had some reservation regarding this ordinance, but he would vote to move it forward.

Council Member Bell moved to adopt. Seconded by Council Member Sochin.

A roll call vote was taken as follows: Mayor John F. Cosgrove: Yes; Vice Mayor Vrooman: Yes; Council Member Meerbott: Yes; Council Member Sochin: Yes; Council Member Bell: Yes. The proposed Ordinance passed on first reading

- C. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO THE OFFICIAL SEAL OF THE TOWN OF CUTLER BAY; DESIGNATING THE TEMPORARY OFFICIAL SEAL OF THE TOWN OF CUTLER BAY; PROVIDING FOR USE AND PENALTIES; PROVIDING FOR ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.

Town Attorney Bierman provided a brief explained that the Town has a temporary design of a Town Seal which was adopted on an emergency basis which has to be renewed by one hundred and eight days and this was one of those ordinances.

Council Member Meerbott moved to adopt. Seconded by Council Member Bell.

A roll call vote was taken as follows: Mayor John F. Cosgrove: Yes; Vice Mayor Vrooman: Yes; Council Member Meerbott: Yes; Council Member Sochin: Yes; Council Member Bell: Yes. The proposed Ordinance passed on first reading

XI. ORDINANCES FOR SECOND READING AND PUBLIC HEARING:

- A. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CREATING THE URBAN CENTER DISTRICT (UCD) FOR THE AREA GENERALLY LOCATED SOUTH OF THE INTERSECTION OF THE HOMESTEAD EXTENSION OF THE FLORIDA TURNPIKE (HEFT) AND U.S. 1, WEST OF THE HEFT TO THE TOWN LIMITS, AND NORTH OF THE C-1 CANAL (BLACK CREEK CANAL); PROVIDING FOR A REPEALER; PROVIDING FOR ORDINANCES IN CONFLICT, SEVERABILITY AND AN EFFECTIVE DATE.

Vice Mayor Vrooman provided a brief explanation regarding the Urban Center District. This project had been in the development stages since July 2002, and it was born from a series of public meetings, workshops and hearings. He advised that this a unique project because it has created a coalition combining the efforts of business interest, residents and the environmentalist.

Mr. Joe Corradino with the Corradino Group explained that he was familiar with the project from its inception. He advised that this project was well planned and much needed land use in the South Miami area.

The following individuals spoke in regards to this matter: Manny Williams, 9750 SW 215 Way; John Breder, 9861 SW 184 Street; Adrian Alexander, 9760 Haitian Drive; Alphonsonio Sergio, 9261 Caribbean Blvd.; Nancy McCue, 20827 SW 86th Avenue; Louise Lockwood, 9071 Richman Drive; Chuck Barentine, 19502 SW 87th Place; Ed Wolmer, 9370 Dominican Drive.

After discussion regarding the density of the Charrette project the Council moved to adopt this ordinance on second reading.

Council Member Sochin moved to adopt. Seconded by Council Member Bell.

A roll call vote was taken as follows: Mayor John F. Cosgrove: Yes; Vice Mayor Vrooman: Yes; Council Member Meerbott: Yes; Council Member Sochin: Yes; Council Member Bell: Yes. Ordinance No. 60-06 was adopted on second reading unanimously (5-0).

Vice Mayor Vrooman directed staff to take the next step for rezoning in the Urban District Center.

Mayor Cosgrove directed staff to issue an administrative moratorium regarding development of new projects within the Charrett. He asked legal staff to prepare an ordinance regarding a moratorium to be noticed for the May 4, 2006 Council Meeting for first reading.

XII. PUBLIC COMMENTS

The following individuals addressed the Council: Bill Meikeljohn, 9311 Sterling Drive; Chuck Barentine, 19502 SW 87th Place; Jim Shiver, 20020 SW 105th Avenue; Joy Cooper, 9365 Nassau Drive; Ron Metro, 10230 Dolphin Road; Adrian Alexander, 9760 Haitian Drive.

XIII. MAYOR AND COUNCIL COMMENTS

- A. Council Member Sochin advised that thorough background checks should be completed for all key personnel for permanent positions in light of the recent financial disclosure by the Interim Town Manager.

Council Member Sochin reported that he is very concerned regarding a Utility Tree Ordinance in preparation for Hurricane Preparedness. He asked for this ordinance to be brought to the next Council Meeting.

- B. Council Member Bell requested additional guidance from Council Member Sochin who had asked her to form a committee for a party celebrating the town. She expressed an interest in discussing it at the upcoming Town Council Workshop.

Council Member Bell reported that she had spoke with individuals from the Miami-Dade County to schedule a meeting regarding the parks. There will be an inventory of all equipment at the parks to be transferred to the town.

Council Member Bell advised that the Town Clerk/Communication Citizens Committee will be meeting next week.

In reading the recent Miami-Dade County Sexual Predator Ordinance which was updated in November stating that the town needs to post Sexual Predator signs at the parks Council Member Bell asked the Town Attorney for clarification.

The Town Attorney advised that since the parks currently belong to Miami-Dade County, the County will be posting the signs.

Council Member Bell reported that there will be a committee for the logo contest, and she is asking Council Members to remember to appoint someone to this committee that will be a judge in the logo contest.

- C. Council Member Meerbott provided a report concerning his recent attendance at the Cutler Bay Business Association meeting. He encouraged all to get involved. The meetings will be on the second Thursday of each month. He

reminded everyone of the Peterson's Harley Davidson Gala Ball Fund Raising event on April 21, 2006.

- D. Vice Mayor Vrooman reported that the Council and Town Manager trip to Tallahassee was very successful.
- E. Mayor Cosgrove advised that national searches will be conducted for hiring permanent personnel and background searches will be conducted, but the individual's qualifications and experience will also be taken into consideration.

Mayor Cosgrove reported that he is anxious to start working on the Town Parks.

Mayor Cosgrove advised that he try to be fair to every citizen at the Council Meeting. He stated that he would be contacting Mr. Ed Wolmers after the Council Meeting regarding the matter that occurred at this Council Meeting.

XIV. OTHER BUSINESS: None at this time

XV. NEXT MEETING ANNOUNCEMENT AND ADJOURNMENT

Mayor Cosgrove asked Council Member Bell to arrange for the invocation and pledge of allegiance for the next Council Meeting.

He announced that the next Council Meeting will be held on May 4, 2006 at 7:00 pm at the South Dade Governmental Center. He asked staff to contact East Ridge for the first Wednesday meeting in June.

The Meeting was officially adjourned at 10:53 pm.

Prepared and submitted by:

Elizabeth A. Sewell, CMC
Interim Town Clerk

Adopted by the Town Council on
this 4th day of May, 2006

Paul S. Vrooman, Mayor

PURSUANT TO FLORIDA STATUTES 286.0105, THE TOWN HEREBY ADVISES THE PUBLIC THAT IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THIS COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT ITS MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT FOR SUCH PURPOSE, THE AFFECTED PERSON MAY NEED TO ENSURE THAT VERBATIM RECORD OF THE PROCEEDING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED THIS NOTICE DOES NOT CONSTITUTE CONSENT BY THE TOWN FOR THE INTRODUCTION OR ADMISSION OF OTHERWISE INADMISSIBLE OR IRRELEVANT EVIDENCE, NOR DOES IT AUTHORIZE CHALLENGES OR APPEALS NOT OTHERWISE ALLOWED BY LAW.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, ENCOURAGING THE DEPARTMENT OF TRANSPORTATION TO INSTALL HIGHWAY SIGNAGE ALONG THE FLORIDA TURNPIKE FROM SW 152 STREET TO SW 216 STREET TO EFFECT THE CO-DESIGNATION OF THE TURNPIKE IN HONOR OF FORMER STATE REPRESENTATIVE/MAYOR OF THE TOWN OF CUTLER BAY JOHN F. COSGROVE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, former State Representative and the first Mayor of the Town of Cutler Bay John F. Cosgrove passed away on April 19, 2006, following a exemplary lifetime of public service; and

WHEREAS, the Honorable Representative Edward Bullard and the Honorable Senator Larcenia Bullard, together with sponsorship from the Honorable Representatives Ed Jennings, Jr., Ray Sansom and Senator Rod Smith, have proposed that the Florida Turnpike from S.W. 152 Street to S.W. 216 Street be co-designated in honor of this outstanding statesman, husband, father, and friend; and

WHEREAS, the Town of Cutler Bay supports the honor bestowed posthumously upon Mayor John F. Cosgrove in order to commemorate the remarkable accomplishments of this great leader.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. The Town of Cutler Bay, Florida, hereby expresses its support and encourages the Florida Department of Transportation to install appropriate highway signage from S.W. 152 Street and S.W. 216 Street to honor the late John F. Cosgrove, former State Representative and the first Mayor of the Town of Cutler Bay, Florida

Section 2. This resolution shall take effect immediately upon approval.

PASSED AND ADOPTED this 4th day of May, 2006.

Attest:

Elizabeth Sewell
Town Clerk

Paul S. Vrooman
Mayor

APPROVED AS TO FORM:

Mitchell Bierman
Town Attorney

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman _____

Council Member Timothy Meerbott _____

Council Member Ernest Sochin _____

Council Member Peggy Bell _____

RESOLUTION NO. 06-____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA GRANTING THE TOWN CLERK AUTHORITY TO PAY FOR THE ADVERTISING OF PUBLIC HEARINGS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, state law requires that public hearings be advertised; and

WHEREAS, the Town Clerk is responsible for advertising these hearings in conformance with the law; and

WHEREAS, the Council wishes to grant authority to the Town Clerk to pay for the advertising of public hearings.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above Recitals are true and correct and are incorporated herein by this reference.

Section 2. Authority. The Town Clerk is hereby authorized to pay for the advertising of public hearings.

Section 3. Effective Date. This Resolution shall become effective immediately upon its adoption.

PASSED and ADOPTED this ____ day of May, 2006.

PAUL VROOMAN
Mayor

RESOLUTION NO. 06-_____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING AN AGREEMENT WITH THE INSTITUTE FOR COMMUNITY COLLABORATION, INC. FOR THE FACILITATION OF A COUNCIL WORKSHOP; PROVIDING FOR A DETERMINATION OF IMPRACTICALITY AS TO COMPETITIVE BIDDING AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay (the "Town") requires services for the facilitation of a Council Workshop; and

WHEREAS, the Town Council finds that it is both necessary and appropriate to retain The Institute for Community Collaboration, inc. (the "Consultant"); and

WHEREAS, in accordance with the provisions of Town Charter section 3.10, the Interim Town Manager has stated in writing and the Town Council has determined that it is impracticable to solicit competitive bids or proposals for such services.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. **Recitals.** The above Recitals are true and correct and are incorporated herein by this reference.

Section 2. The Interim Town Manager is authorized to execute an agreement, on behalf of the Town, with the Consultant, the competitive bidding requirements of Section 3.10 of the Town Charter are hereby waived to the extent they would require a competitive process for the selection of a firm for financial services consulting.

Section 3. This resolution shall become effective immediately upon its adoption.

PASSED and ADOPTED this ____ day of May, 2006.

PAUL VROOMAN
Mayor

Attest: _____
ELIZABETH SEWELL
Interim Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA COLE & BONISKE, P.A.
Interim Town Attorney

FINAL VOTE AT ADOPTION:

Mayor Paul Vrooman _____
Council Member Timothy J. Meerbott _____
Council Member Ernest Sochin _____
Council Member Peggy Bell _____



April 26, 2006

To: Mayor and Council

From: Steven Alexander
Acting Town Manager

RE: Council Workshop

The Town Council has a need to participate in a visioning workshop scheduled for Saturday, May 6, 2006.

The Town Charter anticipates the need for this immediate action and provides mechanisms for it under Section 8.8 – Transitional Ordinances and Resolutions and Section 3.10 – Competitive Bid Requirements.

RECOMMENDATION

The Institute for Community Collaboration, Inc. is a qualified 501(c) 3 nonprofit affiliated with the South Florida Regional Planning Council. One of the core purposes of the Institute is to provide neutral process design and facilitation services. The purpose of the meeting is for the Council to come to some consensus about a vision statement and administrative structure.

It is neither practical nor advantageous for the Town to use formal competitive bidding procedures for the acquisition of essential interim personnel and services needed immediately and that, subject to the provisions of the Town Charter cited above, that formal competitive bidding be waived for the following interim services and that the selection of the services be based on the recommendation of the relevant Council member upon 4/5 vote of the Town Council:

Funds for these activities will be available from the \$300,000 advance from Miami-Dade County.

My recommendation is that formal competitive bidding be waived, and that the Acting Town Manager be authorized to contract with the Institute for Community Collaboration, Inc. to provide this service. This contract will be at a cost of \$5,000.

RESOLUTION NO. 06-_____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A CONSULTING AGREEMENT WITH THE NONPROFIT ASSISTANCE CENTER FOR ACCOUNTING AND FINANCIAL SERVICES; PROVIDING FOR A DETERMINATION OF IMPRACTICALITY AS TO COMPETITIVE BIDDING AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay (the "Town") requires the services of a accounting and financial services consultant to assist the Town in managing its finances; and

WHEREAS, the Town Council finds that it is both necessary and appropriate to retain The Nonprofit Assistance Center (the "Consultant"); and

WHEREAS, in accordance with the provisions of Town Charter section 3.10, the Interim Town Manager has stated in writing and the Town Council has determined that it is impracticable to solicit competitive bids or proposals for such services.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above Recitals are true and correct and are incorporated herein by this reference.

Section 2. The Interim Town Manager is authorized to execute an agreement, substantially in the form of the agreement attached as Exhibit "A" on behalf of the Town, with the Consultant and the competitive bidding requirements of Section 3.10 of the Town Charter are hereby waived to the extent they would require a competitive process for the selection of a firm for accounting and financial services consulting.

Section 3. This resolution shall become effective immediately upon its adoption.

PASSED and ADOPTED this ____ day of May, 2006.

PAUL VROOMAN
Mayor

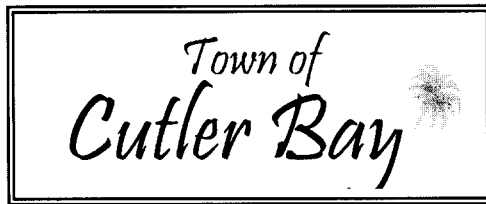
Attest: _____
ELIZABETH SEWELL
Interim Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA COLE & BONISKE, P.A.
Interim Town Attorney

FINAL VOTE AT ADOPTION:

Mayor Paul Vrooman _____
Council Member Timothy J. Meerbott _____
Council Member Ernest Sochin _____
Council Member Peggy Bell _____



April 26, 2006

To: Mayor and Council

From: Steven Alexander
Acting Town Manager

RE: CFO services

The Town has a need to replace Randy White as the CFO with the Nonprofit Assistance Center, which will provide the services of Irwin Williams, a licensed Certified Public Accountant to aid in the implementation of a governmental accounting system, develop the annual budget with the Town Manager, implement accounting policies & procedures, prepare the monthly financial statements.

The Town Charter anticipates the need for this immediate action and provides mechanisms for it under Section 8.8 – Transitional Ordinances and Resolutions and Section 3.10 – Competitive Bid Requirements.

RECOMMENDATION

It is neither practical nor advantageous for the Town to use formal competitive bidding procedures for the acquisition of essential interim personnel and services needed immediately and that, subject to the provisions of the Town Charter cited above, that formal competitive bidding be waived for the following interim services and that the selection of the services be based on the recommendation of the relevant Council member upon 4/5 vote of the Town Council:

Funds for these activities will be available from the \$300,000 advance from Miami-Dade County.

My recommendation is that formal competitive bidding be waived, and that the Acting Town Manager be authorized to contract with the Nonprofit Assistance Center to provide all of these services. This contract will be at a cost of \$6,000 a month and will expire September 30, 2006.



CONSULTING AGREEMENT

This Agreement, dated April 1, 2006, is entered into between **The Nonprofit Assistance Center** (the "CONSULTANT") and the **Town of Cutler Bay** (Cutler Bay).

1. Engagement. Cutler Bay engages CONSULTANT to perform, and CONSULTANT agrees to use its best efforts to perform, the services specifically set forth in the Scope of Services attached hereto, and incorporated herein by reference, as Exhibit A. Such services include general accounting practices such as bookkeeping, virtual CFO services and preparation and presentation of reports as required by the Cutler Bay Town Manager.
2. Term; Good Faith. The term of this Agreement shall be for an initial period of 6 months from the date set forth above. The CONSULTANT may, at its option, respond to any RFP or other similar process by Cutler Bay relative to accounting services. If applicable, no later than 30 days prior to the expiration of the initial period, the parties may negotiate a subsequent term. Given the nature of the public process entailed in securing governmental approvals, both Cutler Bay and CONSULTANT acknowledge and commit to acting in good faith with each other. The Parties agree to not willfully take advantage of the nature of the public review process to manipulate the success of any particular project to the financial or business detriment of the other Party.
3. Compensation. In consideration of the services to be rendered by CONSULTANT during the term of this Agreement, CONSULTANT shall receive a fee as set forth in the Scope of Services attached hereto as Exhibit A.
4. Termination. This Agreement shall be terminable by Cutler Bay upon 30-day notice to CONSULTANT. CONSULTANT will not act to deprive Cutler Bay of the business benefit of any of the projects for which CONSULTANT produces or negotiates on behalf of Cutler Bay.
5. Venue. Venue in any proceeding instituted under this Agreement shall be Miami-Dade County, Florida. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida.
6. Construction. The language in all parts of this Agreement will be construed as a whole according to its fair meaning and not strictly for or against any party. Each party has reviewed this Agreement with their respective counsel. Any rule of

construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendments to it.

7. Severability. In the event a court of competent jurisdiction declares any term or provision of this Agreement to be invalid or unenforceable for any reason, this Agreement will remain in full force and effect, and either: (a) the invalid or unenforceable provision will be modified to the minimum extent necessary to make it valid and enforceable; or (b) if such a modification is not possible, this Agreement will be interpreted as if that invalid or unenforceable provision were not a part of this Agreement.

8. Entire Agreement; Modification. This Agreement constitutes the entire understanding of the parties and supersedes any and all prior discussions, negotiations, agreement and understandings, whether oral or written, with respect to its subject matter. This Agreement may be modified only by a written instrument executed by Cutler Bay and CONSULTANT.

In witness whereof, the parties have executed this Agreement on the date set forth above.

Irwin Williams, CPA

CONSULTANT

Cutler Bay

Exhibit A

Scope of Services

The Nonprofit Assistance Center will provide the services of Irwin Williams, a licensed Certified Public Accountant in the State of Florida to act as the Director of Finance, to oversee the work of the Cutler Bay accounting staff, work on special projects for the Cutler Bay Town Manager, aid in the implementation of a governmental accounting system, develop the annual budget with the Town Manager, implement accounting policies & procedures, prepare the monthly financial statements and to present the quarterly financials to the Cutler Bay Council. Mr. Williams will devote 48 hours per month towards this endeavor.

The fee for the above services will be Six Thousand Dollars (\$6,000) per month for a period of six months. This monthly fee will be due and payable on the first day of each month, commencing April 1, 2006.

RESOLUTION NO. 06 - ____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO PROCUREMENT; PROVIDING FOR A DETERMINATION OF IMPRACTICALITY AS TO COMPETITIVE BIDDING AND AUTHORIZING THE ACTING TOWN MANAGER TO PROCURE A LARGE CAPACITY COLOR COPIER, WITH SERVICE AND SUPPLY BY LEASE OR PURCHASE AT A REASONABLE COST TO BE DETERMINED BY THE MANAGER; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay, Florida, (the "Town") is engaged in the start-up of municipal government and the provision of initial government services; and

WHEREAS, it is necessary to install a large capacity color copier in the Town's offices for the efficient conduct of Town's business; and

WHEREAS, in accordance with Section 3.10 of the Town Charter, the Town Manager has made a written recommendation to the Town Council and the Town Council has determined that it is impracticable to competitively bid these items because of the immediate need to procure said items; and

WHEREAS, the Mayor and Town Council desire to authorize the Acting Town Manager to obtain a large capacity color copier for the Town Offices complete with installation, service and supply by lease or purchase at a reasonable cost to be determined by the Manager.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. The Acting Town Manager is authorized to select and procure a large capacity color copier for the Town Offices complete with installation, service and supply by lease or purchase at a reasonable cost to be determined by the Manager and the provisions of Section 3.10 of the Town Charter are hereby waived to the extent they would require competitive procurement of the same.

Section 3. This resolution shall take effect immediately upon approval.

PASSED and ADOPTED this _____ day of May, 2006.

PAUL S. VROOMAN, MAYOR

ATTEST:

Elizabeth Sewell, CMC
INTERIM TOWN CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

INTERIM TOWN ATTORNEY

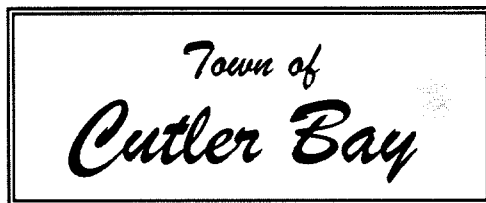
FINAL VOTE ON ADOPTION

Mayor Paul S. Vrooman _____

Council Member Timothy J. Meerbott _____

Council Member Ernest N. Sochin _____

Council Member Peggy R. Bell _____



April 26, 2006

To: Mayor and Council

From: Steven Alexander
Acting Town Manager

RE: Copier lease, service and supply

The Town has a need for a large capacity color copier. This type of copier is used by other government entities such as Homestead, El Portal, City of Miami, City of Miami Beach, Miami Dade County Schools, and Miami Dade County, and has been selected by a procurement process involving competitive bids. The Town of Cutler Bay is able to benefit from their procurement processes by "piggybacking" on their negotiated agreements and entering into a 48 month lease program at \$252.90 per month with a per copy charge.

The Town Charter anticipates the need for this immediate action and provides mechanisms for it under Section 8.8 – Transitional Ordinances and Resolutions and Section 3.10 – Competitive Bid Requirements.

RECOMMENDATION

It is neither practical nor advantageous for the Town to use formal competitive bidding procedures for the acquisition of essential interim personnel and services needed immediately and that, subject to the provisions of the Town Charter cited above, that formal competitive bidding be waived for the following interim services and that the selection of the services be based on the recommendation of the relevant Council member upon 4/5 vote of the Town Council:

Funds for these activities will be available from the \$300,000 advance from Miami-Dade County.

My recommendation is that formal competitive bidding be waived, and that the Acting Town Manager be authorized to contract with Toshiba Business Solutions of Florida to provide this equipment and all of these services.

RESOLUTION NO. 06 - ____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO PROCUREMENT; PROVIDING FOR A DETERMINATION OF IMPRACTICALITY AS TO COMPETITIVE BIDDING AND AUTHORIZING THE ACTING TOWN MANAGER TO REMIT PAYMENT FOR TRAVEL BY COUNCIL TO TALLAHASSEE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay, Florida, (the "Town") is engaged in the start-up of municipal government and the provision of initial government services; and

WHEREAS, it is necessary to remit payment to The Journey Shoppe for the travel of Council to Tallahassee to attend Dade Days for the efficient conduct of Town's business; and

WHEREAS, in accordance with Section 3.10 of the Town Charter, the Town Manager has made a written recommendation to the Town Council and the Town Council has determined that it is impracticable to competitively bid these items because of the immediate need to procure said items; and

WHEREAS, the Mayor and Town Council desire to authorize the Acting Town Manager to remit payment to The Journey Shoppe for the travel of Council to Tallahassee to attend Dade Days.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. The Acting Town Manager is authorized to remit payment to The Journey Shoppe for the travel of Council to Tallahassee to attend Dade Days and the provisions of Section 3.10 of the Town Charter are hereby waived to the extent they would require competitive procurement of the same.

Section 3. This resolution shall take effect immediately upon approval.

PASSED and ADOPTED this ____ day of May, 2006.

PAUL S. VROOMAN, MAYOR

ATTEST:

Elizabeth Sewell, CMC
INTERIM TOWN CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

INTERIM TOWN ATTORNEY

FINAL VOTE ON ADOPTION

Mayor Paul S. Vrooman _____

Council Member Timothy J. Meerbott _____

Council Member Ernest N. Sochin _____

Council Member Peggy R. Bell _____



April 26, 2006

To: Mayor and Council

From: Steven Alexander
Acting Town Manager

RE: travel agency

The Town needed to utilize The Journey Shoppe agency to make the travel arrangements for the Council trip to Tallahassee during Dade Days on April 3 and 4, 2006. Due to time constraints without credit options available to the town at this time, the travel agency was used for the flights and graciously agreed to bill the town. However, the total exceeded the allowed \$2000 per vendor by resolution 06-29.

The Town Charter anticipates the need for this immediate action and provides mechanisms for it under Section 8.8 – Transitional Ordinances and Resolutions and Section 3.10 – Competitive Bid Requirements.

RECOMMENDATION

It is neither practical nor advantageous for the Town to use formal competitive bidding procedures for the acquisition of essential interim personnel and services needed immediately and that, subject to the provisions of the Town Charter cited above, that formal competitive bidding be waived for the following interim services and that the selection of the services be based on the recommendation of the relevant Council member upon 4/5 vote of the Town Council:

Funds for these activities will be available from the \$300,000 advance from Miami-Dade County.

My recommendation is that formal competitive bidding be waived, and that the Acting Town Manager be authorized to pay The Journey Shoppe the outstanding balance of \$3110.40.

The Journey Shoppe
frankw@thejourneyshoppe.com
11921 South Dixie Hwy, #203
Miami, FL 33156
phn305-233-4544/fx305-252-5978

CosgroveJ

Sale Invoice No: 804023
Date Issued: 4/3/2006
Agent: FW

Passenger Type	Department Ticket/Conf No	Depart Date Airline/Vendor	Return Date A/L	Remarks Itin	Total Fare
From	To	Flight	Depart	Arrive	
Alexander/Steven		4/3/2006	4/4/2006		
Air-Dom.	1260294104	Delta Air Lines		MIA/TLH/MIA	767.60
MIA Miami	TLH Tallahassee	6333	DL 4/3/2006 6:45:00 PM	4/3/2006 8:10:00 PM	
TLH Tallahassee	MIA Miami	6111	DL 4/4/2006 7:20:00 PM	4/4/2006 8:40:00 PM	
Bell/Peggy		4/3/2006	4/4/2006		
Air-Dom.	1260294105	Delta Air Lines		MIA/TLH/MIA	767.60
MIA Miami	TLH Tallahassee	6333	DL 4/3/2006 6:45:00 PM	4/3/2006 8:10:00 PM	
TLH Tallahassee	MIA Miami	6111	DL 4/4/2006 7:20:00 PM	4/4/2006 8:40:00 PM	
Meerbot/Tim		4/3/2006	4/4/2006		
Air-Dom.	1260294106	Delta Air Lines		MIA/TLH/MIA	767.60
MIA Miami	TLH Tallahassee	6333	DL 4/3/2006 6:45:00 PM	4/3/2006 8:10:00 PM	
TLH Tallahassee	MIA Miami	6111	DL 4/4/2006 7:20:00 PM	4/4/2006 8:40:00 PM	
Vrooman/Paul		4/3/2006	4/4/2006		
Air-Dom.	1260294107	Delta Air Lines		MIA/TLH/MIA	767.60
MIA Miami	TLH Tallahassee	6333	DL 4/3/2006 6:45:00 PM	4/3/2006 8:10:00 PM	
TLH Tallahassee	MIA Miami	6111	DL 4/4/2006 7:20:00 PM	4/4/2006 8:40:00 PM	
Alexander/Steven		4/3/2006	4/4/2006		
Hotel	87101891	Courtyard Tallahassee Capital			
		1018 Appalachee Parkway			
		Tallahassee FL 32301			
		+1 (850) 222-8822			
Bell/Peggy		4/3/2006	4/4/2006		
Hotel	87101921	Courtyard Tallahassee Capital			
		1018 Appalachee Parkway			
		Tallahassee FL 32301			
		+1 (850) 222-8822			
Meerbot/Tim		4/3/2006	4/4/2006		
Hotel	87101969	Courtyard Tallahassee Capital			
		1018 Appalachee Parkway			
		Tallahassee FL 32301			
		+1 (850) 222-8822			
Vrooman/Paul		4/3/2006	4/4/2006		

4/6/2006 3:39:29 PM

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The Journey Shoppe
 frankw@thejourneyshoppe.com
 11921 South Dixie Hwy, #203
 Miami, FL 33156
 phn305-233-4544/fx305-252-5978

CosgroveJ

Sale Invoice No: 804023
 Date Issued: 4/3/2006
 Agent: FW

Passenger Type	Department Ticket/Conf No	Depart Date Airline/Vendor	Return Date A/L Depart	Remarks Itin	Arrive	Total Fare
Hotel	87101998	Courtyard Tallahassee Capital 1018 Appalachee Parkway Tallahassee FL 32301 +1 (850) 222-8822	4/3/2006			40.00
Alexander/Steven Air-Dom.						

Invoice Total: 3,110.40
 Balance Due: 3,110.40

RESOLUTION NO. 06-_____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A CONSULTING AGREEMENT WITH THE GOVERNMENT SERVICES GROUP, INC. FOR STRATEGIC BUDGET SERVICES; PROVIDING FOR A DETERMINATION OF IMPRACTIBILITY AS TO COMPETITIVE BIDDING AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay (the "Town") requires the services of a strategic budgeting consultant to assist the Town in managing its finances; and

WHEREAS, the Town Council finds that it is both necessary and appropriate to Government Services Group, inc. (the "Consultant"); and

WHEREAS, in accordance with the provisions of Town Charter section 3.10, the Interim Town Manager has stated in writing and the Town Council has determined that it is impracticable to solicit competitive bids or proposals for such services.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above Recitals are true and correct and are incorporated herein by this reference.

Section 2. The Interim Town Manager is authorized to execute an agreement, substantially in the form of the agreement attached as Exhibit "A" on behalf of the Town, with the Consultant and the competitive bidding requirements of Section 3.10 of the Town Charter are hereby waived to the extent they would require a competitive process for the selection of a firm for Strategic Budget Services consulting.

Section 3. This resolution shall become effective immediately upon its adoption.

PASSED and ADOPTED this ____ day of May, 2006.

PAUL VROOMAN
Mayor

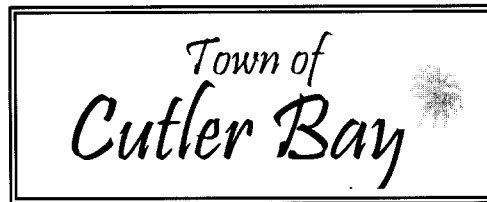
Attest: _____
ELIZABETH SEWELL
Interim Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA COLE & BONISKE, P.A.
Interim Town Attorney

FINAL VOTE AT ADOPTION:

Mayor Paul Vrooman _____
Council Member Timothy J. Meerbott _____
Council Member Ernest Sochin _____
Council Member Peggy Bell _____



April 26, 2006

To: Mayor and Council

From: Steven Alexander
Acting Town Manager

RE: Strategic Budget Services

We have an opportunity, of which I am recommending the Council approval, to aid in the implementation of forensic budget review of our current year budget with the County and the strategic planning and development of the first full annual budget with the Town Manager. Dr. David Morris, former Director and Senior Advisor of the Office of Management and Budget for Miami-Dade County will be a key participant of this team, focusing on ensuring that the Town of Cutler Bay identifies and receives all of revenues properly due to us in this transition period. He has been with that budget office from 1978 to 2006 and is in a unique position to assist the Town in this regard. Many other new municipalities have employed consultants in similar roles to assist the Manager in maximizing the resources available through the Interlocal Agreement process between the municipality and the County.

The Town Charter anticipates the need for this immediate action and provides mechanisms for it under Section 8.8 – Transitional Ordinances and Resolutions and Section 3.10 – Competitive Bid Requirements.

RECOMMENDATION

It is neither practical nor advantageous for the Town to use formal competitive bidding procedures for the acquisition of essential interim personnel and services needed immediately and that, subject to the provisions of the Town Charter cited above, that formal competitive bidding be waived for the following interim services and that the selection of the services be based on the recommendation of the relevant Council member upon 4/5 vote of the Town Council:

Funds for these activities will be available from the \$300,000 advance from Miami-Dade County.

My recommendation is that formal competitive bidding be waived, and that the Acting Town Manager be authorized to contract with the Government Services Group to provide all of these services. This contract will be at a lower cost than shown in the proposal:

Budget Processes	\$58,000
Strategic Planning and Managing	\$42,500



public sector
solutions

GOVERNMENT SERVICES GROUP, INC.

April 27, 2006

Mr. Steve Alexander, Acting Town Manager
Town of Cutler Bay
10720 Caribbean Boulevard, Suite 105
Cutler Bay, FL 33189

Dear Mr. Manager,

As recently discussed, I am attaching a proposal from Government Services Group, Inc. (GSG) for professional consulting services for the Town of Cutler Bay that will significantly assist you and the Town Council in effectively responding to initial challenges and opportunities. GSG has for many years provided extensive professional services for over 150 local government jurisdictions throughout Florida.

Our proposal is being submitted with great empathy for the shock and sadness that Mayor John Cosgove's untimely passing caused for his family, his elected colleagues and you, Cutler Bay citizens and his many friends. I have been one of John's many friends for over 25 years. As you know, I discussed Cutler Bay's immediate needs with Mayor Cosgove the day before his ill-fated trip at which time he encouraged me to meet with you.

Our proposal areas include:

- Researching and preparing the Town's FY2006-2007 budget including revenue and expense calculations, forecasting, staffing, contingencies, etc. Included is the financial review and subsequent negotiations with Miami-Dade County and the State of Florida on their FY2005-2006 year-end calculations of revenues due the Town of Cutler Bay since incorporation.
- The second part of our proposal is for the timely development of the first Strategic Plan for the Town of Cutler Bay, which when completed will become an integral part of the budget process.

Not part of this proposal, but of inestimable value to the new Town is an asset inventory that is mapped and computerized. Town assets include all public improvements, (i.e., roads, drainage, fire hydrants), solid waste and bus routes, land use, schools, special taxing districts, improved and unimproved parks, etc. Developed from the asset inventory and the strategic plan will be the Town's first capital plan, which includes all

Letter to Town Manager
Page 2
April 27, 2006

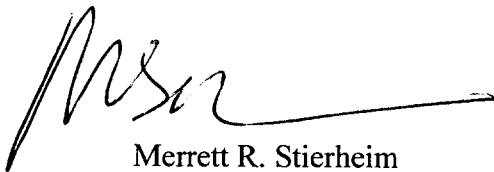
County and State capital facilities in process. Also not included are consulting services for building inspection, permitting and code enforcement. Proposals for these two projects will be submitted in the near future.

Please be aware that we have already initiated encouraging discussions seeking a State grant for Cutler Bay to partially finance the Strategic Plan and the Asset Inventory/Capital Budget. This, of course, is subject to your and the Council's approval. We will keep you fully advised of our progress on this initiative.

As the first Town Manager in Miami Lakes in 2001, I have a keen understanding of the multitude of decisions and tasks facing you and your Town Council. As the former County Manager, I moved into an office in Miami Lakes with one employee. It was a most challenging transition and the Town Council clearly understood that we needed additional professional assistance. For the Cutler Bay project, in addition to myself as Project Director, the consulting team includes Dr. David Morris, former Miami-Dade County Budget Director, Dr. Ralph Lewis, retired professor from Florida International University who led the University's strategic planning process, Ms. Dianne Wright, former Director of Budget and Finance for Miami-Dade County's Fire Rescue and Public Works Departments, and Mr. Bill Busutil, GSG Senior Consultant. Both Dianne and Bill were members of the former Miami Lakes consulting team.

Because of time constraints in State budget laws, we are ready to proceed and are available to meet and discuss this proposal with you and your Council at your convenience.

Sincerely,



Merrett R. Stierheim
Senior Advisor, GSG

cc: Robert Sheets, President & CEO, GSG
Consulting Team Members

The Town Of Cutler Bay Proposal for Consulting Services

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PROPOSAL FOR BUDGET PROCESS

The Town Charter requires that the Town Manager prepare a departmental budget for each budget year. Prior to the first public budget hearing on the proposed budget, the Town Manager shall make public a budget summary to include the estimated millage cost of each department including contingency and carryover funds for that department. State law sets forth the timeline and other requirements for the budget approval process.

This budget proposal is for professional consulting services to review and reconcile year-end County and State calculations of revenues due the Town of Cutler Bay. Concurrently, we will assist your office in researching and preparing the FY2006-2007 budget in accordance with State law.

It is our understanding that you have retained assistance to prepare the FY2005-2006 budget for Cutler Bay that is financed by advance funding from Miami-Dade County. A critical component of the FY2005-2006 budget process is the final reconciliation of revenues due the Town from both Miami-Dade County and the State of Florida. From past experience, the Town will be well served having our consulting team represent the Town in those negotiations to make certain that all credits and revenues due the Town are received.

Municipal and State revenues that must be reconciled for FY2005-2006 from the date of incorporation include, among others:

- Ad valorem taxes on property within the Town;
- The State allocation of communications tax;
- Electrical and other franchise fees;
- Utility taxes;
- Sales tax;
- State revenue sharing;
- Gas taxes, and
- Fees for service such as building and zoning fees.

Estimating the revenue in the current year and future years from municipal revenue sources requires the involvement of State and County officials. Consultants will work in harmony with the Town Manager to make sure that those calculations are accurate and fair to the Town.

Municipal services include some services that will, by the Town's Charter, be provided by the County within the County budget (e.g., fire and rescue services); services that will be provided to the Town through contract (e.g., police services); and services that may be provided directly by the Town, or through contract (e.g., park maintenance, building inspections, code enforcement, etc.). The Town may decide to assume certain services during the course of the current or next fiscal year. The analysis of the expenditure budget must take into account the costs associated with the planned method of providing services. In addition, the expenditure analysis must include estimating personnel

requirements including benefits, allocations for emergencies and other contingencies, and overhead costs for government facilities, internal services (such as finance), and governance and management. To project such costs will require close coordination with the Town Manager and County personnel.

Methodology

We propose a two-step methodology in the development of the budget:

1. Review work in progress on FY2005-2006 budget to make sure that all projected revenues have been quantified and confirmed as to availability. Involve appropriate State and County officials in estimating the amounts and timing of available funds. Verify and report any constraints on the use of these revenues. Identify revenue sources that may not be available to the Town in the first fiscal year, but that may be available in future years.
2. Create expenditure classifications and cost estimates that will be incurred in the first full fiscal year ending September 30, 2007. This process must be closely integrated with the current fiscal year budget and any immediate plans for recruiting personnel and securing contracted services. Expenditures for the proposed budget year (October 2006 to September 2007) will be based on planned service levels. In addition, plans for capital expenditures and resultant operating impacts must be coordinated with the budget process.

Project Timeline & Deliverables

The timelines suggested below depend on commencement of work in early May, 2006. The Capital Budget Planning process, which includes the asset inventory study, runs concurrently with the development of the operating budget and strategic planning processes. Both the capital and operating budgets will be included in the Manager's Proposed Budget.

Tasks	Deliverables	Timeline
Review current year FY2005-2006 budget efforts including carryover projections. Discuss revenue estimates with appropriate County and State personnel	Current fiscal year projections	Mid-May
Analyze FY2006-2007 planned service levels and priorities, expected revenues, and develop preliminary budget allocations. Discuss revenue estimates with appropriate County and State	FY2006-07 Baseline Budget	Early June

Tasks	Deliverables	Timeline
personnel. Involve the Town Council and Manager with desired service level projections. Negotiate with affected County agencies.		
Revise and refine FY2005-2006 and FY2006-2007 projections based on: results of negotiations with Miami-Dade County for services; updated revenue/expense data.	Revised FY2006-2007 budget; preliminary millage options for approval in July	Mid-June & July 1
Revise and refine budget based on strategic plan outcomes, desired capital improvement programs new information on revenues and expenses.	Updated budget documents	End of July or Early August
Participate in budget workshops for Town Council and in public budget hearings.	Budget workshop presentation on budget process and budget highlights	During budget development as requested
Develop summary documents and presentations for First Budget Hearing and Budget Ordinance.	Budget summary information and presentations as requested by Town Manger	September
Develop summary documents and presentation for Second Budget Hearing.	Budget summary information and presentations as requested by Town Manger	September
Revise budget as needed based on the results of the Second Budget Hearing	Final Adopted Operating and Capital Budget for FY2006-2007	October

Project Staff and Cost

Dr. David Morris will concentrate on revenue issues and Ms. Dianne Wright will concentrate on expenditures. Both David and Dianne along with GSG Project Advisor Merrett R. Stierheim will collaborate in drafting preliminary and final budget documents and participating in budget workshops.

Needless to say it will take a concerted and immediate effort that will require a sustained focus and intensity on the part of the consulting team in order to complete the tasks outlined above and meet all mandated budget timelines. Subject to contract execution,

consultants will begin work immediately. Consultants will provide all supplemental budget documents, revenue and expense tabulations and necessary support documents to the Town Manager. We will also assist the Town Manager in retaining a permanent Budget/Finance Director. The cost of printing the Proposed Budget and Approved Budget should be a Town expense because of formatting, style, color, logo, etc.

Our fee to complete the budget processes outlined above is \$50,400.

Strategic Planning and Management Proposal

Introduction

We propose to provide experienced professional assistance to the Town Council and Town Manager in the preparation and development of Cutler Bay's first Strategic Plan. As a newly incorporated municipality, this plan should serve as the public policy and management foundation for your Town's future. A well-designed Strategic Plan, if implemented effectively will enable you and the Town Council to prioritize major initiatives; effectively allocate human, financial and capital resources; establish strong competitive positions in critical areas; and develop powerful, goal-specific strategies to support your major policies and ongoing operations. An important added benefit is that the strategic plan will provide the basis for the adoption of an Annual Business Plan for the Town of Cutler Bay.

We believe such results are possible because our proposed methodology will help develop broad based awareness of issues and consensus on priorities among citizens, business leadership, elected officials and Town management. In turn, the alignment of stakeholder views helps provide a stable foundation for decisions concerning the operation of the Town of Cutler Bay.

Strategic Planning and Management

Strategic policy formulation and management is the process of 1) identifying the desired future for an organization, 2) determining what needs to be done (strategic issues) to achieve that future, and 3) managing the organization with a focus on strategic issues and the desired future. The strategic policy formulation and management is mission (purpose) driven. It focuses on a vision for the future for the organization, and emphasizes the values (principles, standards, beliefs, and actions) that members of the organization and its constituents consider important and feel the organization should represent.

The proposed strategic planning process will enable the Town of Cutler Bay to be successful because it encourages a well thought-out, forward thinking approach to the operation and management of the Town. Properly implemented this process will integrate planning with the implementation of policies, operational programs and projects, along with an assessment of results achieved by the ongoing activities of the Town. Strategic planning is the first indispensable step in strategic management.

The first stage of the strategic planning and management process is discovery and focuses on developing answers to five questions:

- **Who are we?** - What is our mission? What are the purposes of the organization?
- **What are our core values?** – What values will drive decision making within the organization?
- **What is our vision of the desired future for Cutler Bay?** Where do we want to go? What kind of Town do we want to become?
- **What are the core values of the town of Cutler Bay?**
- **What does the external and internal environmental scan tell us about opportunities, threats, conditions and trends that should be considered in our Strategic Plan?**

Addressing these issues is a major undertaking that usually requires an extensive amount of time and effort. We are proposing a strategic planning process that will assist the Town Council in answering these provocative questions.

Methodology

The process we propose to use is similar to the methodology we have successfully used in several similar assignments. By its very nature strategic planning should be a participatory process requiring the involvement of all major stakeholders. The advantage of this approach is that it helps develop broad based awareness of issues and consensus on priorities among citizens, the business community, elected officials and professional staff. The alignment of stakeholder views will provide a stable foundation for policy decisions affecting the operation of the Town of Cutler Bay.

To be effective our model requires a series of structured, highly facilitated, town meetings with Town residents, the local business community, the Mayor and Council Members and the Town Manager.

We propose that a minimum of three evening town meetings in defined geographic areas within the Town. During the months of May and early June, we would schedule Town meetings for the residents in each area. An additional town meeting would be scheduled for the business community. Each town meeting should be well publicized. Our project facilitators will provide an interactive environment where all attendees have an opportunity to articulate and vote on their priorities for the community. In addition to goals and priorities, we would also seek consensus on a defined Town Mission, a Town Vision with Core Values, as well as strategies for delivering effective services.

The Town will place ads in the Neighbors, Community Newspapers and other available communications that promote resident attendance at the Town Meetings. We also propose a plan to obtain input from residents unable to attend a Town Meeting. Ads and

other communications will include questions and a mail-in-form for non-attendees to state their priorities for the new Town.

The compiled results of town meetings and mailed-in forms would be presented to the Town Manager and the Council in advance of a recommended strategic planning workshop. Prior to that workshop we will meet individually with the Mayor, each Council Member and the Town Manager to determine their personal priorities. This information will be presented in a consolidated format (not personalized) at the workshop. During this workshop, we will facilitate a discussion on economic trends, relevant governmental regulations, direct and indirect competition, technology, demographic changes, available funding for operational and capital needs and other factors that may, or will, impact strategic planning goals. With this information as a foundation, we would also facilitate the wording and tentative adoption of the Town's Shared Values, Mission, Vision, Goals, Objectives and implementation strategies at the workshop.

Following that workshop and subject to any special instructions by the Town Council, we will prepare a draft of the Town's first Strategic Plan to be considered for possible adoption at a future public hearing (preferably at a special meeting for that purpose). If necessary, we will adjust and finalize your Strategic Plan after that public hearing. Our project team will be present and actively involved in every step throughout this process.

Project Timeline & Deliverables

The Project Timeline is to be negotiated with the Town Manager after his consultation with the Mayor and Council members. Realizing the public notice requirements prior to town meetings, we believe that the town meetings could be completed during May and early June, and the project completed by the end of June. This time schedule coincides with the budgetary cycle for the FY2006-20007 Town Budget.

Tasks and deliverables are listed below.

Tasks	Deliverables
Developmental Activities	Detailed schedule and work plan
Citizen Town Meetings	Meetings held and report on meeting results
Meeting with business community	Meeting held and report on meeting results
Individual meetings with Cutler Bay elected officials and Town Manager	A consensus position paper (not individual positions)
Review of material from citizens who could not attend Town Meetings	Report on additional citizen input

Meeting to develop Town of Cutler Bay's draft mission statement, vision statement, core values statement	Meeting held and report on meeting results
Town Council Strategic Planning Workshop	Meeting held and report on meeting
Strategic Plan Report	Draft Strategic Plan submitted.

Project Staff and Cost

The GSG Strategic Planning team will consist of Project Leader, Merrett R. Stierheim, Lead Facilitator Mr. Bill Busutil and Technical Advisor and Facilitator Dr. Ralph Lewis. Individual resumes are attached.

This is a proposal for services by a highly experienced team of proven professionals. Our proposal envisions the Town of Cutler Bay providing space and needed materials for the town meetings, and providing for necessary advertisements and public notices. In addition to our personal services throughout this strategic planning process, we will provide formal reports on the compiled results of all town meetings, written responses from citizens unable to attend, a consolidated report on our interviews with elected officials and the Town Manager and a facilitated workshop with the Town Council. We will also provide 50 copies of the Strategic Plan prior to its consideration and possible adoption by the Town Council at public hearing.

Our fee for this assignment is \$36,500.

Resume – Merrett R. Stierheim

BIOGRAPHY: In July, 2004, after a 45-year public service career, Merrett R. Stierheim stepped down as Superintendent of the Miami-Dade School System, the fourth largest in the U. S. Appointed in October, 2001 by the School Board to clean up a scandal-ridden school system, Stierheim was responsible for 45,000 employees in 340 schools with 370,000 K through 12 and 150,000 adult and vocational students. After coping with severe financial shortfalls, labor disputes, and implementing three reorganizations and a host of other badly needed reform initiatives, in October 2003, Stierheim recommended a national search for his successor to be on-board by June 2004. Immediately before his appointment as Superintendent, he served under contract as the first Town Manager of the newly formed Town of Miami Lakes. While conducting a national search for a permanent Manager, he led the Council through a strategic planning process and prepared the Town's first two budgets.

In March 1998, he was asked to return a second time as County Manager to manage a scandal-ridden, demoralized County government with a \$5 billion budget, 30,000 employees and 42 departments, including Miami International Airport, the Port of Miami, transportation, water and sewer, health and human services, police, fire, etc. He retired three years later in March 2001. Stierheim first served as County Manager from 1976 to 1986 and successfully supervised a \$5 billion countywide infrastructure expansion including the construction of Miami Metro Zoo, the downtown library and cultural complex, the Government Center, several regional parks, libraries, water, sewer and solid waste facilities and the County's mass transit system – Metrorail, Metromover and the Metro bus system. He also dealt with a number of events with national repercussions when the community assimilated more than 165,000 refugees from Cuba (Mariel exodus) and Haiti. In 1980, he helped restore law and order after severe civil disturbances and joined community leaders to address the social inequities that sparked the disturbances. Many of those programs are still in place today.

After nearly ten years as County Manager, Stierheim stepped down after being recruited as CEO of the professional Women's Tennis Association with 500 tennis professionals including Chris Evert, Martina Navratilova, Steffi Graff, etc. As CEO, Stierheim is credited with making women's professional tennis more international in its scope, doubling prize money, expanding the tiered feeder system of professional tournaments and establishing a player's pension plan.

In 1990, Stierheim was appointed President & CEO of the Greater Miami Convention & Visitors Bureau (GMCVB), a marketing, not-for-profit organization with 1,100 corporate members whose mission is to promote Miami-Dade County as a convention, business and leisure destination. Working with government and industry leaders, Stierheim established the Bureau's first dedicated advertising fund exceeding \$5 million. When crimes against tourists in 1993 threatened the community's number one industry, Stierheim lobbied effectively for more tourist signs, law enforcement programs and community awareness of the importance of the visitor industry. During the boycott of the visitor industry by the African-American community, he established the Visitor Industry Human Resources

Development Council (VIC), a private, not-for-profit organization working to increase the economic participation of African Americans at management and professional levels in the local visitors industry through hospitality scholarships. Today, the VIC has awarded over 200 college scholarships and raised well over \$1.5 million from the visitor industry. Stierheim's efforts led to Miami-Dade experiencing its best tourism years ever in 1995, 1996 and 1997. For his work, he was recognized as the 1996 Tourism Professional of the Year.

In 1996, Stierheim was called upon and served pro bono as City Manager of the City of Miami where he uncovered a \$68 million shortfall in a once approved bogus city budget. He then led a recovery effort, enlisting over 45 pro bono private and public sector executives in 13 task forces and presented a financial recovery plan to the City that is still being followed. In 2001, he completed a similar pro bono financial review with a recommended fiscal recovery plan at the request of the Homestead Mayor and Council.

Stierheim interned and later served as Assistant City Manager in Miami from 1959 to 1967; as Clearwater City Manager from 1967 to 1973; and Pinellas County Administrator from 1973 to 1976. He graduated third in his class with a Master's Degree in Governmental Administration from the Wharton Graduate School, University of Pa. and earned a BS in Commerce and Finance from Bucknell University where, upon graduation, he was awarded the Outstanding Student Achievement Award from the Wall Street Journal. In 1997, he completed the required courses from Purdue and Calgary Universities to become a Certified Destination Management Executive (CDME). In December 1998, Stierheim received an Honorary Doctor of Laws degree from Barry University in Miami, Florida. In June 2004, he received an Honorary Doctorate of Humane Letters from St. Thomas University. He is an Air Force Cadet graduate and served as a First Lieutenant, Navigator from 1953 to 1957.

Stierheim is the recipient of numerous local, national and international awards. He was a principal founder of major Miami-Dade civic and municipal institutions including The Beacon Council, the GMCVB, the Metro Miami Action Plan (MMAP), the Human Service Alliance, etc. He has served on the board of directors of more than 30 local, state and national organizations including Barnett Bank, SunBank, Travel Industry of America (TIA), International Association of Convention & Visitors Bureaus (IACVB), etc. He is a member of the Orange Bowl Committee and serves on the following Boards: Zoological Society, Collins Center for Public Trust, the United Way, the Beacon Council, Greater Miami Chamber of Commerce, GMCVB, Goodwill Industries, the Homeless Trust, and Mellon National Bank. He is a lifetime member of the International City and County Management Association and is the Chair and lectures at the Academy for Strategic Management at FIU. He also holds a Florida Real Estate License and is certified by the American Arbitration Association to serve on the Complex Arbitration and Mediation panel and is a Florida Supreme Court certified mediator.

With offices in downtown Miami, Stierheim currently serves as President of Merrett R. Stierheim & Associates, as Senior Associate with Government Services Group (GSG), an effective and progressive public sector funding and service solutions organization with

offices in Tallahassee, Orlando and Miami; and Senior Advisor to the highly respected commercial real estate firm of Abood Wood-Fay with offices in Coral Gables. Happily married to Judy Cannon Stierheim, he has four daughters, nine grandchildren and two great grandchildren.

Resume – David M. Morris, Ph.D.

Career Summary

Executive with strong quantitative skills and extensive experience in governmental management, budgeting, program analysis, finance, and financial analysis. Expertise in re-engineering organizations. Proven ability as negotiator and as troubleshooter for wide range of programs.

Professional Background

Miami-Dade County
Miami, Florida

Director and Senior Advisor, Office of Management and Budget and Office of Strategic Business Management 1998 to 2006

Responsible for overall development of operating and capital budgets that totaled \$6.3 billion in FY2004-2005. Assisted in development of Resourcing for Results that redirected budget process to an allocation process based on goals of countywide strategic plan, departmental business plans, and performance measures. Directed re-organization of Office of Management and Budget to include analysis of annexation and incorporation activities, management planning functions, performance improvement activities, revenue maximization functions, performance measurements, and the Ryan White grant program with a combined staff of eighty. Participated in collective bargaining negotiations. Responsible for negotiating extension of resource recovery plant contract that will result in savings for the County of \$16 million over the life of the contract. Developed plan to eliminate \$75 million imbalance in budget of County's Public Health Trust which operates Jackson Memorial Hospital and other healthcare facilities.

Deputy Director, Office of Management and Budget 1997 to 1998

Returned to Office of Management and Budget when assistant County manager positions were abolished by Board of County Commissioners. Assisted Director in development of FY 1998-99 Miami Dade County Budget, personnel management, and special projects.

Assistant County Manager 1993 to 1997

Responsible for developing and effectuating County administrative policies and procedures. Designated as the assistant County manager authorized to act for County Manager during his absence. In 1996, named to act as Chief Information Officer for Miami Dade County, concentrating on addressing Year 2000 conversion issues, standardization of information technology tools, reorganization of information technology functions, and oversight of major development programs which evidenced difficulties in their completion, including payroll and 800 megahertz public safety radio system. Directly responsible for oversight of budgetary, financial, and internal auditing functions. Chaired Manager's Finance Committee and Bond Counsel Selection

Committee with oversight of all County financings. Chaired Seaport Financial Oversight Committee established to review finances of Seaport of Miami following disclosure of management improprieties. Supervised Aviation Department, and chaired Airport Retail Committee responsible for all retail activities at Miami International Airport. Chaired 1995 Organizational Review Team, which recommended consolidations eliminating 12 departments and 1,500 positions, restructured middle management, and developed early retirement program elected by 1,000 employees, which resulted in a net savings of over \$18 million. Participated in collective bargaining negotiations. Developed uniform processes for Requests for Proposals and Requests for Qualifications. Participated in negotiations with Miami Heat and City of Miami for new arena. Coordinated acquisition of land from the state and negotiations for Blockbuster Park Sports and Entertainment Complex. Served as County Manager's liaison to Courts, Clerk of Courts, State Attorney, and Public Defender. Supervised Finance Department, Property Appraisal Department, General Services Administration, Aviation Department, and Information Technology Department. Staffed Ad Hoc Committee on Powers of a Strong Mayor.

Director, Office of Management and Budget 1985 to 1993

Reported directly to the County Manager. Overall responsibility for \$2.5 billion budget and six year capital program. Responsible for developing budgetary policy and allocations for over 50 departments. Developed new budgetary system, "Operational Budgeting," to emphasize departmental participation and multi-year planning aspects of budget. Participated in County's group health insurance plan design change from preferred provider organization (PPO) to point of service (POS) program saving more than \$100 million. Member of Citizen's Budget Reform Commission. Responsible for supervising a staff of twenty budget and management analysts and four clerical employees.

Deputy Budget Director, Office of Management and Budget 1983 to 1985

Supervisory responsibility of staff, as well as overall budget coordination and monitoring. Responsible for analyzing and projecting budgets of Courts, Clerk, State Attorney, Public Defender, County Attorney, and County Commission.

Budget Coordinator, Office of Management and Budget 1981 to 1983

In addition to responsibilities of Budget Analyst, responsible for the format and publishing of Miami Dade County Proposed Budget. Responsible for monitoring Miami Dade County's general fund operating budget and projecting all general fund revenues and expenditures. Responsible for assuring budget process met requirements of State law.

Budget Analyst, Office of Management and Budget 1978 to 1981

At various times responsible for analysis, review, and approval of budgets for all County programs. Responsible for reviewing, coordinating, and verifying statistical correctness of all County sponsored surveys and opinion research. Special assignments included shared responsibility for the developing County's six-year capital improvement program,

analyzing equity of allocation of Florida Highway Patrol officers to Miami Dade County, participating as one of twelve members of Nationwide User Requirement Committee to review techniques used by local government for long range revenue and expenditure forecasting, and assisting in development of "Decremental Budgeting" procedures to emphasize budgetary options for service delivery.

**Staff Consultant, Office of the County Manager
1975 to 1978**

Responsible for various management and performance audits. Staffed several citizen task forces. Assisted in developing state rules regarding verification of signatures on petitions. Designed survey procedures for phone survey of County residents.

Early Experience

**Department of Management Science, University of Miami
1974**

Visiting Assistant Professor (fall semester): Taught courses in computer science and statistics.

**Department of Mathematical Science, Florida International University
1973 to 1974**

Assistant Professor: Taught courses in algebra, computer science, and statistics.

Consulting

Designed survey for the Redevelopment Agency of the City of Miami Beach. (1977)
Analyzed housing survey data for the City of Miami Beach Planning Department (1979)
Wrote medical record reporting system for nursing home service agency (1981)
Designed and programmed computerized reservation system for ski resort (1984)

Education

B.S. University of Miami, 1967 – Summa Cum Laude with general and departmental honors

M.S. University of Miami, 1970 (Mathematics)

Ph.D. University of Miami, 1973 (Mathematics)

Honors and Publications

Woodrow Wilson Fellow

Elected Member of the following honor societies:

Delta Theta Ma

Phi Kappa Phi

Omicron Delta Kappa

Sigma Xi

Former Director and Officer Beth Ahm Israel and Temple Israel of Miramar

“Semiprime Ideals and Irreducible Ideals of the Ring of Bounded Operators on Hilbert Space.” Joint paper with Norberto Salinas. INDIANA UNIVERSITY MATHEMATICS JOURNAL, Vol. 23, No. 7 (1974)

“A New Example of a Jacobson Radical Simple Ring.” INDIANA UNIVERSITY MATHEMATICS JOURNAL, Vol. 23, No. 7 (1974).

Resume - Dianne G. Wright, MPA

Summary of Qualifications

Professional manager with extensive experience in financial and operational reviews of organizations that provide essential public services such as emergency medical services and fire organizations, police departments, not-for-profit and private service providers. Strong project management skills and thorough knowledge of public budgeting and operations developed through line, staff, and management positions in large and small governmental entities.

Work Experience

DGWright Consultants, Inc. Miami, FL
Senior Consultant

1998-Present

Management consultant specializing in governmental budgets, operational reviews and project management for public safety organizations, municipal and County governments, community facilitation and economic development. Senior Consultant with several firms including All Hands Consulting (Baltimore, MD), Consulting Group of South Florida (Miami, FL) and Fitch & Associates, LLC (Kansas City, MO).

Current Projects Include:

- Project manager for Miami Urban Area Security Initiative: a major, multi-year homeland security project that involves working with four counties, multiple municipal jurisdictions and public safety entities to provide planning, training, equipment and exercises for domestic security (All Hands Consulting, Inc.).
Tasks include:
 - Manage budgets for \$50 million, three multi-year grants
 - Report development and writing for federal and state compliance
 - Compliance development for City of Miami external auditors
 - Strategic plan development, reporting and updating
 - Coordinate policy and budgeting issues and solve project administration problems across multiple municipal jurisdictions
 - Continuous project management and performance accomplishment with multi-jurisdictional and multi-disciplinary groups
 - Create and deliver briefing papers and presentations to various working groups
- Consultant on Emergency Medical Services (EMS) for Genesee County, MI: project entails a thorough review of current operations, financial issues and clinical quality for county, city and multiple private emergency ambulance providers and three 9-1-1 dispatch centers (Fitch & Associates, LLC). Tasks include:
 - Review dispatch and staffing policies for Genesee County, City of Flint and 12 private ambulance companies
 - Review financial costs of EMS system including patient billings and tax subsidies

- Perform financial review of special taxing revenues
- Create options for EMS service delivery to maximize financial and operational resources and provide a higher level of EMS service
- Phase II includes implementation of findings and recommendations

Historical Project Experience:

- Budget, finance and administrative transition manager for Town of Miami Lakes: transition team member for newly incorporated municipal government (Merritt Stierheim, City Manager and The Consulting Group of South Florida). Tasks included:
 - Research and estimate Town revenue sources from state and county sources
 - Negotiate with Miami-Dade County for certain services and charges to the Town
 - Draft intergovernmental agreements for provision of police and other essential services to Town
 - Prepare first year budget documents for the Town Manager and Town Council

- Co-project manager for Miami-Dade Defense Alliance (MDDA): day-to-day project completion of economic development grant project (The Consulting Group of South Florida, FL). Tasks included:
 - Researched, designed and developed from concept to production, an annual report on the economic contribution of the military in Miami-Dade County including the production of the final report product
 - Developed from concept through to publication, a directory of local business discounts to military personnel; worked through the chambers of commerce in Miami-Dade and Broward County
 - Conducted numerous community and focus group planning and action forums to identify military personnel needs and prioritize projects for community support
 - Developed and produced three annual workshops for businesses on doing business with the military
 - Completed monthly, quarterly and financial closeout reporting to Enterprise Florida in conjunction with The Beacon Council, Inc.
 - Researched and produced a workbook to assist businesses in doing business with the military

- Staff to Governor's Financial Oversight Board for City of Miami: staff person for the contract review process during the entire five-year State takeover of City financial processes (The Consulting Group of South Florida). Tasks included:
 - Review and analysis the City's contract agreements for goods and services in the amount of \$4,500 or more
 - Coordinated with the Budget Review Committee in first two years to manage and analyze cash flow

- Special analysis of complex contracts for services such as telecommunications agreements, community development grants and loans, and city manager contract agreements
- Options development to provide Emergency Medical Services (EMS) for Kansas City, MO: review and analysis of EMS services (Fitch & Associates, LLC). Tasks included:
 - Team member to identify issues in financial crisis of current EMS system
 - Review of the clinical, operational and financial aspects of current public utility EMS service provider
 - Developed three options for service delivery that included identifying operational issues, paramedic training and clinical issues, transition issues and timeline and financial issues for revenues and expenditures
 - Created delivered options presentation for the City Council
- Options development to provide Emergency Medical Services (EMS) for the City of Rochester, NY: review and analysis of EMS services (Fitch & Associates, LLC). Tasks included:
 - Review of the clinical, operational and financial aspects of Fire Department and private sector EMS service providers
 - Developed three options for service delivery that included identifying operational issues, paramedic training and clinical issues, transition issues and timeline and financial issues for revenues and expenditures
 - Created full presentation for the Rochester City Council
- Certificate of Public Need and Necessity (COPCN) Reviews for Ambulance Services in Volusia County, FL: analyze the effect of competitor entry into ambulance service delivery system (Fitch & Associates, LLC). Tasks included:
 - Analyze and report on performance of current emergency medical services response and ambulance transport provider
 - Analyze and report on financial system of government subsidy and patient transports fee revenues of current provider
 - Analyze and report on the clinical, financial and operational effect on the overall County system of inserting a second ambulance and medical transport provider
 - Create and deliver presentations for the County Council for four separate COPCN reviews

Miami-Dade County Fire Rescue Department, Miami, FL

1987 - 1998

Assistant Director

Administration, Emergency Medical Services, and Policy and Procedures

- Professionalized the budgeting, accounting, financial and human resources practices for \$170 million department with 1,200 employees; department was funded through restricted special taxing district
- Streamlined and professionalized collection of medical transport fees; achieved significant increase in transport fee revenues

- Headed up major firefighter recruitment project that included successful processing of over 8,000 applicants annually and resulted in increased minority hiring
- Managed expansion of grant operations and accountability of department's Urban Search and Rescue Team, EMS grant projects, fire impact fees, and a major general obligation bond issue
- Managed documentation, reimbursement procedures and processes to collect more than \$15 million from FEMA for Hurricane Andrew damages and emergency operation

**Miami-Dade County Public Works Department, Miami, FL
1984-1987**

**Division Chief, Finance and Environmental Nuisance Control
Inspections Division**

- Streamlined construction contract payment processes
- Professionalized and automated Finance Division processes and procedures
- Managed inspection section that included legal process notifications, remedial actions, real property lien and collection processes
- Streamlined and improved accountability for over 200 special taxing districts both for collections and operational accounting to property owners

**Miami Dade County Office of Management and Budget
Budget Analyst**

1979 - 1984

- Developed budgets and analyzed budget policy issues for major County departments including Finance, Seaport, Airport, General Services Administration and Transit
- Liaison between Finance Department and Budget Office during major change of financial reporting processes
- Developed with Finance Director the County's first Annual Report for use with the bond rating agencies

Education

Masters in Public Administration, Florida International University, Miami, FL
Bachelor of Science, Environmental Technology, Florida International University, Miami, FL
Bachelor of Science, Housing and Design, Florida State University

Business Affiliations, Specialized Training and Certifications

Urban Land Institute Member (current)
Chamber South Member (current)
National Fire Academy Executive Fire Officer Management Program (1996, 1997)
Emergency Medical Technician, State of Florida (1997 - 1999)
American Ambulance Association, Ambulance Manager Certification, 1993
Government Finance Officers Association, Budget Review Committee, 1984

Resume – William J. Busutil, MPA

PROFESSIONAL HISTORY

Bill Busutil & Associates – Hollywood, Florida 2001 - Present
President and Chief Executive Officer

Responsible for providing Strategic Planning, Business Planning, Organizational and Accelerated Operational Consulting Services to State and Local Governments throughout the United States. Primary areas of focus include County and Municipal Government Agencies, Judicial Administration and the Development Industry.

The Impact Group - Hartford, Connecticut 1997 - 2001
Managing Consultant

Responsible for delivering accelerated process improvement services that can be implemented with cost savings and efficiency. These services were provided to a wide range of clients in Florida and throughout the United States. Primary areas of focus included State and Local Government, Transit, Tourism, Financial Institutions, Aviation and Health Care. These services produced positive results by focusing on resolution of operational and policy issues, and paying close attention to details.

Tri-County Commuter Rail Authority (TCRA) - Fort Lauderdale, Florida
1994 - 1997
Director of Administration and Finance

Responsible for directing and coordinating all general accounting, financial planning and risk management activities for the Tri-County Commuter Rail Authority. Also responsible for all procurement activities for the Authority. Specific responsibilities include preparation and implementation of the annual business plan, development of administrative policies and procedures, procurement policies, accounting policies and procedures, the development and implementation of business process improvements throughout the organization, and the development and implementation of the TCRA's total quality management program.

ICF Kaiser Engineers - Miami, Florida 1992 to 1994
Senior Consultant and Marketing Manager

Responsible for marketing ICF Kaiser Engineers' professional services within Metro-Dade County and F.D.O.T., District Six. Also responsible for managing consulting projects in the transit industry and preparing proposals, technical reports and presentation packages for a growing client base in South Florida.

Ernst & Young - Washington, D.C. 1989 to 1992
Executive Consultant - National Transportation Consulting Practice

Responsible for assisting a national transportation client base in improving productivity, developing capital improvement programs, adding value to transit services, and implementing business process improvements geared toward improving market share, improving systems, controlling costs, and making optimum use of available federal and state funding sources. This work required frequent contact with the F.T.A. and other federal and state agencies to develop the necessary insight for prudent capital planning. Specific engagements range from organization studies to detailed operations analysis, business process improvements, materials management studies, and manpower budgeting. Also responsible for conducting a wide range of management and technical training seminars, and developing comprehensive human resource training programs for the Firm's clients.

Florida International University - Miami, Florida
Adjunct Professor

1987 to 1992

Served as an Adjunct Professor in the College of Urban and Public Affairs at Florida International University from 1987 to 1992. During this time I designed and taught a course in Communication Skills which was offered primarily to students majoring in public administration.

Cannon Stierheim Busutil - Miami, Florida
Senior Principal

1986 to 1990

Responsible for developing and managing a comprehensive management consulting practice in South Florida. Provided a wide range of consulting assistance to both public and private sector organizations. Specific engagements focused on strategic and business planning, Human Resource Development programs, operations analysis, business process improvement, financial planning, performance audits, organizational restructuring and productivity improvement.

Metro-Dade County - Miami, Florida
Internal Consultant and Training Manager

1982 to 1986

Responsible for directing a wide range of consulting projects within several county agencies. Specific projects focused on improving efficiency, business processes and quality of services. These projects yielded significant service improvements and annual recurring cost savings of more than \$50 million. During this period I designed and implemented a comprehensive management development and professional training program for several county agencies.

Price Waterhouse - Miami, Florida
Senior Consultant - Management Consulting Practice

1980 to 1982

Responsible for assisting the Firm's clients in improving productivity, improving business processes, developing long-range systems plans, and improving product and

service quality. Specific engagements focused on implementing productivity improvement programs, materials management and operations analysis.

EDUCATION

Master of Public Administration

Texas Tech University
Lubbock, Texas

Bachelor of Business Administration

Florida International University
Miami, Florida

PROFESSIONAL AFFILIATIONS

- American Society for Training and Development - Board Member
- American Public Transit Association
- The Productivity Center
- Florida Transit Association
- American Society for Public Administration

LANGUAGES

Proficient in Spanish and English

Resume – Ralph G. Lewis, Ed.D.

Ralph G. Lewis is a retired faculty member in the School of Policy and Management at Florida International University (FIU) where he taught courses in policy analysis and applied management including courses in strategic planning, total quality management and institutional development. He received his undergraduate degree from Tennessee Wesleyan College, studied Church History and Social ethics at Boston University School of Theology and received a doctorate in Sociology of Education Harvard University Graduate School of Education.

Immediately prior to his retirement from FIU, Dr. Lewis served as the Executive Assistant for Strategic Initiatives to the Miami-Dade County Public Schools Superintendent. In this capacity he had overall responsibility for quality improvement efforts including development of the District's strategic planning process. He also served as the Acting Chief Business Officer for approximately seven months. Prior to his work in the school district he served as the Director of Planning and Institutional Effectiveness for FIU. In this capacity he led the university's Millennium Strategic Planning efforts. Prior to that, he served as the Director of the FIU Office of Continuous Improvement and was responsible for the development of university's institutional effectiveness program to meet the Southern Association of Schools and Colleges (SACS) criteria for reaccreditation.

Other positions at FIU included: Director of the Institute for Public Management and Service; the Associate Director of the Joint Center for Environmental and Urban Studies; and founding Director of the Academy for the Art of Teaching. He has also served as the Chairperson of the University Faculty Senate; the Director of the Department of Criminal Justice; the Director of the Department Public Administration; and, as the Associate Dean of the School of Public Affairs.

Prior to FIU, he served as the Director of Research at the Criminal Justice Systems Center at Michigan State University; Associate Director of the Center for the Study of Violence at Brandeis University; Coordinator of Research and Data Processing at Action for Boston Community Development; and as a Medical Social Worker at Boston Sanatorium.

Dr. Lewis has experience in social science research and has conducted management and program evaluation studies in a number of fields. He has written on topics related to the criminal justice system, human relations, education, emergency management, social policy, education, distance education, quality improvement and institutional effectiveness. He has conducted organizational and team development projects with private sector corporations, local governments, government agencies and educational institutions including international experience in Brazil, Jamaica and Panama.

He is a member of the: American Association of Higher Education, the American Society for Quality, Association for the Management of Organization Design; Association for Quality and Participation; the World Future Society; the American Society for Public

Administration. Excellence. He has also served as a member of the Board of Examiners for the Florida Sterling Award and the Malcolm Baldrige National Quality Award.

RESOLUTION NO. 06-____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, FILLING THE VACANCY OF VICE MAYOR; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the untimely passing of the Town's first Mayor, John Cosgrove, has led to the succession of Vice Mayor Paul Vrooman to the position of Mayor; and

WHEREAS, said succession has left the Vice Mayor's office vacant; and

WHEREAS, Article II, Section 2.5 (C)(2) of the Charter of the Town of Cutler Bay (the "Charter") requires that the Vice Mayor's office be filled through a resolution of the Council appointing a nominee; and

WHEREAS, if the Council is unable to confirm a nominee then the Charter requires that a special election be held.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Appointment of Vice Mayor or Special Election. Pursuant to the Charter, the Council:

- a) Hereby appoints _____, to fill the vacancy of Vice Mayor until the next scheduled countywide election in Miami-Dade County; or
- b) Hereby directs the Town Manager to take the steps necessary so that a special election will be held no later than July 18, 2006, in order to elect a Vice Mayor.

Section 3. Effective Date. This Resolution shall be effective immediately upon adoption.

PASSED and ADOPTED this ____ day of May, 2006.

PAUL VROOMAN
Mayor

Attest: _____
ELIZABETH SEWELL
Interim Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA COLE & BONISKE, P.A.
Interim Town Attorney

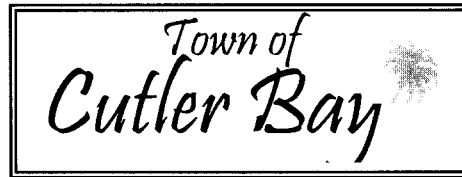
FINAL VOTE AT ADOPTION:

Mayor Paul Vrooman _____

Council Member Timothy J. Meerbott _____

Council Member Ernest Sochin _____

Council Member Peggy Bell _____



To: Mayor and Council

Date: April 21, 2006

From: Steven Alexander
Interim Town Manager

Re: Procedure for Filling Vacancy

As we recently lost our first Mayor, John Cosgrove, I am providing the following information concerning the mandated procedure for filling the vacancy on the Town Council.

The Town Charter provides, at Section 2.5, that the former Vice Mayor, Paul Vrooman, automatically assumes the position of Mayor for the remainder of the Mayor's term. The Mayor's term, pursuant to Article 8.5 (A)(4), shall expire in March, 2010. Under Section 2.5 (C)(2) and (3), the Vice Mayor's position is to be filled in the same manner as a council seat vacancy.

Since there are more than six month's remaining in the Vice Mayor's term (which expires in March, 2008, pursuant to Article 8.5(A)(5)), Section (C)(2) applies. To fill the seat vacated by the Vice Mayor, the Council is directed by the Town Charter to appoint, by resolution, a qualified Town elector (a registered voter who has resided within the area comprising the Town for the past two years) to serve until the next countywide election, at which time the electorate will elect a person to fill the remainder of the Vice Mayor's position and term.

The next countywide election is September 5, 2006. If the Town Council is unable to confirm a nominee to fill the vacant position, then a special election shall be held no later than 90 days following the occurrence of the vacancy. The vacancy occurred on April 19, 2006, thus the 90-day period would expire July 18, 2006.

In the event the Town Council selects a current Council Member to fill the term of the Vice Mayor, then he or she would have to resign his or her current Council seat and would have to run in September in order to retain the Vice Mayor seat.

The Council Member vacancy thus created would then have to be filled at the following Council meeting on May 18, 2006 by resolution of the Council. That new Council Member would serve until the September 5, 2006 election, at which time an election would be held to fill the seat for the remainder of the original term.

If the Council is unable to agree on a person to fill the Vice Mayor position, then a special election would have to be held no later than 90 days after May 4, 2006 (August

2, 2006). The Miami-Dade County Department of Elections has confirmed that they will coordinate the special election as may be required.

Selection process

In order to provide a clear, open and timely method for the consideration of candidates for the open position of **Vice Mayor**, the following process is provided:

Any qualified Town elector (a registered voter who has resided within the area comprising the Town for the past two years) must send

a letter of interest stating that they meet the applicable requirements,
and,
a current resume to:

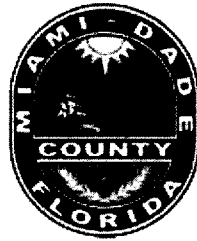
Steven Alexander, Interim Town Manager
Town Hall
Suite 105
10720 Caribbean Blvd.
Cutler Bay, FL 33189

The deadline for receiving this information at Town Hall is 5 pm on April 27, 2006.

Subsequent to receiving these letters of interest and resumes, the Town Staff will make copies and distribute them to the Mayor and each Council member on **Friday, April 28, 2006**.

The Mayor and Council will be able to perform their own evaluation of each interested, qualified candidate prior to the **Council meeting on May 4, 2006**. During that Council meeting, the Council will nominate candidates and, by Resolution, appoint the next Vice Mayor.

If you have any questions, please do not hesitate to contact me at 305 234 4262.



KATY SORENSON
COUNTY COMMISSIONER
DISTRICT 8

April 25, 2006

Dear Citizens of Cutler Bay:

I, along with you, am mourning the loss of our dear friend and your mayor, John Cosgrove. John was a man who cared deeply about South Miami-Dade, and worked hard for decades to improve the quality of life for all of us – through his work as a state legislator, as a promoter of so many important causes and as a founder and the mayor of Cutler Bay. We will all miss him greatly. Our thoughts and prayers are with Bernie and the family.

At the same time, it's important that the town move forward to become one of the finest municipalities in Miami-Dade County. When I appointed the committee to write the charter for your town, I asked all prospective members to refrain from running for office for at least two years.

My reasoning was that no one should have the opportunity to craft such an important document with their own interests in mind. And the community should not have the perception that this was the case.

But no one could have anticipated such tragic, unforeseen circumstances. It is therefore now my intention to allow Mayor Vrooman and the members of the council to be able to consider any citizen of the town they deem to be the right person for the job. I don't believe they should be limited in their choice at such a critical time in the town's early development. Considering the above, I hereby release any charter committee member from our earlier agreement, and if the council wishes to appoint any member, I would be supportive of their choice.

My best wishes are with all of you as we go through this difficult time. I look forward to working together for the community John Cosgrove loved so well.

Sincerely,

A handwritten signature in black ink that reads "Katy Sorenson".

Katy Sorenson
County Commissioner, District 8

RESOLUTION NO. 06-____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING ADMINISTRATIVE ORDER NO. 06-1 UCD MORATORIUM; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay (the "Town") desires to facilitate well planned and organized development within its boundaries; and

WHEREAS, Section 33-319 of the Town's Code of Ordinances permits the Town Manager to issue an administrative moratorium if he finds that existing zoning districts in an area of the Town may be detrimental to this area if they continue to remain applicable; and

WHEREAS, the Town Manager has determined that it is in the public interest to issue an administrative moratorium for the area located south of the intersection of the Homestead Extension of the Turnpike (HEFT) and U.S. 1, west of the HEFT to the Town limits, and north of the C-1 Canal (Black Creek Canal) because existing zoning districts are inappropriate and may be detrimental to this area should they continue to remain applicable; and

WHEREAS, The Town Council has already approved an alternative zoning scheme for the area, and will be considering rezoning of the area in the coming months; and

WHEREAS, pursuant to the Town Code, an administrative moratorium may be effective for a maximum of 120 days measured from _____, and will no longer be necessary once the alternative zoning scheme is applied to the areas; and

WHEREAS, the Town Council desires to accomplish the policy outlined in the Town Manager's Administrative Order, a copy of which is incorporated herein by reference.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Administrative Order. Administrative order No. 06-1, issued by the Town Manager pursuant to the Section 33-319 of the Town Code is hereby approved.

Section 3. Effective Date. This Resolution shall be effective immediately upon adoption.

PASSED and ADOPTED this ____ day of May, 2006.

PAUL VROOMAN
Mayor

Attest: _____
ELIZABETH SEWELL
Interim Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA COLE & BONISKE, P.A.
Interim Town Attorney

FINAL VOTE AT ADOPTION:

Mayor Paul Vrooman _____

Council Member Timothy J. Meerbott _____

Council Member Ernest Sochin _____

Council Member Peggy Bell _____

RESOLUTION NO. 06-_____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A REQUEST TO WAIVE 15 FEET OF THE ZONED RIGHT-OF-WAY LOCATED APPROXIMATELY 200 FEET SOUTH OF S.W. 212TH STREET & NORTHWEST OF OLD CUTLER ROAD; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 33-133 of the Town of Cutler Bay (the "Town") Code of Ordinances (the "Code"), Old Cutler Road is required to have a 100 foot (50 feet on each side) zoned right-of-way (Application No. Z05-239); and

WHEREAS, pursuant to Section 33-311(A)(4)(b) of the Town Code, Mohamed Ishmael & Jerry Abdul (the "Applicant") have requested that the Town Council waive 15 feet of the required 50 feet of zoned right-of-way located 200 feet south of S.W. 212th Street & N.W. of Old Cutler Road; and

WHEREAS, Town Staff has reviewed the requirements of Section 33-311(A)(4)(b) of the Town Code and has recommended approval of this request with conditions; and

WHEREAS, public notice was provided in accordance with law; and

WHEREAS, the Town Council finds that this waiver of zoned right-of-way is consistent with the provisions of the Town's Comprehensive Plan.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Approval of Waiver of Zoned Right-of-Way. The Town Council hereby approves the request by the Applicant, subject to the conditions below, to waive 15 feet of the zoned right-of-way located 200 feet south of S.W. 212th Street & N.W. of Old Cutler Road.

Section 3. Conditions. The approvals granted by this Resolution are subject to the Applicant's compliance with the following conditions, to which the Applicant stipulated at the public hearing:

1. That a site plan be submitted to and meet with the approval of the Town upon the submittal of an application for a building permit; said plan to include, but not be limited to, location of structure or structures, exits and entrances, drainage, walls, fences, landscaping, and other requirements.

2. That in the approval of the plan, the same be substantially in accordance with that submitted for the hearing entitled "Survey," as prepared by Unitec Surveying, Inc. and dated 1/12/05. Except as may be specified by any zoning resolution applicable to the subject property, any future additions on the property which conform to Zoning Code requirements will not require further public hearing action.
3. That the use be established and maintained in accordance with the approved plan.

Section 4. **Effective Date.** This Resolution shall be effective immediately upon adoption.

PASSED and ADOPTED this ____ day of May, 2006.

PAUL VROOMAN
Mayor

Attest: _____
ELIZABETH SEWELL
Interim Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA COLE & BONISKE, P.A.
Interim Town Attorney

FINAL VOTE AT ADOPTION:

Mayor Paul Vrooman _____

Council Member Timothy J. Meerbott _____

Council Member Ernest Sochin _____

Council Member Peggy Bell _____

1. MOHAMED ISHMAEL & JERRY ABDUL
Applicant

06-5-TCB-1 (05-239)
TCB/District 8
Hearing Date: 5/4/06

Property Owner (if different from applicant) Same.

Is there an option to purchase /lease the property predicated on the approval of the zoning request? Yes No

Disclosure of interest form attached? Yes No

Previous Zoning Hearings on the Property:

<u>Year</u>	<u>Applicant</u>	<u>Request</u>	<u>Board</u>	<u>Decision</u>
				NONE

Action taken today does not constitute a final development order, and one or more concurrency determinations will subsequently be required. Provisional determinations or listings of needed facilities made in association with this Initial Development Order shall not be binding with regard to future decisions to approve or deny an Intermediate or Final Development Order on any grounds.

RECOMMENDATION TO THE TOWN OF CUTLER BAY

APPLICANT: Mohamed Ishmael & Jerry Abdul

PH: Z05-239

SECTION: 8-56-40

DATE: May 4, 2006

ITEM NO.: 1

=====

A. INTRODUCTION

o **REQUEST:**

Applicant is requesting to waive the zoning regulations requiring Old Cutler Road to be 100' in width; to permit 35' of dedication (50' required) for the northwest side of Old Cutler Road.

Upon a demonstration that the applicable standards have been satisfied, approval of the request may be considered under §33-311(A)(4)(b) (Non-Use Variance) or (c) (Alternative Non-Use Variance).

A survey is on file and may be examined in the Zoning Department as prepared by Unitec Surveying, Inc. and dated 1/12/05.

o **SUMMARY OF REQUEST:**

This application seeks to waive the zoning regulations pertaining to the required width for Old Cutler Road resulting in a request to permit less dedication on the northwest side of said road.

o **LOCATION:**

Approximately 200' south of S.W. 212 Street & northwest of Old Cutler Road, Cutler Bay, Florida.

o **SIZE:** 75' x 100'

o **IMPACT:**

The approval of this request would allow the applicant to construct a single-family residence on a lot without the required street dedication. The waiver of a portion of the required road dedication could visually impact the surrounding properties and affect traffic flow in the area.

B. ZONING HEARINGS HISTORY: None.

C. COMPREHENSIVE DEVELOPMENT MASTER PLAN (CDMP):

The Adopted 2005 and 2015 Land Use Plan designates the subject property as being within the Urban Development Boundary for **Low Density Residential**. The residential densities allowed in this category shall range from a minimum of 2.5 to a maximum of 6.0 units per gross acre. This density category is generally characterized by single family housing, e.g., single family detached, cluster, zero lot line and townhouses. It could include low-rise apartments with extensive surrounding open space or a mixture of housing types provided that the maximum gross density is not exceeded.

D. NEIGHBORHOOD CHARACTERISTICS:

ZONING

LAND USE PLAN DESIGNATION

SUBJECT PROPERTY:

RU-1; vacant

Low Density Residential, 2.5 to 6 du

SURROUNDING PROPERTY:

NORTH: RU-1; vacant

Low Density Residential, 2.5 to 6 du

SOUTH: RU-1; vacant

Low Density Residential, 2.5 to 6 du

EAST: RU-1; single-family residence

Low Density Residential, 2.5 to 6 du

WEST: RU-1; vacant

Low Density Residential, 2.5 to 6 du

The subject property is located approximately 200' south of S.W. 212 Street and northwest of Old Cutler Road. The subject site is surrounded by single-family residences and vacant parcels.

E. SITE AND BUILDINGS:

Site Plan Review:	(Survey submitted)
Scale/Utilization of Site:	Acceptable
Location of Buildings:	N/A
Compatibility:	Acceptable
Landscape Treatment:	N/A
Open Space:	N/A
Buffering:	N/A
Access:	Acceptable
Parking Layout/Circulation:	N/A
Visibility/Visual Screening:	N/A
Energy Considerations:	N/A
Roof Installations:	N/A
Service Areas:	N/A
Signage:	N/A
Urban Design:	N/A

F. PERTINENT REQUIREMENTS/STANDARDS:

Section 33-311(A)(4)(b) Non-use variance standard. Upon appeal or direct application in specific cases, the Board shall hear and grant applications for **non-use variances** from the terms of the zoning and subdivision regulations and may grant a non-use variance upon a showing by the applicant that the non-use variance maintains the basic intent and purpose of the zoning, subdivision and other land use regulations, which is to protect the general welfare of the public, particularly as it affects the stability and appearance of the community and provided that the non-use variance will be otherwise compatible with the surrounding land uses and would not be detrimental to the community. No showing of unnecessary hardship to the land is required.

Section 33-311(A)(4)(c) Alternative non-use variance standard. Upon appeal or direct application in specific cases to hear and grant applications from the terms of the zoning and subdivision regulations for non-use variances for setbacks, minimum lot area, frontage and depth, maximum lot coverage and maximum structure height, the Board (following a public hearing) may grant a non-use variance for these items, upon a showing by the applicant that the variance will not be contrary to the public interest, where owing to special conditions, a literal enforcement of the provisions thereof will result in unnecessary hardship, and so the spirit of the regulations shall be observed and substantial justice done; provided, that the non-use variance will be in harmony with the general purpose and intent of the regulation, and that the same is the minimum non-use variance that will permit the reasonable use of the premises; and further provided, no non-use variance from any airport zoning regulation shall be granted under this subsection.

G. NEIGHBORHOOD SERVICES:

DERM	No objection*
Public Works	No objection*
Parks	No objection
MDTA	No objection
Fire Rescue	No objection
Police	No objection
Schools	No comment

*Subject to the conditions indicated in their memoranda.

H. ANALYSIS:

The subject property is located approximately 200' south of S.W. 212 Street and northwest of Old Cutler Road in an established RU-1 zoned single-family residential area. Vacant parcels of land are still found in the area. The applicants are requesting to waive the zoning regulations requiring Old Cutler Road to be 100' in width to permit 35' of dedication on the northwest side of Old Cutler Road adjacent to the subject property where 50' of dedication is required.

The Department of Environmental Resources Management (**DERM**) has **no objections** to this application and has indicated that it meets the minimum requirements of Chapter 24 of the Code. However, the applicants will have to comply with all DERM conditions

as set forth in their memorandum pertaining to this application. The **Public Works Department** has **no objections** to the applicant's request to permit 35' of dedication on the northwest side of Old Cutler Road. Their memorandum indicates that Old Cutler Road is designated historical where no future widening or improvements are foreseen. They further indicate that this project will not generate any additional peak hour trips; therefore no vehicle trips have been assigned.

Approval of this application will allow the applicant to construct a single-family residence on a lot along Old Cutler Road. The Land Use Plan (LUP) map of the Comprehensive Development Master Plan (CDMP) designates this site for **Low-Density Residential** use, which allows a minimum of 2.5 to a maximum of 6.0 dwelling units per gross acre which permits one unit on the subject site. As such, the construction of a single-family residence on this RU-1 zoned property is **consistent** with the CDMP.

When this application is analyzed under the non-use variance (NUV) standards, Section 33-311(A)(4)(b), staff is of the opinion that the approval of this application would be **compatible** with the surrounding area, would not be detrimental to the neighborhood, nor would it affect the appearance of the community. Approval of this request, to permit 35' of dedication (50' required) on the northwest side of Old Cutler Road, will provide the required RU-1 lot area necessary for the construction of the proposed single-family residence and, in staff's opinion, would not be contrary to the basic intent and purpose of the land use regulations. Although there are no similar approvals in the immediate area, staff notes that there are two similar applications in the area currently on the same agenda (Item #A, 05-95 and Item #B, 05-96). Additionally, the Public Works Department has no objections to the applicant's request to permit 35' of dedication on the northwest side of Old Cutler Road. Their memorandum indicates that Old Cutler Road is designated historical where no future widening or improvements are foreseen. As such, staff recommends approval with conditions of this application under the NUV standards, Section 33-311(A)(4)(b).

When this application is analyzed under the alternative non-use variance (ANUV) standards, Section 33-311(A)(4)(c), the applicants would have to prove that the request is due to unnecessary hardship and that, should the request not be granted, such denial would not permit the reasonable use of the premises. However, since the applicants have not provided documentation to that effect, this application cannot be properly analyzed under the Alternative Non-Use Variance Standards and should be denied without prejudice under same.

Based on all of the aforementioned, staff recommends approval with conditions of this application under Section 33-311(A)(4)(b) and denial without prejudice under Section 33-311(A)(4)(c).

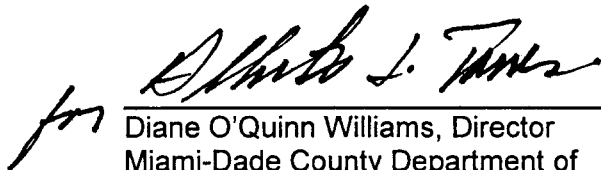
I. **RECOMMENDATION:**

Approval with conditions under Section 33-311(A)(4)(b) and denial without prejudice under Section 33-311(A)(4)(c).

J. CONDITIONS:

1. That a site plan be submitted to and meet with the approval of the Town of Cutler Bay upon the submittal of an application for a building permit; said plan to include, but not be limited to, location of structure or structures, exits and entrances, drainage, walls, fences, landscaping, and other requirements.
2. That in the approval of the plan, the same be substantially in accordance with that submitted for the hearing entitled "Survey," as prepared by Unitec Surveying, Inc. and dated 1/12/05. Except as may be specified by any zoning resolution applicable to the subject property, any future additions on the property which conform to Zoning Code requirements will not require further public hearing action.
3. That the use be established and maintained in accordance with the approved plan.

DATE INSPECTED: 03/17/06
DATE TYPED: 04/03/06
DATE REVISED: 04/03/06; 04/05/06; 04/10/06; 04/20/06; 04/26/06
DATE FINALIZED: 04/26/06
DO'QW:AJT:MTF:LVT:CSE:JV


Diane O'Quinn Williams, Director
Miami-Dade County Department of
Planning and Zoning

Memorandum



Date: September 12, 2005

To: Diane O'Quinn-Williams, Director
Department of Planning and Zoning

From: Jose Gonzalez, P.E., Assistant Director
Environmental Resources Management

A handwritten signature in black ink, appearing to read "Jose Gonzalez", written over the printed name.

Subject: C-15 #Z2005000239
Mohamed H. Ishmael & Terry T. Abdue
S/O SW 212th Street and W/O Old Cutler Road
Request to Waive of R-O-W Dedication
(RU-1) (0.17 Ac.)
08-56-40

The Department of Environmental Resources Management (DERM) has reviewed the subject application and has determined that it meets the minimum requirements of Chapter 24 of the Code of Miami-Dade County, Florida (the Code). Accordingly, DERM may approve the application, and the same may be scheduled for public hearing.

Water Supply:

The closest public water main is located approximately 120 feet from the site. Based on the proposed request, the subject property is within a feasible distance for connection to public water; therefore DERM shall require connection to the public water supply system.

Existing public water facilities and services meet the Level of Service (LOS) standards set forth in the Comprehensive Development Master Plan (CDMP). Furthermore, the proposed development order, if approved, will not result in a reduction in the LOS standards subject to compliance with the conditions stipulated by DERM for this proposed development order.

Sewer Service:

Sanitary sewers are not available to serve this site; however, DERM has no objection to low intensity development served by interim septic tanks provided that the proposed lot is connected to the public water supply system, and that the maximum sewage loading allowed by the Code is not exceeded. Based on available information, the proposed use served with septic tanks would not exceed the maximum allowable sewage loading for the subject site. The applicant is advised that if public water is not extended to serve this site, the use of a septic tank as means for the disposal of domestic liquid waste cannot be administratively approved by DERM and for this reason DERM approvals of any additional development orders for this site will be contingent upon compliance with this requirement.

Stormwater Management:

All stormwater shall be retained on site utilizing properly designed seepage or infiltration drainage structures. Drainage plans shall provide for full on-site retention of the stormwater runoff of a 5-year/1-day storm event. Pollution Control devices shall be required at all drainage inlet structures.

Site grading and development shall comply with the requirements of Chapter 11C of the Code.

Any proposed development shall comply with County and Federal flood criteria requirements. The proposed development order, if approved, will not result in a reduction in the LOS standards for flood protection set forth in the CDMP subject to compliance with the conditions required by DERM for this proposed development order.

Wetlands:

The subject property does not contain jurisdictional wetlands as defined by Section 24-5 of the Code; therefore, a Class IV Wetland Permit will not be required.

The applicant is advised that permits from the Army Corps of Engineers (305-526-7181), the Florida Department of Environmental Protection (561-681-6600) and the South Florida Water Management District (1-800-432-2045) may be required for the proposed project. It is the applicant's responsibility to contact these agencies.

Tree Preservation:

There are no tree resources issues on this property. Therefore, no tree permits will be required.

Enforcement History:

DERM has reviewed the Permits and Enforcement database and the Enforcement Case Tracking System and has found no open or closed formal enforcement records for the subject properties identified in the subject application.

Concurrency Review Summary:

DERM has conducted a concurrency review for this application and has determined that the same meets all applicable LOS standards for an initial development order, as specified in the adopted CDMP for potable water supply, wastewater disposal and flood protection. Therefore, the application has been approved for concurrency subject to the comments and conditions contained herein.

This concurrency approval does not constitute a final concurrency statement and is valid only for this initial development order as provided for in the adopted methodology for concurrency review. Additionally, this approval does not constitute any assurance that the LOS standards would be met by any subsequent development order applications concerning the subject property.

In summary, the application meets the minimum requirements of Chapter 24 of the Code and therefore, it may be scheduled for public hearing; furthermore, this memorandum shall constitute DERM's written approval to that effect as required by the Code.

cc: Lynne Talleda, Zoning Evaluation- P&Z
Ron Connally, Zoning Hearings- P&Z
Franklin Gutierrez, Zoning Agenda Coordinator-P&Z

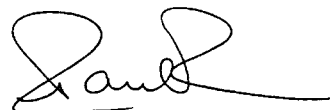
PUBLIC WORKS DEPARTMENT COMMENTS

Applicant's Names: MOHAMED ISHMAEL & JERRY ABDUL

This Department has no objections to this application.

This Department has no objections to the request to permit 35 feet of dedication on the west side of Old Cutler Rd. Old Cutler Road is designated historical where no future widening or improvements are foreseen.

This application does not generate any new additional daily peak hour trips, therefore no vehicle trips have been assigned. This meets the traffic concurrency criteria set for an Initial Development Order.



Raul A Pino, P.L.S.

14-SEP-05

DATE: 04/03/06

REVISION 2

TEAM METRO

ENFORCEMENT HISTORY

MOHAMED ISHMAEL & JERRY
ABDUL

APPROX 200' SOUTH OF SW 212
ST & NORTHWEST OF OLD CUTLER
ROAD, MIAMI-DADE COUNTY, FL

APPLICANT

ADDRESS

Z2005000239

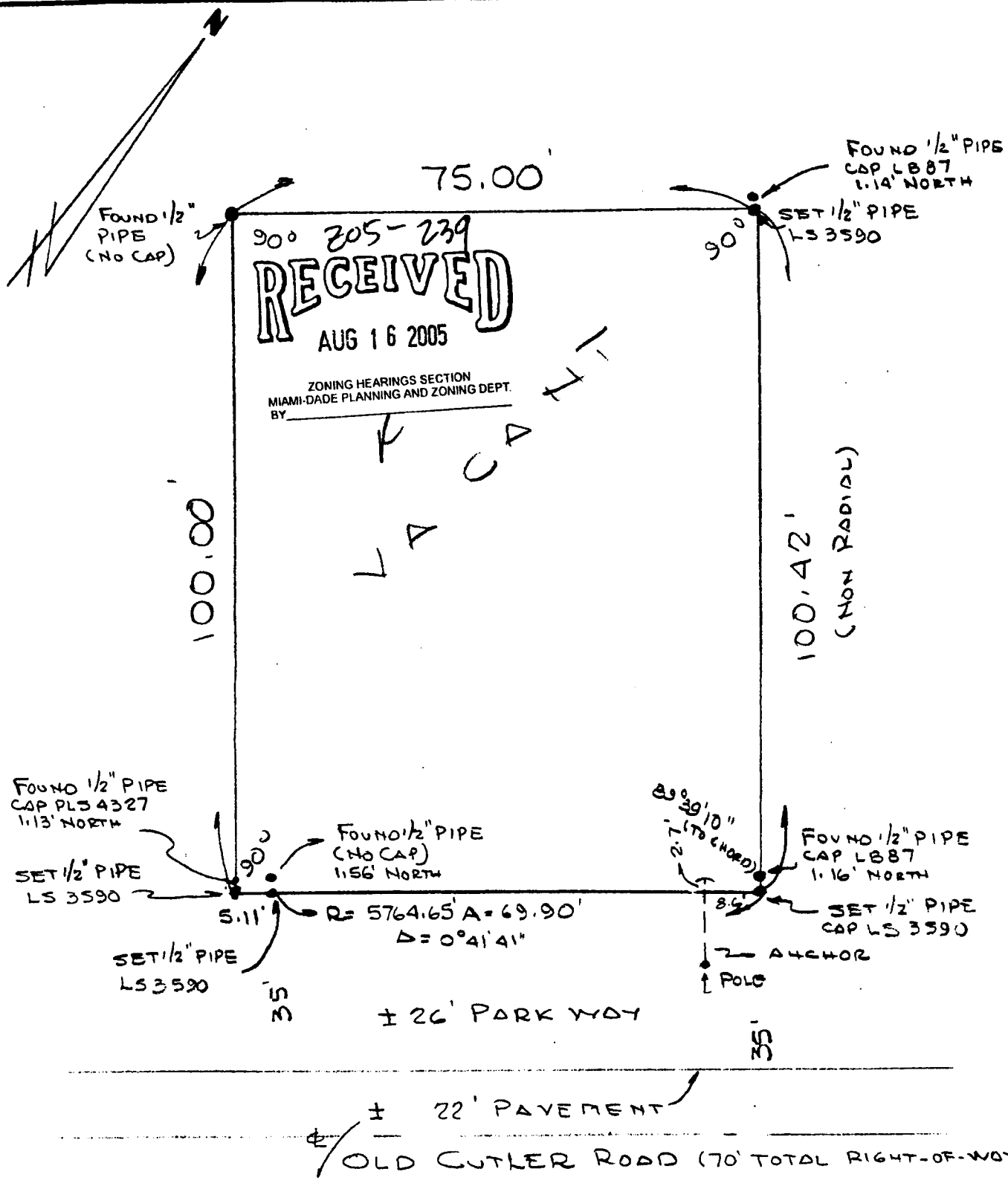
HEARING NUMBER

CURRENT ENFORCEMENT HISTORY:

3-29-06 No violations.

PLAN OF SURVEY

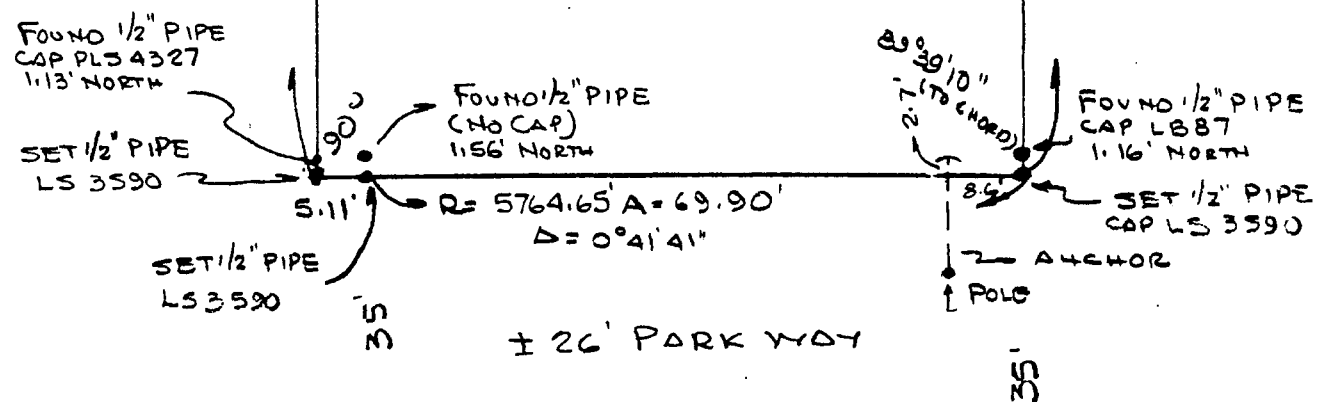
SCALE 1" = 20'



900 205-239
RECEIVED
 AUG 16 2005

ZONING HEARINGS SECTION
 MIAMI-DADE PLANNING AND ZONING DEPT.
 BY _____

LA CATTI

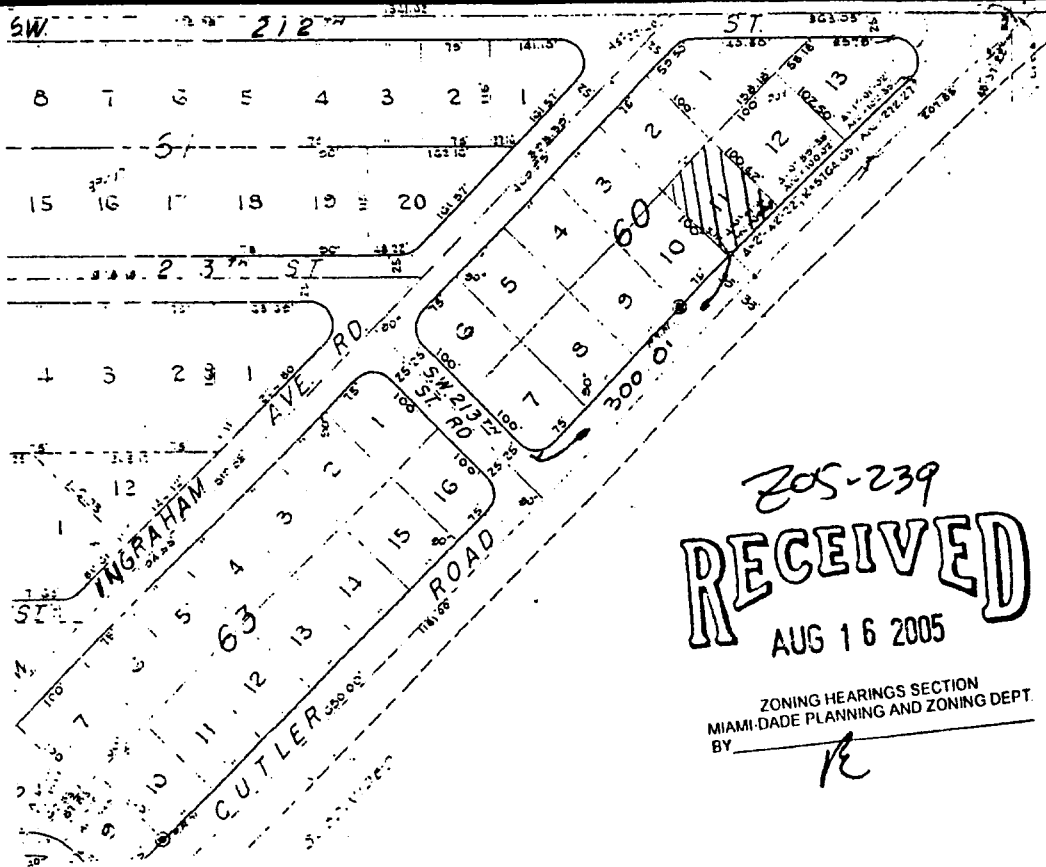


± 26' PARK WAY

± 22' PAVEMENT
 OLD CUTLER ROAD (70' TOTAL RIGHT-OF-WAY)

REVISIONS

R: RADIUS Δ: CENTRAL ANGLE A: ARC &: CENTER LINE



LEGAL DESCRIPTION: Lot 11, Block 60, LINCOLN CITY SECTION G, according to the Plat thereof as recorded in Plat Book 48, page 75 of the Public Records of Dade County, Florida.-

GENERAL NOTES

- 1) OWNERSHIP IS SUBJECT TO OPINION OF TITLE.
- 2) EXAMINATION OF THE ABSTRACT OF TITLE WILL HAVE TO BE MADE TO DETERMINE RECORDED INSTRUMENTS, IF ANY, AFFECTING THIS PROPERTY.
- 3) (2.22) DENOTES THOSE ELEVATIONS REFERRED TO N/A DATUM.
- 4) LOCATION AND IDENTIFICATION OF UTILITIES ON AND/OR ADJACENT TO THE PROPERTY WERE NOT SECURED AS SUCH INFORMATION WAS NOT REQUESTED.
- 5) THIS PROPERTY IS WITHIN THE LIMITS OF FLOOD ZONE X
- 6) ~~No underground locations were done by this Company~~

CERTIFIED TO: Mohamed Ishamel

DATE: January 12, 2005

APPLICABLE ZONING, UNDERGROUND, ZONING AND BUILDING SET BACKS, MUST BE CHECKED BY OWNER, ARCHITECT OR BUILDER BEFORE DESIGN OR CONSTRUCTION BEGINS ON THIS PROPERTY.

CERTIFIED TO:



SURVEYING, INC.
L.B. No. 3333

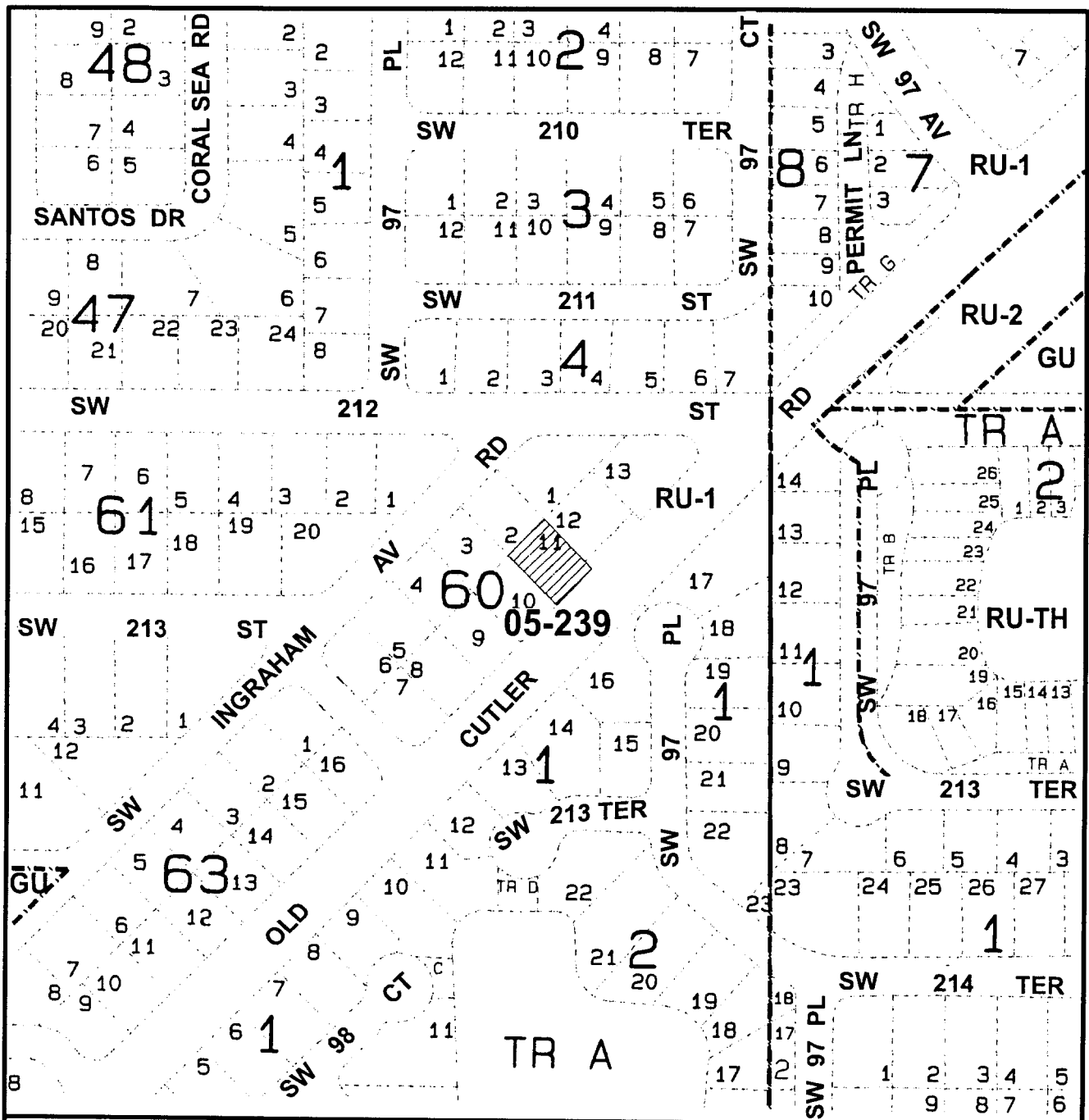
147 ALHAMBRA CIRCLE No. 241
CORAL GABLES, FLORIDA, 33134
Phone: (305) 448-9488

THIS IS A BOUNDARY SURVEY

I HEREBY CERTIFY: That the attached Plan of Survey of the above described property is true and correct to the best of my knowledge, information and belief, as recently surveyed and platted under my direction, also that there are not above-ground encroachments other than those shown. This survey meets the minimum technical standards set forth by the Florida Board of Land Surveyors pursuant to Chapter 61G17-6, Florida Administrative Code, Section 472-027, Florida Statutes.-

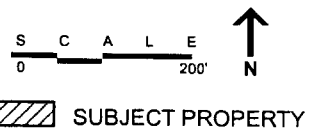
[Signature]
LAZARO D. ALONSO
PROFESSIONAL LAND SURVEYOR
CERTIFICATE NO. 3590
STATE OF FLORIDA

NOT VALID UNLESS SEALED WITH AN EMBOSSED SURVEYOR'S SEAL

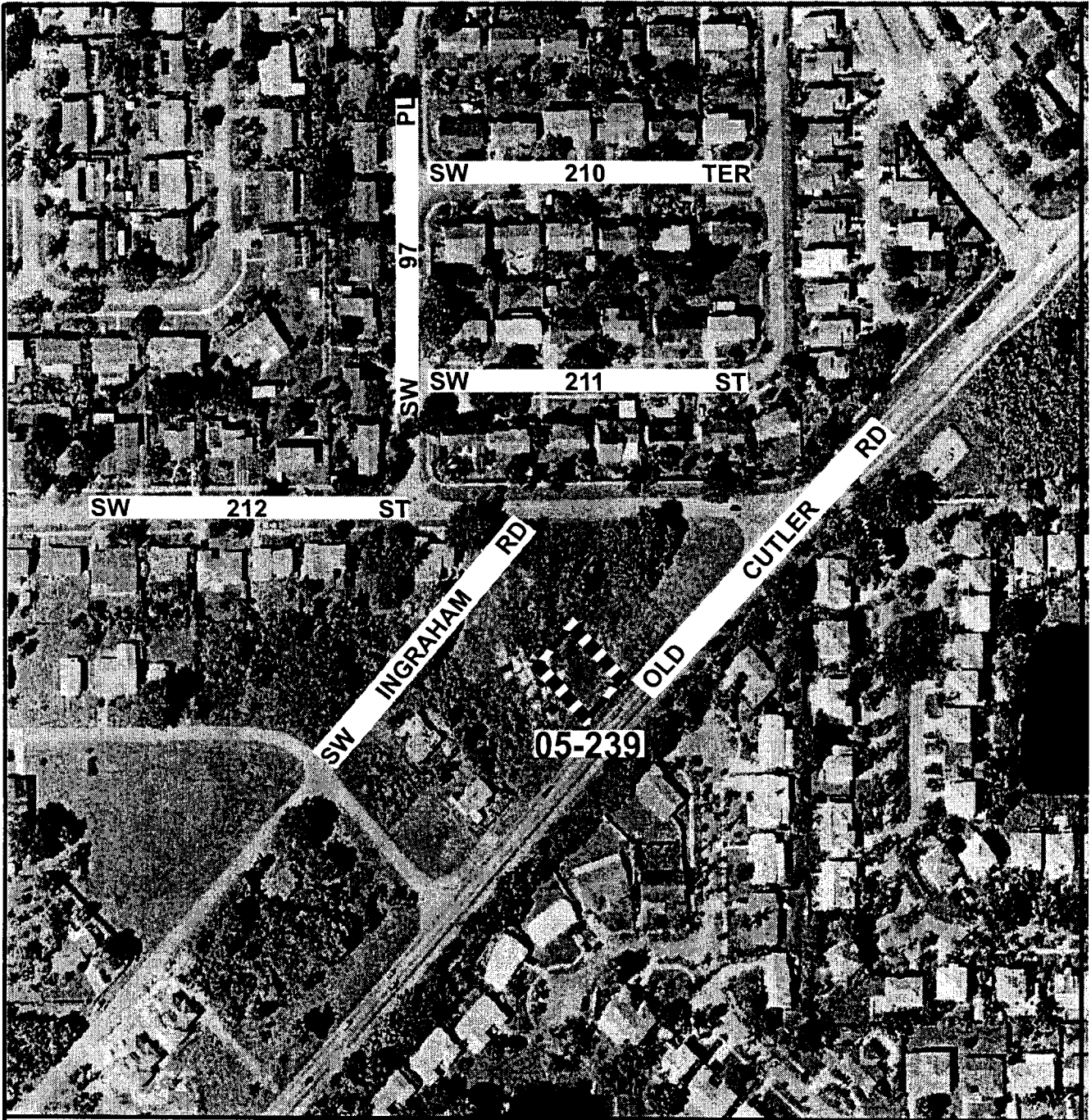


**MIAMI-DADE COUNTY
HEARING MAP**

Section: 08 Township: 56 Range: 40
 Process Number: 05-239
 Applicant: MOHAMED ISHMAEL & JERRY ABDUL
 Zoning Board: TCB
 District Number: 8
 Drafter ID: KEELING
 Scale: 1:200'

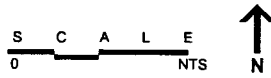


113



MIAMI-DADE COUNTY
AERIAL

Section: 08 Township: 56 Range: 40
Process Number: 05-239
Applicant: MOHAMED ISHMAEL & JERRY ABDUL
Zoning Board: TCB
District Number: 8
Drafter ID: KEELING
Scale: NTS



RESOLUTION NO. 06-_____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A REQUEST TO WAIVE 15 FEET OF THE ZONED RIGHT-OF-WAY FOR THE NORTHWEST CORNER OF S.W. 213TH STREET & OLD CUTLER ROAD; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 33-133 of the Town of Cutler Bay (the "Town") Code of Ordinances (the "Code"), Old Cutler Road is required to have a 100 foot (50 feet on each side) zoned right-of-way (Application No. Z05-095); and

WHEREAS, pursuant to Section 33-311(A)(4)(b) of the Town Code, Le Development Limited (the "Applicant") has requested that the Town Council waive 15 feet of the required 50 feet of zoned right-of-way on the west side of Old Cutler Road located at the northwest corner of S.W. 213th street & Old Cutler Road; and

WHEREAS, Town Staff has reviewed the requirements of Section 33-311(A)(4)(b) of the Town Code and has recommended approval of this request with conditions; and

WHEREAS, public notice was provided in accordance with law; and

WHEREAS, the Town Council finds that this waiver of zoned right-of-way is consistent with the provisions of the Town's Comprehensive Plan.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Approval of Waiver of Zoned Right-of-Way. The Town Council hereby approves the request by the Applicant, subject to the conditions below, to waive 15 feet of the zoned right-of-way on the west side of Old Cutler Road located at the northwest corner of S.W. 213 Street Road & Old Cutler Road.

Section 3. Conditions. The approvals granted by this Resolution are subject to the Applicant's compliance with the following conditions, to which the Applicant stipulated at the public hearing:

1. That a site plan be submitted to and meet with the approval of the Town upon the submittal of an application for a building permit; said plan to include, but not be limited to, location of structure or structures, exits and entrances, drainage, walls, fences, landscaping, and other requirements.

2. That in the approval of the plan, the same be substantially in accordance with that submitted for the hearing entitled "Cutler Bay Estates," as prepared by Raphael C. Chiappetta, consisting of 5 sheets and dated 2/1/05. Except as may be specified by any zoning resolution applicable to the subject property, any future additions on the property which conform to Zoning Code requirements will not require further public hearing action.
3. That the use be established and maintained in accordance with the approved plan.

Section 4. Effective Date. This Resolution shall be effective immediately upon adoption.

PASSED and ADOPTED this ____ day of May, 2006.

 PAUL VROOMAN
 Mayor

Attest: _____
 ELIZABETH SEWELL
 Interim Town Clerk

APPROVED AS TO FORM AND
 LEGAL SUFFICIENCY FOR THE
 SOLE USE OF THE TOWN OF CUTLER BAY:

 WEISS SEROTA HELFMAN PASTORIZA COLE & BONISKE, P.A.
 Interim Town Attorney

FINAL VOTE AT ADOPTION:

Mayor Paul Vrooman _____
 Council Member Timothy J. Meerbott _____
 Council Member Ernest Sochin _____
 Council Member Peggy Bell _____

A. LE DEVELOPMENT LIMITED
Applicant

05-9-CZ15-5 (05-95)
TCB/District 8
Hearing Date: 5/4/06

Property Owner (if different from applicant) **Same.**

Is there an option to purchase /lease the property predicated on the approval of the zoning request? Yes No

Disclosure of interest form attached? Yes No

Previous Zoning Hearings on the Property:

<u>Year</u>	<u>Applicant</u>	<u>Request</u>	<u>Board</u>	<u>Decision</u>
				NONE

Action taken today does not constitute a final development order, and one or more concurrency determinations will subsequently be required. Provisional determinations or listings of needed facilities made in association with this Initial Development Order shall not be binding with regard to future decisions to approve or deny an Intermediate or Final Development Order on any grounds.

The residential densities allowed in this category shall range from a minimum of 2.5 to a maximum of 6.0 units per gross acre. This density category is generally characterized by single family housing, e.g., single family detached, cluster, zero lot line and townhouses. It could include low-rise apartments with extensive surrounding open space or a mixture of housing types provided that the maximum gross density is not exceeded.

D. NEIGHBORHOOD CHARACTERISTICS:

ZONING

LAND USE PLAN DESIGNATION

SUBJECT PROPERTY:

RU-1; vacant

Low Density Residential, 2.5 to 6 dua

SURROUNDING PROPERTY:

NORTH: RU-1; single-family residences

Low Density Residential, 2.5 to 6 dua

SOUTH: RU-1; single-family residences

Low Density Residential, 2.5 to 6 dua

EAST: RU-1; single-family residences

Low Density Residential, 2.5 to 6 dua

WEST: RU-1; single-family residences

Low Density Residential, 2.5 to 6 dua

The subject property is located on the northwest corner of S.W. 213 Street Road & Old Cutler Road. Single-family residences surround the subject site.

E. SITE AND BUILDINGS:

Site Plan Review:	(site plan submitted)
Scale/Utilization of Site:	Acceptable
Location of Buildings:	Acceptable
Compatibility:	Acceptable
Landscape Treatment:	Acceptable
Open Space:	Acceptable
Buffering:	Acceptable
Access:	Acceptable
Parking Layout/Circulation:	Acceptable
Visibility/Visual Screening:	Acceptable
Energy Considerations:	N/A
Roof Installations:	N/A
Service Areas:	N/A
Signage:	N/A
Urban Design:	N/A

of Old Cutler Road adjacent to the subject property where 50' of dedication is required. The applicant has submitted plans depicting the aforementioned request.

The Department of Environmental Resources Management (DERM) has **no objections** to this application and has indicated that it meets the Level of Service (LOS) standards set forth in the Master Plan. However, the applicant will have to comply with all DERM conditions as set forth in their memorandum pertaining to this application. The **Public Works Department** has **no objections** to the applicant's request to permit 35' of dedication on the west side of Old Cutler Road. Their memorandum indicates that Old Cutler Road is designated historical where no future widening or improvements are foreseen. They further indicate that the applicant must dedicate the 25 feet radius corner at the intersection of Old Cutler Road and SW 213 St Rd. This project will not generate any additional peak hour trips; therefore no vehicle trips have been assigned.

Approval of this application will allow the applicant to construct a single-family residence on a lot along Old Cutler Road. The Land Use Plan (LUP) map of the Comprehensive Development Master Plan (CDMP) designates this site for **Low-Density Residential** use, which allows a minimum of 2.5 to a maximum of 6.0 dwelling units per gross acre which permits one unit on the subject site. As such, the construction of a single-family residence on this RU-1 zoned property is **consistent** with the CDMP.

When this application is analyzed under the non-use variance (NUV) standards, Section 33-311(A)(4)(b), staff is of the opinion that the approval of request #1 would be **compatible** with the surrounding area, would not be detrimental to the neighborhood, nor would it affect the appearance of the community. Approval of this request, to permit 35' of dedication (50' required) on the west side of Old Cutler Road, will provide the required RU-1 lot area necessary for the construction of the proposed single-family residence and, in staff's opinion, would not be contrary to the basic intent and purpose of the land use regulations. Although there are no similar approvals in the immediate area, staff notes that there are two similar applications in the area currently on the same agenda (Item #B, 05-96 and Item #1, 05-239). Additionally, the Public Works Department has no objections to the applicant's request to permit 35' of dedication on the west side of Old Cutler Road. Their memorandum indicates that Old Cutler Road is designated historical where no future widening or improvements are foreseen. As such, staff recommends approval with conditions of this application under the NUV standards, Section 33-311(A)(4)(b).

If this application is analyzed under the alternative non-use variance (ANUV) standards, Section 33-311(A)(4)(c), the applicant would have to prove that the request is due to unnecessary hardship and that, should the request not be granted, such denial would not permit the reasonable use of the premises. However, since the applicant has not provided documentation to that effect, this application cannot be properly analyzed under the Alternative Non-Use Variance Standards and should be denied without prejudice under same.

Based on all of the aforementioned, staff recommends approval with conditions of this application under Section 33-311(A)(4)(b) and denial without prejudice under Section 33-311(A)(4)(c).

Memorandum



Date: May 3, 2005

To: Diane O'Quinn-Williams, Director
Department of Planning and Zoning

From: Jose Gonzalez, P.E., Assistant Director
Environmental Resources Management

Subject: C-15 #Z2005000095
LE Development Limited
Old Cutler Road and SW 213th Street
NUV of Lot Area Requirements
(RU-1) (0.146 Ac.)
08-56-40

A handwritten signature in black ink, appearing to read "Jose Gonzalez".

The Department of Environmental Resources Management (DERM) has reviewed the subject application and has determined that it meets the minimum requirements of Chapter 24 of the Code of Miami-Dade County, Florida (The Code). Accordingly, DERM may approve the application, and the same may be scheduled for public hearing.

Water Supply:

The closest public water main is located approximately 300 feet from the site. However, another main is being extended along Old Cutler Road that will end approximately 150 feet from the northeasterly property line of the subject site. Accordingly, and based on the proposed request, the subject property is within a feasible distance for connection to public water; therefore DERM shall require connection to the public water supply system. The applicant is advised that the subject lot does not meet the minimum lot size requirements for the use of an on-site drinking water supply well and a septic tank; therefore, no DERM approvals for the proposed development will be granted unless the property is connected to the public water supply system as required by the Code.

Existing public water facilities and services meet the Level of Service (LOS) standards set forth in the Comprehensive Development Master Plan (CDMP). Furthermore, the proposed development order, if approved, will not result in a reduction in the LOS standards subject to compliance with the conditions stipulated by DERM for this proposed development order.

Wastewater Disposal:

The subject parcel of land does not meet the minimum allowable lot size required in Section 24-43.1 of the Code for a residence served by public water and a septic tank; however, if the creation of such tract of land, occurred prior to the effective date of the requirements, the subject parcel would be grandfatherable and can be administratively approved by DERM for the use of a septic tank as a means for the disposal of the domestic liquid waste. This office does not object to the proposed use served by a septic tank/drainfield disposal system provided that all the above criteria are met and connection is made to public water. The applicant is advised that DERM approval of any additional development orders required in connection with the proposed development will be contingent upon compliance with the above noted Code requirements.

PUBLIC WORKS DEPARTMENT COMMENTS

Applicant's Names: LE DEVELOPMENT LIMITED

This Department has no objections to this application.

This Department has no objections to the request to permit 35 feet of dedication on the west side of Old Cutler Rd. Old Cutler Road is designated historical where no future widening or improvements are foreseen.

The applicant must dedicate the 25 foot radius corner at the intersection of Old Cutler Road and SW 213 St Rd.

This application does not generate any new additional daily peak hour trips, therefore no vehicle trips have been assigned. This meets the traffic concurrency criteria set for an Initial Development Order.



Raul A Pino, P.L.S.

12-AUG-05

TEAM METRO

ENFORCEMENT HISTORY

LE DEVELOPMENT LIMITED

THE NORTHWEST CORNER OF SW
213 STREET ROAD AND OLD
CUTLER ROAD, TOWN OF CUTLER
BAY, FLORIDA.

APPLICANT

ADDRESS

Z2005000095

HEARING NUMBER

CURRENT ENFORCEMENT HISTORY:

3-29-06 No violations.

If there is a **CONTRACT FOR PURCHASE** by a Corporation, Trust or Partnership, list purchasers below, including principal officers, stockholders, beneficiaries or partners. [Note: Where principal officers, stockholders, beneficiaries or partners consist of other corporations, trusts, partnerships or similar entities, further disclosure shall be made to identify natural persons having ultimate ownership interests].

NAME OF PURCHASER: N/A

NAME, ADDRESS AND OFFICE (if applicable)	Percentage of Interest
<u>N/A</u>	<u>N/A</u>

Date of contract: N/A

If any contingency clause or contract terms involve additional parties, list all individuals or officers, if a corporation, partnership or trust:

N/A.

RECEIVED
205-045
MAR 22 2005

ZONING HEARINGS SECTION
MIAMI-DADE PLANNING AND ZONING DEPT.
BY [Signature]

NOTICE: For changes of ownership or changes in purchase contracts after the date of the application, but prior to the date of final public hearing, a supplemental disclosure of interest is required.

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

Signature: [Signature]
(Applicant)

Sworn to and subscribed before me this 14th day of MARCH, 2005. Affiant is personally known to me or has produced N/A as identification.

[Signature]
(Notary Public)

ABISAEEL PEREZ
MY COMMISSION # DD 243650
EXPIRES: October 10, 2007
1-800-3-NOTARY FL Notary Discount Assoc. Co.

*Disclosure shall not be required of: 1) any entity, the equity interests in which are regularly traded on an established securities market in the United States or another country; or 2) pension funds or pension trusts of more than five thousand (5,000) ownership interests; or 3) 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 every level of ownership and where no one (1) person or entity holds more than a total of five per cent (5%) of the ownership interest in the partnership, corporation or trust. Entities whose ownership interests are held in a 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 in the partnership, corporation or trust.

LANDSCAPE LEGEND

DATE: 04/06/05

NET LAND 146 (AREA) WATER BODIES 0 (AREA)
 TOTAL 146 (AREA)
 TOTAL 146 (AREA)
 TOTAL 146 (AREA)
 TOTAL 146 (AREA)

LANDSCAPE REQUIREMENTS

MINIMUM LANDSCAPE REQUIREMENTS SHALL BE:
 TOTAL NUMBER OF TREES: 3
 TOTAL NUMBER OF PALMS: 1
 TOTAL NUMBER OF SHRUBS: 1
 TOTAL NUMBER OF BUSHES: 1
 TOTAL NUMBER OF FLOWERS: 1
 TOTAL NUMBER OF TREES: 3
 TOTAL NUMBER OF PALMS: 1
 TOTAL NUMBER OF SHRUBS: 1
 TOTAL NUMBER OF BUSHES: 1
 TOTAL NUMBER OF FLOWERS: 1

TREE LEGEND	REQUIREMENTS
1. 10' TALL TREE	3
2. 8' TALL TREE	1
3. 6' TALL TREE	1
4. 4' TALL TREE	1
5. 2' TALL TREE	1
6. 1' TALL TREE	1
7. 1/2' TALL TREE	1
8. 1/4' TALL TREE	1
9. 1/8' TALL TREE	1
10. 1/4" TALL TREE	1

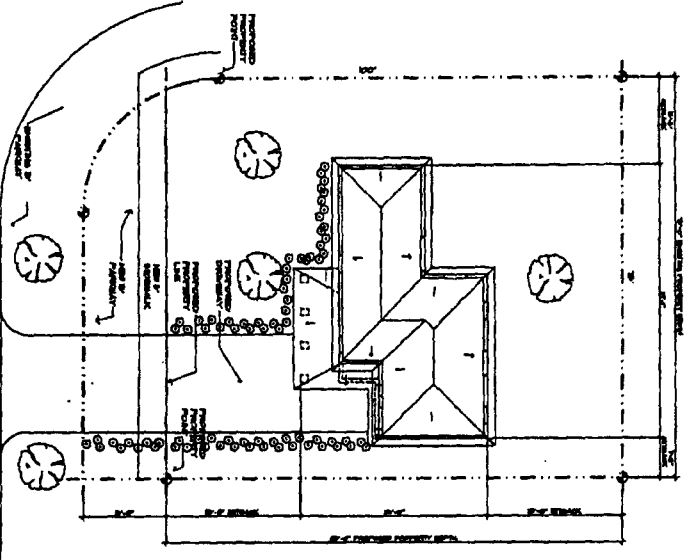
ZONING LEGEND

REQUIREMENTS FOR ZONING: ...

1. 10' TALL TREE	3
2. 8' TALL TREE	1
3. 6' TALL TREE	1
4. 4' TALL TREE	1
5. 2' TALL TREE	1
6. 1' TALL TREE	1
7. 1/2' TALL TREE	1
8. 1/4' TALL TREE	1
9. 1/8' TALL TREE	1
10. 1/4" TALL TREE	1

RECEIVED
 APR 06 2005
 ZONING HEARINGS SECTION
 MIAMI-DADE PLANNING AND ZONING DEPT.

BY: *[Signature]*



CENTRELINE OF OLD CURTIS ROAD
 SITE PLAN 1" = 30'-0"

Raphaele C. Chippetta
 Architect
 LE Development
 Curlier Bay Estates
 14600 SW 14th St., Suite 100
 Miami, FL 33185
 Phone: 305-555-1111
 Fax: 305-555-1112
 Email: info@ledevelopment.com

Old Currier Road
 14600 SW 14th St.
 Miami, FL 33185
 Phone: 305-555-1111
 Fax: 305-555-1112
 Email: info@ledevelopment.com

LE Development Limited

SP-1

Rodhaele C. Chippetta

Architect

3004 SW 14th Street, Miami, FL 33135
305-372-9000 Fax: 305-372-9001

LE Development Limited

10000 SW 17th Street, Suite 100, Miami, FL 33199
305-442-8999 Fax: 305-442-8998

Project: Cutler Bay Estates

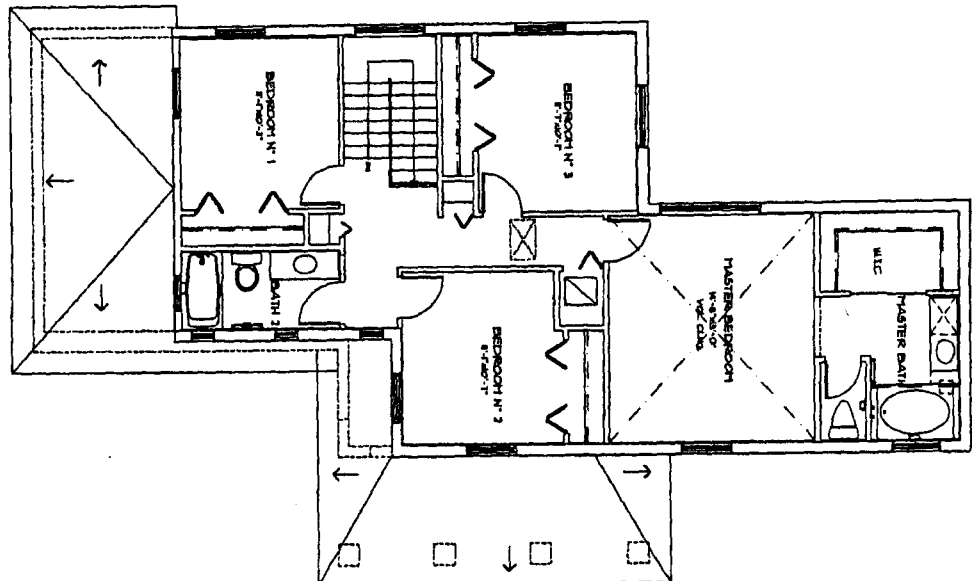
Client: Cutler Bay Estates, Miami, Florida 33199

LE Development Limited

3004 SW 14th Street, Miami, FL 33135
305-442-8999
305-442-9004

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- △
- △
- △
- △
- △

Job No.: 007
Date: February 1, 2004
Oversee: J.C.C.
Drawn By: O.L.K.
Scale: 1/4"
Sheet: A-2
Scale:



SECOND FLOOR PLAN 1/4"

RECEIVED
 205-0415
 MAR 22 2005
 ZONING HEARINGS SECTION
 MIAMI-DADE PLANNING AND ZONING DEPT.
 BY: *[Signature]*

Raphaele C. Chiappetta

Architect

3415 SW 15th Street, Miami, FL 33135
305-224-0200 Fax: 305-224-0201

LE Development Limited

A design-build partnership
12000 SW 12th Street, Suite 1200, Miami, FL 33186
305-224-0200 Fax: 305-224-0201

Project: Cutler Bay Estates

Old Cutler Road, Miami, Florida 33130

Client: LE Development Limited

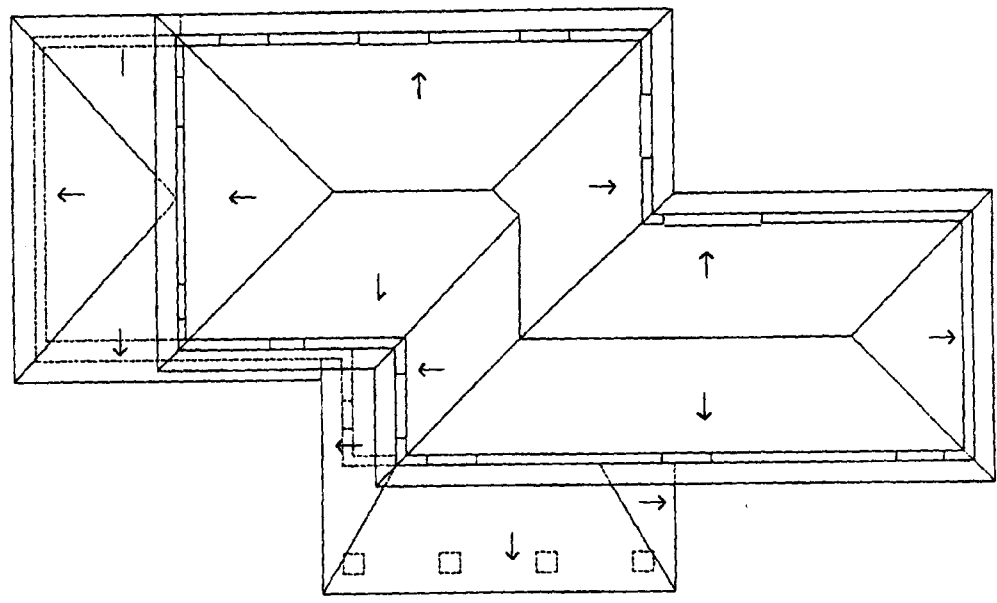
30004 SW 34th Street, Miami, FL 33185
305-221-0223 305-221-4904

Revisions:
△
△
△
△
△

Date: February 1, 2008
Scale: 1/4" = 1'-0"
Sheet: A-4

Drawn by: DLK
Checked: NCC
Date: February 1, 2008
Scale: 1/4" = 1'-0"

30004 SW 34th Street, Miami, FL 33185
305-221-0223 305-221-4904



ROOF PLAN 1/4"

RECEIVED
205-095
MAR 22 2005

ZONING HEARINGS SECTION
MIAMI-DADE PLANNING AND ZONING DEPT.

BY: [Signature]



MIAMI-DADE COUNTY
AERIAL

S C A L E
0 NTS
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N

 SUBJECT PROPERTY

Section: 08 Township: 56 Range: 40
Process Number: 05-095
Applicant: LE DEVELOPMENT
Zoning Board: TCB
District Number: 8
Drafter ID: DIONNE
Scale: NTS



RESOLUTION NO. 06-____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A REQUEST TO WAIVE 15 FEET OF THE ZONED RIGHT-OF-WAY FOR THE NORTHWEST CORNER OF S.W. 215TH STREET & OLD CUTLER ROAD; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 33-133 of the Town of Cutler Bay (the "Town") Code of Ordinances (the "Code"), Old Cutler Road is required to have a 100 foot (50 feet on each side) zoned right-of-way (Application No. Z05-096); and

WHEREAS, pursuant to Section 33-311(A)(4)(b) of the Town Code, Le Development Limited (the "Applicant") has requested that the Town Council waive 15 feet of the required 50 feet of zoned right-of-way on the west side of Old Cutler Road located at the northwest corner of S.W. 215th Street & Old Cutler Road; and

WHEREAS, Town Staff has reviewed the requirements of Section 33-311(A)(4)(b) of the Town Code and has recommended approval of this request with conditions; and

WHEREAS, public notice was provided in accordance with law; and

WHEREAS, the Town Council finds that this waiver of zoned right-of-way is consistent with the provisions of the Town's Comprehensive Plan.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Approval of Waiver of Zoned Right-of-Way. The Town Council hereby approves the request by the Applicant, subject to the conditions below, to waive 15 feet of the zoned right-of-way on the west side of Old Cutler Road located at the northwest corner of S.W. 215th Street & Old Cutler Road.

Section 3. Conditions. The approvals granted by this Resolution are subject to the Applicant's compliance with the following conditions, to which the Applicant stipulated at the public hearing:

1. That a site plan be submitted to and meet with the approval of the Town upon the submittal of an application for a building permit; said plan to include, but not be limited to, location of structure or structures, exits and entrances, drainage, walls, fences, landscaping, and other requirements.

2. That in the approval of the plan, the same be substantially in accordance with that submitted for the hearing entitled "Cutler Bay Estates," as prepared by Raphaele C. Chiappetta, consisting of 6 sheets and dated 2/1/05. Except as may be specified by any zoning resolution applicable to the subject property, any future additions on the property which conform to Zoning Code requirements will not require further public hearing action.
3. That the use be established and maintained in accordance with the approved plan.

Section 4. **Effective Date.** This Resolution shall be effective immediately upon adoption.

PASSED and ADOPTED this ____ day of May, 2006.

PAUL VROOMAN
Mayor

Attest: _____
ELIZABETH SEWELL
Interim Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA COLE & BONISKE, P.A.
Interim Town Attorney

FINAL VOTE AT ADOPTION:

Mayor Paul Vrooman _____
Council Member Timothy J. Meerbott _____
Council Member Ernest Sochin _____
Council Member Peggy Bell _____

B. LE DEVELOPMENT LIMITED
Applicant

05-9-CZ15-6 (05-96)
TCB/District 8
Hearing Date: 5/4/06

Property Owner (if different from applicant) **Same.**

Is there an option to purchase /lease the property predicated on the approval of the zoning request? Yes No

Disclosure of interest form attached? Yes No

Previous Zoning Hearings on the Property:

<u>Year</u>	<u>Applicant</u>	<u>Request</u>	<u>Board</u>	<u>Decision</u>
				NONE

Action taken today does not constitute a final development order, and one or more concurrency determinations will subsequently be required. Provisional determinations or listings of needed facilities made in association with this Initial Development Order shall not be binding with regard to future decisions to approve or deny an Intermediate or Final Development Order on any grounds.

RECOMMENDATION TO THE TOWN OF CUTLER BAY

APPLICANT: LE Development Limited

PH: Z05-096

SECTION: 8-56-40

DATE: May 4, 2006

ITEM NO.: B

=====

A. INTRODUCTION

o **REQUEST:**

Applicant is requesting to waive the zoning regulations requiring Old Cutler Road to be 100' in width; to permit 35' of dedication (50' required) on the west side of Old Cutler Road.

Upon a demonstration that the applicable standards have been satisfied, approval of the request may be considered under §33-311(A)(4)(b) (Non-Use Variance) or (c) (Alternative Non-Use Variance).

Plans are on file and may be examined in the Zoning Department entitled "Cutler Bay Estates," as prepared by Raphael C. Chiappetta, consisting of 6 sheets and dated 2/1/05. Plans may be modified at public hearing.

o **SUMMARY OF REQUEST:**

This application seeks to waive the zoning regulations pertaining to the required width for Old Cutler Road resulting in a request to permit less dedication on the west side of said road.

o **LOCATION:**

The northwest corner of S.W. 215 Street & Old Cutler Road, Cutler Bay, Florida.

o **SIZE:** 0.689 gross acre

o **IMPACT:**

The approval of this request would allow the applicant to construct single-family residences on four lots with less street dedication than required. The waiver of a portion of the required road dedication could visually impact the surrounding properties and affect traffic flow in the area.

B. ZONING HEARINGS HISTORY: None.

C. COMPREHENSIVE DEVELOPMENT MASTER PLAN (CDMP):

The Adopted 2005 and 2015 Land Use Plan designates the subject property as being within the Urban Development Boundary for **Low Density Residential** use. The residential densities allowed in this category shall range from a minimum of 2.5

to a maximum of 6.0 units per gross acre. This density category is generally characterized by single family housing, e.g., single family detached, cluster, zero lot line and townhouses. It could include low-rise apartments with extensive surrounding open space or a mixture of housing types provided that the maximum gross density is not exceeded.

D. NEIGHBORHOOD CHARACTERISTICS:

ZONING

LAND USE PLAN DESIGNATION

SUBJECT PROPERTY:

RU-1; vacant

Low Density Residential, 2.5 to 6 du/a

SURROUNDING PROPERTY:

NORTH: RU-1; single-family residences

Low Density Residential, 2.5 to 6 du/a

SOUTH: RU-1; single-family residences

Low Density Residential, 2.5 to 6 du/a

EAST: RU-1; single-family residences

Low Density Residential, 2.5 to 6 du/a

WEST: RU-1; single-family residences

Low Density Residential, 2.5 to 6 du/a

The subject property is located on the northwest corner of S.W. 215 Street & Old Cutler Road. The properties surrounding the subject site are predominately developed with single-family residences.

E. SITE AND BUILDINGS:

Site Plan Review:

(site plan submitted)

Scale/Utilization of Site:

Acceptable

Location of Buildings:

Acceptable

Compatibility:

Acceptable

Landscape Treatment:

Acceptable

Open Space:

Acceptable

Buffering:

Acceptable

Access:

Acceptable

Parking Layout/Circulation:

Acceptable

Visibility/Visual Screening:

Acceptable

Energy Considerations:

N/A

Roof Installations:

N/A

Service Areas:

N/A

Signage:

N/A

Urban Design:

N/A

F. PERTINENT REQUIREMENTS/STANDARDS:

Section 33-311(A)(4)(b) Non-use variance standard. Upon appeal or direct application in specific cases, the Board shall hear and grant applications for **non-use variances** from the terms of the zoning and subdivision regulations and may grant a non-use variance upon a showing by the applicant that the non-use variance maintains the basic intent and purpose of the zoning, subdivision and other land use regulations, which is to protect the general welfare of the public, particularly as it affects the stability and appearance of the community and provided that the non-use variance will be otherwise compatible with the surrounding land uses and would not be detrimental to the community. No showing of unnecessary hardship to the land is required.

Section 33-311(A)(4)(c) Alternative non-use variance standard. Upon appeal or direct application in specific cases to hear and grant applications from the terms of the zoning and subdivision regulations for non-use variances for setbacks, minimum lot area, frontage and depth, maximum lot coverage and maximum structure height, the Board (following a public hearing) may grant a non-use variance for these items, upon a showing by the applicant that the variance will not be contrary to the public interest, where owing to special conditions, a literal enforcement of the provisions thereof will result in unnecessary hardship, and so the spirit of the regulations shall be observed and substantial justice done; provided, that the non-use variance will be in harmony with the general purpose and intent of the regulation, and that the same is the minimum non-use variance that will permit the reasonable use of the premises; and further provided, no non-use variance from any airport zoning regulation shall be granted under this subsection.

G. NEIGHBORHOOD SERVICES:

DERM	No objection*
Public Works	No objection*
Parks	No objection
MDTA	No objection
Fire Rescue	No objection
Police	No objection
Schools	No comment

*Subject to the conditions indicated in their memoranda.

H. ANALYSIS:

This item was originally scheduled before Community Zoning Appeals Board 15 (CZAB-15). Due to Hurricane Wilma, the Department was unable to meet all Code-mandated deadlines for the October 24, 2005 hearing for CZAB-15 and this item was therefore, deferred and subsequently revised. Due to the incorporation of the Town of Cutler Bay, this application falls now within the jurisdiction of the Town.

The subject property is located on the northwest corner of S.W. 215 Street & Old Cutler Road in an area characterized by single-family residences developed under the RU-1 zoning standards. The applicant is requesting to waive the zoning regulations requiring Old Cutler Road to be 100' in width to permit 35' of dedication on the northwestern side

of Old Cutler Road adjacent to the subject property where 50' of dedication is required. The applicant has submitted plans depicting the aforementioned request.

The Department of Environmental Resources Management (**DERM**) has **no objections** to this application and has indicated that it meets the Level of Service (LOS) standards set forth in the Master Plan. However, the applicant will have to comply with all DERM conditions as set forth in their memorandum pertaining to this application. The **Public Works Department** has **no objections** to the applicant's request to permit 35' of dedication on the west side of Old Cutler Road. Their memorandum indicates that Old Cutler Road is designated historical where no future widening or improvements are foreseen. This project will not generate any additional peak hour trips; therefore no vehicle trips have been assigned.

Approval of this application will allow the applicant to construct single-family residences on four lots along Old Cutler Road. The Land Use Plan (LUP) map of the Comprehensive Development Master Plan (CDMP) designates this site for **Low-Density Residential** use, which allows a minimum of 2.5 to a maximum of 6.0 dwelling units per gross acre or a total of 4 units on the subject property. As such, the construction of four single-family residences on this RU-1 zoned property is **consistent** with the CDMP.

When this application is analyzed under the non-use variance (NUV) standards, Section 33-311(A)(4)(b), staff is of the opinion that the approval of this request would be **compatible** with the surrounding area, would not be detrimental to the neighborhood, nor would it affect the appearance of the community. Approval of this request, to permit 35' of dedication (50' required) on the west side of Old Cutler Road, will provide the required RU-1 lot area necessary for the construction of the proposed single-family residences and, in staff's opinion, would not be contrary to the basic intent and purpose of the land use regulations. Although there are no similar approvals in the immediate area, staff notes that there are two similar applications in the area currently on the same agenda (Item #A, 05-95 and Item #1, 05-239). Additionally, the Public Works Department has no objections to the applicant's request to permit 35' of dedication on the west side of Old Cutler Road. Their memorandum indicates that Old Cutler Road is designated historical where no future widening or improvements are foreseen. As such, staff recommends approval with conditions of this application under the NUV standards, Section 33-311(A)(4)(b).

If this application is analyzed under the alternative non-use variance (ANUV) standards, Section 33-311(A)(4)(c), the applicant would have to prove that the request is due to unnecessary hardship and that, should the request not be granted, such denial would not permit the reasonable use of the premises. However, since the applicant has not provided documentation to that effect, this application cannot be properly analyzed under the Alternative Non-Use Variance Standards and should be denied without prejudice under same.

Based on all of the aforementioned, staff recommends approval with conditions of this application under Section 33-311(A)(4)(b) and denial without prejudice under Section 33-311(A)(4)(c).

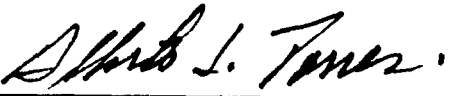
I. **RECOMMENDATION:**

Approval with conditions under Section 33-311(A)(4)(b) and denial without prejudice under Section 33-311(A)(4)(c).

J. **CONDITIONS:**

1. That a site plan be submitted to and meet with the approval of the Town of Cutler Bay upon the submittal of an application for a building permit; said plan to include, but not be limited to, location of structure or structures, exits and entrances, drainage, walls, fences, landscaping, and other requirements.
2. That in the approval of the plan, the same be substantially in accordance with that submitted for the hearing entitled "Cutler Bay Estates," as prepared by Raphaelle C. Chiappetta, consisting of 6 sheets and dated 2/1/05. Except as may be specified by any zoning resolution applicable to the subject property, any future additions on the property which conform to Zoning Code requirements will not require further public hearing action.
3. That the use be established and maintained in accordance with the approved plan.

DATE INSPECTED: 07/11/05
DATE TYPED: 07/22/05
DATE REVISED: 07/22/05; 08/03/05; 08/30/05; 09/08/05; 09/23/05; 04/03/06;
04/05/06; 04/10/06; 04/19/06; 04/20/06; 04/26/06
DATE FINALIZED: 04/26/06
DO'QW:AJT:MTF:LVT:CSE:JV

for 

Diane O'Quinn Williams, Director
Miami-Dade County Department of
Planning and Zoning

Memorandum



Date: May 4, 2005

To: Diane O'Quinn-Williams, Director
Department of Planning and Zoning

From: Jose Gonzalez, P.E., Assistant Director
Environmental Resources Management

A handwritten signature in black ink, appearing to read "Jose Gonzalez".

Subject: C-15 #Z2005000096
LE Development Limited
Old Cutler Road and SW 215th Street
NUV of Lot Area Requirements
(RU-1) (0.146 Ac.)
08-56-40

The Department of Environmental Resources Management (DERM) has reviewed the subject application and has determined that it meets the minimum requirements of Chapter 24 of the Code of Miami-Dade County, Florida (The Code). Accordingly, DERM may approve the application, and the same may be scheduled for public hearing.

Water Supply:

The closest public water main is located approximately 300 feet from the site. The applicant is advised that the subject lot does not meet the minimum lot size requirements for the use of an on-site drinking water supply well and a septic tank; therefore, no DERM approvals for the proposed development will be granted unless the property is connected to the public water supply system as required by the Code.

Existing public water facilities and services meet the Level of Service (LOS) standards set forth in the Comprehensive Development Master Plan (CDMP). Furthermore, the proposed development order, if approved, will not result in a reduction in the LOS standards subject to compliance with the conditions stipulated by DERM for this proposed development order.

Wastewater Disposal:

The subject parcel of land does not meet the minimum allowable lot size required in Section 24-43.1 of the Code for a residence served by public water and a septic tank; however, if the creation of such tract of land, occurred prior to the effective date of the requirements, the subject parcel would be grandfatherable and can be administratively approved by DERM for the use of a septic tank as a means for the disposal of the domestic liquid waste. This office does not object to the proposed use served by a septic tank/drainfield disposal system provided that all the above criteria are met and connection is made to public water. The applicant is advised that DERM approval of any additional development orders required in connection with the proposed development will be contingent upon compliance with the above noted Code requirements.

Stormwater Management:

All stormwater shall be retained on site utilizing properly designed seepage or infiltration drainage structures. Drainage must be provided for the 5-year storm event with full on-site retention of the 5-year/1 day storm. Pollution Control devices shall be required at all drainage inlet structures.

Site grading and development shall comply with the requirements of Chapter 11C of the Code.

Any proposed development shall comply with County and Federal flood criteria requirements. The proposed development order, if approved, will not result in a reduction in the Level of Service standards for flood protection set forth in the CDMP subject to compliance with the conditions required by DERM for this proposed development order.

Wetlands:

The subject site is not located in jurisdictional wetlands as defined in Sections 24-5 and 24-48 of the Code; therefore, a Class IV Permit for work in wetlands will not be required by DERM.

Notwithstanding the above, permits from the Army Corps of Engineers, the State of Florida Department of Environmental Protection and the South Florida Water Management District may be required for the proposed project. The applicant is advised to contact these agencies concerning their permit procedures and requirements.

Tree Preservation:

The subject property contains tree resources; Section 24-49 of the Code requires the preservation of tree resources. A Miami-Dade County tree removal permit is required prior to the removal or relocation of any trees. A tree survey showing all the tree resources on-site will be required prior to reviewing the tree removal permit application. The applicant is advised to contact DERM staff for permitting procedures and requirements prior to development of site and landscaping plans.

Enforcement History:

DERM has reviewed the Permits and Enforcement database and the Enforcement Case Tracking System and has found no open or closed formal enforcement records for the subject properties identified in the subject application.

Concurrency Review Summary:

DERM has conducted a concurrency review for this application and has determined that the same meets all applicable Levels of Service standards for an initial development order, as specified in the adopted CDMP for potable water supply, wastewater disposal and flood protection. Therefore, the application has been approved for concurrency subject to the comments and conditions contained herein.

This concurrency approval does not constitute a final concurrency statement and is valid only for this initial development order as provided for in the adopted methodology for concurrency review. Additionally, this approval does not constitute any assurance that the LOS standards would be met by any subsequent development order applications concerning the subject property.

In summary, the application meets the minimum requirements of Chapter 24 of the Code and therefore, it may be scheduled for public hearing; furthermore, this memorandum shall constitute DERM's written approval to that effect as required by the Code.

cc: Lynne Talleda, Zoning Evaluation- P&Z
Ron Connally, Zoning Hearings- P&Z
Franklin Gutierrez, Zoning Agenda Coordinator-P&Z

REVISION 1
PH# Z2005000096
CZAB - C15

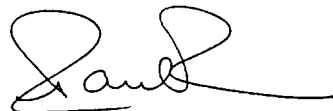
PUBLIC WORKS DEPARTMENT COMMENTS

Applicant's Names: LE DEVELOPMENT LIMITED

This Department has no objections to this application.

This Department has no objections to the request to permit 35 feet of dedication on the west side of Old Cutler Rd. Old Cutler Road is designated historical where no future widening or improvements are foreseen.

This application does not generate any new additional daily peak hour trips, therefore no vehicle trips have been assigned. This meets the traffic concurrency criteria set for an Initial Development Order.



Raul A Pino, P.L.S.

12-AUG-05

Memorandum



Date: 29-MAR-05
To: Diane O'Quinn Williams, Director
Department of Planning and Zoning
From: Herminio Lorenzo, Fire Chief
Miami-Dade Fire Rescue
Subject: Z2005000096

Fire Prevention Unit:

OK for accessibility OK

Development for the above Z2005000096
located at N OF OLD CUTLER RD & E OF SW 216 ST, MIAMI-DADE COUNTY, FLORIDA.
in Police Grid 2295 is proposed as the following:

<u>1</u> single	dwelling units	<u> </u> industrial	square feet
<u> </u> multifamily	dwelling units	<u> </u> institutional	square feet
<u> </u> commercial	square feet	<u> </u> nursing home	square feet

Based on this development information, estimated service impact is
0.26 alarms annually.

Planned service(s) to mitigate the impact is:

None

Station/Unit

Estimated date of opening

TEAM METRO

ENFORCEMENT HISTORY

LE DEVELOPMENT LIMITED

THE NORTHWEST CORNER OF OLD
CUTLER ROAD AND SW 215
STREET, TOWN OF CUTLER BAY,
FLORIDA.

APPLICANT

ADDRESS

Z2005000096

HEARING NUMBER

CURRENT ENFORCEMENT HISTORY:

3-29-06 No violations.

DISCLOSURE OF INTEREST*

If a CORPORATION owns or leases the subject property, list principal stockholders and percent of stock owned by each. [Note: Where principal officers or stockholders consist of other corporation(s), trust(s), partnership(s) or similar entities, further disclosure shall be made to identify the natural persons having the ultimate ownership interest].

CORPORATION NAME: N/A

NAME AND ADDRESS	Percentage of Stock

If a TRUST or ESTATE owns or leases the subject property, list the trust beneficiaries and percent of interest held by each. [Note: Where beneficiaries are other than natural persons; further disclosure shall be made to identify the natural persons having the ultimate ownership interest].

TRUST/ESTATE NAME: N/A

NAME AND ADDRESS	Percentage of Interest

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BY *[Signature]*

If a PARTNERSHIP owns or leases the subject property, list the principals including general and limited partners. [Note: Where partner(s) consist of other partnership(s), corporation(s), trust(s) or similar entities, further disclosure shall be made to identify the natural persons having the ultimate ownership interests].

PARTNERSHIP OR LIMITED PARTNERSHIP NAME: LE DEVELOPMENT LIMITED

NAME AND ADDRESS	Percent of Ownership
<u>OCTAVIO E. MENDIZABAL</u> <u>12004 SW 268 ST. MIAMI, FL 33032</u>	<u>50%</u>
<u>OCTAVIO L. MENDHABAL</u> <u>12004 SW 268 ST. MIAMI, FL 33032</u>	<u>50%</u>

If there is a **CONTRACT FOR PURCHASE** by a Corporation, Trust or Partnership, list purchasers below, including principal officers, stockholders, beneficiaries or partners. [Note: Where principal officers, stockholders, beneficiaries or partners consist of other corporations, trusts, partnerships or similar entities, further disclosure shall be made to identify natural persons having ultimate ownership interests].

NAME OF PURCHASER: N/A

NAME, ADDRESS AND OFFICE (if applicable)	Percentage of Interest
<u>N/A</u>	<u>N/A</u>
<u>N/A</u>	<u>N/A</u>
<u>N/A</u>	<u>N/A</u>

Date of contract: N/A

If any contingency clause or contract terms involve additional parties, list all individuals or officers, if a corporation, partnership or trust:

N/A.

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BY [Signature]

NOTICE: For changes of ownership or changes in purchase contracts after the date of the application, but prior to the date of final public hearing, a supplemental disclosure of interest is required.

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

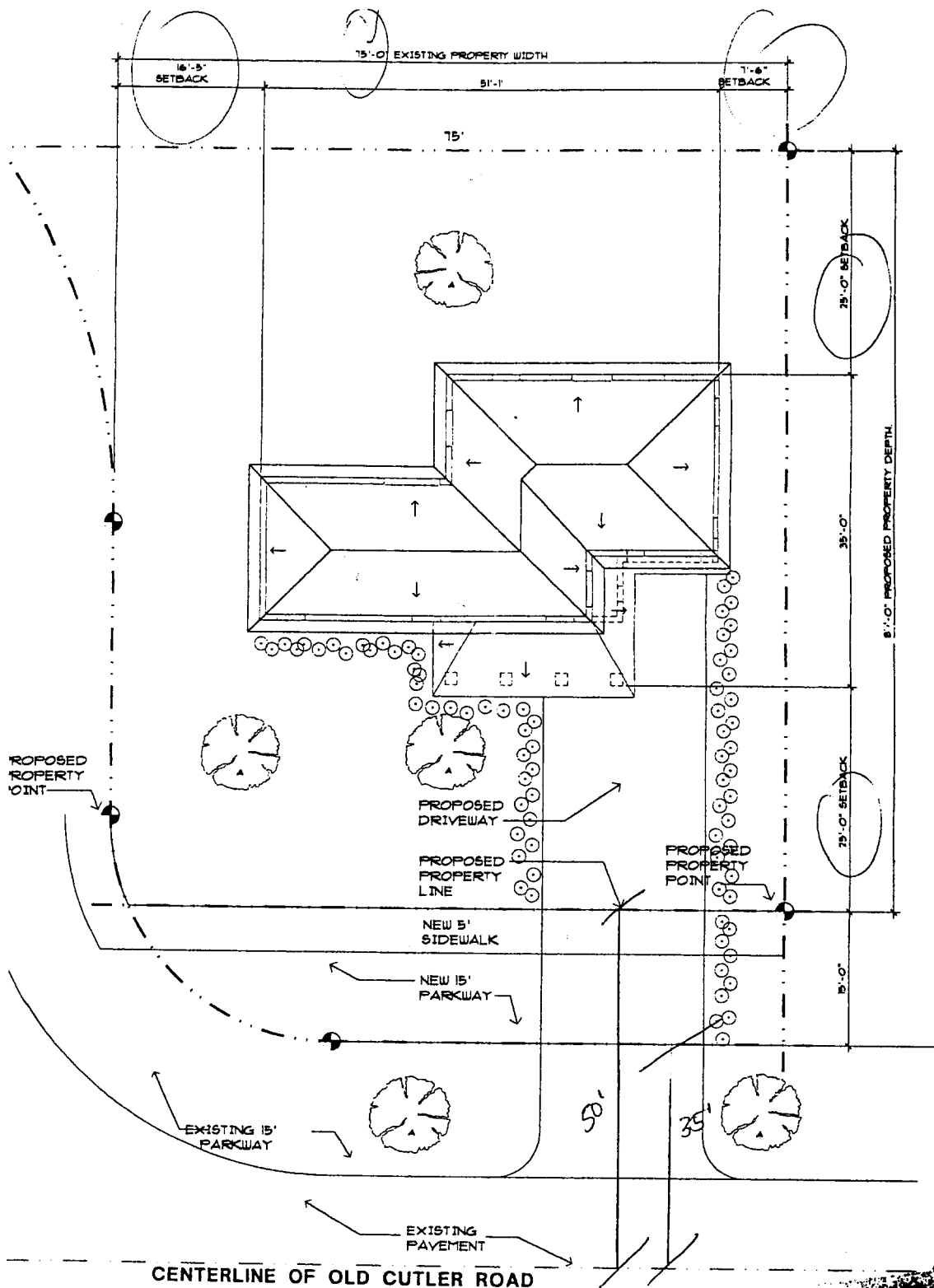
Signature: [Signature]
(Applicant)

Sworn to and subscribed before me this 14th day of MARCH, 2005. Affiant is personally known to me or has produced N/A as identification.

[Signature]
 (Notary Public)  ABISAEEL PEREZ
 MY COMMISSION # DD 243850
 EXPIRES: October 10, 2007
 1-800-3-NOTARY FL Notary Discount Assoc. Co.

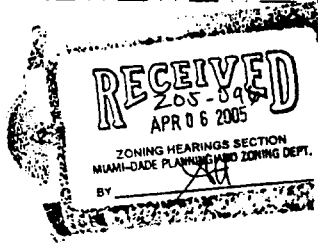
My commission expires _____

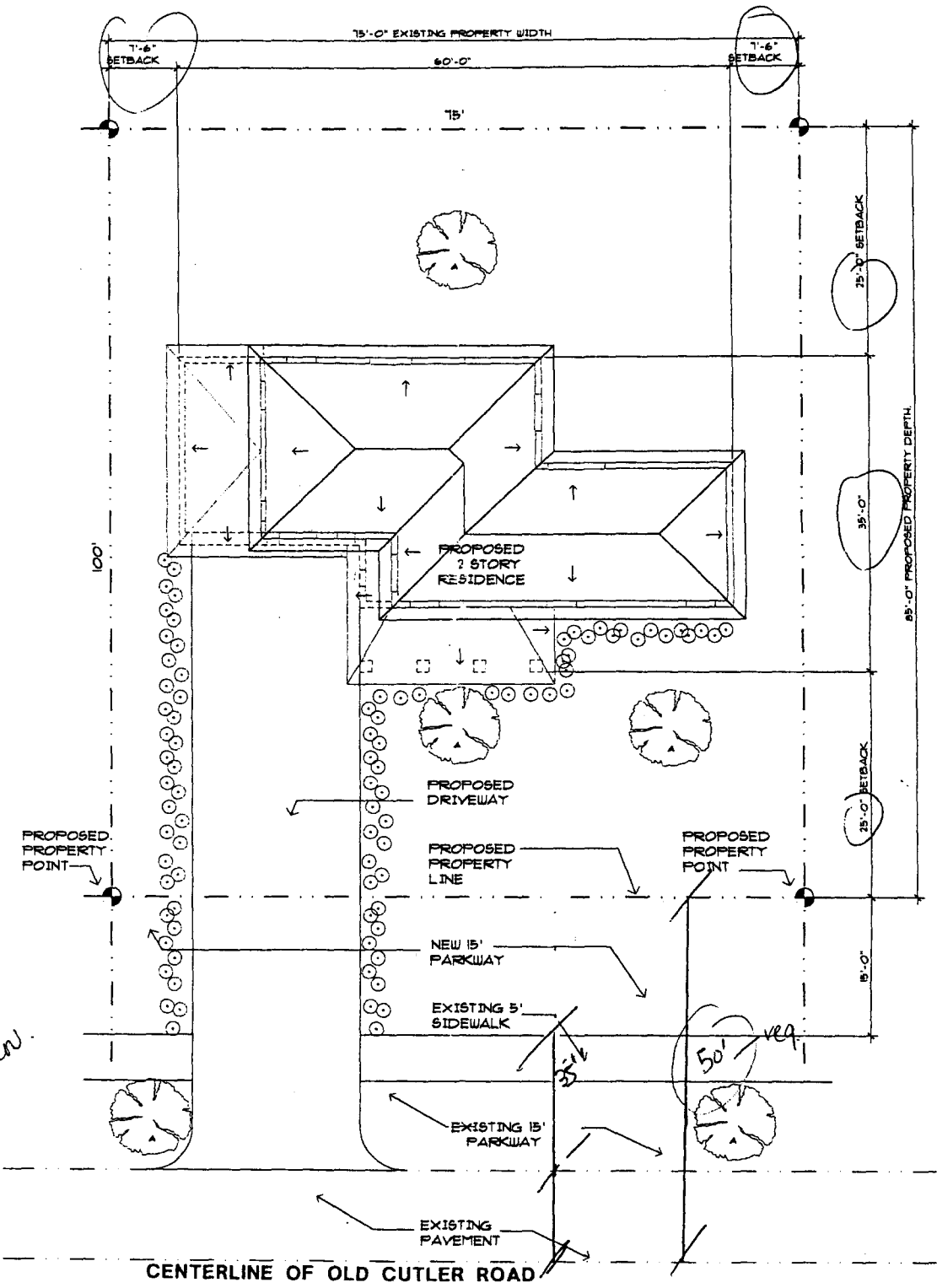
*Disclosure shall not be required of: 1) any entity, the equity interests in which are regularly traded on an established securities market in the United States or another country; or 2) pension funds or pension trusts of more than five thousand (5,000) ownership interests; or 3) any entity where ownership interests are held in a partnership, corporation or trust consisting of more than five thousand (5,000) separate interests, including all interests at every level of ownership and where no one (1) person or entity holds more than a total of five per cent (5%) of the ownership interest in the partnership, corporation or trust. Entities whose ownership interests are held in a 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 in the partnership corporation or trust.



SITE PLAN 1" = 10'-0"

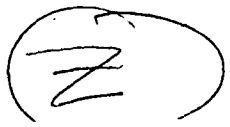
lot 9 BLK 63





SITE PLAN 1" = 10'-0"

lots 10, 11, 12
BLK 63



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ZONING HEARINGS SECTION

LANDSCAPE LEGEND

1/10/05 - 1/10/05

LOT (AREA) _____ NET LAND (AREA) _____ WATER BODIES (AREA) _____
 (OR APPROXIMATE) _____
 (OR APPROXIMATE) _____
 (OR APPROXIMATE) _____
 (OR APPROXIMATE) _____
 (OR APPROXIMATE) _____

LOT (NOTE: SIZE OF INDICATED TREES AND CON. PLANTS SHALL BE AS SHOWN)
 SPECIES: _____
 HEIGHT: _____
 SPACING: _____
 DATE OF MAT'RY OR ON PRIVATE PROPERTY; ALL INDICATED PUBLIC
 OR PRIVATE: _____
 DATE FOR SA. TREE REMOVAL: _____
 REMOVAL SHALL BE NATIVE SPECIES
 TREES REMOVED PERMISSIBLE TO QUALIFY AS FLORIDA BUILT AND GROWN

APE REQUIREMENTS

- 1. LOT TREES 2
- 2. STREET TREES 1
- 3. NATURAL TREES 1
- 4. NATURAL TREES 1
- 5. NATURAL TREES 1

TREE LEGEND

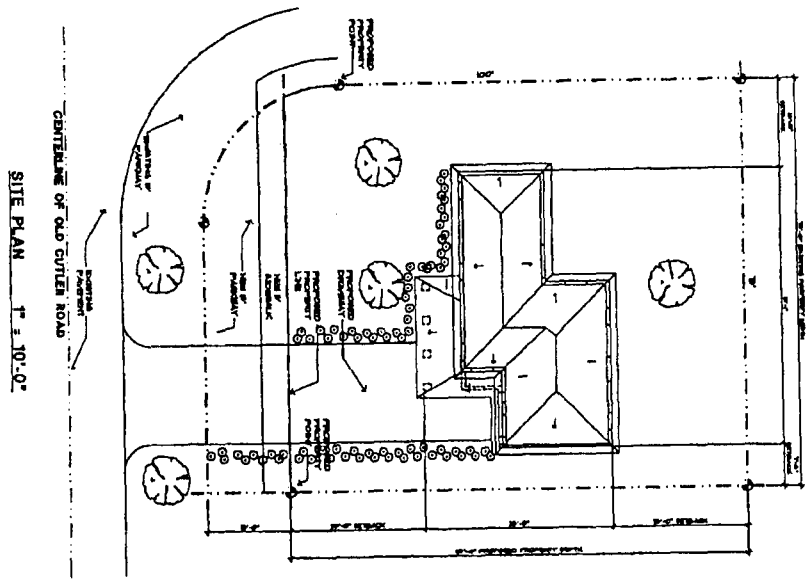
SCALE: 1/4" = 1'-0"	DATE: 1/10/05
SCALE: 1/8" = 1'-0"	DATE: 1/10/05
SCALE: 1/16" = 1'-0"	DATE: 1/10/05
SCALE: 1/32" = 1'-0"	DATE: 1/10/05
SCALE: 1/64" = 1'-0"	DATE: 1/10/05

lot 9 BLK 603

ZONING LEGEND

THIS LEGEND IS FOR THE PURPOSES OF THIS ZONING MAP AND SHALL BE USED IN CONJUNCTION WITH THE ZONING ORDINANCE AND THE ZONING MAP. THE ZONING MAP SHALL BE THE AUTHORITY FOR THE DETERMINATION OF THE ZONING DISTRICT FOR ANY PARTICULAR PROPERTY.

ZONING DISTRICT	PERMITTED USES	RESTRICTIONS
RESIDENTIAL SINGLE-FAMILY (RS)	Single-Family Detached Dwelling	Minimum Lot Area: 5,000 sq. ft.
RESIDENTIAL MEDIUM-DENSITY (RM)	Single-Family Detached Dwelling, Duplex, Triplex	Minimum Lot Area: 3,500 sq. ft.
RESIDENTIAL HIGH-DENSITY (RH)	Single-Family Detached Dwelling, Duplex, Triplex, Multi-Family	Minimum Lot Area: 2,500 sq. ft.
COMMERCIAL GENERAL (CG)	General Commercial	Minimum Lot Area: 5,000 sq. ft.
COMMERCIAL LIMITED (CL)	General Commercial	Minimum Lot Area: 3,500 sq. ft.
OFFICE (O)	Office Building	Minimum Lot Area: 5,000 sq. ft.
INDUSTRIAL GENERAL (IG)	General Industrial	Minimum Lot Area: 10,000 sq. ft.
INDUSTRIAL LIMITED (IL)	General Industrial	Minimum Lot Area: 5,000 sq. ft.
RECREATION (R)	Recreation	Minimum Lot Area: 5,000 sq. ft.
CORPORATE CENTER (CC)	Corporate Center	Minimum Lot Area: 5,000 sq. ft.
UNIVERSITY (U)	University	Minimum Lot Area: 5,000 sq. ft.
TECHNOLOGY (T)	Technology	Minimum Lot Area: 5,000 sq. ft.
ARTS AND CULTURE (A)	Arts and Culture	Minimum Lot Area: 5,000 sq. ft.
HOUSING DEVELOPMENT (HD)	Housing Development	Minimum Lot Area: 5,000 sq. ft.



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 BY: [Signature]

Raphaella C. Chippetta
 Architect

LE Development Limited
 Project: **Cutler Bay Estates**

3000 SW 10th Street, Miami, FL 33135
 305-442-2222
 305-442-2222

SP

LANDSCAPE LEGEND

DATE: 11/22/04

PROJECT: 101112 PAK 63

LAND 310 (FORM) 1:1000 1/4" (FORM) WATER BODIES 0 (FORM)

PRICE (BY APPROVAL) 50% (TYPED BY) 75% (TYPED BY)

REL. NORTH (BY APPROVAL) N/A (FORM) N/A (FORM)

FILE (AS ATTACHED TO ORDINANCE) S.D. 2 (FORM BY) T.D. 2 (FORM BY)

TEN MET LOT (NOTE: 50% OF REQUIRED TREES AND ONE PALM SHALL BE ANNUAL TO CANCELLED PALM)

TREES 2 3 4

N/A (FORM) N/A (FORM)

IN THE CASE OF ANY OF THE ABOVE, THE APPLICANT SHALL PROVIDE PUBLIC APPROVAL OF SPECIAL LAND DISTRICT

APPROVAL OF TREES 0 0 0

IF 10 TREES OR MORE ARE REQUIRED, 2

ANNUAL TREES SHALL BE PLANTED BEFORE THE END OF THE YEAR

ACTION EVENT REQUIRED PRESENT TO CHAPTER 39 A. ORDINA. 18.0300

DISCARE REQUIREMENTS

LAST AREA PERMITTED 2003 BY

PROVIDED 2003 BY

PROVIDED 3 NATIVES

PROVIDED 1 NATIVES

PROVIDED 3 NATIVES

PROVIDED NO

PROVIDED NO

PROVIDED NO

PROVIDED NO

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PROVIDED NO

ZONING LEGEND

DATE: 11/22/04

PROJECT: 101112 PAK 63

LAND 310 (FORM) 1:1000 1/4" (FORM) WATER BODIES 0 (FORM)

PRICE (BY APPROVAL) 50% (TYPED BY) 75% (TYPED BY)

REL. NORTH (BY APPROVAL) N/A (FORM) N/A (FORM)

FILE (AS ATTACHED TO ORDINANCE) S.D. 2 (FORM BY) T.D. 2 (FORM BY)

TEN MET LOT (NOTE: 50% OF REQUIRED TREES AND ONE PALM SHALL BE ANNUAL TO CANCELLED PALM)

TREES 2 3 4

N/A (FORM) N/A (FORM)

IN THE CASE OF ANY OF THE ABOVE, THE APPLICANT SHALL PROVIDE PUBLIC APPROVAL OF SPECIAL LAND DISTRICT

APPROVAL OF TREES 0 0 0

IF 10 TREES OR MORE ARE REQUIRED, 2

ANNUAL TREES SHALL BE PLANTED BEFORE THE END OF THE YEAR

ACTION EVENT REQUIRED PRESENT TO CHAPTER 39 A. ORDINA. 18.0300

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2005-03-16

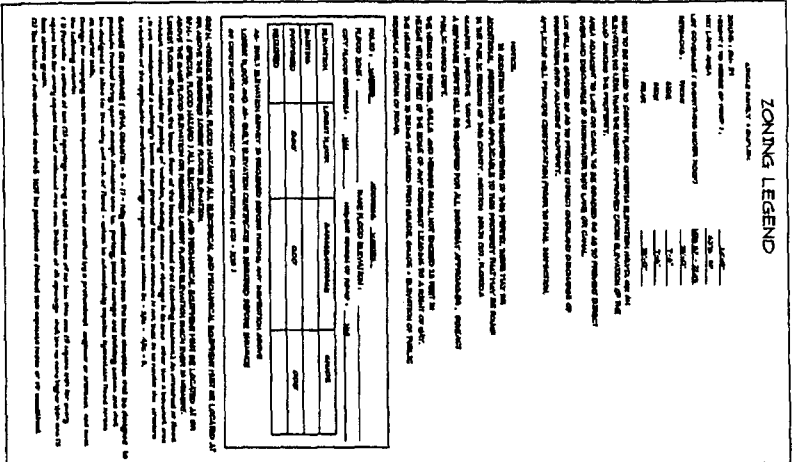
MAR 22 2005

ZONING HEARINGS SECTION

MIAMI-DADE PLANNING AND ZONING DEPT.

BY [Signature]

lots 10,11,12 PAK 63



SITE PLAN 1" = 10'-0"

Raphaele C. Chippello Architect	LE Development Limited 8000 SW 24th Street Miami, FL 33032 305-447-3223 305-447-7104	Culler Boy Estates	LE Development 101112 PAK 63 8000 SW 24th Street Miami, FL 33032 305-447-3223	SP
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Raphaele C. Chiappetta

Architect

3442 SW 24th Road, Miami, FL 33135
 (305) 358-0320 Fax: (305) 358-0324

LE Development
 Limited

a design-build partnership

10,000 SW 11th Street, Suite 100, Miami, FL 33135
 (305) 358-0320 Fax: (305) 358-0324

Project:
Cutler Boy Estates

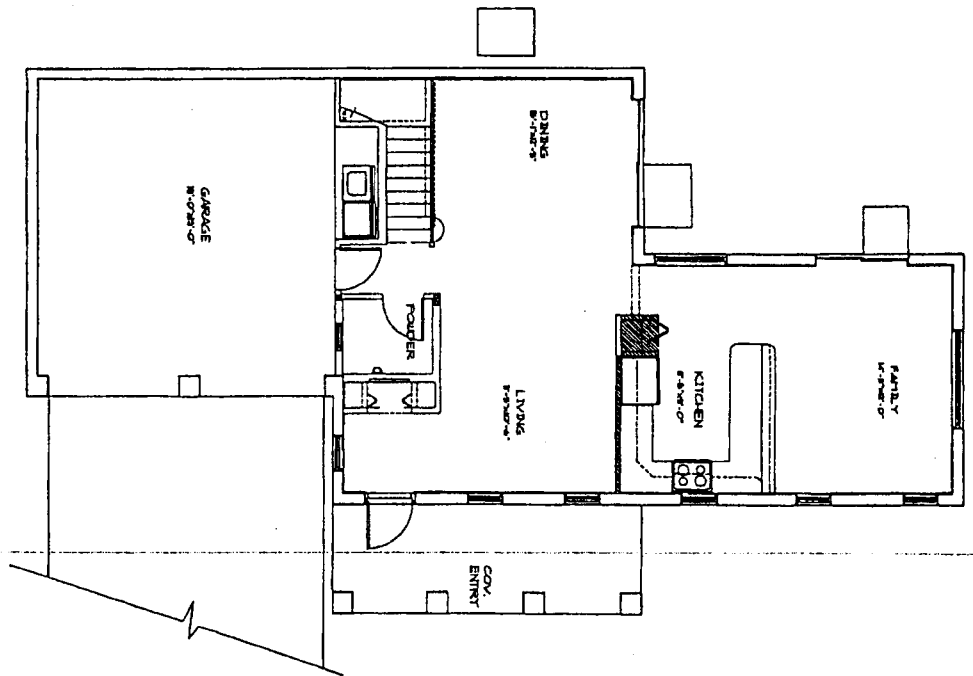
Client:
 Old Cutler Road
 Miami, Florida 33190

Client:
LE Development Limited

3004 SW 24th Street
 Miami, FL 33135
 305-281-2221
 305-281-7904

- △ Residential
- △
- △
- △
- △
- △

Job No.:	009
Date:	February 1, 2004
Checked:	E.C.C.
Drawn By:	O.I.M.
Scale:	1/4"
Sheet:	A-1



FIRST FLOOR PLAN 1/4"

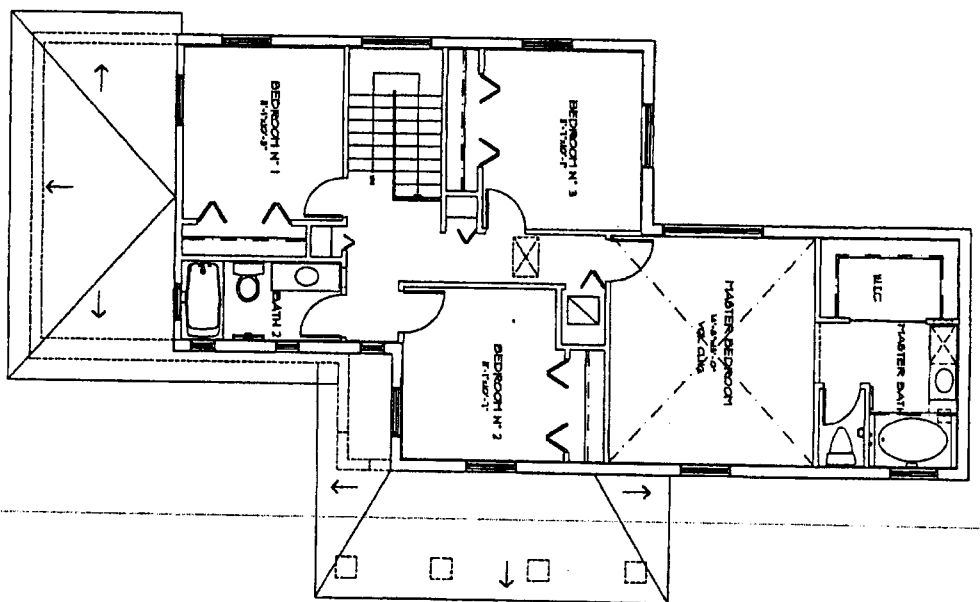
AREA SUMMARY

AC SERVICE - FIRST FLOOR	104 sq. ft.
AC SERVICE - SECOND FLOOR	107 sq. ft.
TOTAL AC SERVICE	211 sq. ft.
COVERED ENTRY	13 sq. ft.
SCREENED ENTRY	423 sq. ft.
TOTAL AREA	748 sq. ft.

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 205-046
 MAR 22 2005

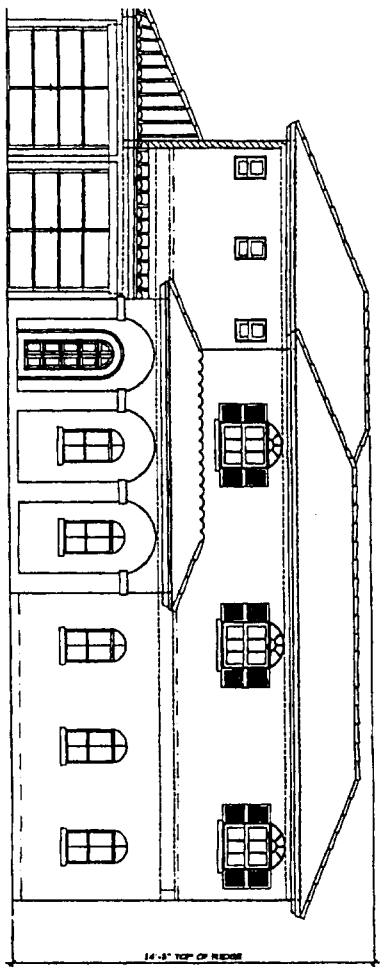
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 MIAMI-DADE PLANNING AND ZONING DEPT.
 BY X A

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 205-096
 MAR 22 2005
 ZONING HEARINGS SECTION
 MIAMI-DADE PLANNING AND ZONING DEPT.
 BY *[Signature]*

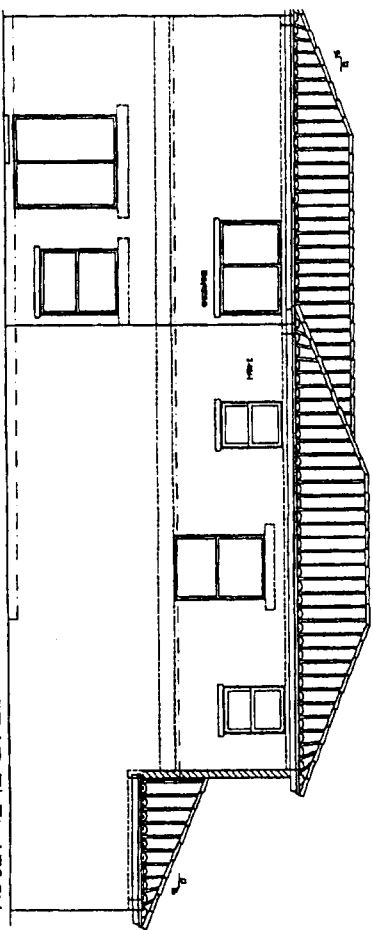


SECOND FLOOR PLAN 1/4"

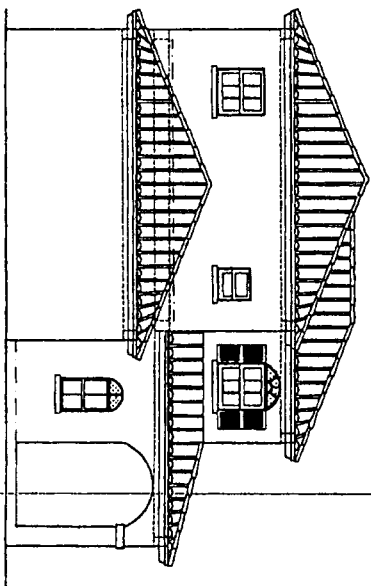
<p>Raphaele C. Chippetta Architect</p>	
<p>LE Development Limited</p>	
<p>Project: Cutler Bay Estates</p>	
<p>3004 SW 24th Road, Miami, FL 33135 (305) 224-0200 Fax: (305) 224-0201</p>	
<p>Client: OMI Cutler Bay Miami, Florida 33130</p>	
<p>Design: LE Development Limited</p>	
<p>Architect: R. Chippetta S. Chippetta J. Chippetta M. Chippetta A. Chippetta</p>	
<p>Address: 3004 SW 24th Street Miami, FL 33135 305-224-0200 305-224-1904</p>	
<p>Job No.: 029 Date: February 1, 2004 Checked: S.C.C. Drawn By: D.L.R. Scale: 1/4"</p>	
<p>Sheet: A-2</p>	



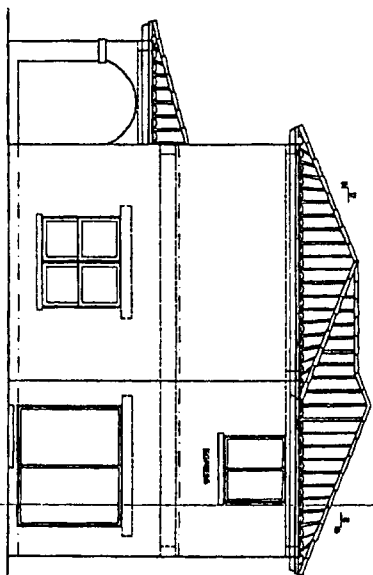
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REAR ELEVATION
SCALE: 1/8"=1'-0"



LEFT ELEVATION
SCALE: 1/8"=1'-0"



RIGHT ELEVATION
SCALE: 1/8"=1'-0"

Raphaele C. Chippetta

Architect

1004 NW 34th Street, Miami, FL 33150
305-325-0200 Fax: 305-325-0201

LE Development Limited

1004 NW 34th Street, Miami, FL 33150
305-325-0200 Fax: 305-325-0201

Project:

Cuttler Bay Estates

001 Cutler Road
Miami, Florida 33150

Client:

LE Development Limited

1004 NW 34th Street
Miami, FL 33150
305-325-0200 Fax: 305-325-0201

Particulars:

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- △
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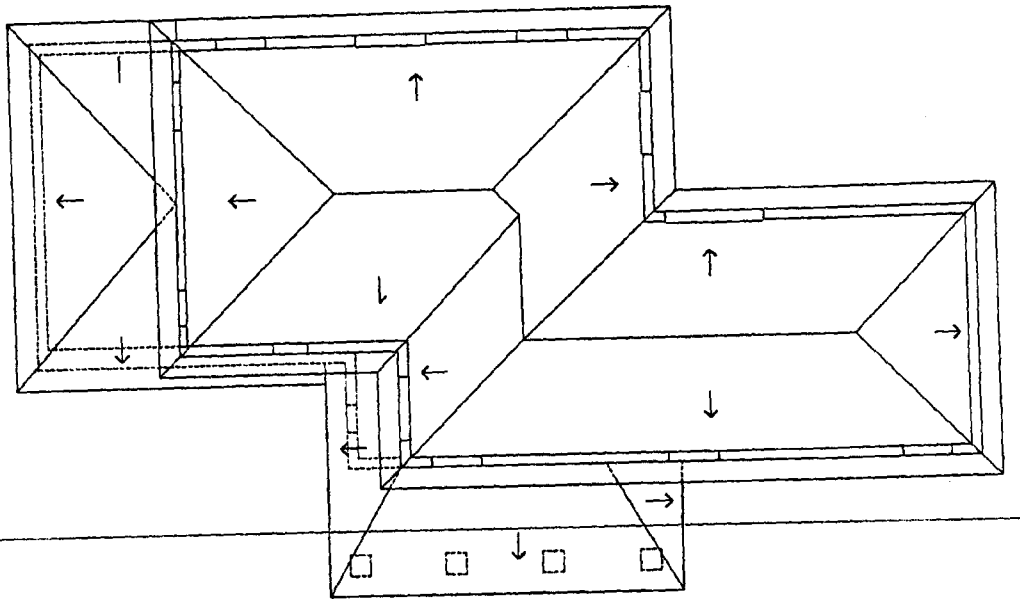
Job No.	091
Date	February 1, 2004
Order	122
Drawn By	DLK
Scale	1/8"
Sheet	A-3

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MAR 22 2005

ZONING HEARINGS SECTION
MIAMI-DADE PLANNING AND ZONING DEPT.
BY Xlt

RECEIVED
 201-096
 MAR 22 2005

ZONING HEARINGS SECTION
 MIAMI-DADE PLANNING AND ZONING DEPT.
 BY XLT



ROOF PLAN 1/4"

Raphaela C.
 Chippetta

Architect

2044 SW 24th Street, Miami, FL
 33135-3300 TEL: 305-351-1111

LE Development
 Limited

A design-build partnership

750 NE 137th Street, Suite 1, North Miami
 33161-3098 TEL: 305-944-3333

Project:

Curtler Bay
 Estates

Old Curtler Road
 Miami, Florida 33190

Client:

LE Development
 Limited

33004 SW 24th Street
 Miami, FL 33192
 305-551-2223
 305-551-9104

Substance:

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Alt. No.: 077

Proj. No.: February 1, 2004

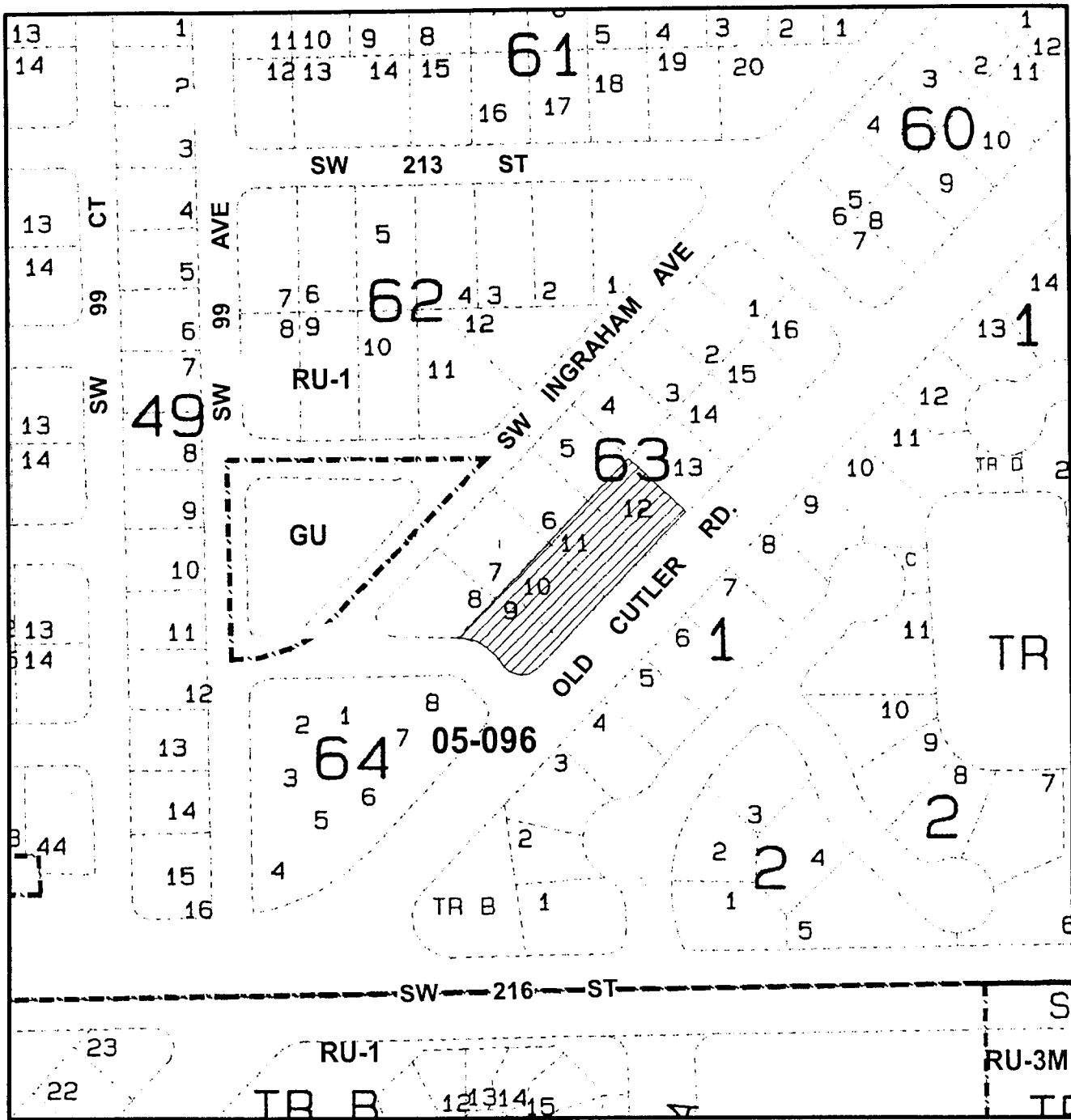
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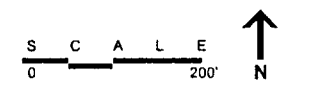
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Scale:



**MIAMI-DADE COUNTY
HEARING MAP**

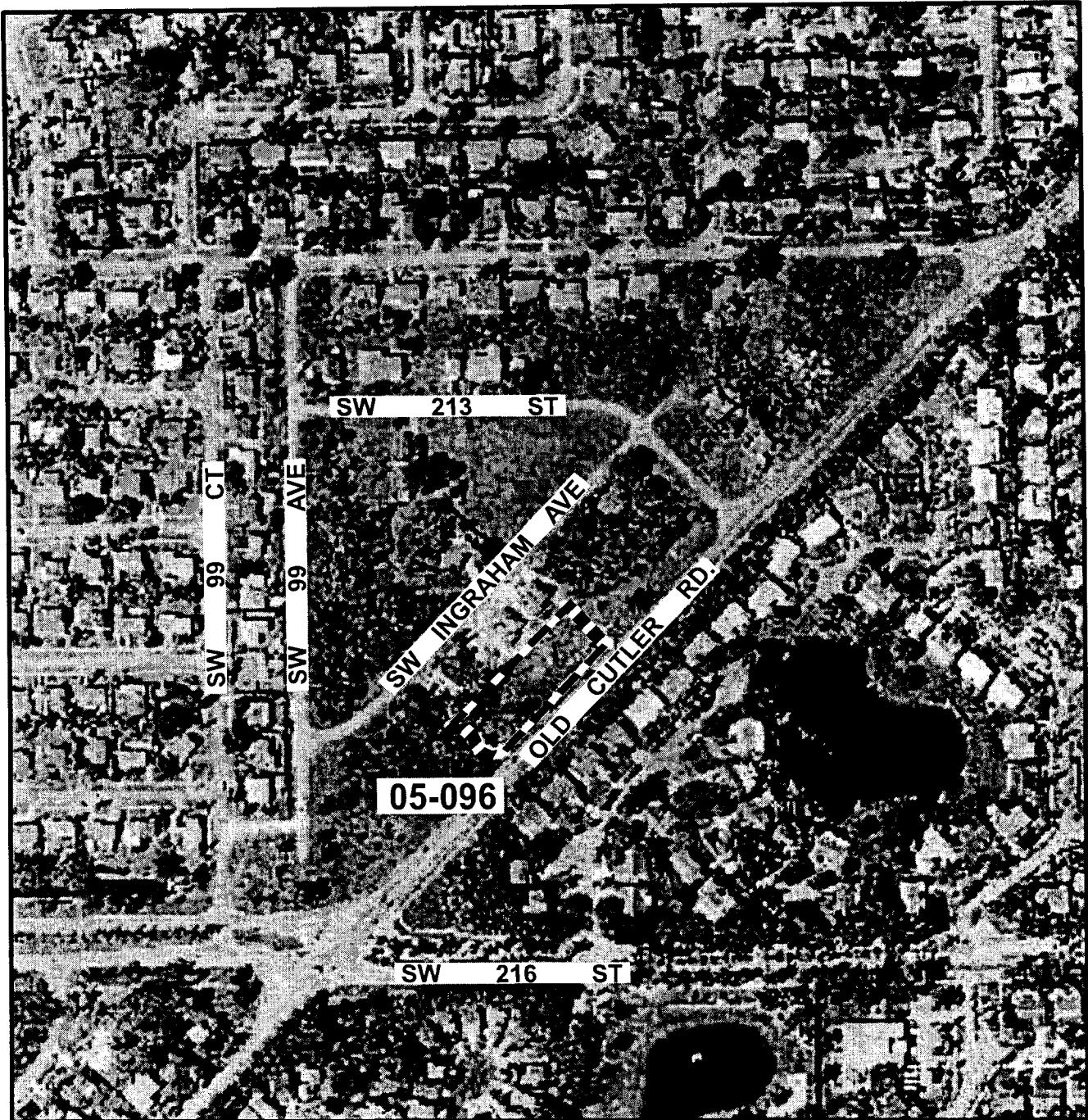
Section: 08 Township: 56 Range: 40
 Process Number: 05-096
 Applicant: LE DEVELOPMENT
 District Number: 08
 Zoning Board: TCB
 Drafter: ALFREDO
 Scale: 1:200'



 SUBJECT PROPERTY



G: ZONING DRAFTING, 95-096, 03/05
REVISED 03/29/06



MIAMI-DADE COUNTY
AERIAL

Section: 08 Township: 56 Range: 40
Process Number: 05-096
Applicant: LE DEVELOPMENT
District Number: 08
Zoning Board: TCB
Drafter: ALFREDO
Scale: NTS

SCALE
0 NTS N

 SUBJECT PROPERTY



ORDINANCE NO. ____

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CREATING THE SECTION ENTITLED, "FLOODPLAIN MANAGEMENT REGULATIONS"; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, in order to obtain National Flood Insurance Protection the Town must adopt Floodplain Management Regulations; and

WHEREAS, the Town Council finds that the adoption of this Ordinance is in the best interest of the health, safety and welfare of the residents of the Town.

NOW THEREFORE IT IS HEREBY ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. Recitals Adopted. That each of the above stated recitals is hereby adopted and confirmed.

Section 2. Statutory Authorization, Findings of Fact, Purpose, and Objectives

FLOODPLAIN MANAGEMENT REGULATIONS

SECTION A. STATUTORY AUTHORIZATION

The Legislature of the State of Florida has authorized and delegated in Florida Statutes Chapter 166, the responsibility to local government units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the Council of Cutler Bay does hereby adopt the following floodplain management regulations.

SECTION B. FINDINGS OF FACT

- (1) The flood hazard areas of Cutler Bay are subject to periodic inundation, which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

- (2) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, and by the occupancy in flood hazard areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated, flood-proofed, or otherwise unprotected from flood damages.

SECTION C. STATEMENT OF PURPOSE

It is the purpose of this ordinance to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) Restrict or prohibit uses which are dangerous to health, safety and property due to water or erosion hazards, which result in damaging increases in erosion or in flood heights and velocities;
- (2) Require that uses vulnerable to floods including facilities which serve such uses be protected against flood damage throughout their intended life span;
- (3) Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of flood waters;
- (4) Control filling, grading, dredging and other development which may increase erosion or flood damage; and
- (5) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

SECTION D. OBJECTIVES

The objectives of this ordinance are to:

- (1) Protect human life, health and to eliminate or minimize property damage;
- (2) Minimize expenditure of public money for costly flood control projects;
- (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) Minimize prolonged business interruptions;
- (5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, roadways, and bridges and culverts located in floodplains;
- (6) Maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize flood blight areas; and

- (7) Ensure that potential homebuyers are notified that property is in a flood hazard area.

ARTICLE 2. DEFINITIONS

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

Accessory structure (Appurtenant structure) means a structure that is located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Accessory structures should constitute a minimal investment, may not be used for human habitation, and be designed to have minimal flood damage potential. Examples of accessory structures are detached garages, carports, storage sheds, pole barns, and hay sheds.

Appeal means a request for a review of the Floodplain Administrator's interpretation of any provision of this ordinance or a request for a variance.

Area of shallow flooding means a designated AO or AH Zone on the community's Flood Insurance Rate Map (FIRM) with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of special flood hazard is the land in the floodplain within a community subject to a one-percent or greater chance of flooding in any given year. This term is synonymous with the phrase "special flood hazard area."

Base flood means the flood having a one percent chance of being equaled or exceeded in any given year (also called the "100-year flood" and the "regulatory flood"). Base flood is the term used throughout this ordinance.

Base Flood Elevation means the water-surface elevation associated with the base flood.

Basement means that portion of a building having its floor sub-grade (below ground level) on all sides.

Breakaway wall means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or the supporting foundation system.

Building – see **Structure**.

Coastal high hazard area means an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high

velocity wave action from storms or seismic sources. The area is designated on the FIRM as Zone V1 – V30, VE, or V.

Datum A reference surface used to ensure that all elevation records are properly related. Many communities have their own datum that was developed before there was a national standard. The current national datum is the National Geodetic Vertical Datum (NGVD) of 1929, which is expressed in relation to mean sea level, or the North American Vertical Datum (NAVD) of 1988.

Development means any man-made change to improved or unimproved real estate, including, but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavating, drilling operations, or storage of materials or equipment.

Elevated building means a non-basement building built to have the lowest floor elevated above the ground level by foundation walls, posts, piers, columns, pilings, or shear walls.

Encroachment means the advance or infringement of uses, plant growth, fill, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

Existing Construction means, for the purposes of floodplain management, structures for which “the start of construction” commenced before the date of the initial Flood Insurance Rate Map (FIRM). Existing construction, means for the purposes of determining rates structures for which the “start of construction” commenced before **the effective date of the first FIRM or before January 1, 1975, for FIRMs effective before that date.** This term may also be referred to as “existing structures”.

Existing manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

Expansion to an existing manufactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Flood or flooding means:

- (a) A general and temporary condition of partial or complete inundation of normally dry land areas from:
 - (1) The overflow of inland or tidal waters.
 - (2) The unusual and rapid accumulation or runoff of surface waters from any source.

- (3) Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in paragraph (a) (2) of this definition and are akin to a river of liquid and flowing mud on the surface of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.
- (b) The collapse or subsidence of land along a shore of a lake or other body of water as the result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (a) (1) of this definition.

Flood Boundary and Floodway Map (FBFM) means the official map of the community on which the Federal Emergency Management Agency (FEMA) has delineated the areas of special flood hazard and regulatory floodways.

Flood Hazard Boundary Map (FHBM) means an official map of the community, issued by FEMA, where the boundaries of the areas of special flood hazard have been identified as only Approximate Zone A.

Flood Insurance Rate Map (FIRM) means an official map of the community, issued by FEMA, which delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

Flood Insurance Study (FIS) is the official hydraulic & hydrologic report provided by FEMA. The study contains an examination, evaluation, and determination of flood hazards, and, if appropriate, corresponding water surface elevations, or an examination, evaluation, and determination of mudslide (i.e., mudflow) and other flood-related erosion hazards. The study may also contain flood profiles, as well as the FIRM, FHBM (where applicable), and other related data and information.

Floodplain means any land area susceptible to being inundated by water from any source (see definition of "flooding").

Floodplain management means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

Floodplain Administrator is the individual appointed to administer and enforce the floodplain management regulations of the community.

Floodplain management regulations means this ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as floodplain ordinance, grading ordinance, and erosion control ordinance), and other applications of police power which control development in flood-prone areas. This term describes Federal,

State of Florida, or local regulations in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

Floodproofing means any combination of structural and non-structural additions, changes, or adjustments to structures, which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

Floodway fringe means that area of the floodplain on either side of the regulatory floodway where encroachment may be permitted without additional hydraulic and/or hydrologic analysis.

Freeboard means the additional height, usually expressed as a factor of safety in feet, above a flood level for purposes of floodplain management. Freeboard tends to compensate for many unknown factors, such as wave action, bridge openings and hydrological effect of urbanization of the watershed, that could contribute to flood heights greater than the height calculated for a selected frequency flood and floodway conditions.

Functionally dependent use means a use that cannot be used for its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities.

Hardship as related to variances from this ordinance means the exceptional hardship associated with the land that would result from a failure to grant the requested variance. The community requires that the variance is exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

Highest adjacent grade means the highest natural elevation of the ground surface, prior to the start of construction, next to the proposed walls of a structure.

Historic Structure means any structure that is:

- a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register:

- b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic or a district preliminarily determined by the Secretary to qualify as a registered historic district:
- c) Individually listed on the Florida inventory of historic places, which has been approved by the Secretary of the Interior; or
- d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - 1. By the approved Florida program as determined by the Secretary of the Interior, or
 - 2. Directly by the Secretary of the Interior.

Lowest adjacent grade means the lowest elevation, after the completion of construction, of the ground, sidewalk, patio, deck support, or basement entryway immediately next to the structure.

Lowest floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage, in an area other than a basement, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the nonelevation design standards of this ordinance.

Mangrove Stand means an assemblage of mangrove trees which are mostly low trees noted for a copious development of interlacing adventitious roots above ground and which contain one or more of the following species: Black mangrove (*Avicennia Nitida*); red mangrove (*Rhizophora mangle*); white mangrove (*Languncularia Racemosa*); and buttonwood (*Conocarpus Erecta*).

Manufactured home means a building, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term also includes park trailers, travel trailers, and similar transportable structures placed on a site for 180 consecutive days or longer and intended to be improved property.

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Market value means the building value, which is the property value excluding the land value and that of the detached accessory structures and other improvements on site (as agreed to between a willing buyer and seller) as established by what the local real estate market will bear. Market value can be established by an independent certified appraisal (other than a limited or curbside appraisal, or one based on income approach), Actual Cash Value (replacement cost depreciated for age and quality of construction of building), or adjusted tax-assessed values.

Mean Sea Level means the average height of the sea for all stages of the tide. It is used as a reference for establishing various elevations within the floodplain. For purposes of this

ordinance, the term is synonymous with National Geodetic Vertical Datum (NGVD) of 1929, or North American Vertical Datum (NAVD) of 1988.

National Geodetic Vertical Datum (NGVD) of 1929 means a vertical control used as a reference for establishing varying elevations within the floodplain.

New Construction means, for floodplain management purposes, any structure for which the “start of construction” commenced on or after the effective date of the initial floodplain management code, ordinance, or standard based upon specific technical base flood elevation data that establishes the area of special flood hazard – include only one date. The term also includes any subsequent improvements to such structures. For flood insurance rates, structures for which the start of construction commenced on or after the effective date of the date of an initial FIRM or after December 31, 1974, whichever is later – include only one date, and includes any subsequent improvements to such structures.

New manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the first floodplain management code, ordinance or standard.

North American Vertical Datum (NAVD) of 1988 means a vertical control used as a reference for establishing varying elevations within the floodplain.

Free of Obstruction means any type of lower area enclosure or other construction element that will obstruct the flow of velocity water and wave action beneath the lowest horizontal structural member of the lowest floor of an elevated building during a base flood event is not allowed. This requirement applies to the structures in velocity zones (V-Zones).

Program deficiency means a defect in the community’s floodplain management regulations or administrative procedures that impairs effective implementation of those floodplain management regulations or of the standards required by the National Flood Insurance Program.

Public safety and nuisance means anything which is injurious to safety or health of the entire community or a neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

Recreational vehicle means a vehicle that is:

- a) Built on a single chassis;
- b) 400 square feet or less when measured at the largest horizontal projection;
- c) Designed to be self-propelled or permanently towable by a light duty truck; and

- d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Regulatory floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

Remedy a deficiency or violation means to bring the regulation, procedure, structure or other development into compliance with State of Florida, Federal or local floodplain management regulations; or if this is not possible, to reduce the impacts of its noncompliance. Ways the impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of this ordinance or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

Riverine means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Sand dune means naturally occurring accumulations of sand in ridges or mounds landward of the beach.

Shallow flooding means the same as area of shallow flooding.

Special flood hazard area means the same as area of special flood hazard.

Start of construction For other than new construction or substantial improvements under the Coastal Barrier Resources Act P. L. 97-348, includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation or placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main building. For substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Storm cellar means a place below grade used to accommodate occupants of the structure and emergency supplies as a means of temporary shelter against severe tornadoes or similar windstorm activity.

Structure means for floodplain management purposes a walled and roofed building, including gas or liquid storage tank that is principally above ground, as well as a manufactured home.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial improvement means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cumulative cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures that have incurred "substantial damage" regardless of the actual repair work performed. This term does not, however, include any repair or improvement of a structure to correct existing violations of State of Florida or local health, sanitary, or safety code specifications, which have been identified by the local code enforcement official prior to the application for permit for improvement, and which are the minimum necessary to assure safe living conditions.

Substantially improved existing manufactured home parks or subdivisions is where the repair, reconstruction, rehabilitation or improvement of the streets, utilities and pads equals or exceeds 50 percent of the value of the streets, utilities and pads before the repair, reconstruction or improvement commenced.

Variance is a grant of relief from the requirements of this ordinance.

Violation means the failure of a structure or other development to be fully compliant with the requirements of this ordinance. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.

Watercourse means a lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

Water surface elevation means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 or the North American Vertical Datum (NAVD) of 1988, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

ARTICLE 3. GENERAL PROVISIONS

SECTION A. LANDS TO WHICH THIS ORDINANCE APPLIES

This ordinance shall apply to all areas of special flood hazard within the jurisdiction of the Council of the Town of Cutler Bay.

SECTION B. BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD

The areas of special flood hazard identified by the Federal Emergency Management Agency in the Flood Insurance Study (FIS) for Miami-Dade County, dated March 2, 1994, with the accompanying maps and other supporting data, and any subsequent revisions thereto, are adopted by reference and declared to be a part of this ordinance. The Flood Insurance Study and Flood Insurance Rate Map are on file at the Office of the Town Clerk, Town of Cutler Bay.

SECTION C. DESIGNATION OF FLOODPLAIN ADMINISTRATOR

The Council of Cutler Bay hereby appoints the Town Manager to administer and implement the provisions of this ordinance and is herein referred to as the Floodplain Administrator.

SECTION D. ESTABLISHMENT OF DEVELOPMENT PERMIT

A development permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities.

SECTION E. COMPLIANCE

No structure or land shall hereafter be located, extended, converted or structurally altered without full compliance with the terms of this ordinance and other applicable regulations.

SECTION F. ABROGATION AND GREATER RESTRICTIONS

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

SECTION G. INTERPRETATION

In the interpretation and application of this ordinance all provisions shall be:

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the governing body; and
- (3) Deemed neither to limit nor repeal any other powers granted under State of Florida statutes.

SECTION H. WARNING AND DISCLAIMER OF LIABILITY

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create

liability on the part of Council of Cutler Bay or by any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

SECTION I. PENALTIES FOR VIOLATION

Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall be punishable for a non-criminal violation. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon adjudication therefore, be fined not more than \$500, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Floodplain Administrator from taking such other lawful actions as is necessary to prevent or remedy any violation.

ARTICLE 4. ADMINISTRATION

SECTION A. PERMIT PROCEDURES

Application for a Development Permit shall be made to the Floodplain Administrator on forms furnished by him or her prior to any development activities, and may include, but not be limited to, the following plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, earthen fill, storage of materials or equipment, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

- (1) Application Stage:
 - a) Elevation in relation to mean sea level of the proposed lowest floor (including basement) of all buildings;
 - b) Elevation in relation to mean sea level to which any non-residential building will be flood-proofed;
 - c) Certificate from a registered professional engineer or architect that the non-residential flood-proofed building will meet the flood-proofing criteria in Article 4, Section A (2) and Article 5, Section B (2);
 - d) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development; and
 - (e) Elevation in relation to mean sea level of the bottom of the lowest horizontal structural member of the lowest floor and provide a certification from a registered engineer or architect indicating that they have developed and or reviewed the structural designs, specifications and plans of the construction and certified that

are in accordance with accepted standards of practice in Coastal High Hazard Areas.

(2) Construction Stage:

Upon placement of the lowest floor, or flood-proofing by whatever construction means, or bottom of the lowest horizontal structural member it shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the NGVD or NAVD elevation of the lowest floor or flood-proofed elevation, or bottom of the lowest horizontal structural member as built, in relation to mean sea level. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same. When flood proofing is utilized for a particular building said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. Any work undertaken prior to submission of the certification shall be at the permit holder's risk. The Floodplain Administrator shall review the lowest floor and flood-proofing elevation survey data submitted. The permit holder immediately and prior to further progressive work being permitted to proceed shall correct violations detected by such review. Failure to submit the survey or failure to make said corrections required hereby, shall be cause to issue a stop-work order for the project.

SECTION B. DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR

Duties of the Administrator shall include, but are not be limited to:

- (1) Review permits to assure sites are reasonably safe from flooding;
- (2) Review all development permits to assure that the permit requirements of this ordinance have been satisfied;
- (3) Advise permittee that additional Federal, State of Florida, or local permits may be required, and if such additional permits are necessary, especially as it relates to Chapters 161.053; 320.8249; 320.8359; 373.036; 380.05; 381.0065, and 553, Part IV, Florida Statutes, require that copies of such permits be provided and maintained on file with the development permit;
- (4) Notify adjacent communities, the Department of Community Affairs, Division of Emergency Management, the South Florida Water Management District, the Federal Emergency Management Agency and other Federal and/or State of Florida agencies with statutory or regulatory authority prior to any alteration or relocation of a watercourse;
- (5) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is maintained;

- (6) Verify and record the actual elevation (in relation to mean sea level) of the lowest floor (A-Zones) or bottom of the lowest horizontal structural member of the lowest floor (V-Zones) of all new or substantially improved buildings, in accordance with Article 5, Section B (1) and (2) and Section E (2), respectively;
- (7) Verify and record the actual elevation (in relation to mean sea level) to which the new or substantially improved buildings have been flood-proofed, in accordance with Article 5, Section B (2);
- (8) Review certified plans and specifications for compliance. When flood-proofing is utilized for a particular building, certification shall be obtained from a registered engineer or architect certifying that all areas of the building below the required elevation are water tight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy in compliance with Article 5, Section B (2) of this ordinance. In Coastal High Hazard Areas, certification shall be obtained from a registered professional engineer or architect that the building is designed and securely anchored to pilings or columns in order to withstand velocity waters and hurricane wave wash. Additionally in Coastal High Hazard Areas, if the area below the lowest horizontal structural member of the lowest floor is enclosed, it may be done so with open wood lattice and insect screening or with non-supporting breakaway walls that meet the standards of Article 5, Section E (6) of this ordinance;
- (9) Interpret the exact location of boundaries of the areas of special flood hazard. When there appears to be a conflict between a mapped boundary and actual field conditions, the Floodplain Administrator shall make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article;
- (10) When base flood elevation data or floodway data have not been provided in accordance with Article 3, Section B, the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a Federal, State of Florida, or any other source, in order to administer the provisions of Article 5;
- (11) Coordinate all change requests to the FIS, FIRM and FBFM with the requester, State of Florida, and FEMA, and
- (12) Where Base Flood Elevation is utilized, obtain and maintain records of lowest floor and floodproofing elevations for new construction and substantial improvements in accordance with Article 5, Sections B (1) and (2), respectively.

ARTICLE 5. PROVISIONS FOR FLOOD HAZARD REDUCTION

SECTION A. GENERAL STANDARDS

In all areas of special flood hazard, all development sites including new construction and substantial improvements shall be reasonably safe from flooding, and meet the following provisions:

- (1) New construction and substantial improvements shall be designed or modified and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- (2) Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable State of Florida requirements for resisting wind forces;
- (3) New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage. See the applicable Technical Bulletin or Bulletins for guidance;
- (4) New construction or substantial improvements shall be constructed by methods and practices that minimize flood damage. See the applicable Technical Bulletin or Bulletins for guidance;
- (5) Electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities, including duct work, shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
- (6) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- (7) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters;
- (8) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding;
- (9) Any alteration, repair, reconstruction or improvements to a building that is in compliance with the provisions of this ordinance shall meet the requirements of "new construction" as contained in this ordinance;
- (10) Any alteration, repair, reconstruction or improvements to a building that is not in compliance with the provisions of this ordinance, shall be undertaken only if said non-conformity is not furthered, extended, or replaced;
- (11) All applicable additional Federal, State of Florida, and local permits shall be obtained and submitted to the Floodplain Administrator. Copies of such permits shall be maintained

on file with the development permit. State of Florida permits may include, but not be limited to the following:

- (a) South Florida Water Management District(s): in accordance with Chapter 373.036 Florida Statutes, Section (2)(a) – Flood Protection and Floodplain Management.
- (b) Department of Community Affairs: in accordance with Chapter 380.05 F.S. Areas of Critical State Concern, and Chapter 553, Part IV F.S., Florida Building Code.
- (c) Department of Health: in accordance with Chapter 381.0065 F.S. Onsite Sewage Treatment and Disposal Systems.
- (d) Department of Environmental Protection, Coastal Construction Control Line: in accordance with Chapter 161.053 F.S. Coastal Construction and Excavation.

(12) Standards for Subdivision Proposals and other Proposed Development (including manufactured homes):

- (a) All subdivision proposals shall be consistent with the need to minimize flood damage;
- (b) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage;
- (c) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards.

SECTION B. SPECIFIC STANDARDS.

In all A-Zones where base flood elevation data have been provided (Zones AE, A1-30, and AH), as set forth in Article 3, Section B, the following provisions shall apply:

- (1) *Residential Construction.* All new construction or substantial improvement of any residential building (including manufactured home) shall have the lowest floor, including basement, elevated to no lower than one foot above the base flood elevation. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate automatic equalization of flood hydrostatic forces on both sides of the exterior walls shall be provided in accordance with standards of Article 5, Section B (3).
- (2) *Non-Residential Construction.* All new construction or substantial improvement of any commercial, industrial, or non-residential building (including manufactured home) shall

have the lowest floor, including basement, elevated to no lower than one foot above the base flood elevation. All buildings located in A-Zones may be flood-proofed, in lieu of being elevated, provided that all areas of the building components below the base flood elevation plus one foot are water tight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied using the FEMA Floodproofing Certificate. Such certification along with the corresponding engineering data, and the operational and maintenance plans shall be provided to the Floodplain Administrator.

- (3) *Elevated Buildings.* New construction or substantial improvements of elevated buildings that include fully enclosed areas formed by foundation and other exterior walls below the lowest floor elevation shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls.
 - (a) Designs for complying with this requirement must either be certified by a professional engineer or architect or meet the following minimum criteria:
 - (i) Provide a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
 - (ii) The bottom of all openings shall be no higher than one foot above foundation adjacent interior grade (which must be equal to or higher in elevation than the adjacent exterior grade); and
 - (iii) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided they provide the required net area of the openings and permit the automatic flow of floodwaters in both directions.
 - (b) Fully enclosed areas below the lowest floor shall solely be used for parking of vehicles, storage, and building access. Access to the enclosed area shall be minimum necessary to allow for parking of vehicles (garage door), limited storage of maintenance equipment used in connection with the premises (standard exterior door), or entry to the living area (stairway or elevator); and
 - (c) The interior portion of such enclosed area shall not be finished or partitioned into separate rooms.
- (4) Standards for Manufactured Homes and Recreational Vehicles
 - (a) All manufactured homes that are placed, or substantially improved within Zones A1-30, AH, and AE, on sites (i) outside of an existing manufactured home park or subdivision, (ii) in a new manufactured home park or subdivision, (iii) in an expansion to an existing manufactured home park or subdivision, or (iv) in an

existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood, the lowest floor be elevated on a permanent foundation to no lower than one foot above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

- (b) All manufactured homes to be placed or substantially improved in an existing manufactured home park or subdivision within Zones A-1, AH, and AE, that are not subject to the provisions of paragraph 4 (a) of this Section, must be elevated so that either:
 - (i) The lowest floor of the manufactured home is elevated to no lower than one foot above the base flood elevation, or
 - (ii) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least an equivalent strength that are no less than 48 inches in height above the grade and securely anchored to an adequate foundation system to resist flotation, collapse, and lateral movement.
- (c) All recreational vehicles placed on sites within Zones A1-30, AH, and AE must either:
 - (i) Be on the site for fewer than 180 consecutive days,
 - (ii) Be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions), or
 - (iii) Meet all the requirements for new construction, including anchoring and elevation requirements in accordance with Section B, provisions (4) (a) and (b) of this Article.
- (5) Adequate drainage paths around structures shall be provided on slopes to guide water away from structures.
- (6) Standards for streams with established Base Flood Elevations, without Regulatory Floodways

Located within the areas of special flood hazard established in Article 3, Section B, where streams exist for which base flood elevation data has been provided by the Federal Emergency Management Agency without the delineation of the regulatory floodway (Zones AE and A1-30), the following additional provisions shall also apply.

- (a) Until a regulatory floodway is designated, no new construction, substantial improvements, or other development including fill shall be permitted within the

areas of special flood hazard, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood more than one foot at any point within the community.

- (b) Development activities which increase the water surface elevation of the base flood by more than one foot may be allowed, provided that the developer or applicant first applies – with the community’s endorsement – for a conditional FIRM revision, and receives the approval of the Federal Emergency Management Agency.
- (7) Floodways. Located within areas of special flood hazard established in Article 3, Section B, are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles and have significant erosion potential, the following additional provisions shall also apply:
- (a) Prohibit encroachments, including fill, new construction, substantial improvements and other developments within the regulatory floodway unless certification (with supporting technical data) by a registered professional engineer is provided through hydraulic and hydrologic analyses performed in accordance with standard engineering practice demonstrating that encroachments would not result in any increase in flood levels during occurrence of the base flood discharge.
 - (b) Prohibit the placement of manufactured homes (mobile homes), except in an existing manufactured homes (mobile homes) park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring standards of Article 5, Section A (2), and the elevation standards of Article 5, Section B (1) and (2), and the encroachment standards of Article 5, Section B (7) (a), are met.
 - (c) Development activities including new construction and substantial improvements that increase the water surface elevation of the base flood by more than one foot may be allowed, provided that the developer or applicant first applies – with the community’s endorsement – for a conditional FIRM revision, and receives the approval of FEMA.
 - (d) When fill is proposed, in accordance with the permit issued by the Florida Department of Health, within the regulatory floodway, the development permit shall be issued only upon demonstration by appropriate engineering analyses that the proposed fill will not increase the water surface elevation of the base flood in accordance with Article 5, Section (7) (a).
- (8) For all structures located seaward of the Coastal Construction Control Line (CCCL), the lowest floor of all new construction and substantial improvements shall be elevated to the regulatory flood elevation established by the Florida Department of Environmental

Protection or by FEMA in accordance with Article 3, Section B, whichever is higher. All non-elevation design requirements of Article 5, Section E shall apply.

SECTION C. SPECIFIC STANDARDS FOR A-ZONES WITHOUT BASE FLOOD ELEVATIONS AND REGULATORY FLOODWAYS.

Located within the areas of special flood hazard established in Article 3, Section B, where there exist A Zones for which no base flood elevation data and regulatory floodway have been provided or designated by the Federal Emergency Management Agency, the following provisions shall apply:

- (1) Require standards of Article 5, Section A.
- (2) The Floodplain Administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal, State of Florida, or any other source, in order to administer the provisions of this ordinance. When such data is utilized, provisions of Article 5, Section B shall apply. The Floodplain Administrator shall:
 - a) Obtain the elevation (in relation to the mean sea level) of the lowest floor (including the basement) of all new and substantially improved structures,
 - b) Obtain, if the structure has been floodproofed in accordance with the requirements of Section B (2) of Article 5, the elevation in relation to the mean sea level to which the structure has been floodproofed, and
 - c) Maintain a record of all such information.
- (3) Notify, in riverine situations, adjacent communities, the State of Florida, Department of Community Affairs, NFIP Coordinating Office, and the applicable Water Management District prior to any alteration or relocation of a watercourse, and submit copies of such notifications to FEMA.
- (4) Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.
- (5) Manufactured homes shall be installed using methods and practices that minimize flood damage. They must be elevated and anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State of Florida and local anchoring requirements for resisting wind forces.
- (6) When the data is not available from any source as in paragraph (2) of this Section, the lowest floor of the structure shall be elevated to no lower than three feet above the highest adjacent grade.

- (7) Require that all new subdivision proposals and other proposed developments (including proposals for manufactured home parks and subdivisions) greater than 50 lots or 5 acres, whichever is the lesser, include within such proposals base flood elevation data.

SECTION D. STANDARDS FOR AO-ZONES

Located within the areas of special flood hazard established in Article 3, Section B, are areas designated as shallow flooding areas. These areas have flood hazards associated with base flood depths of one to three feet, where a clearly defined channel does not exist and the path of flooding is unpredictable and indeterminate; therefore, the following provisions apply:

- (1) All new construction and substantial improvements of residential structures in all AO Zones shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the Flood Insurance Rate Map. If no flood depth number is specified, the lowest floor, including basement, shall be elevated to no less than two feet above the highest adjacent grade.
- (2) All new construction and substantial improvements of non-residential structures shall:
 - (a) Have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the Flood Insurance Rate Map. If no flood depth number is specified, the lowest floor, including basement, shall be elevated to at least two feet above the highest adjacent grade, or
 - (b) Together with attendant utility and sanitary facilities be completely floodproofed to that level to meet the floodproofing standard specified in Article 5, Section B (2).
- (3) Adequate drainage paths around structures shall be provided on slopes to guide water away from structures.

SECTION E. COASTAL HIGH HAZARD AREAS (V-ZONES)

Located within areas of special flood hazard established in Article 3, Section B are Coastal High Hazard Areas, designated as Zones V1-30, VE, or V (with BFE). The following provisions shall apply for all development activities:

- (1) Meet the Requirements of Article 4, Section A, and Article 5, Sections A, B (except B (7)), C, and D.
- (2) All new construction and substantial improvements in Zones V1-V30, VE, and V (with BFE) shall be elevated on pilings or columns so that:

- a) The bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to no lower than one foot above the base flood elevation whether or not the structure contains a basement; and
 - b) The pile or column foundation and structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Water loading will be those values associated with the base flood. Wind loading values will be those required by applicable State of Florida or local, if more stringent than those of the State of Florida, building standards.
- (3) A registered professional engineer or architect shall develop or review the structural design, specifications and plans for the construction, and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of this Section.
- (4) Obtain the elevation (in relation to mean sea level) of the bottom of the lowest horizontal structural member of the lowest floor (excluding pilings and columns) of all new and substantially improved structures. The Floodplain Administrator shall maintain a record of all such information.
- (5) All new construction and substantial improvements shall be located landward of the reach of mean high tide.
- (6) Provide that all new construction and substantial improvements have the space below the lowest floor either free of obstruction or constructed with nonsupporting breakaway walls, open wood lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. For the purpose of this section, a breakaway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot. Use of breakaway walls which exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by local codes) may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions:
- a) Breakaway wall collapse shall result from water load less than that which would occur during the base flood; and
 - b) The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and nonstructural). The water loading shall be those values associated with the base flood. The wind loading values shall be those required by applicable Florida or local, if more stringent than those of the State of Florida, building standards.

- (c) Such enclosed space shall be useable solely for parking of vehicles, building access, or storage. Such space shall not be finished, partitioned into multiple rooms, or temperature-controlled.
- (7) Prohibit the use of fill for structural support. No development permit shall be issued for development involving fill in coastal high hazard areas unless it has been demonstrated through appropriate engineering analyses that the subject fill does not cause any adverse impacts to the structure on site or adjacent structures. Placement of fill that would result in an increase in the base flood elevation or cause adverse impacts by wave ramping and deflection may be permitted, provided that the permit applicant first applies for and receives a conditional FIRM revision, fulfilling the requirements for such revisions as established by FEMA.
- (8) Prohibit man-made alteration of sand dunes and mangrove stands that would increase potential flood damage.
- (9) Standards for Manufactured Homes
- (a) All manufactured homes to be placed or substantially improved on sites: (i) Outside a manufactured home park or subdivision, (ii) In a new manufactured home park or subdivision, (iii) In an expansion to an existing manufactured home park or subdivision, or, (iv) In an existing manufactured home park or subdivision in which a manufactured home has incurred "substantial damage" as the result of a flood, must meet the standards of Article 5, Section E (2) through (8),
 - (b) All manufactured homes placed or substantially improved on other sites in an existing manufactured home park or subdivision shall meet the requirements of Article 5, Section B (4) (b).
- (10) Recreational vehicles placed on sites within Zones VE, V1-V30, V (with base flood elevation) on the FIRM either
- (a) Be on the site for fewer than 180 consecutive days,
 - (b) Be fully licensed and ready for highway use (on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions); or
 - (c) Meet the requirements of Article 5, Section E (2) through (8).
 - (d) Prohibit the placement of recreational vehicles, except in an existing recreational vehicle park. They must be on site for fewer than 180 consecutive days, fully licensed and ready for highway use (on its wheels or jacking system, is attached to the site by quick disconnect type utilities and security devices, and has no permanently attached additions). They shall also have a plan for removal in case of a threat.

- (11) For all structures located seaward of the Coastal Construction Control Line (CCCL), the bottom of the lowest horizontal structural member of the lowest floor of all new construction and substantial improvements shall be elevated to the flood elevation established by the Florida Department of Environmental Protection or the base flood elevation, whichever is the higher. All non-elevation design requirements Article 5, Section E (2) through (11) shall apply.
- (12) When fill is proposed, in accordance with the permit issued by the Florida Department of Health, in coastal high hazard area, the development permit shall be issued only upon demonstration by appropriate engineering analyses that the proposed fill will not increase the water surface elevation of the base flood nor cause any adverse impacts to adjacent properties by wave ramping and deflection.

ARTICLE 6. VARIANCE PROCEDURES.

SECTION A. DESIGNATION OF VARIANCE AND APPEALS BOARD.

The Town Council of the Town of Cutler Bay shall hear and decide appeals and requests for variances from the requirements of this ordinance.

SECTION B. DUTIES OF VARIANCE AND APPEALS BOARD.

The board shall hear and decide appeals when it is alleged an error in any requirement, decision, or determination is made by the Floodplain Management Administrator in the enforcement or administration of this ordinance. Any person aggrieved by the decision of the board may appeal such decision to the Circuit Court.

SECTION C. VARIANCE PROCEDURES.

In acting upon such applications, the Council shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance, and:

- (1) The danger that materials may be swept onto other lands to the injury of others;
- (2) The danger of life and property due to flooding or erosion damage;
- (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (4) The importance of the services provided by the proposed facility to the community;
- (5) The necessity to the facility of a waterfront location, where applicable;
- (6) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;

- (7) The compatibility of the proposed use with existing and anticipated development;
- (8) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- (9) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (10) The expected heights, velocity, duration, rate of rise, and sediment of transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
- (11) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

SECTION D. CONDITIONS FOR VARIANCES.

- (1) Variances shall only be issued when there is:
 - a) A showing of good and sufficient cause;
 - b) A determination that failure to grant the variance would result in exceptional hardship; and
 - c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- (2) Variances shall only be issued upon a determination that the variance is the minimum necessary deviation from the requirements of this ordinance.
- (3) Variances shall not be granted after-the-fact.
- (4) The Floodplain Administrator shall maintain the records of all variance actions, including justification for their issuance or denial, and report such variances in the community's NFIP Biennial Report or upon request to FEMA and the State of Florida, Department of Community Affairs, NFIP Coordinating Office.

SECTION E. VARIANCE NOTIFICATION.

Any applicant to whom a variance is granted shall be given written notice over the signature of a community official that:

- (1) The issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage, and
- (2) Such construction below the base flood level increases risks to life and property.

A copy of the notice shall be recorded by the Floodplain Administrator in the Office of the Clerk of Court and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.

SECTION F. HISTORIC STRUCTURES.

Variations may be issued for the repair or rehabilitation of “historic” structures – meeting the definition in this ordinance – upon a determination that the proposed repair or rehabilitation will not preclude the structure’s continued designation as a “historic” structure.

SECTION G. STRUCTURES IN REGULATORY FLOODWAY.

Variations shall not be issued within any designated floodway if any impact in flood conditions or increase in flood levels during the base flood discharge would result.

Section 4. Severability. That the provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. Inclusion In The Code. It is the intention of the Town Council that the provisions of this Ordinance shall become and made a part of the Town of Cutler Bay Code; that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word “Ordinance” shall be changed to “Section” or other appropriate word.

Section 6. Conflicts. Any and all Ordinances or parts of Ordinances in conflict herewith be and the same are hereby repealed.

Section 7. Effective Date. This Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading on _____, 2006

PASSED AND ADOPTED on second reading on _____, 2006.

PAUL VROOMAN
Mayor

Attest: _____
ELIZABETH SEWELL
Interim Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA COLE & BONISKE, P.A.
Interim Town Attorney

FINAL VOTE AT ADOPTION:

Mayor Paul Vrooman _____

Council Member Timothy J. Meerbott _____

Council Member Ernest Sochin _____

Council Member Peggy Bell _____

ORDINANCE NO. 2006- _____

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, PROVIDING FOR A MORATORIUM ON THE ISSUANCE OF DEVELOPMENT ORDERS AND DEVELOPMENT PERMITS WITHIN THE AREA GENERALLY LOCATED SOUTH OF THE INTERSECTION OF THE HOMESTEAD EXTENSION OF THE FLORIDA TURNPIKE (HEFT) AND U.S. 1, WEST OF THE HEFT TO THE TOWN LIMITS, AND NORTH OF THE C-1 CANAL (BLACK CREEK CANAL); EXEMPTING CERTAIN DEVELOPMENT; PROVIDING FOR WAIVERS; PROVIDING FOR SEVERABILITY; PROVIDING PROCEDURES FOR VESTED RIGHTS AND JUDICIAL REVIEW FOR THE SPECIFIC MATTERS ADDRESSED HEREIN; PROVIDING FOR A TERM; PROVIDING FOR A REPEALER; PROVIDING FOR ORDINANCES IN CONFLICT, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, on April 6, 2006, the Town Council of the Town of Cutler Bay (the "Town") adopted the Urban Center District ("UCD") land development regulations; and

WHEREAS, the Town Council wishes to ensure that no incompatible development is approved during the time necessary to rezone properties within the area located south of the intersection of the Homestead Extension of the Turnpike (HEFT) and US1, west of the HEFT to the Town limits, and north of the C-1 Canal (Black Creek Canal) (the "moratorium area") from their existing zoning categories to UCD; and

WHEREAS, to achieve this end, the Town Council directed Town staff to draft an ordinance for its consideration, declaring a building moratorium within the moratorium area until the rezoning to UCD can be approved by the Town Council; and

WHEREAS, the Town Council has determined that developments that have had their final plat reviewed and approved by the Town Council, or have received at least one building permit for a principal building should be allowed to proceed, even if they would otherwise be affected by the moratorium; and

WHEREAS, the Town Council has determined that this building moratorium should be in place until the earlier of 120 days from the effective date of this Ordinance or the date of final adoption of the rezoning of the area to UCD; and

WHEREAS, this Ordinance was heard and recommended by the Town Council, in its capacity as the Town's Local Planning Agency; and

WHEREAS, by resolution, the Town Council approved the Town Manager's Administrative Order No. 06-1 that was issued pursuant to Section 33-319 of the Town's Code

of Ordinances (the "Code"), which further authorizes a building moratorium in the moratorium area; and

WHEREAS, it is the intent of the Town Council that this Ordinance be adopted together with the above referenced resolution to accomplish the same purpose in accordance with all applicable laws; and

WHEREAS, after due notice and hearing, the Town Council finds that this Ordinance is consistent with the Miami-Dade County Comprehensive Development Master Plan, which now functions as the Town's Comprehensive Plan, and the Town's Code.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY AS FOLLOWS:

Section 1. Building Moratorium Imposed. During the time that this Ordinance is in effect as specified in Section 7 below, there shall be a building moratorium on the issuance of development orders and development permits within the moratorium area. For purposes of this Ordinance, the terms "development orders" and "development permits" shall be defined as follows: building permits, variances, special exceptions, zoning district changes, minimum square footage requirement changes, unusual and new uses, or modifications or elimination of conditions, restrictions or limitations on these orders and permits. The following categories of development shall be exempt from this moratorium:

- Any development that had its final plat reviewed and approved by the Town Council.
- Any development that has received at least one building permit for a principal building.

Section 2. Waivers. Any property owner seeking a waiver under this Section 2 must file an application with the Town Council, for a determination within 30 days after the effective date of this Ordinance. The Town Council, after a public hearing, may grant a waiver to the moratorium provided above and permit development to proceed on a specific parcel where the Town Council determines, based upon substantial competent evidence, that the specific use or activity requested by the waiver application will not detrimentally affect the land development regulations adopted in the UCD, will be compatible with surrounding land uses, and will not impair the public health, safety or welfare. The public hearing shall be advertised at least seven days prior to the hearing in a local newspaper. The grant of waiver, if any, shall be by resolution. The applicant shall be responsible for the waiver application fee and any other standard fees and requirements for a public hearing.

Section 3. Determination of Vested Rights or Denial of All Economic Use.

(A) Nothing in this Ordinance shall be construed or applied to abrogate the vested right of a property owner to complete development of a parcel where the property owner can demonstrate by substantial competent evidence each of the following:

- (1) A governmental act of development approval was obtained prior to the effective date of this Ordinance; and
- (2) Upon which the property owner has detrimentally relied, in good faith, by making substantial expenditures; and
- (3) That it would be highly inequitable to deny the property owner the right to complete the development.

(B) Nothing in this Ordinance shall be construed or applied to prevent development of a particular parcel where the property owner can demonstrate by substantial competent evidence that, because of the moratorium, no economic use can be made of the parcel.

(C) Any property owner claiming vested rights or denial of all use under this Section 3 must file an application with the Town Council for a determination within 30 days after the effective date of this Ordinance. The application shall be accompanied by an application fee of \$1,500.00 and contain a sworn statement as to the basis upon which the vested rights or denial of all use are asserted, together with documentation required by the Town and other documentary evidence supporting the claim. The Town Council shall hold a public hearing on the application and, based upon the competent substantial evidence submitted, shall make a determination as to whether the property owner has established vested rights or a lack of economic use for the parcel.

Section 4. Judicial Review. Judicial review of final decisions by the Council under Section 2 or Section 3 of this Ordinance shall be by the filing of a Petition for Certiorari in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County in accordance with the Florida Rules of Appellate Procedure for the review of the quasi-judicial decisions of municipalities.

Section 5. Exhaustion of Administrative Remedies. No property owner claiming that this Ordinance, as applied, constitutes or would constitute a temporary or permanent taking of private property or an abrogation of vested rights may pursue such claim in court, unless he or she has first exhausted the applicable administrative remedies provided in Sections 2 and 3 of this Ordinance.

Section 6. Conflicts. All Sections or parts of Sections of the Code of Ordinances, all Ordinances or parts of Ordinances, and all Resolutions, or parts of Resolutions, in conflict with this ordinance are repealed to the extent of such conflict.

Section 7. Term. The building moratorium imposed by this Ordinance is temporary and shall be effective for a period of 120 days from the effective date of this Ordinance, unless dissolved earlier by the Town Council. Further, the building moratorium shall automatically dissolve upon the adoption of the rezoning of properties within the moratorium area to UCD, which rezoning shall be expeditiously pursued. The building moratorium may be reasonably extended, if necessary, by Ordinance of the Town Council.

Section 8. **Effective Date.** This Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this _____ day of May, 2006.

PASSED AND ADOPTED on second reading this _____ day of May, 2006.

PAUL VROOMAN
Mayor

Attest: _____
ELIZABETH SEWELL
Interim Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA COLE & BONISKE, P.A.
Interim Town Attorney

FINAL VOTE AT ADOPTION:

Mayor Paul Vrooman _____

Council Member Timothy J. Meerbott _____

Council Member Ernest Sochin _____

Council Member Peggy Bell _____

ORDINANCE NO. 06-_____

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA CREATING A CHAPTER OF THE TOWN CODE OF ORDINANCES, ENTITLED "VENDORS' CAMPAIGN CONTRIBUTION DISCLOSURE," PROVIDING FOR PROCEDURES FOR DISCLOSURE OF CAMPAIGN CONTRIBUTIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 7.5 of the Town Charter requires that vendors of products or services must disclose any campaign contributions made to a candidate who was elected to Town Council; and

WHEREAS, the Charter does not provide any direction as to how or when this disclosure is to be made; and

WHEREAS, the wishes to clarify how, when and to whom such disclosures shall be made.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above Recitals are true and correct and are incorporated herein by this reference.

Section 2. Vendors' campaign contribution disclosure requirement. The Town Council hereby creates a campaign contribution disclosure ordinance, entitled "Vendors' Campaign Contribution Disclosure," to read as set forth below:

Vendors' Campaign Contribution Disclosure

(A) Any vendor required to disclose campaign contributions pursuant to the Charter of the Town of Cutler Bay, as may be amended, shall file a written disclosure with the Town Clerk, stating all contributions made that were accepted by an elected official, the official to whom they were made and the date they were made. The Town Clerk may develop a form to be used by vendors for such disclosure.

(B) The disclosure shall be filed prior to and as a condition of the award of any Town contract to the Vendor.

(C) The Town Clerk shall inform the Council of any disclosures which were made in relation to any items before the Council prior to the hearing on the item or prior to the award of the contract.

(D) If an existing vendor makes a contribution the vendor must report the same to the clerk within ten days of its acceptance or prior to being awarded any additional contract or renewal, whichever occurs first.

(E) The Town Clerk shall file a quarterly report with the Council, which lists all the vendor disclosures in the quarter.

Section 3. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections,

sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 4. Inclusion In The Code. It is the intention of the Town Council that the provisions of this Ordinance shall become and made a part of the Town of Cutler Bay Code; that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 5. This Ordinance shall become effective immediately upon its adoption.

PASSED on first reading this ____ day of _____, 2006.

PASSED and ADOPTED on second reading this ___ day of _____, 2006.

PAUL S. VROOMAN
MAYOR

ATTEST:

ELIZABETH SEWELL
INTERIM TOWN CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA COLE & BONISKE, P.A.
INTERIM TOWN ATTORNEY

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman _____

Council Member Timothy J. Meerbott _____

Council Member Ernest N. Sochin _____

Council Member Peggy R. Bell _____

ORDINANCE NO. ____

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CREATING THE SECTION ENTITLED, "NUISANCE VEGETATION ABATEMENT"; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 8.03 of the Town Charter of the Town of Cutler Bay (the "Town"), there is presently in effect within the Town the provisions of the Code of Ordinances of Metropolitan Dade County (the "County Code") providing for the regulation of nuisances within the Town; and

WHEREAS, as a result of the recent hurricanes and severe weather events which have affected the Nation, State of Florida, and the Town of Cutler Bay ("Town"), it is recognized to be necessary to implement additional regulations to assure the protection of the public health, safety and welfare; and

WHEREAS, the Town Council finds that the adoption of this Ordinance is protective of the public health, safety and welfare; and

WHEREAS, preservation of uniform regulations and continuance of electric and utility services is vital to the maintenance of order and the economic viability of the Town; and

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Nuisance Vegetation Abatement. The Ordinance Entitled "Nuisance Vegetation Abatement" is hereby created as follows:

Nuisance Vegetation Abatement

A. Title; applicability; to constitute minimum standard.

This chapter shall be known as the "Nuisance Vegetation Abatement" and shall be applicable in the Town of Cutler Bay.

B. Declaration of legislative intent.

The Council finds that certain vegetation may endanger the health, safety and welfare of the Town of Cutler Bay by interfering with utility lines including power lines.

C. Definitions

(1) *Line clearance or Line Clearing* shall mean maintaining, trimming, pruning, or removing all vegetation, including but not limited to all trees, shrubs or vines growing or existing in proximity to any above ground electric transmission line, electric service line, telephone line, cable line or other utility line.

(2) *Qualified line-clearance professional* shall mean an individual who through related training and on-the-job experience, is familiar with the equipment and hazards in line clearance and has demonstrated the ability to perform the specific techniques required to do so effectively and safely. Such professional need not currently be employed by a line-clearance contractor. In conducting the line clearing, the qualified line clearing professional must adhere to the standards set forth in the American National Standards Institute (ANSI) and be certified or licensed to do

such work. Additionally, such professional shall be a certified or licensed arborist or shall be associated with a certified or licensed arborist and shall maintain liability insurance in the minimum amount of \$500,000 per occurrence.

(3) *Vegetation and Vegetative Matter* shall include, but is not limited to all types, maturity and varieties of trees, plants, shrubs, palms or components thereof, whether dead or alive.

C. Public nuisance declared.

(1) Any vegetation and/or any vegetative matter located within four (4') feet of any above ground electric transmission line, electric service line, telephone line, cable line or other utility line, are hereby declared a public nuisance.

(2) It shall be the right of every property owner and tenant of any property to abate any nuisance as described in (1) above by causing such nuisance to be remedied by a qualified line-clearance professional.

D. Notice to remedy condition.

If the Town Manager or designee finds and determines that a public nuisance as described and declared in Part C, above, hereof exists, he shall so notify the record owner of the offending property in writing and demand that such owner cause the condition to be remedied. The notice shall be given by registered or certified mail, addressed to the owner or owners of the property described, as their names and addresses are shown upon the record of the Miami Dade County Property Appraiser, and shall be deemed complete and sufficient when so addressed and deposited in the United States mail with proper postage prepaid. In the event that such notice is

returned by postal authorities the Director shall cause a copy of the notice to be served by a law enforcement officer upon the occupant of the property or upon any agent of the owner thereof. In the event that personal service upon the occupant of the property or upon any agent of the owner thereof cannot be performed after reasonable search by a law enforcement officer the notice shall be accomplished by physical posting on the said property.

E. Form of notice.

The notice shall be in substantially the following form:

NOTICE OF PUBLIC NUISANCE

Name of owner _____

Address of owner _____

Our records indicate that you are the owner(s) of the following property in the Town of Cutler Bay, Florida:

(described property)

An inspection of this property discloses, and I have found and determined, that a public nuisance exists thereon so as to constitute a violation of the Town of Cutler Bay Nuisance Vegetation Ordinance in that there exists on the above-described property vegetation and/or any vegetative matter located within four (4') feet of any above ground electric transmission line, electric service line, telephone line, cable line or other utility line. You are hereby notified that unless the above-described vegetation and/or vegetative matter are trimmed or removed within twenty (20) days from the date hereof, the Town of Cutler Bay will proceed to trim or remove said vegetation and/or vegetative matter and the cost of the work, including advertising costs and other expenses,

will be imposed as a lien on the property if not otherwise paid within thirty (30) days after receipt of billing.

Town of Cutler Bay, Florida

By _____

F. Hearing.

Within twenty (10) days after the mailing of notice to the property owner, the property owner may make written request to the Town Manager for a hearing before him or a person designated by him to hear such matters, to show that the vegetation and/or vegetative matter referred to in the notice are not located within four (4') feet of any above ground electric transmission line, electric service line, telephone line, cable line or other utility line. At the hearing the Town or the property owner may introduce such evidence as is deemed necessary. The Town Manager or person designated by him shall hold hearings at appropriate times and places, and the Town Manager shall establish rules and regulations for the review procedure. Following the review by the Town Manager or person designated by him, the owner will be deemed to have exhausted his administrative remedies.

G. Vegetation and/or Vegetative Matter may be trimmed or removed by Town; lien for expenses.

If within twenty (10) days after mailing of the notice no hearing has been requested and the vegetation and/or vegetative matter described in the notice have not been trimmed or removed, the Town Manager or designee shall have the vegetation and/or vegetative matter trimmed or removed by the Town of Cutler Bay at the expense of the property owner. If a hearing has been held and has concluded adversely to the property owner, the Town Manager or designee shall have the vegetation and/or vegetative matter trimmed or removed by the Town of Cutler Bay at the expense of the property owner.

After removal of the vegetation and/or vegetative matter the Town Manager shall certify to the Town Clerk the expense incurred and shall include a copy of the notice above-described and a copy of the decision of the Town Manager, or his designee, if a hearing was held, whereupon such expense shall become payable within thirty (30) days, after which a special assessment lien and charge will be made upon the property, which shall be payable with interest at the rate of six (6) percent per annum from the date of such certification until paid.

Such lien shall be enforceable in the same manner as a tax lien in favor of Town of Cutler Bay and may be satisfied at any time by payment thereof including accrued interest. Notice of such lien shall be filed in the Office of the Clerk of the Circuit Court and recorded among the public records of Dade County, Florida.

H. Duty of the Town Clerk to keep records of liens.

The Town Clerk shall keep complete records relating to the amount payable for liens above-described.

I. Review by certiorari.

Any party aggrieved by the administrative decision may have such decision reviewed by the filing of a petition for writ of certiorari in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, for a review of the record upon which the decision is based, in accordance with the procedure and within the time provided by the Florida Appellate Rules for the review of the rulings of any commission or Board, which rules of practice and procedure are hereby adopted. For such purposes, the Town Manager shall make available for public inspection and copying the record of each such decision to be reviewed; provided, the Manager may make a reasonable charge commensurate with the cost, in the event he is able to and does furnish copies of all or any portion of the record at the hearing. Prior to certifying a copy of any record or portion thereof, the Manager or his designee shall make all necessary corrections in order that the copy is a true and correct copy of the record, or those portions thereof requested, and shall make a charge of not more than twenty-five cents (\$0.25) per page, instrument or exhibit; provided the charges here authorized are not intended to repeal or amend any fee or schedule of fees otherwise established.

Section 3. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 4. Inclusion In The Code. It is the intention of the Town Council that the provisions of this Ordinance shall become and made a part of the Town of Cutler Bay Code; that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 5 Effective Date. This Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading on _____, 2006

PASSED AND ADOPTED on second reading on _____, 2006.

Attest: _____
ELIZABETH SEWELL
Interim Town Clerk

PAUL S. VROOMAN
Mayor

APPROVED AS TO FORM:

WEISS SEROTA HELFMAN PASTORIZA COLE & BONISKE, P.A.
Interim Town Attorney

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman _____

Council Member Timothy J. Meerbott _____

Council Member Ernest N. Sochin _____

Council Member Peggy R. Bell _____

ORDINANCE NO. ___

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING THE TOWN COUNCIL AGENDA FORMAT; CREATING TOWN COUNCIL MEETING PROCEDURES; CREATING ADVERTISEMENT AND NOTICE REQUIREMENTS; PROVIDING FOR A REPEALER; PROVIDING FOR ORDINANCES IN CONFLICT, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Cutler Bay (the "Town") desires to amend the Town Council meeting agenda format to provide for quasi-judicial and other meeting procedures; and

WHEREAS, the Town Council also desires to create advertisement and notice requirements for amendments to the comprehensive plan and land development code, and for other development permit approvals; and

WHEREAS, the Town Council intends that the agenda format provided in this Ordinance shall replace the format adopted pursuant to Resolution 06-04; and

WHEREAS, the Town Council also intends that the notice and advertisement requirements adopted in this Ordinance shall amend those provided in Section 33-310 of the existing Town Code of Ordinances; and

WHEREAS, the Town Council finds that adoption of these regulations is in the best interest and welfare of the citizens of the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY AS FOLLOWS:

Section 1. Agenda Format and Council Meeting Procedures.

(A) *Agenda.* The town manager shall be responsible for the preparation of all town council meeting agendas.

(B) *Procedures.* The mayor will decide on any procedures or format to be followed during town council meetings which are not otherwise provided in this section.

(C) *Time limitation.* A time limitation of two (2) minutes is established for each individual who desires to speak under the subjective categories of "public comments and public hearings." There will be no responses to those speaking by any member of the town council. The total time allotted to this category will be thirty (30) minutes. Exceptions to these limitations may be approved by the mayor.

(D) *Meeting Time.* Unless otherwise directed by the mayor, regular council meetings will commence at 7:00 p.m.

(E) *Agenda Format.* The format of the council meeting agenda is hereby established as follows:

- I. CALL TO ORDER, ROLL CALL, PLEDGE OF ALLEGIANCE
- II. INVOCATION
- III. PROCLAMATIONS, AWARDS, PRESENTATIONS
- IV. APPROVAL OF MINUTES
- V. ADDITIONS, DELETIONS, AND DEFERRALS
- VI. TOWN MANAGER'S REPORT
- VII. TOWN ATTORNEY'S REPORT
- VIII. BOARD AND COMMITTEE REPORTS
- IX. CONSENT AGENDA (ANY ITEM SHALL BE REMOVED FROM THE CONSENT AGENDA FOR DISCUSSION OR SEPARATE VOTE IF REQUESTED BY A COUNCILMEMBER)
- X. QUASI-JUDICIAL CONSENT AGENDA (ANY ITEM MAY BE REMOVED FROM THE CONSENT AGENDA IF REQUESTED BY A MEMBER OF THE TOWN COUNCIL, THE TOWN STAFF, THE APPLICANT, OR ANY AFFECTED PARTY. ANY ITEM REMOVED SHALL BE TABLED TO THE NEXT REGULARLY SCHEDULED COUNCIL MEETING FOR A QUASI-JUDICIAL HEARING.)
- XI. QUASI-JUDICIAL HEARINGS
- XII. PUBLIC HEARINGS
 - A. RESOLUTIONS
 - B. ORDINANCES
 1. FIRST READING
 2. SECOND READING

- XIII. PUBLIC COMMENTS (TWO MINUTES PER PERSON)
- XIV. MAYOR AND COUNCIL MEMBER COMMENTS
- XV. OTHER BUSINESS
- XVI. NEXT MEETING ANNOUNCEMENT AND ADJOURNMENT

(F) *Sign-in sheet.* Residents of the town, or property owners or owners of businesses within the town requesting to speak or make a presentation before the town council during public comments, will be required to sign up in a form to be provided by the town which will include their name and address. The sign-in sheet must be signed prior to the council meeting being called to order.

(G) *Quasi-judicial consent agenda.* All quasi-judicial land development applications that the staff has determined meet all applicable comprehensive plan requirements and land development regulations shall be placed on the quasi-judicial consent agenda for approval. All such applications that the staff has determined do not meet all applicable requirements and regulations, shall be placed on an agenda for a quasi-judicial hearing. At the appropriate time during the meeting, the mayor will announce that the quasi-judicial consent agenda is the next item on the agenda. The mayor will announce that a member of the town council, town staff, the applicant or any affected party may request that a specific item be removed from the quasi-judicial consent agenda for a hearing. An affected party may participate in the hearing by presenting testimony and cross examining witnesses only if the affected party has filed a notice of appearance at least five (5) days before the hearing with the town manager or his or her designee. The notice of appearance shall state with particularity the comprehensive plan requirement or land development regulation the person contends is not being properly applied and the nature of the legally recognizable interest that may be adversely affected by the town's approval of the quasi-judicial land development application.

(H) *Affected party defined.* For purposes of this Ordinance, the term "affected party" shall mean a person who will suffer an adverse effect to a legally recognizable interest if the town's comprehensive plan requirements and land development regulations are not properly applied to a quasi-judicial land development application. The interest, which may be shared in common generally with other members of the community, must be definite and must exceed in degree the general interest in community good shared by all persons. The town council shall determine the status of any person in question.

(I) *Record.* In a quasi-judicial proceeding, the following are automatically deemed part of the record:

- (1) The town's staff report on file on the land development application;
- (2) The town's comprehensive plan, the town code of ordinances and all other applicable codes.

(J) *Police officer in attendance at council meetings.* It shall be the duty of the chief of police or a police officer assigned by him, who shall have the grade of lieutenant or higher, to be present and on official duty at all special and regular meetings of the town council.

(K) *Interruptions and disturbances.* Except during such times as the town council shall set aside for public comment, it shall be unlawful for any person present as a spectator to interrupt or disturb the proceedings in any manner by voice, actions or otherwise.

(L) *Public participation.* During periods set aside for public hearings, any person desiring to speak shall secure the permission of the mayor by first silently raising his hand and being recognized. The use of profanity, obscene language, threats or any violent or abusive conduct by any person shall constitute a violation of this section.

(M) *Removal of persons.* It shall be the duty of the chief of police or officer in attendance, upon the order of the mayor or in his or her absence the vice mayor, to remove from the town council meeting or take into custody any person violating the provisions of this section.

(N) *Firearms.* It shall be unlawful for any person who is not a certified police officer on duty to enter into a town council meeting with a firearm.

Section 2. Notice and Advertisements of Public Hearings. Amendments to the Town's comprehensive plan and land development regulations shall be advertised and noticed in accordance with the following provisions:

(A) *Comprehensive plan amendments.* All ordinances which amend the comprehensive plan text or future land use map shall be advertised by publication in accordance with the provisions of Section 163.3184, Florida Statutes. In addition, property owners of record within a _____ foot radius of the property subject to the future land use map amendment shall be provided mailed notice. [NOTE: The Village of Pincrest provides for 2,500 feet and the Village of Palmetto Bay does not provide for mailed notice].

(B) *Land development regulation amendments.* All ordinances which amend the text of the land development regulations or the town's zoning map shall be advertised in accordance with the requirements set forth in Section 166.041, Florida Statutes. A courtesy mailed notice containing substantially the same information set forth in the published advertisement may be mailed to the property owners of record located within a radius of _____ feet of the property described in the application or such greater distance as the town manager may prescribe. The failure to mail or receive such courtesy notice shall not affect action or proceedings taken by the town council. [NOTE: The Village of Pincrest requires mailed notice for a 2,500 foot radius and the Village of Palmetto Bay does not provide for mailed notice].

(C) *Other development approvals.* Public hearings on applications for development permit approvals (other than comprehensive plan amendments, rezonings, or changes to the land

development regulations, which shall be governed by section (A) and (B)) including special exceptions, unusual uses, variances, and plats, shall be advertised and noticed as follows:

(1) Mailed notice to the property owners of record within a radius of _____ feet of the property described in the application or such greater distance as the town manager may prescribe. [NOTE: The Village of Pincrest requires mailed notice for a 1,000 foot radius and the Village of Palmetto Bay does not provide for mailed notice].

(2) Courtesy publication in the non-legal section of a local newspaper selected by the town.

(D) *Posted notice.* Posted notice shall be provided on the property subject to the public hearing. The property shall be posted by the applicant no later than five (5) days prior to the first town council hearing in a manner conspicuous to the public, by a sign or signs containing information concerning the application including, but not limited to, the applied for action and the time and place of the adoption hearing. The town manager may develop standards for the size, placement and type of sign to be posted, ensuring that the sign is legible from the nearest public right-of-way. The applicant shall remove such posting within ten (10) days following the town council's approval or denial of the application, or upon the applicant's withdrawal of the application.

(E) *Advertising costs.* All costs of advertising, noticing, and posting shall be borne by the applicant. For the purpose of the town council meeting advertisements as set forth above, the applicant shall pay for a pro-rata share of the advertisement cost for each item submitted for review with any other applicant on the same agenda.

(F) *Deferred agenda items.* Hearings on agenda items may be deferred or continued by the local planning agency or town council to a meeting date certain. The town council may waive further notice except as provided for by state statute.

Section 3. Amendment of Section 33-310 of the Town Code of Ordinances.
Section 33-310 of the Town Code of Ordinances is hereby amended as follows:

Sec. 33-310. Staff report, review, and recommendation. Notice and hearing prerequisite to action by the Community Zoning Appeals Boards or Board of County Commissioners.

~~(a) When an application as prescribed by Sections 33-304 and 33-309 has been filed hereunder the Director shall, no later than forty (40) days after filing, at the cost of the applicant, provide mailed notice of such filing as provided in Section 33-310(d). The notice shall include the applicant's name, the processing number, the property size, the location (and street address, if available) of the property, a general description of the action requested in the application, and a statement that the application was filed and is being reviewed by the Department and, where applicable, the Developmental Impact Committee, and that a future notice will be provided prior to the public hearing thereon. The notice shall additionally state and make clear that any interested person is entitled to discuss the application with the County employees processing and reviewing the application to the same extent as the applicant is so entitled and that the~~

~~application may change during the hearing process. The person or persons mailing the notice provided herein shall attach an affidavit or affidavits thereof to the application's file setting forth the compliance with this subsection. Failure to mail the said written notice as provided herein shall render voidable any hearing held on the application. If, after this initial notice is mailed, the application is changed in a manner such that additional land area is encompassed within the application, then the initial notice described herein shall be repeated by the Director at the expense of the applicant. Such modifications that require repeating the initial notice shall be permitted only during the regular working days that fall within the first seven (7) days of the month. The notice provided in this paragraph shall not be required for appeals filed in conjunction with Section 33-313 or 33-314 of the Code.~~

(b) Applications filed hereunder shall be promptly transmitted to the appropriate board, together with the written recommendation of the Director. Where applicable the Developmental Impact Committee shall issue its recommendation, which shall include a statement of the Director as to the application's relationship to the Comprehensive Development Master Plan. All such recommendations shall state all facts relevant to the application, including an accurate depiction of known living, working, traffic and transportation conditions in the vicinity of the property that is the subject of the application, and also a description of all projected effects of the proposed zoning action on those conditions. Before reaching a conclusion, each recommendation shall list all known factors both in favor of and against each application. All such recommendations shall be signed and considered final no earlier than thirty (30) days prior to the public hearing to give the public an opportunity to provide information to the staff prior to the recommendations becoming final. This shall not preclude earlier, preliminary recommendations. All documents of the County departments evaluating the application, which documents pertain to the application, are open for public inspection to applicants or other interested persons.

~~(c) No action on any application shall be taken by the Community Zoning Appeals Boards or the Board of County Commissioners on any appeal, until a public hearing has been held upon notice of the time, place and purpose of such hearing, the cost of said notice to be borne by the applicant. Notice shall be provided as follows:~~

~~(1) Said notice shall be published twice in newspapers of general circulation in Miami Dade County, as follows: (A) a full legal notice, to be published no later than twenty (20) days and no earlier than thirty (30) days prior to the public hearing, to contain the date, time and place of the hearing, the property's location (and street address, if available) and legal description, and nature of the application, including all specific variances and other requests; and (B) a layman's notice, to be published in the newspaper of largest circulation in Miami Dade County, no later than twenty-five (25) days and no earlier than thirty-five (35) days prior to the public hearing, to contain the same information as the above described full legal notice except that the property's legal description may be omitted and the nature of the application and requests contained therein may be summarized in a more concise, abbreviated fashion. The layman's notice may be published in a section or a supplement of the newspaper distributed only in the locality where the property subject to the application lies. In the event that any time periods specified in this subsection shall conflict with any applicable provision of the Florida Statutes, the provision of the Florida Statutes shall govern.~~

~~(2) Mailed notice containing general information, including, but not limited to, the date, time and place of the hearing, the property's location (and street address, if available), and nature of~~

~~the application shall be sent as provided by Subsection 33-310(d) no later than thirty (30) days prior to the hearing.~~

~~(3) The property shall be posted no later than twenty (20) days prior to the hearing in a manner conspicuous to the public, by a sign or signs containing information including but not limited to the applied for zoning action and the time and place of the public hearing.~~

~~(d) Mailed notice shall be accomplished by placing in the United States mail a written notice to all property owners of record, as reflected on the Miami-Dade County Property Appraiser's tax roll as updated, within the following radius of the property described in the application, or such greater distance as the Director may prescribe:~~

~~(1) Approvals of or modifications to Developments of Regional Impact ("DRI"), including substantial deviation determinations or modifications thereof, one (1) mile;~~

~~(2) For applications, other than for Development of Regional Impact, required to be reviewed by the Development Impact Committee; for district boundary changes, use variances, special exceptions, or unusual uses unless the foregoing are specifically itemized in Subsection (d)(3); for any modification of a covenant accepted or condition imposed in connection with a prior district boundary change or use variance; but this subsection shall not apply to residential uses of less than five (5) units, one-half (1/2) mile;~~

~~(3) For modification or elimination of conditions or restrictive covenants, or parts thereof, after public hearing, mailed notice shall be accomplished by placing in the United States mail a written notice to all property owners of record, as reflected on the Miami-Dade County Property Appraiser's tax roll as updated, within the same radius of the property as required to be noticed for zoning action imposing or accepting the condition or restrictive covenant sought to be modified or eliminated, or such greater distance as the Director may prescribe.~~

~~(4) For district boundary change involving a change of prefix within BU (Business) or IU (Industrial) and use variance involving such a use prefix change; for unusual use for outdoor patio dining, outdoor display, adult congregate living facility, day nursery, convalescent home, day camp, home for the aged, institution for the handicapped, kindergarten, nursing home, retirement village, entrance feature, mobile home as watchman's quarters, bathing beach; for special exception for resubdividing/refacing of platted lots, servant's quarters in RU-1 district, convalescent home, eleemosynary and philanthropic institution in RU-4 districts, barn (spacing from residences) in AU district, dude ranch in AU district, temporary farm labor housing in AU district; and for all other applications for zoning action not specified in Subsections (d)(1), (2), (3) and (4), five hundred (500) feet.~~

~~Such notice shall also be mailed to the president of any homeowners association having any member who resides within the area of mailed notice described above when such residency is shown upon a current updated notice filed with the director. The Director shall establish and maintain a process by which homeowners associations may provide notice of the areas in which their members reside. Homeowners associations shall keep these notices current by updating them in accordance with procedures to be prescribed by the Director.~~

~~(e) The person or persons responsible for providing the notices provided in Subsection (e) above shall attach to the application file a sworn affidavit or affidavits setting forth that they have complied with said subsection. Failure to provide the newspaper notices as provided, or failure to mail the written notices as provided, or failure to post the property as provided renders voidable any hearing held on the application.~~

~~(f) The Director shall have the discretion to expand any of the notice provisions contained in this section to provide more information if deemed appropriate.~~

~~(g) If the notices described in Subsection (c)(1) above are published, and the affidavits required by Subsections (a) and (d) above are of record, no judicial proceeding to void a hearing shall be commenced after the time for appeal from a resolution of an administrative or quasijudicial tribunal as provided in the Florida Rules of Appellate Procedures.~~

Section 4. Severability. If any section, clause, sentence, or phrase of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the remaining portions of this Ordinance.

Section 5. Repealer. All resolutions or ordinances or parts of resolutions or ordinances in conflict with the provisions of this Ordinance are repealed.

Section 6. Effective Date. This Ordinance shall be effective immediately upon adoption.

PASSED on first reading this _____ day of May, 2006.

PASSED AND ADOPTED on second reading this _____ day of May, 2006.

PAUL VROOMAN
Mayor

Attest: _____
ELIZABETH SEWELL
Interim Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA COLE & BONISKE, P.A.
Interim Town Attorney

FINAL VOTE AT ADOPTION:

Mayor Paul Vrooman _____

Council Member Timothy J. Meerbott _____

Council Member Ernest Sochin

Council Member Peggy Bell

ORDINANCE NO. ____

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CREATING A COST RECOVERY ADMINISTRATIVE PROGRAM; PROVIDING FOR A REPEALER; PROVIDING FOR ORDINANCES IN CONFLICT, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Town staff has conducted a review of costs incurred by the Town for the review of development approvals and for other Town programs and transactions; and

WHEREAS, the Town Council finds that existing fee schedules do not fully cover the Town's costs in administration and review of land development applications, preparation of documents regarding certain assistance programs, housing measures, and Town loan and economic development programs; and

WHEREAS, the Town Council finds that it is in the best interests of the Town for the Town to recover the costs for services relating to the review of applications for development approvals and for Town transactions from those persons deriving the benefit of the review and of the transaction, as provided herein; and

WHEREAS, the Town Council finds that adoption of these regulations is in the best interest and welfare of the citizens of the Town.

BE IT ENACTED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. Purpose, intent, applicability.

A. Intent. The intent of this Ordinance is to provide for a procedure for the recovery of costs related to the review of applications for development approval, real estate transactions, and economic development programs, such that those persons or entities that benefit from the Town's review and approval of these matters properly bear the costs of review.

B. Applicability of provisions. The cost recovery required herein shall not apply to applications or transactions that are originally initiated by or on behalf of the Town.

Section 2. Cost recovery. The cost recovery administrative program is hereby created as follows:

A. **Cost Recovery.** To the extent that any application for review by the Town under the Town's Zoning Code or, except as otherwise specified below, other Town Code provisions which require review by Town staff, Town contractors, agents or consultants, the actual costs for such additional review shall be passed on to the applicant. Costs for the Town Attorney and/or any outside contractors, agents or consultants of Town shall be charged to the applicant in an amount equal to the actual hourly rate charged to the Town.

B. **Existing Miami-Dade County fee schedule not affected.** Fees charged by Miami-Dade County to process building permits and other development applications on the behalf of the Town shall not be affected by this Ordinance.

C. **Town preparation of real estate transactional documents.** Unless prohibited by law, in circumstances in which the Town prepares closing papers, deeds, or other documents in conjunction with Town programs such as in-fill lot housing or other housing measures, or for other matters in which the Town holds a lien and is requested to subordinate its position, the Town shall charge the applicant a reasonable fee as determined by the Town Manager in an amount equal to the actual costs of the Town for the preparation of such documents.

D. **Town loan and economic development programs.** In cases where the Town prepares loan documents, liens, mortgage papers, subordination documents and other such documents in conjunction with or resulting from Town loan and economic development programs, the Town shall charge the applicant a reasonable fee as determined by the Town Manager in an amount equal to the actual costs of the Town for the preparation of such documents.

Section 3. Fees for public hearings and other items.

Application fees for public hearings and other items involving Town action or review shall be adopted by resolution of the Town Council.

Section 4. Severability.

If any section, clause, sentence, or phrase of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the remaining portions of this Ordinance.

Section 5. Repealer.

All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are repealed.

Section 6. Effective Date. This Ordinance shall be effective immediately upon adoption.

PASSED and ENACTED this ____ day of April, 2006.

JOHN F. COSGROVE
Mayor

Attest: _____
ELIZABETH SEWELL
Interim Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA COLE & BONISKE, P.A.
Interim Town Attorney

FINAL VOTE AT ADOPTION:

Mayor John F. Cosgrove _____
Vice Mayor Paul Vrooman _____
Council Member Timothy J. Meerbott _____
Council Member Ernest Sochin _____
Council Member Peggy Bell _____

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, IMPLEMENTING THE PROVISIONS OF SECTION 286.0115, FLORIDA STATUTES, TO ESTABLISH A PROCEDURE GOVERNING EX PARTE COMMUNICATIONS WITH LOCAL PUBLIC OFFICIALS CONCERNING QUASI-JUDICIAL MATTERS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE TOWN CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay, Florida (the "Town") desires to implement Section 286.0115(1) Fla. Stat., by establishing a process to disclose ex parte communications (communications made on behalf of one side only without the presence of the other side) with local public officials; and

WHEREAS, the Town Council finds that adoption of these regulations is in the best interest and welfare of the citizens of the Town.

BE IT ORDNANED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. The above recitations are true and correct and are incorporated into this ordinance by this reference.

Section 2. Communications with The Town Council. Communications with local public officials [as defined in Sec. 286.0115(1)(b), Fla.Stat. (1997)], regarding quasi-judicial matters [as defined in Board of County Commissioners of Brevard County v. Snyder, 627 So.2d 469 (Fla. 1993)], including the adjudication of the rights of persons and the application of a general rule or policy to a specific individual, property, interest or activity shall be governed by the following procedure:

A. Any person not otherwise prohibited by statute, charter provision, or ordinance may discuss with any local public official representing the Town the merits of any matter on which action may be taken by any board, council or commission on which the local public official is a member. Such communication shall not raise any presumption of prejudice provided that the

following process of disclosure occurs:

1. The subject and substance of any ex parte communication with a local public official representing the Town which relates to quasi-judicial action pending before the official, as well as the identity of the person, group or entity with whom the communication took place, is disclosed and made a part of the record before final action is taken on the matter.

2. A local public official representing the Town may read a written communication from any person; however, a written communication that relates to quasi-judicial action pending before such official shall be made a part of the record before final action is taken on the matter.

3. A local public official representing the Town may conduct investigations, make site visits and receive expert opinions regarding quasi-judicial action pending before him or her, provided that such activities and the existence of such investigations, site visits, or expert opinions is made a part of the record before final action is taken on the matter.

4. Disclosure made pursuant to paragraphs (1), (2) and (3) above must be made before or during the public meeting at which a vote is taken on such matters, so that persons who have opinions contrary to those expressed in the ex parte communication are given a reasonable opportunity to refute or respond to the communication.

Section 3. **Severability.** The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 4. **Inclusion in the Code.** It is the intention of the Town Council, and it is hereby ordained that the provisions of this Ordinance shall become and made a part of the Town

Code and that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 5. **Effective Date.** This Ordinance shall be effective immediately upon adoption on second reading.

PASSED and ENACTED this ____ day of April, 2006.

JOHN F. COSGROVE
Mayor

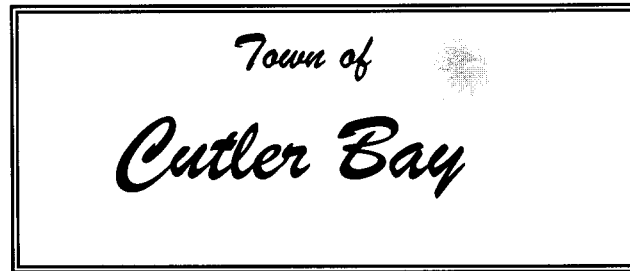
Attest: _____
ELIZABETH SEWELL
Interim Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA COLE & BONISKE, P.A.
Interim Town Attorney

FINAL VOTE AT ADOPTION:

Mayor John F. Cosgrove _____
Vice Mayor Paul Vrooman _____
Council Member Timothy J. Meerbott _____
Council Member Ernest Sochin _____
Council Member Peggy Bell _____



MEMORANDUM

To: The Honorable Mayor and Councilmembers
Town of Cutler Bay

From: Mitchell Bierman, Interim Town Attorney

Re: Ex-Parte Communications on Quasi-Judicial Land Use Matters

Date: April 6, 2006

We have prepared the attached ordinance addressing disclosure of ex-parte communications regarding quasi-judicial proceedings and land use matters. An explanation follows.

I. QUASI-JUDICIAL BOARDS AND PROCEEDINGS FOR LAND USE MATTERS

The Town's Local Planning Agency ("LPA") and, in certain situations, the Town Council are considered to be quasi-judicial boards of the Town. This means that the LPA and the Town Council will be conducting quasi-judicial proceedings. As Councilmembers, you are most familiar with legislative decision making, in which you are asked to create a general rule or policy to govern the conduct of those within the Town. In contrast, a quasi-judicial proceeding is one that determines the rights of some individual person or business by applying that legislative rule of Town-wide application to the particular facts and circumstances of an individual case. In the area of land use, all comprehensive planning decisions are considered to be legislative. Most zoning decisions are considered to be quasi-judicial proceedings; a few, such as a Town-wide enactment of zoning, are likely to be considered legislative. Decisions on special permits, such as variances and building permits, are quasi-judicial.

Members of quasi-judicial boards are subject to certain restrictions when it comes to communications concerning matters under consideration. Such contacts are considered "ex-parte communications."¹ Since it is possible that applicants or other interested persons may seek to contact (or already have contacted) you to discuss the merits of development applications, the Council should address what, if any, communications will be allowed between the Councilmembers and an applicant, as well as communications with the general public.

A. WHAT IS AN EX-PARTE COMMUNICATION?

An ex-parte communication is any communication, whether written or oral, between a Councilmember or other quasi-judicial board member and any person regarding the subject matter of any application that is, or foreseeably will be, heard in a quasi-judicial proceeding. Site visits and review of expert opinions are also considered ex-parte communications.

Currently, you must refrain from all ex-parte contacts with applicants or other interested persons regarding development applications, in order to avoid creating a legal presumption that your future decision on these applications is prejudiced by the contact.² However, as discussed below, the Town Council may remove this presumption of prejudice by adopting an ordinance or resolution establishing a process to allow ex-parte communications related to quasi-judicial proceedings.

i. JENNINGS V. METROPOLITAN DADE COUNTY

The leading case dealing with the issue of ex-parte communications and quasi-judicial boards is Jennings v. Metropolitan Dade County, 589 So. 2d 1337 (Fla. 3rd DCA 1991), rev. den., 598 So.2d 75 (Fla. 1992). In Jennings, the court disapproved of ex-parte communications and found them to be inherently improper because they violated the concept of fundamental due process, the cornerstone of quasi-judicial proceedings. The court further found that the existence of an ex-parte communication creates a presumption that the communication is prejudicial. As a result, any aggrieved party that objects to the ex-parte communication is entitled to an entirely new hearing unless it can be successfully proven that the communication was not, in fact, prejudicial.

While the types of matters which are subject to the rules put forth in the Jennings case are not clearly and consistently defined by the law, at a minimum the following matters are considered by courts to be quasi-judicial in nature:

site specific rezonings, special exceptions, variances, site plan approvals, conditional uses, and code enforcement proceedings.³

ii. SECTION 286.0115(1), FLORIDA STATUTES: ACCESS TO LOCAL PUBLIC OFFICIALS LAW.

¹ / "Ex-Parte" is defined as: on one side only; by or for one party; done for, in behalf of or on the application of, one party only. Black's Law Dictionary, 5th Edition. In other words, when the prosecutor talks to the judge in the absence of the defense attorney about the case against the accused, it is an ex parte contact.

² / The Town Charter provides for the continued applicability of Miami-Dade County ordinances until replaced or superceded by the Town's own ordinances. Miami-Dade County has not adopted any rules removing the presumption of prejudice and allowing ex-parte communications with members of quasi-judicial boards.

³ / Board of County Commissioners of Brevard County v. Snyder; 627 So. 2d 469 (Fla. 1993); Irvine v. Duval County Planning Commission, 495 So. 2d 167 (Fla. 1986); Park of Commerce Associates v. Town of Delray Beach, 636 So. 2d 12 (Fla. 1994); Chapter 162, Fla. Stat. (2000).

Due in large part to the Jennings decision, in 1995 the Florida Legislature enacted Section 286.0115, Florida Statutes, titled "Access to Local Public Officials". This law allows a municipality to adopt an ordinance or resolution removing the presumption of prejudice from ex-parte communications with local public officials.

By definition, this statute covers all elected or appointed officials holding a municipal office who recommend or take quasi-judicial action as a member of a board or council. It allows any person to engage in ex-parte discussions regarding the merits of quasi-judicial matters with a Councilperson so long as the Councilperson discloses, on the record, the existence of the ex-parte communication. This disclosure must be made before or during the public meeting at which any final action is taken on the matter in order for the presumption of prejudice to be removed. The Councilperson must disclose the communication and the identity of the person, group, or entity with whom the communication took place. This procedure allows an applicant or an affected party with a differing opinion a reasonable opportunity to refute or respond to the substance of the ex-parte communication.

In order to allow any form of ex-parte communication or site visit without creating the presumption of prejudice, the Council is required to adopt an ordinance or resolution specifying what, if any, ex-parte communication is allowed.

iii. **ORDINANCE REGARDING EX-PARTE COMMUNICATIONS.**

Attached for your consideration is a proposed ordinance authorizing ex-parte communications so long as the communications are properly disclosed. Alternatively, the Council may elect to maintain the current practice followed by the County and prohibit all ex-parte communications in accordance with the court's ruling in the Jennings case.

B. **GUIDANCE FOR COMPLYING WITH JENNINGS.**

Until such time as the Town Council enacts its own rules governing ex-parte communications, the rule of law set forth in the Jennings decision applies. Any correspondence received by a Councilmember regarding a quasi-judicial application must be forwarded to the Town Clerk. In the event that someone attempts to contact you about a quasi-judicial matter outside of a public meeting, we recommend that you ask them to put their concerns in writing and forward their written documents to the Town Clerk. The Clerk will then make their correspondence part of the record on that application. Additionally, when the application is subsequently heard before the LPA or the Town Council, each Councilmember should state on the record the existence of the ex-parte communication, the nature of the communication, and the name of the person who contacted you. You should also state whether or not the ex-parte communication affects your ability to consider the evidence presented impartially.

Finally, even if the Town Council establishes a process to allow ex-parte communications on quasi-judicial matters, Councilmembers must comply with the Florida Government in the Sunshine Law. As is required on any issue that might come before the Council for consideration, Town Councilmembers may only discuss quasi-judicial matters with each other at a public meeting.

ORDINANCE NO. 06-

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO THE OFFICIAL SEAL OF THE TOWN OF CUTLER BAY; DESIGNATING THE TEMPORARY OFFICIAL SEAL OF THE TOWN OF CUTLER BAY; PROVIDING FOR USE AND PENALTIES; PROVIDING FOR ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Mayor and Town Council of the Town of Cutler Bay desire to designate the official Town seal for the execution and authentication of municipal deeds, contracts, ordinances, resolutions and other documents; and

WHEREAS, the designated official seal is temporary and shall be changed upon the selection of a permanent seal; and

WHEREAS, Article VIII, Section 8.8 of the Town Charter empowers the Council to enact emergency ordinances to effect the transition to municipal government, and provides that transitional ordinances shall be effective for a period of no longer than 180 days from the date of enactment, unless the ordinance is re-enacted and the emergency seal was previously adopted pursuant to said Charter provision and the Council now desires to reenact the Ordinance as a permanent ordinance of the Town.

NOW THEREFORE BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. **Town Seal.** Chapter 2 of the Code of Ordinances of the Town of Cutler Bay is created and entitled "Town Seal" to read as follows:

Chapter 2
TOWN SEAL

2.1 Designation. As used in this chapter, the temporary official seal of the Town shall mean the following identifying symbol.

2.2 Execution and acknowledgment of written instruments. Whenever it shall be necessary for the Town, under the authority of its Town Council, its charter or its code and the general laws of the State of Florida, to execute and/or authenticate deeds, contracts, ordinances, resolutions and other documents on behalf of the Town, the official seal of the town shall be affixed to the document.

2.3 Prohibition. It shall be unlawful and a violation of Chapter 2 of the Town Code for any person to print for the purpose of sale or distribution or to circulate, manufacture, publish, use, display or offer for sale any letters, papers, documents or items of merchandise which simulate the official seal of the Town or the stationery of an official, department or instrumentality of the Town without the expressed written authority of the Town Council or its designee. Pursuant to Florida Statute Section 165.043, the unauthorized use or reproduction of the Seal constitutes a second degree misdemeanor, punishable as provided in Florida Statute Sections 775.082 and 775.083.

2.4 Exceptions. This chapter shall not be applicable to the Town or its departments, instrumentalities, quasi-judicial and advisory bodies acting within the scope of their official capacities.

Section 2. Repealer. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are repealed.

Section 3. Inclusion in the Code. This ordinance shall be codified and included in the Code of Ordinances.

Section 4. Severability. If any section, clause, sentence, or phrase of this ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the remaining portions of this ordinance.

Section 5. Effective Date. This ordinance shall take effect immediately upon enactment.

PASSED and ENACTED this ____ day of April, 2006.

JOHN F. COSGROVE
Mayor

Attest: _____
ELIZABETH SEWELL, CMC
Interim Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA COLE & BONISKE, P.A.
Interim Town Attorney

FINAL VOTE AT ADOPTION:

Mayor John F. Cosgrove _____
Vice Mayor Paul Vrooman _____
Council Member Timothy J. Meerbott _____
Council Member Ernest Sochin _____
Council Member Peggy Bell _____