EXHIBIT LIST

COMMUNITY ZONING APPEALS BOARD 15

DECEMBER 9, 2003

RESOLUTION # CZAB15- -03

ITEM#	HEARING#	APPLICANT'S NAME	SS-TT-RR
2	03-262	SUMMERVILLE DEVELOPMENT, INC.	19-56-40

DEFERRAL TO JANUARY 20, 2004

EX. #	EXHIBIT DESCRIPTION	IN FILE
2-1	Summerville Site Plan & Tabular Data (foam board mounted)	NO
2-2	Aerial of subject area & surrounding terrain (mounted on glossy foam board)	NO
2-3	Photograph of house proposed to be used as sales office (mounted on glossy foam board)	NO
2-4	Series of 7 large photographs (foam board mounted)	NO
2-5	Summerville Location Site with Adjacency (foam board mounted)	NO
2-6	Summerville Five Minute Walk (partial arc) (foam board mounted)	NO
2-7	Objectors' locations map (noted in pink) (foam board mounted)	NO
2-8	Series of 12 photos of vicinity, roadways, etc. (stapled together)	YES
2-9	Artist's Rendition of Entrance to Summerville	YES
2-10	Artist's Rendition of Entrance to Summerville	YES
2-11	Copy of Settlement Agreement (GC Homes & Manuel Dorta-Duque)	YES
2-12	Copy of fax memo from Elliot Harris, esq. to Thomas Egan, esq.	YES
2-13	Copy of Complaint for Declaratory Relief (Summerville v Dorta-Duque)	YES
2-14	Copy of selected portions of the Deposition of Ray Castellanos	YES
2-15	Copy of selected portions of the Deposition of Juan Mayol	YES
2-16	Pg., titled "Manuel C & Emilia Diaz Zoning Hearing Application #02-377 Index"	YES
2-17		
2-18		

EXHIBIT LIST

COMMUNITY ZONING APPEALS BOARD 15

DECEMBER 9, 2003

RESOLUTION # CZAB15- -03

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2-14	Copy of selected portions of the Deposition of Ray Castellanos	YES
2-15	Copy of selected portions of the Deposition of Juan Mayol	YES
2-16	Pg., titled "Manuel C & Emilia Diaz Zoning Hearing Application #02-377 Index"	YES
2-17		
2-18		

4/13/05 As per clerk of the court, Michelle, no Exhibits were submitted on 3/3/04 & 2/24/05 to item #16.

EXHIBIT LIST

COMMUNITY ZONING APPEALS BOARD 15

APRIL 21, 2004

RESOLUTION # CZAB15- -04

ITEM#	HEARING#	APPLICANT'S NAME	SS-TT-RR
A	03-262	SUMMERVILLE DEVELOPMENT, INC.	19-56-40

(deferral to 7-14-04)

EX. #	EXHIBIT DESCRIPTION	IN FILE
A-1	Letter from Kent Robbins to CZAB 15	Yes
A-2		
A-3		
A-4		
A-5		
A-6		
A-7		
A-8		
A-9		
A-10		
A-11		
A-12		
A-13		
A-14		
A-15		
A-16		
A-17		
A-18		

*

EXHIBIT LIST

COMMUNITY ZONING APPEALS BOARD 15

OCTOBER 12, 2004

RESOLUTION # CZAB15-23-04

ITEM#	HEARING#	APPLICANT'S NAME	SS-TT-RR
A	03-262	SUMMERVILLE DEVELOPMENT, INC.	19-56-40

	EX. #	EXHIBIT DESCRIPTION	IN FILE
*	A-1	SPIRAL BOUND BOOKLET BY AKERMAN SENTERFITT	YES
*	A-2	8 PP. PLAN PACKET ENTITLED "SUMMERVILLE TOWN CENTER"	YES
*	A-3	PROFFERED DECLARATION OF RESTRICTIONS	YES
—	A-4	AERIAL PHOTO NOTING SUBJECT PROPERTY (ON FOAM BOARD)	NO
*	A-5	2 PP TRANSCRIPTS WITH HEADING: 'SMALLER SCALE!!'	YES
*	A-6	1 PG TRANSCRIPT WITH HEADING: 'DEC 9, 2003 7PM'	YES
*	A-7	COPY OF SURVET BY MAKOWSKI & RICE, INC.	YES
*	A-8	24 GROUND LEVEL PHOTOGRAPHS	YES
	A-9		
	A-10		
	A-11		
	A-12		
	A-13		
	A-14		
	A-15		
	A-16		
	A-17		
	A-18		

EXHIBIT LIST

COMMUNITY ZONING APPEALS BOARD 15

JANUARY 20, 2004

RESOLUTION # CZAB15- -04

ITEM#	HEARING#	APPLICANT'S NAME	SS-TT-RR
F	03-262	SUMMERVILLE DEVELOPMENT, INC.	19-56-40

NONE (DEFERRAL TO APRIL 21, 2004)

EX. #	EXHIBIT DESCRIPTION	IN FILE
F-1		
F-2		
F-3		
F-4		
F-5		
F-6		
F-7		
F-8		
F-9		
F-10		
F-11		
F-12		
F-13		
F-14		
F-15		
F-16		
F-17		
F-18		

EXHIBIT LIST

COMMUNITY ZONING APPEALS BOARD 15

JULY 14, 2004

RESOLUTION # CZAB15- -04

ITEM#	HEARING#	APPLICANT'S NAME	SS-TT-RR
A	03-262	SUMMERVILLE DEVELOPMENT, INC.	19-56-40

NONE (deferral to October 12, 2004)

EX. #	EXHIBIT DESCRIPTION	IN FILE
A-1		
A-2		
A-3		
A-4		
A-5		
A-6		
A-7		
A-8		
A-9		
A-10		
A-11		
A-12		
A-13		
A-14		
A-15		
A-16		
A-17		
A-18		

COUNTY COMMISSION
ZONING AGENDA OF May 19, 2005
EXHIBITS SUBMITTED FOR THE RECORD

A. **SUMMERVILLE DEVELOPMENT, INC. (03-12-CZ15-2/03-262)** (Denial of appeal)

EXHIBIT A: One packet submitted by Kent Harrison Robbins regarding an appeal of the application. Denial of appeal

Exhibit B: One packet for the application submitted by Holland + Knight.

Exhibit C: A large site plan for Summerville and quotes.

Exhibit D: A large poster board with different pictures of the application site.

C. **GARY TREWICK, ET AL. (05-5-CC-1/04-404)** Def to June 9

Exhibit A: Petitions from several different residents within the community in opposition of the application.

1. **BLACK CREEK L.C. & BLACK CREEK TRUST (05-2-CZ15-1/04-161)** Approved

Exhibit A: A large poster board site plan for Old Silver Palm Trail.

Exhibit B: One large site plan of the Black Creek area with the turnpike highlighted.

Exhibit C: Another large zoning map from the public works department with the zoning codes for the different areas.

2. **VILLAGE SHOPPING CENTER TRUST L.L.C. & COUNTRY CLUB TRUST L.L.C F/K/A: JOSE MILTON & VILLAGE SHOPPING CENTER TRUST) (05-3-CZ5-2/04-424)** Approved

Exhibit A: A booklet regarding the application.

Submitted for the record this 20th day of May, 2005.

ATTEST:

HARVEY RUVIN, CLERK
Clerk of Circuit and County Courts

By M. Tato, Jr.
Deputy Clerk

COUNTY COMMISSIONERS DADE COUNTY FLORIDA

TRANSFERRED TO THE CARE, CUSTODY AND CONTROL OF THE DEPARTMENT OF PLANNING AND ZONING.

RECEIVED BY: _____ 5/20/05 Franklin Gutierrez 5/20/05
(SIGN) **(DATE)** **(PRINT)** **(DATE)**

5-10-2005 Version # 6

MIAMI-DADE COUNTY

BOARD OF COUNTY COMMISSIONERS

ZONING HEARINGS

COUNTY COMMISSIONERS CHAMBERS OF THE STEPHEN P. CLARK CENTER - 2ND FLOOR

111 NW 1 Street, Miami

Thursday, May 19, 2005 at 9:30 a.m.

Exhibit F

PREVIOUSLY DEFERRED

							DISTRICT	
A.	03-12-CZ15-2	SUMMERVILLE DEVELOPMENT, INC.	yes	(APPEAL)	03-262	19-56-40	8	ok
B.	05-2-CZ8-1	CENTURY CAPITAL GROUP, INC.	NO	(APPEAL)	04-241	33-52-41	2	ok
C.	05-5-CC-1	GARY TREWICK ET AL	NO & NO LIST	(DIC)	04-404	23-56-39	8	ok

APPEALS

							DISTRICT	
1.	05-2-CZ15-1	BLACK CREEK L.C. & BLACK CREEK TRUST	yes		04-161	17-56-40	N 8	ok
2.	05-3-CZ5-2	VILLAGE SHOPPING CENTER TRUST LLC. AND COUNTRY CLUB TRUST, LLC (F.K.A. JOSE MILTON & VILLAGE SHOPPING CENTER TRUST)	yes	(DIC)	04-424	11-52-40	N 13	ok

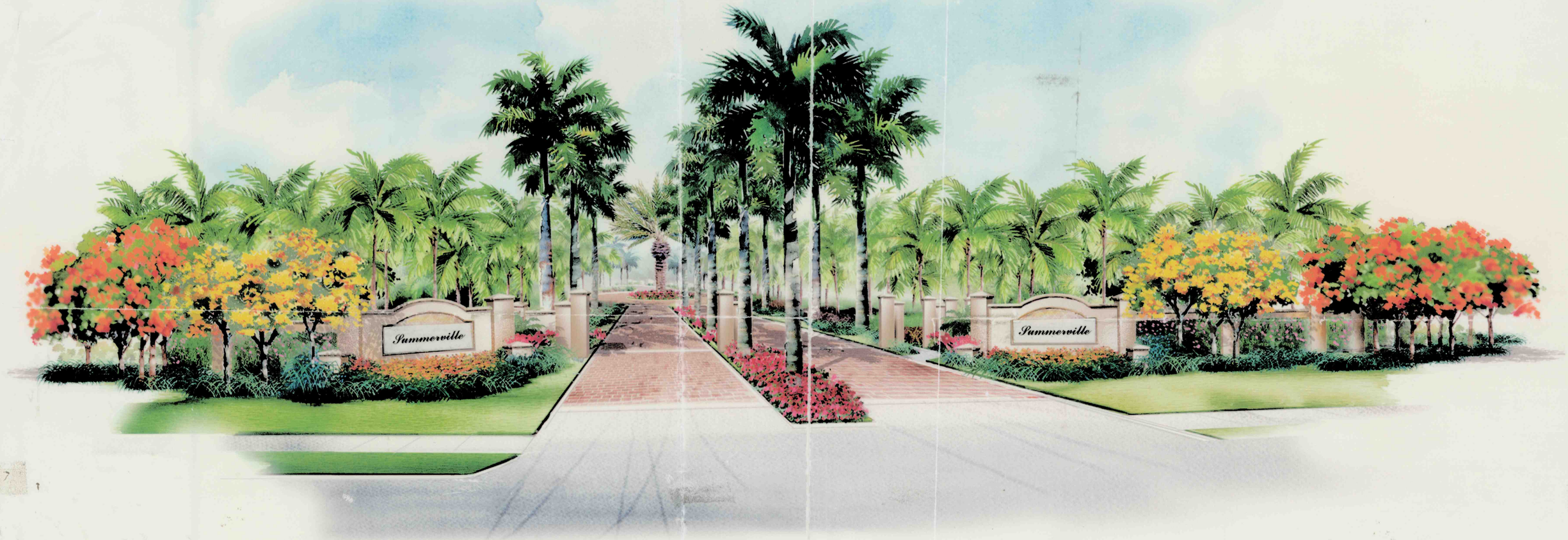
CURRENT

							DISTRICT	
3.	05-5-CC-2	THE DIRECTOR OF THE DEPARTMENT OF PLANNING & ZONING	NO	(DIC)	04-460	27-56-39	N 8/09	ok

RECEIVED BY CLERK
Item # 03-262
CZAB # 15 Exhibit # 2-8
DEC - 9 2003
CLERK OF THE BOARD

RECEIVED BY CLERK
Item # 03-262
CZAB # 15 Exhibit # 2-10
DEC - 9 2003
CLERK OF THE BOARD

RECEIVED BY CLERK
Item # 03-262
CZAB # 15 Exhibit # 2-9
DEC - 9 2003
CLERK OF THE BOARD



SETTLEMENT AGREEMENT

GC Homes, Inc., a Florida ("GC Homes"), and Manuel Dorta-Duque ("Dorta-Duque"), stipulate and agree as follows:

RECITALS

WHEREAS, GC Homes, filed a zoning application, Public Hearing No. 2001-333 (the "Application"), on that certain ±54 acres located on the south side of SW 248th Street at SW 117th Avenue (the "Property");

WHEREAS, GC Homes has entered into a contract to acquire the Property from Robert Borek; Jody K. Vaccaro & Richard L. Vitta; Claude F. Daigle & Sara L. Daigle; Wilfred J. Vick and Pamela Vick, which transaction is subject to the approval of the Application;

WHEREAS, differences have arisen between Dorta-Duque and GC Homes with respect to the Application; and

WHEREAS, Dorta-Duque and GC Homes desire to resolve their differences.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions herein, the parties stipulate and agree as follows:

AGREEMENT

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

2. To address Dorta-Duque's concerns regarding the impact of the Application on Dorta-Duque's property, GC Homes and Dorta-Duque have simultaneously herewith entered into a Contract for Sale and Purchase (the "Contract"), under the terms of which GC Homes will set aside for sale to Dorta-Duque approximately 5 acres located on the western boundary of the Property, adjacent to Dorta-Duque's property (the "Land Use Buffer"), all as shown on the plans submitted with the Application. The purpose of the Land Use Buffer* is to establish and maintain an appropriate land use transition between the development of the Property and Dorta-Duque's property, as well as other Homes & Farms located west of the proposed residential community & SW 117 AVE, between SW 232 st + SW 248 st. MAD

* together with the proposed wall

3. In consideration of the execution of the Contract by GC Homes, Dorta-Duque, on behalf of himself, his heirs, successors and assigns, agrees not to oppose, object to or interfere, whether directly or indirectly, with the efforts of GC Homes to secure the approval of the Application and other approvals that are necessary for the development of the Property, provided GC Homes is in compliance with the terms of this Agreement. Further, Dorta-Duque agrees to appear** before the Community Zoning Appeals Board, or in the event of an appeal, the Board of County Commissioners, to MAD

** (either personally, in writing or at Seller's request & expense through counsel) MAD

[MI789001:1]

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Item # 03-262
CZAB # 15 Exhibit # 2-11
DEC - 9 2003
CLERK OF THE BOARD

actively support approval of the Application, provided G. Homes is in compliance with the terms of this Agreement.

4. This Agreement is binding on the parties hereto and the parties agree to execute any and all documents necessary to ratify and confirm the terms and provisions of this Agreement. The parties hereto agree, that this is a private Settlement Agreement, which neither party may disclose to any other party without the prior written consent of the other party hereto unless either party hereto has brought an enforcement action hereunder, whereupon this Settlement Agreement may be disclosed in connection with said enforcement action & for no other purpose.

5. This Agreement shall be deemed drafted by all parties and there shall be no presumption against any party relating to the drafting of said Agreement and the language used herein.

6. This Agreement and its enforcement shall be governed by the laws of the State of Florida.

7. In the event of any dispute hereunder, the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs.

8. The parties signing this Agreement represent and warrant that they have full and complete legal and binding authority to enter into said Agreement.

9. The terms of this Agreement shall be binding on the parties, their legal representatives, successors and assigns, and shall supersede all prior discussions and negotiations among the parties concerning settlement. This Agreement represents the entire agreement of the parties and shall not be modified except by a writing signed by all of the parties.

10. The terms of this Agreement may be modified if mutually agreed upon, in writing, by GC Homes and Dorta-Duque, with no third party consent required.

11. This Agreement may be signed in counterparts, and the signature counterparts of the parties or their authorized representative shall be treated the same as if said Agreement had been signed by all parties or their authorized representatives. A facsimile signature shall be deemed the equivalent of an original signature of a party or its authorized representative.

12. Notices shall be sent via Certified Mail, Hand Delivery or Federal Express as follows:

If to Owner: GC Homes, Inc.
c/o Mr. Ray Castellanos
14425 Country Walk Drive
Miami, Florida 33186

With a copy to: Juan J. Mayol, Jr., Esq.
Akerman Senterfitt & Eidson, P.A.
One Southeast Third Avenue, 28th Floor

[MD99001;1]

Miami, Florida 33131-1714

If to Dorta-Duque: Mr. Manuel Dorta-Duque
11999 SW 248th Street
Miami, Florida 33032

With a copy to: Thomas V. Eagan, Esq.
Steel Hector & Davis
200 S. Biscayne Boulevard
Suite 4000
Miami, Florida 33131-2310

13. This Agreement is executed by the parties as of the date stated at the end of the Settlement Agreement.

WHEREOF, the parties have read, understood and agreed to the terms of this Amendment and by their signatures below bind themselves, their heirs, distributees, legatees, assigns and any other successors in interest.

DATED this 3 day of JUNE, 2002.

Manuel Dorta-Duque

By: Manuel
Manuel Dorta-Duque

GC Homes, Inc., a Florida Corporation

By: RAY CASTELLANOS

{MI799001;1}

ELLIOTT HARRIS, P.A.
111 S.W. 3rd Street
Sixth Floor
Miami, Florida 33130
Telephone No. (305) 358-0146
Fax No. (305) 358-0149

RECEIVED BY CLERK
Item # 03-262
CZAB # 15 Exhibit # 2-12
DEC - 9 2003
CLERK OF THE BOARD

FAX MEMO

TO: THOMAS V. EAGAN, ESQ. (FAX NO. 305-577-7001)

FROM: ELLIOTT HARRIS, ESQ.

RE: SUMMERVILLE DEVELOPMENT, INC. with MANUEL DORTA-DUQUE

DATE: February 11, 2003

We are hoping to close our transaction with the various Sellers and Commercebank, N.A., at 220 Alhambra Circle (I believe 11th floor) on Friday, February 14.

The legal description of the property to be acquired by Manuel Dorta-Duque follows and the survey shows that it is 5.744 acres. The purchase price at $65,500.00 per acre amounts to $376,232.00 and is 26.544 of the total net acres 21.639, being acquired from Claude F. Daigle, Jr.

$64,354.84 will have been paid to Mr. Daigle for the extension fee and according to agreement, Manuel Dorta-Duque is responsible for 26.544% or $17,082.35 for a total purchase price of $393,314.35.

We will prepare the Deed directly from Claude F. Daigle Jr. and Sandra L. Daigle, his wife, to Manuel Dorta-Duque along with the FIRPTA Affidavit and No-Lien Affidavit. The closing statement will be between Summerville Development and Manuel Dorta-Duque.

Schedule A and Schedule B of a prior Commitment follows.

I would like the cash to close made payable to Elliott Harris Trust Account either in the form of a cashier's check or wire transfer so that we could use that money at the closing of the transaction. Please confirm Also, please advise if you will prepare the Memorandum of Agreement as per para. 8 of the addendum between the parties.

Very truly yours,

ELLIOTT HARRIS
EH/lg
Pages transmitted: 9

Plaintiff's Exhibit
"C"

Faxed

☒ IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA
☐ IN THE COUNTY COURT IN AND FOR DADE COUNTY, FLORIDA

DIVISION ☐ CIVIL ☐ OTHER	CIVIL COVER SHEET	CASE NUMBER 03 - 6813

PLAINTIFF	VS. DEFENDANT	CLOCK IN
Summeville Development, Inc	Manuel Dorta-Duque	

CIRCUIT COURTS FLA. 2003 DEC 18 PM 3:33 FILED FOR RECORD

The civil cover sheet and the information contained here does not replace the filing and service of pleadings or other papers as required by law. This form is required by the Clerk of Court for the purpose of reporting judicial workload data pursuant to Florida Statute 25.075. See instructions and definitions on reverse of this form.

TYPE OF CASE (Place an 'x' in one box only)

Domestic Relations	Torts	Other Civil
☐ Simplified dissolution	☐ Professional Malpractice	☒ Contracts
☐ Dissolution of Marriage	☐ Products liability	☐ Condominium
☐ Support - IV-D	☐ Auto negligence	☐ Real property/Mortgage foreclosure
☐ Support - Non IV-D	☐ Other negligence	☐ Eminent domain
☐ URESA - IV-D		☐ Other
☐ URESA - Non IV-D		
☐ Domestic Violence		
☐ Other domestic relations		

Is Jury Trial Demanded in Complaint ? ☐ Yes ☒ No

DATE: 7/18/03

Signature of Attorney for party initiating action: [signature] Elliott Harris, Esq.
FBN 097072

JUDGE:

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Item # 03-262
CZAB # 15 Exhibit # 2-13
DEC - 9 2003
CLERK OF THE BOARD

CLK/CT 96 REV. 8/98

IN THE CIRCUIT COURT FOR MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

SUMMERVILLE DEVELOPMENT, INC., a Florida corporation,

Plaintiff,

vs.

MANUEL DORTA-DUQUE,

Defendant.

CASE NO.

DIVISION 03

COMPLAINT FOR DECLARATORY RELIEF

Fla. Bar No. 097072

215
ISSI
RCP 7265

Plaintiff, SUMMERVILLE DEVELOPMENT, INC., a Florida corporation, sues defendant, MANUEL DORTA-DUQUE, and alleges:

1. This is an action for declaratory relief pursuant to Florida Statutes Chapter 86 pertaining to the Contract and Addendum between the parties of this action. The Contract is attached hereto as Plaintiff's Exhibit "A" and the Addendum is attached hereto as Plaintiff's Exhibit "B." The amount in controversy under the terms of the attached agreement is within the jurisdictional amount for this court and, accordingly, this court has jurisdiction pursuant to section 86.011, Florida Statutes.

2. On or about April 10, 2002, defendant and G.C. Homes, Inc., entered into a contract for the purchase and sale of real property as described in Plaintiff's Exhibit "A." In May, 2002, defendant and G.C. Homes, Inc., entered

into an addendum to such contract, Plaintiff's Exhibit "B."

3. The property described in Plaintiff's Exhibit "A" was a portion of larger parcels plaintiff was acquiring from other sellers.

4. The interest of G.C. Homes, Inc., in and to the attached Contract and Addendum thereto were assigned to plaintiff, Summerville Development, Inc.

5. Pursuant to the terms of the Contract, defendant was to have paid Steel, Hector & Davis, LLP, Escrow Agent, a $50,000.00 deposit.

6. As stated in the Addendum, attached, plaintiff was acquiring the subject property from Claude F. Daigle, Jr., and the transaction between plaintiff and defendant was to take place on the same date as the closing between plaintiff and Claude F. Daigle, Jr.

7. The Addendum to the Contract, Plaintiff's Exhibit "B," provides in paragraph 11 thereof:

> 11. Notices. Notices under the Contract, as amended by this Addendum, shall be deemed served when deposited in the United States mail, registered or certified mail, return receipt requested, with sufficient postage attached and directed to the party in question at the address specified in the Contract, or when delivered to Federal Express or other overnight delivery service during normal business hours, and addressed to the party in question at the address specified in the Contract.

8. Because of contingencies pertaining to a land acquisition loan, plaintiff did not know of a firm closing date until February 11, 2003, for a closing to

take place on Friday, February 14, 2003. Notice was not given to defendant in the manner in which notice would be "deemed served" pursuant to paragraph 11 of the Addendum, but attorney for defendant, Thomas V. Egan, Esq., who is also a member of the firm serving as escrow agent, received notice by facsimile transmission ("fax") on February 11, 2003, along with copies of all closing documents all with a copy of a prior commitment to insure title. Mr. Egan did not respond to the fax but later acknowledged receipt of same. A copy of such fax is attached hereto as Plaintiff's Exhibit "C."

9. Ray Castellanos, an officer of plaintiff, discussed the proposed closing with defendant by cellular telephone and defendant told Ray Castellanos that defendant knew that his attorney, Mr. Egan, was attempting to contact him. Defendant had previously been informed that the closing was imminent.

10. Time was of the essence under the terms of the attached agreement.

11. Both defendant and his attorney had actual notice of the time and place of the closing.

12. Plaintiff caused all necessary closing papers to be prepared, had a deed prepared directly from Claude F, Daigle, Jr., to defendant, had a survey prepared and certified to, among other persons, defendant, and complied with all conditions precedent to close the transaction with defendant other than the giving of notice in a manner which would have been "deemed served" as set

forth in paragraph 11 of the addendum.

13. Plaintiff has attempted on many occasions to obtain confirmation from the escrow agent that the $50,000.00 deposit was actually paid. See Plaintiff's composite Exhibit "D." Plaintiff has received no confirmation that the deposit was, in fact, paid.

14. Defendant has taken the position that because notice of the closing was not given in the manner in which it would have been "deemed served" pursuant to paragraph 11, he did not have to close the transaction on February 14, 2003.

15. Although defendant knew that plaintiff acquired title to the property in February, 2003, defendant did not request a closing until correspondence from his attorney was received dated May 27, 2003, stating that defendant was ready, will and able to close on the transaction. Such correspondence was delivered by fax and not in the manner "deemed served," as set forth above. See Plaintiff's Exhibit "E." See also plaintiff's response to such correspondence, Plaintiff's Exhibit "F."

16. Plaintiff, from its own funds and through its lender, paid all sums necessary to acquire the property as well as adjoining parcels. Because defendant's funds were not used, contrary to expectations and because of defendant being dilatory, plaintiff does not desire to convey any interest in the

property to defendant; however, plaintiff cannot develop such property until the rights of defendant under the terms of the attached agreement are determined.

17. Although plaintiff is of the opinion that defendant breached the agreement by failing to timely close the transaction and, possibly, by failing to pay the deposit required under the terms of the agreement, plaintiff is in doubt of its position because:

a. Although defendant and his attorney received actual notice of the closing, defendant's attorney has contended that plaintiff did not give notice of the closing in the manner in which such notice would be "deemed served" pursuant to paragraph 11 of the agreement and therefore did not have to close on the purchase transaction; and

b. Plaintiff is unaware as to whether or not the deposit required under the terms of the agreement was, in fact, paid.

18. Plaintiff was required to retain the services of the undersigned attorney to bring this action and has agreed to pay its attorney a reasonable fee for his services.

19. Defendant or his attorney is in possession of duplicate originals or copies of all exhibits attached hereto.

WHEREFORE, plaintiff requests this Court to enter a declaratory judgment stating that defendant breached its agreement, that defendant has no right, title

of interest in and to the lands described in the attached agreement and that the deposit should be delivered to plaintiff as agreed upon and liquidated damages along with reasonable attorney's fees and the costs of this action.

ELLIOTT HARRIS, P.A.
Attorney for Plaintiff
111 S.W. 3rd Street
Sixth Floor McCormick Bldg.
Miami, Florida 33130
Tel #: 305-358-0146
Fax #: 305-358-0149

By: _____
ELLIOTT HARRIS, ESQ.

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.: 03-17048 CA 25

RECEIVED BY CLERK
Item # 03-262
CZAB # 15 Exhibit # 2-14
DEC - 9 2003
CLERK OF THE BOARD

MANUEL DORTA-DUQUE,

Plaintiff,

-VS.-

G. C. HOMES, INC., a Florida corporation and SUMMERVILLE DEVELOPMENT, INC., a Florida corporation as assignee of G. C. HOMES, INC.,

Defendant.

ORIGINAL

SUMMERVILLE DEVELOPMENT, INC., a Florida corporation,

CASE NO.: 03-16813 CA 25

Plaintiff,

-VS.-

MANUEL DORTA-DUQUE,

Defendant.

2950 Southwest 27th Avenue,
Miami, Florida,
October 8, 2003,
9:20 o'clock a.m.

DEPOSITION OF RAY CASTELLANOS

Taken before DOLLY MAY PENICK, Notary Public in and for the State of Florida, pursuant of Notice of Taking Deposition filed in the above-styled cause.

A No. I have done nothing else.

Q Or yes, you've done nothing else. Either way, no or yes. You've done nothing else.

Okay. Now, you had an arrangement with Mr. Dorta-Duque to sell him a piece of the property that you were getting from Mr. Daigle; right?

A Yes.

Q And we're going to get into it in detail but in summary, that came about because of efforts to rezone the property; correct?

A Yes.

Q Okay. Were you fellows, on the day that you planned to sell this property to Mr. Dorta-Duque, ready, willing and able to close on that property?

A I don't understand the question. What day exactly are we talking about, the closing day?

Q Yes.

A The day that we were scheduled to close?

Q Yes, sir.

A Were we ready, willing and able, of course.

Q And you were in complete compliance with the agreement that you had entered into with Mr. Dorta-Duque?

A Well, to the best of my knowledge, yes.

Q Was one of the requirements of that agreement

buy the land minus the five point seven-seven acres. Now, you know, the difference is the cash to close. How much -- well, you know, Manny never showed up to closing so now instead of, you know, coming in with 35,000 dollars, we got to come in with 300,000 dollars. We're using numbers just to say numbers. Numbers are not accurate but that was what happened.

Q Okay. When -- you originally signed -- let me show you what I'm going to have marked as 2.

(Thereupon, the referred to document was marked as Plaintiff's Exhibit No. 2 for Identification.)

BY MR. JOSEPHS:

Q I'm going to show you what's been marked as Plaintiff's 2 and ask you if you've seen that document before.

A Okay. Yes.

Q And is that the contract by which the land that we're here about today was purchased from Mr. Daigle?

A Yes. This is the west side of 117th.

Q And a portion of that west side --

A Is the five point seven-seven.

Q Okay. This contract was signed, it says, January 17th, 2001. Does that sound about right to you?

A Yes.

Q How come it took so long to close?

A The zoning process.

Q Okay. So you weren't going to close on this until you had the zoning in place.

A Right.

Q That was one of the contingencies.

A Right.

Q When was the first time you realized that you were going to be closing?

A Well, we -- we always knew we were going to be closing as long as we got the zoning. So we were going through the process. I felt pretty comfortable of the zoning, of the outcome because of our design. And Mr. Daigle was a very, very nice and incredible person and he cooperated with us and told me, you know, hey, I will extend until -- until need be. And we were approved in October, appealed in December and December was the County Commission and that's when the property was officially approved. After that is another appeal period that was some talk in the County about a further appeal by the neighbors. And sometime in the end of January, I guess, that appeal period was up. And that's when we knew that we were home free with the zoning.

Q Okay. When is the first time anybody told Manny that the closing was going to happen?

A Well, obviously we knew all along the closing was going to happen after approval. I spoke with Manny end of January and beginning of February.

Q Okay. Do you have dates of these conversations?

A I have -- I have the dates of February 12 and 13 because of my cell phone bill. Other than that, you know, no, I don't have official dates.

Q Did you -- what was the date you told him the closing was going to happen?

A I don't know that date. I don't know that date. It was, you know, sometime the end of January, beginning of February.

Q Could it have been the 12th or 13th?

A It would -- it -- we spoke before the actual closing date was set up. The closing date was set up in the week of the closing, I believe. I believe. I don't know what day February 14th fell.

And that was, you know, when we actually had a date. But, before then, I spoke with Manny that the closing was imminent, we're tying to get it together and Elliott was trying to contact Mr. Eagan.

Q Why did you set it up for the 14th when you knew Manny was going to be out of town?

A I didn't know Manny was going to be out of

town. And the closing was set up by the bank, not ourselves.

Q You had no idea he was going out of the country?

A Manny, I know, goes and comes. I had seen him on the street sometime relatively close to that date and he waved at me as he passed by and that was the last I saw of Manny. I didn't know Manny was going to be out of town or if he was out of town.

Q Did you know that he was with some degree of regularity going out of town?

A Well, we had been in -- in our conversations back and forth. He had been out of town a few times.

Q Did he tell you he was going out every other week?

A No.

Q Did he tell you that he was concerned to make sure that the closing didn't take place when he was out of town?

A Not that I remember.

Q I mean, that would be a natural courtesy to begin with; right?

A Again, the last conversation I had with -- with Manny about the closing date, I told him Elliott was getting together -- was trying to get together with Mr.

about non response.

A The -- most of the answers I got from Manny were round about non response.

Q So you must have been very nervous on the 12th about whether Manny was going to be there or not.

A Yes.

Q And what did you do as nervous as you were?

A We prepared two closing statements.

Q Okay.

A One if Manny shows up and one if Manny doesn't show up.

Q As of the 12th?

A I don't know exactly which date but I'm sure --

Q That's the day you got nervous?

A I'm sure that the -- that we have paperwork to show exactly when that was done.

Q But it was before -- it was a couple of days before the closing that you got --

A I didn't prepare them. I don't know exactly what day it was prepared before.

Q But it was a couple days, the best of your recollection, that you asked your lawyer to prepare for two different scenarios; correct?

A That's correct.

Q And that was after you spoke to Manny that you

just saw that right now.

BY MR. JOSEPHS:

Q Okay. We've agreed that you'll sort them out and get this back to us.

MR. DORTA-DUQUE: This is not the record for January.

THE WITNESS: Again --

MR. DORTA-DUQUE: No, it is not.

THE WITNESS: It has January 4th.

MR. DORTA-DUQUE: There is two calls that the January invoice is not there.

MR. JOSEPHS: He'll find it. We'll get it.

BY MR. JOSEPHS:

Q Did Manny tell you that he had reason to be in San Juan on a fairly regular basis while all this was going on?

MR. HARRIS: Asked and answered.

THE WITNESS: While all this was going on, no. In general, I know he has a place in San Juan.

BY MR. JOSEPHS:

Q Okay. And you didn't know that he was going there every couple of weeks?

A No. I didn't know the pattern of when he was going.

Whenever it was that you got concerned that

Manny wasn't going to appear for the closing, who did you speak to?

Who did you discuss that with?

A Mr. Harris, my father-in-law.

Q Okay. Anybody else?

A Not to my recollection.

Q Did you care?

A My -- in my previous dealings with Manny, my experience was very, as we said earlier, round about answers and I kind of expected that.

Q You kind of expected him not to show.

A Yes.

Q You expected that he would not appear for the closing.

A Let me rephrase that. Everything that happened from day one, I had my doubts on.

Let me not say I expected. I had my doubts. When I got the round about answer on the phone conversations, I had my doubts. Did I care? We had to bring more money to the closing. I wasn't sure if we were ready for that at that given moment. Then I made sure that we could.

Q You knew you would be in a position to close?

A Immediately after. Immediately after I did my -- my homework on that.

Q Yes. So, the answer is yes, you knew you would be able to close on this deal with or without Manny.

A Not immediately. The answer is after my doubts, I had to make sure.

Okay. Now, the land that Manny was going to buy, as part of your master plan was going to serve as a buffer zone; right?

A That's correct.

Q Whose idea was that buffer zone?

A Manny's.

Q And whose idea was it that Manny buy that land?

A Manny's.

Q And why did he want the buffer zone?

A To create separation from his personal property to the more dense community.

Q Now, in order -- and that made sense, didn't it?

A Yes. It makes sense.

Q And in order to get your overall project approved, part of the sales pitch to the Commission was the buffer zone, wasn't it?

A Since we were doing the buffer zone it was definitely a point we used.

Q And that buffer zone and your overall project

Three questions.

CROSS EXAMINATION

BY MR. HARRIS:

Q Did you ever, up to today, ever get a copy of the bid that was obtained from Manny to do the wall?

A No.

Q Did Manny ever tell you that he was assigning his interest in the contract?

A No.

Q After the closing in February on February 14th, the balance of February, March, April, 2003, and May, did Manny ever contact you about requesting a closing?

A No.

Q Did you ever receive any certified mail or any delivery by Federal Express or any document that needed a receipt from Manny?

A No.

MR. HARRIS: I have no other questions.

REDIRECT EXAMINATION

BY MR. JOSEPHS:

Q Would you have closed in May if he had called you up and said I want to close?

A We would have been in the same position we are today.

Q Which means you wouldn't have.

A Our expenses and our difficulties happened on February 14th.

Q You wouldn't have closed if he would have written you on the 15th, the 16th of February, the 20th of May or the 19th of June.

A We would have been right here at this table.

Q In a lawsuit.

A Arguing about why they didn't show up to the closing.

Q So the answer -- so the answer is the day after you closed, you're not doing business with Manny?

A Unless Manny convinced me of some drastic thing that happened why he didn't show up.

Q Like being in Puerto Rico?

A Again, we didn't even get a call -- I found out through Mr. Mayol months later saying, hey, Manny's now wanting to close.

MR. JOSEPHS: That's it.

MR. HARRIS: Waive, but we'll take a copy.

MR. JOSEPHS: Mini, ASCii.

MR. HARRIS: The same thing.

(Thereupon, the deposition was concluded at 11:45 o'clock a.m., reading and signing were waived.)

IN THE CIRCUIT COURT OF
THE ELEVENTH JUDICIAL CIRCUIT IN
AND FOR MIAMI-DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION

RECEIVED BY CLERK
Item # 03-262
CZAB # 15 Exhibit # 2-15
DEC - 9 2003
CLERK OF THE BOARD

CASE NO. 03-17048 CA25

MANUEL DORTA-DUQUE,

Plaintiff,

vs.

COPY

G.C. HOMES, INC., a Florida corporation, and SUMMERVILLE DEVELOPMENT, INC., a Florida corporation, as assignee of G.C. HOMES, INC.,

Defendant.
_____/

DEPOSITION OF JUAN J. MAYOL, JR.

taken before Maria J. Torre-Verdejo, Court Reporter and Notary Public in and for the State of Florida at Large, at 2950 Southwest 27th Avenue, Suite 100, Miami, Florida, on Thursday, October 9, 2003, commencing at 9:00 a.m., pursuant to Re-Notice of Taking Deposition Duces Tecum.

Orlando (407) 849-1193
Jacksonville (904) 350-9583
Tampa (813) 876-4722
W. Palm Beach (561) 835-0220
Ft. Lauderdale (954) 463-2933
Miami (305) 373-8404

00030

Q. That would be the smart business thing to do and it would also be the gentlemanly thing to do.

Correct?

A. Yes.

Q. And you would give him as much **notice as possible when he was needed?**

A. Yes.

Q. You tried to avoid giving him short notice because you know he is a busy guy?

A. These hearing are set thirty days in advance.

Q. And that, you think, would give him enough time?

A. Thirty days is a pretty reasonable time.

Q. Did there come a point in time where you guys planned as best you could and he was out of the country when one hearing got scheduled?

A. Yes, I think that one --

I think there might have been two occasions when he was out of town.

In one of them I believe he was traveling to Chile, to go skiing.

00037

taking place.
Q. Were you told why?
A. My understanding from talking to Rey is that -- I don't know who exactly, but someone on behalf of G. C. Homes tried to get ahold of Manny to come to closing and either they weren't successful or Manny didn't show up for closing.
Q. Would you agree with me that Manny was entitled to a reasonable notice about the closing?
You were respective of his efforts in this project?
A. Yes, I would agree with you.
Q. Would you agree with me that at least gentility would dictate that given his efforts on behalf of G. C. Homes he deserved a little bit more slack than the average guy, a little bit more notice or an attempt to give more notice than the average guy?
A. I don't know what that means.
I can tell you that he deserved reasonable notice of the closing date so that he could make whatever arrangements he needed to make to be at the closing.

00038

Q. What would you think is "reasonable notice" when a guy has to come up with the better part of $300,000?
A. For me a couple of years, but --
Q. And you are a high-priced lawyer and he is a farmer, so maybe it takes a decade for him.
A. A couple of weeks.
Q. The fact of the matter is that the one document that exists in your file discussing the kind of notice that Manny received says that?
A. Which one is that -- the one page?
Q. I will find it, because I want to show it to you.
MR. JOSEPHS: Let's mark this No. 4.
(The document titled Copy Request dated 8/29/03 was thereupon marked as Plaintiff's Exhibit Number 4 to Mayol's deposition for Identification)
Q. (BY MR. JOSEPHS) The one document in your file that I have been able to find that discusses the kind of notice that Manny got characterizes that notice as short notice.

00039

Let me show you what has been marked as Exhibit No. 4, which is a fax from Mr. Harris to you?

MR. SANCHEZ: You did not see that?

MR. HARRIS: No, I don't recall that.

Q. (BY MR. JOSEPHS) Correct?

A. Yes.

Q. That is just flat out wrong, isn't it?

A. I mean I don't know what "short notice" means -- short two weeks, two days, a day?

Q. Short is short.

A. Short is short, yes.

Q. Reasonable is reasonable.

A. Ah'hum.

Q. The two are not the same, are they?

A. They don't tend to be.

Q. You said they don't --

A. They don't tend to be the same.

Q. In fact, Exhibit No. 4 was part of your file and was received in the ordinary course of business from Mr. Harris.

A. Yes.

Q. Mr. Harris you know as the attorney

MANUEL C. & EMILIA DIAZ ZONING HEARING APPLICATION # 02-377
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1. SITE PLAN AND ELEVATIONS.
2. HIGHLIGHTS OF APPLICATION.
3. LETTER FROM DIANE O'QUINN DATED 8/18/03.
4. DECLARATION OF RESTRICTIONS OF SILVER PALM.
5. RESUME OF GUILLERMO OLMEDILLO.
6. SUMMARY OF TESTIMONY BY GUILLERMO OLMEDILLO.
7. RESUME OF RAMON ALVAREZ, P.E.
8. SUPPORT LETTERS FROM COMMUNITY LEADERS.
9. LETTER TO RAUL PINO REGARDING STREET CLOSURE.
10. LENNAR OUTREACH LETTERS TO NEIGHBORS.
11. G.C. HOMES LAWSUIT V. MANUEL DORTA-DUQUE.
12. MANUEL DORTA-DUQUE LAWSUIT V. G.C. HOMES.
    (a) ADDENDUM TO CONTRACT FOR SALE AND PURCHASE.
13. "SECRET" SETTLEMENT AGREEMENT BETWEEN MANUEL DORTA-DUQUE AND G.C. HOMES.
14. ANALYSIS OF TAINTED "PETITION IN OPPOSITION".
15. EXCERPTS FROM 8/21/03 HEARING TRANSCRIPT.
16. RECOMMENDATION.

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Item # 03-262
CZAB # 15 Exhibit # 2-16
DEC - 9 2003
CLERK OF THE BOARD

9-15-2004 Version # 2

MIAMI-DADE COUNTY

COMMUNITY ZONING APPEALS BOARD 15

SOUTH DADE GOVERNMENT CENTER-ROOM 203 (OLD BUILDING)

10710 SW 211 Street, Miami

Tuesday, October 12, 2004 at 7:00 p.m.

PREVIOUSLY DEFERRED

A.	03-12-CZ15-2	SUMMERVILLE DEVELOPMENT, INC.	Exhibit A-4 Missing	03-262	19-56-40	
B.	04-9-CZ15-1	GOULDS LLC	Exhibit NOT FOUND	04-30	18-56-40	

CURRENT

1.	04-10-CZ15-1	RIDEL & DIADENYS NODARSE	NO Exhibit	04-61	13-56-39	N
2.	04-10-CZ15-2	JUAN GUZMAN & NELSON VALLEDOR	NO Exhibit	04-104	08-56-40	N
3.	04-10-CZ15-3	LONDON REAL ESTATE HOLDINGS NO. 1, INC.	Exhibit NOT FOUND	04-156	34-56-39	N

EXHIBIT LIST

COMMUNITY ZONING APPEALS BOARD 15

OCTOBER 12, 2004

RESOLUTION # CZAB15-23-04

ITEM#	HEARING#	APPLICANT'S NAME	SS-TT-RR
A	03-262	SUMMERVILLE DEVELOPMENT, INC.	19-56-40

EX. #	EXHIBIT DESCRIPTION	IN FILE
A-1	**SPIRAL BOUND BOOKLET BY AKERMAN SENTERFITT**	**YES**
A-2	**8 PP. PLAN PACKET ENTITLED "SUMMERVILLE TOWN CENTER"**	**YES**
A-3	**PROFFERED DECLARATION OF RESTRICTIONS**	**YES**
A-4	**AERIAL PHOTO NOTING SUBJECT PROPERTY (ON FOAM BOARD)**	**NO**
A-5	**2 PP TRANSCRIPTS WITH HEADING: 'SMALLER SCALE!!'**	**YES**
A-6	**1 PG TRANSCRIPT WITH HEADING: 'DEC 9, 2003 7PM'**	**YES**
A-7	**COPY OF SURVET BY MAKOWSKI & RICE, INC.**	**YES**
A-8	**24 GROUND LEVEL PHOTOGRAPHS**	**YES**
A-9		
A-10		
A-11		
A-12		
A-13		
A-14		
A-15		
A-16		
A-17		
A-18		

RECEIVED BY CLERK
Item # 03-262
CZAB # 15 Exhibit # A-1
OCT 12 2004
CLERK OF THE BOARD

BEFORE COMMUNITY COUNCIL 15

Summerville Development, Inc.

Public Hearing 03-262

Akerman Senterfitt
ATTORNEYS AT LAW

One Southeast Third Avenue
28th Floor
Miami, Florida 33131
(305) 374-5600 Phone
(305) 374-5095 Fax

MIAMI-DADE COUNTY DEPARTMENT OF PLANNING AND ZONING
RECOMMENDATION TO COMMUNITY COUNCIL No. 15

APPLICANT: Summerville Development, Inc. **PH:** Z03-262 (03-12-CZ15-2)

SECTION: 19-56-40 **DATE:** October 12, 2004

COMMISSION DISTRICT: 8 **ITEM NO.:** A

==========

A. INTRODUCTION

o REQUEST:

(1) AU to BU-1

(2) Applicant is requesting to permit a residential and commercial development setback 20' (25' required) from the front (west) property line, setback 12' from the rear (east) property line and setback 15' from the side street (south) property (25' required from all property lines).

(3) Applicant is requesting to waive the 5' high decorative masonry wall along the east property line for the business lot where it abuts a residential district.

(4) Applicant is requesting to permit the residential/commercial development with a residential floor area covering 73% (50% maximum permitted).

(5) Applicant is requesting to permit 3 stories (2 stories permitted)

REQUESTS #1 - #5 ON EXHIBIT "A"

(6) AU to RU-3M

(7) Applicant is requesting to permit the RU-3M lot with a frontage of 81' (100' required).

(8) UNUSUAL USE to permit parking in a zone more restrictive (RU-3M) than the use it serves is located (BU-1).

REQUESTS #6 - #8 ON EXHIBIT "B"

(9) UNUSUAL USE to permit a gated entrance feature.

REQUEST #9 ON EXHIBITS "A" & "B"

Upon a demonstration that the applicable standards have been satisfied, approval of requests #2 through #5 may be considered under §33-311(A)(16) (Alternative Site Development Option for the BU Zoning District) and request #7 may be considered under §33-311(A)(15) (Alternative Site Development Option for Multiple Family Use) or requests #2 through #5 and 7 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 "Summerville Town Center," as prepared by Corwil Architects, Inc., dated 5/4/06 and consisting of 6 sheets. Plans may be modified at public hearing.

- **SUMMARY OF REQUESTS:**

  This application will allow the applicant to change the zoning on Parcel A of the subject property from AU, Agricultural District to BU-1, Neighborhood Business District, and will change the zoning on Parcel B from AU to RU-3M, Minimum Apartment House District. Accompanying requests pertaining to Parcel A will permit a mixed residential and commercial development to setback closer to the west, east, and south property lines than permitted, waive the required 5' high decorative masonry wall along the east property line where a business lot abuts a residential district, permit the residential/commercial development with a greater residential floor area covering than permitted, and will permit the proposed buildings to be 3 stories in height. Accompanying requests pertaining to Parcel B will permit less lot frontage than permitted in the RU-3M zone and will permit parking in a zone more restrictive (RU-3M) than the use it serves is located (BU-1). A request is also being sought that pertains to both Parcels A and B to allow a gated entrance feature.

- **LOCATION:**

  24751 S.W. 117 Avenue, Miami-Dade County, Florida.

- **SIZE:** 4.336 Acres.

- **IMPACT:**

  The rezoning of the property will allow the applicant to provide commercial and residential uses to the surrounding community. However, the rezoning will bring additional traffic and noise to the surrounding area. The residential component of this application will bring more children into the schools. The accompanying requests would be visually intrusive to the surrounding area.

B. ZONING HEARINGS HISTORY: None.

C. COMPREHENSIVE DEVELOPMENT MASTER PLAN (CDMP):

1. The Adopted 2005 and 2015 Land Use Plan designates Parcel A of the subject property as being within the Urban Development Boundary for **business and office**.

2. The Adopted 2005 and 2015 Land Use Plan designates Parcel B of 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.

3. Residential uses, and mixing of residential use with commercial, office and hotels are also permitted in Business and Office areas provided that the scale and intensity, including height and floor area ratio of the residential or mixed use development, is not

out of character with that of adjacent or adjoining development and zoning, and it does not detrimentally impact, and it provides a sensitive well designed transition to any adjacent or adjoining residentially developed or designated areas of different development intensity. Where these conditions are met residential development may be authorized to occur in the Business and Office category at a density up to one density category higher than the LUP - designated density of the adjacent or adjoining residentially designated area on the same side of the abutting principal roadway, or up to the density of any such existing residential development, or zoning if the adjacent or adjoining land is undeveloped, whichever is higher (Land Use Element, page I-35).

4. Objective 9N. By 1997, Miami-Dade County shall endeavor to initiate review and revision of its Zoning Code and Subdivision Regulations to facilitate the development of better planned communities and better designed buildings. Changes to be considered shall include provisions for:

   i) Open space in the form of squares, plazas, or green areas in residential and commercial zoning categories;

5. Compatible parks are encouraged in all of the residential categories and may be allowed in all other categories of the LUP map.

6. Existing lawful residential and non-residential uses and zoning are not specifically depicted on the LUP map. They are however reflected in the average Plan Density depicted. All such lawful uses and zoning are deemed to be consistent with this Plan as provided in the section of this CDMP titled "Concepts and Limitations of the Land Use Plan Map." The limitation referenced in this paragraph pertain to existing zoning and uses. All approval of new zoning must be consistent with the provisions of the specific category in which the subject parcel exists, including the provisions for density averaging and definition of gross density.

D. NEIGHBORHOOD CHARACTERISTICS:

ZONING	LAND USE PLAN DESIGNATION
Subject Property:	
AU; single family residence & crops	Business & Office & Residential, 2.5 to 6 dua
Surrounding Properties:	
NORTH: PAD; vacant	Residential, 2.5 to 6 dua
SOUTH: AU; vacant & crops	Residential, 2.5 to 6 dua
EAST: AU; vacant	Residential, 2.5 to 6 dua
WEST: PAD; plant nursery	Residential, 2.5 to 6 dua

The subject parcel lies on the east side of SW 117 Avenue, north of SW 248 Street. Although zoned for agriculture, this area has become a residential expansion area and has experienced several zone changes to residential zoning in recent years. A Planned Area Development (PAD) District lies to the north and a PAD District also lies to the west. There is a RU-1 residential development located to the east of the adjacent PAD District located to the north and to the east of the AU property to the east.

E. SITE AND BUILDINGS:

Site Plan Review:

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:	**Acceptable**

F. PERTINENT REQUIREMENTS/STANDARDS:

The Board shall hear and grant or deny applications for **district boundary changes** taking into consideration that same must be consistent with the CDMP, with applicable area or neighborhood studies or plans, and would serve a public benefit. The Board shall take into consideration if the proposed development will have a favorable or unfavorable impact on the environmental and natural resources of Miami-Dade County, including consideration of the means and estimated cost necessary to minimize the adverse impacts, the extent to which alternatives to alleviate adverse impacts may have a substantial impact on the natural and human environment, and whether any irreversible or irretrievable commitment of natural resources will occur as a result of the proposed development. The Board shall consider if the development will have a favorable or unfavorable impact on the economy of Miami-Dade County, if it will efficiently or unduly burden water, sewer, solid waste disposal, recreation, education, public transportation facilities, including mass transit, roads, streets, and highways or other necessary public facilities which have been constructed or planned and budgeted for construction, and if the development is or will be accessible by public or private roads, street or highways.

Section 33-311(A)(16) Alternative Site Development Option for Buildings and Structures in the BU Zoning Districts.

(c) Setbacks for a principal or accessory building or structure shall be approved after public hearing upon demonstration of the following:

(1) the character and design of the proposed alternative development will not result in a material diminution of the privacy of adjoining property; and

(2) the proposed alternative development will not result in an obvious departure from the aesthetic character of the immediate vicinity, taking into account existing structures and open space; and

(3) the proposed alternative development will not reduce the amount of open space on the parcel proposed for alternative development by more than 20% of the landscaped open space percentage required by the applicable district regulations; and

(4) any area of shadow cast by the proposed alternative development upon an adjoining property will be no larger than would be cast by a structure constructed pursuant to the underlying district regulations, or will have no more than a de minimus impact on the use and enjoyment of the adjoining parcel of land; and

(5) the proposed alternative development will not involve the installation or operation of any mechanical equipment closer to the adjoining parcel of land than any other portion of the proposed alternative development, unless such equipment is located within an enclosed, soundproofed structure and if located on the roof of such an alternative development shall be screened from ground view and from view at the level in which the installations are located, and shall be designed as an integral part of and harmonious with the building design; and

(6) the proposed alternative development will not involve any outdoor lighting fixture that casts light on an adjoining parcel of land at an intensity greater than permitted by this code; and

(7) the architectural design, scale, mass, and building materials of any proposed structure(s) or addition(s) are aesthetically harmonious with that of other existing or proposed structure(s) or building(s) on the parcel proposed for alternative development; and

(8) the wall(s) of any building within a front, side street or double frontage setback area or within a setback area adjacent to a discordant use, required by the underlying district regulations, shall be improved with architectural details and treatments that avoid the appearance of a "blank wall"; and

(9) the proposed alternative development will not result in the destruction or removal of mature trees within a setback required by the underlying district regulations, with a diameter at breast height of greater than ten (10) inches, unless the trees are among those listed in section 24-60(4)(f) of this code, or the trees are relocated in a manner that preserves the aesthetic and shade qualities of the same side of the lot, parcel or tract; and

(10) any windows or doors in any building(s) to be located within an interior side or rear setback required by the underlying district regulations shall be designed and

located so that they are not aligned directly across from facing windows or doors on building(s) of a discordant use located on an adjoining parcel of land; and

(11) total lot coverage shall not be increased by more than ten percent (10%) of the lot coverage permitted by the underlying district regulations; or a total floor area ratio shall not be increased by more than ten percent (10%) of the floor area ratio permitted by the underlying district regulations; and

(12) the area within an interior side or rear setback required by the underlying district regulations located adjacent to a discordant use will not be used for off-street parking except:

(A) in an enclosed garage where the garage door is located so that it is not aligned directly across from facing windows or doors on buildings of a discordant use located on an adjoining parcel of land; or

(B) if the off-street parking is buffered from property that abuts the setback area by a solid wall at least six (6) feet in height along the area of pavement and parking, with either:

(i) articulation to avoid the appearance of a "blank wall" when viewed from the adjoining property, or

(ii) landscaping that is at least three (3) feet in height at time of planting, located along the length of the wall between the wall and the adjoining property, accompanied by specific provision for the maintenance of the landscaping, such as but not limited to, an agreement regarding its maintenance in recordable form from the adjoining landowner; and

(13) any structure within an interior side setback required by the underlying district regulations:

(A) is screened from adjoining property by landscape material of sufficient size and composition to obscure at least eighty percent (80%) (if located adjoining or adjacent to a discordant use) of the proposed alternative development to a height of the lower fourteen (14) feet of such structure(s) at time of planting; or

(B) is screened from adjoining property by an opaque fence or wall at least eight (8) feet, six (6) feet if located adjoining or adjacent to a discordant use, in height that meets the standards set forth in paragraph (g) herein; and

(14) any structure not attached to a principal building and proposed to be located within a setback required by the underlying district regulations shall be separated from any other structure by at least 10 feet or the minimum distance to comply with fire safety standards, whichever is greater; and

(15) when a principal or accessory building is proposed to be located within a setback required by the underlying district regulations, any enclosed portion of the upper

floor of such building shall not extend beyond the first floor of such building within the setback; and

(16) safe sight distance triangles shall be maintained as required by this code; and

(17) the parcel proposed for alternative development shall continue to provide the required number of on-site parking spaces as required by this Code, except that off-site parking spaces may be provided in accordance with Section 33-128 of this Code; and

(18) the parcel proposed for alternative development shall satisfy all other applicable underlying district regulations or, if applicable, prior zoning actions issued prior to the effective date of this ordinance (May 2, 2003), regulating setbacks, lot area and lot frontage, lot coverage, floor area ratio, landscaped open space and structure height; and

(19) the proposed development will meet the following:

(A) interior side setbacks shall not be reduced by more than fifty percent (50%) of the side setbacks required by the underlying district regulations, or the minimum distance required to comply with fire safety standards, whichever is greater when the adjoining parcel of land is a BU or IU district; interior side setbacks shall not be reduced by more than twenty-five (25%) percent of the interior side setbacks required by the underlying district regulations when the adjoining parcel of land allows a discordant use.

(B) side street setbacks shall not be reduced by more than twenty-five (25%) of the underlying district regulations;

(C) front setbacks (including double-frontage setbacks) shall not be reduced by more than twenty-five (25%) percent of the setbacks required by the underlying district regulations; and

(D) rear setbacks shall not be reduced below fifty (50%) percent of the rear setback required by the underlying district regulations, or the minimum distance required to comply with fire safety standards, whichever is greater, when the adjoining parcel of land is a BU or IU district; rear setbacks shall not be reduced below twenty-five (25%) percent of the rear setback required by the underlying district regulations when the adjoining parcel of land allows a discordant use.

(E) setbacks between building(s) shall not be reduced below 10 feet, or the minimum distance required to comply with fire safety standards, whichever is greater.

(k) Notwithstanding the foregoing, no proposed alternative development shall be approved upon demonstration that the proposed alternative development:

(1) will result in a significant diminution of the value of property in the immediate vicinity; or

(2) will have substantial negative impact on public safety due to unsafe automobile movements, heightened vehicular-pedestrian conflicts, or heightened risk of fire; or

will result in a materially greater adverse impact on public services and facilities than the impact that would result from development of the same parcel pursuant to the underlying district regulations.

Section 33-311(A)(15). Alternative Site Development Option for Three-unit or Four-unit Apartment House, Multiple-Family Apartment House Use and Multiple-Family Housing Developments.

(f) The **lot area and frontage** for a three-unit or four-unit apartment house, multiple-family apartment house use or multiple-family housing development shall be approved upon demonstration of at least one of the following:

(1) the proposed lot area and lot frontage will permit the development or redevelopment of a lot, parcel or tract of land where such development would not otherwise be permitted by the applicable district regulations due to the size or configuration of the parcel proposed for alternative development, provided that:

(A) the lot, parcel or tract is under lawful separate ownership from any contiguous property; and

(B) the proposed alternative development will not result in the further subdivision of land; and

(C) the size and dimensions of the lot, parcel or tract are sufficient to provide all setbacks required by the underlying district regulations; and

(D) the lot area is not less than ninety percent (90%) of the minimum lot area required by the applicable district regulations; and

(E) the proposed alternative development will not result in an obvious departure from the aesthetic character of the immediate vicinity; and

(F) the parcel proposed for alternative development does not adjoin or lie adjacent to AU or GU zoned lands, nor lands designated for Low Density, Agricultural or Open Land under the Land Use Plan map of the Comprehensive Development Master Plan; and

(G) the lot frontage dimension is not less than ninety percent (90%) of the minimum lot frontage required by the applicable district regulations, except that the frontage dimension of a flag-lot, parcel or tract shall be permitted to be reduced to the minimum width necessary to allow vehicular access as determined by the County; and

(H) the resultant lot frontage provides vehicular ingress and egress to all resulting lots, parcels or tracts, including on-site access to emergency equipment.

(2) the proposed alternative development will result in open space, community design, amenities or preservation of natural resources that enhances the function or aesthetic character of the immediate vicinity in a manner not otherwise achievable through application of the applicable district regulations, provided that:

(A) the density of the proposed alternative development does not exceed that permitted by the applicable district regulations; and

(B) the size and dimensions of each lot, parcel or tract in the proposed alternative development are sufficient to provide all setbacks required by the applicable district regulations, or, if applicable, any prior zoning actions for similar uses issued prior to the effective date of this ordinance (May 16, 2003); and

(C) the area of each lot, parcel or tract is not less than eighty percent (80%) of the area required by the applicable district regulations; and

(D) the proposed alternative development will not result in an obvious departure from the aesthetic character of the immediate vicinity; and

(E) the parcel proposed for alternative development does not adjoin or lie adjacent to AU or GU zoned lands, nor lands designated for Low Density, Agricultural or Open Land under the Land Use Plan map of the Comprehensive Development Master Plan; and

(F) the resultant lot frontage provides vehicular ingress and egress to all resulting lots, parcels or tracts, including on-site access to emergency equipment.

(3) the proposed lot area and frontage is such that:

(A) the proposed alternative development will not result in the creation of more than two (2) lots, parcels or tracts; and

(B) the size and dimensions of each lot, parcel or tract are sufficient to provide all setbacks required by the applicable district regulations; and

(C) no lot area shall be less than the smaller of:

(i) ninety percent (90%) of the lot area required by the applicable district regulations; or

(ii) the average area of the developed lots, parcels or tracts in the immediate vicinity within the same zoning district; and

(D) the proposed alternative development will not result in an obvious departure from the aesthetic character of the immediate vicinity; and

(E) the parcel proposed for alternative development does not adjoin or lie adjacent to AU or GU zoned lands, nor lands designated for Low Density, Agricultural or Open Land under the Land Use Plan map of the Comprehensive Development Master Plan; and

(F) the resultant lot frontage provides vehicular ingress and egress to all resulting lots, parcels or tracts, including on-site access to emergency equipment.

(i) Notwithstanding the foregoing, no proposed alternative development shall be approved upon demonstration that the proposed alternative development:

(1) will result in a significant diminution of the value of property in the immediate vicinity; or

(2) will have substantial negative impact on public safety due to unsafe automobile movements, heightened vehicular-pedestrian conflicts, or heightened risk of fire; or

(3) will result in a materially greater adverse impact on public services and facilities than the impact that would result from development of the same parcel pursuant to the underlying district regulations; or

(4) will combine severable use rights obtained pursuant to Chapter 33B of this code in conjunction with the approval sought hereunder so as to exceed the limitations imposed by section 33B-45 of this code.

Section 33-311(A)(4)(b). Non-use variances from other than airport regulations: 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 from the terms of the zoning regulations 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.

Section 33-311(A)(3). Special exceptions, unusual 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.

G. NEIGHBORHOOD SERVICES:

DERM	**No objection***
Public Works	**No objection***
Parks	**No objection**
MDTA	**No objection**
Fire Rescue	**No objection**
Police	**No objection**
Schools	**12 students****

* subject to conditions stated in their attached memoranda
** based on 35 residential units

H. ANALYSIS:

This application was deferred from the December 9, 2003 and January 20, 2004 meetings of the Community Zoning Appeals Board-15 to allow the applicant to submit plans for the future commercial development of this site and to meet with neighbors. This application was deferred from the April 21, 2004 meeting upon the request of the applicant with leave to amend and to submit plans. Staff notes that the applicant has submitted plans for the development of this site and the advertisement has been amended. This application was deferred from the July 14, 2004 meeting upon the request of the applicant to submit revised plans and to meet with the neighbors. Staff notes that the applicant has submitted revised plans.

The subject property is located at 24751 SW 117 Avenue. In 2002, the 55 acre adjacent parcel to the north and northeast was rezoned to Planned Area Development (PAD) District and will be developed with an integrated residential development that will incorporate a variety of housing types. This application originally pertained to Parcel A only and sought a district boundary change from AU, Agricultural District, to BU-1, Neighborhood Business District, that would have allowed a temporary sales office that would have served the adjacent Planned Area Development (PAD) and in the future a commercial or mixed use

development. When the aforementioned PAD was approved, the property to the east of the subject site was proffered as a fire station site as part of the PAD approval. While preparing a site plan for the development of this site with a mixed use residential and commercial development, the applicant discovered a "gap" between the fire station site and the proposed BU-1 zoned property (Parcel A). Said parcel had previously been re-designated for Business and Office use on the Land Use Plan (LUP) map. Said "gap" consists of 0.45 acres and was not included when Parcel A was redesignated to Business and Office. This "gap" which is referred hereafter as Parcel B has a low density residential designation on the LUP map. Parcel B has been included as a part of the design for the proposed mixed use center and will provide a park to serve the development on Parcel A. This application has been amended to include Parcel B and to include the revised site plan submitted by the applicant for the development of this site in its entirety.

The applicant was originally seeking a district boundary change from AU, Agricultural District, to BU-1, Neighborhood Business District, on Parcel A of the subject site and on Parcel B from AU to RU-3M, Minimum Apartment House District. The applicant has recently submitted an amended letter of intent requesting a zone change to RU-1 on Parcel B in lieu of the originally requested and advertised RU-3M. The advertisement did not need to be amended since RU-3M permits RU-1 uses and, as such, RU-1 is considered to be within the scope of the advertisement. Accompanying requests pertaining to Parcel A will permit a residential and commercial development to setback closer to the west, east, and south property lines than permitted, waive the required 5' high decorative masonry wall along the east property line where a business lot abuts a residential district, permit the residential/commercial development with a greater residential floor area covering than permitted, and will permit the proposed buildings to be 3 stories in height. Based on the newly requested RU-1 zoning on Parcel B in lieu of RU-3M and the aforementioned revised plans, the accompanying requests pertaining to Parcel B (Requests #7 and 8) regarding lot frontage and parking in a more restrictive zone than permitted and Request #9 pertaining to both Parcels A and B to allow a gated entrance feature (which is no longer depicted on the plans) are no longer necessary and should be denied without prejudice, unless withdrawn by the applicant. Request #2 may be considered under Section 33-311(A)(16), Alternative Site Development Option (ASDO) for the BU Zoning District, however, Requests #3 thru 5 cannot be considered under said Section since there are no ASDO standards pertaining to those types of requests. Additionally, Requests #2 thru 5 can be considered under Sections 33-311(A)(4)(b), Non-Use Variances, and (c), Alternative Non-Use Variances.

The revised plans recently submitted by the applicant show a mixed use commercial and residential development on Parcel A consisting of three (3) L-shaped buildings that will contain three (3) stories. Each building will provide commercial retail services on the ground floor and eleven (11) two-story apartments on the second and third floors for a total of thirty-three 33 residential units. Originally, Parcel B was shown as a gated parking area for the residents of the proposed residential use on Parcel A. However, the recently submitted plans depict Parcel B as a park area for same with a centrally located fountain, paved walkways, park benches, and landscaping. Access to the site is provided from SW 248 Street and SW 247 Street. A main street runs through the property between two of the proposed buildings. Extensive landscaping is provided along the perimeter of the site. The applicant intends to proffer a covenant limiting the development of the site to the aforementioned plans, restricting the residential density of the site to no more than thirty-

three (33) units, and restricting the RU-1 portion of the property (Parcel B) solely for park use.

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. The **Public Works Department** has **no objections** to this application. This application will generate **227 PM** daily peak hour vehicle trips; however, said trips will not affect the level of service (LOS) on the area roadways which are currently at LOS "B", "C", "D", and "E". Said Department will require, among other things, that the applicant submit a cross access agreement permitting access to the adjacent property to the north. Additionally, the land requires platting in accordance with Chapter 28 and the road dedications and improvements will be accomplished thru the recording of a plat. **Miami-Dade County Public Schools** (MDCPS) has indicated that the proposed development would bring an additional **12 students** to the schools in the area based on 35 units. Pursuant to the Interlocal Agreement, the applicant's representative met with the School Board on March 16, 2004 and had a dialogue to discuss the impact of the proposed development on public schools. The applicant has voluntarily proffered a covenant to the School Board in order to provide a monetary donation over and above impact fees.

The rezoning of the property to BU-1 on Parcel A and RU-1 in lieu of RU-3M on Parcel B will allow the applicant to provide commercial/retail neighborhood oriented services and housing for the community. Parcel A is designated for Business and Office use on the Land Use Plan (LUP) map of the Comprehensive Development Master Plan (CDMP). Staff notes that this property was re-designated to Business and Office use through a CDMP amendment change pursuant to Ordinance #02-87. BU-1 zoning will be **consistent** with the LUP map designation of the CDMP. The CDMP states that residential uses, and mixing of residential uses with commercial, office and hotels are permitted in Business and Office areas provided that the scale and intensity, including height and floor area ratio of the residential or mixed use development, is not out of character with that of adjacent or adjoining development and zoning, and it does not detrimentally impact, and it provides a sensitive well designed transition to any adjacent or adjoining residentially developed or designated areas of different development intensity. Where these conditions are met residential development may be authorized to occur in the Business and Office category at a density up to one density category higher than the LUP - designated density of the adjacent or adjoining residentially designated area on the same side of the abutting principal roadway, or up to the density of any such existing residential development, or zoning if the adjacent or adjoining land is undeveloped, whichever is higher. In this instance, the proposed mixed use development does not detrimentally impact the adjacent development and the scale and intensity, including height and floor area ratio of the mixed use development, and is not out of character with that of adjacent or adjoining development. The submitted plans provide a well designed transition between the adjacent PAD to the north and the subject property and said PAD will be buffered from the subject property by SW 247 Street. Further, the applicant is providing extensive landscaping that will further buffer the proposed mixed use development from the adjacent PAD. The PAD to the north was approved with certain townhouse units to be 3 stories in height. Additionally, the design of the proposed development orients the proposed buildings away from the PAD and towards SW 248 Street, SW 117 Avenue, and along the Main Street provided in the development. Parking areas for the commercial/retail portion of the development are located behind the buildings between said buildings and the PAD. Since the Master Plan allows one density category

higher for residential uses in the Business and Office designation when the aforementioned criteria is met, the Master Plan would allow the residential component on the Business and Office designated portion to be developed in accordance with the density permitted in the Low-Medium residential designation (5 to 13 dua). This category is one density category higher than the adjacent LUP map category which is Low-density residential (2.5 to 6 dua). The maximum number of units permitted by the CDMP on Parcel A would be 50 dwelling units. As such, the proposed 33 residential units would be **consistent** with the Master Plan.

The LUP map of the CDMP designates Parcel B for Low Density Residential use (2.5 to 6 dwelling units per gross acre). RU-1 zoning allows a maximum density of 4.65 units per gross acre. As such, the now requested RU-1 zoning on Parcel B will be **consistent** with the density permitted by the LUP map.

The proposed BU-1 zoning would be **compatible** with the surrounding area since it would provide neighborhood serving uses to same. This area has experienced several zone changes to residential zoning in recent years and, as previously mentioned, the property to the north is zoned PAD and will consist of various different housing types. A mixed use development with residential and commercial uses would also be compatible with the remainder of the surrounding area and it would bring a pedestrian friendly environment to same. RU-1 zoning in lieu of the originally requested RU-3M zoning on Parcel B will be **compatible** with the surrounding area. As previously mentioned, the applicant intends to proffer a covenant limiting the development of the site to the plans submitted for this hearing that show the development of Parcel B for park use. The proposed park will be located adjacent to the future fire station to the east, the agricultural area to the south, and residential development to the north. Additionally, said park will serve the residents and patrons of the commercial/residential use on Parcel A. The CDMP states that compatible parks are encouraged in all of the residential categories and may be allowed in all other categories of the LUP map. As such, the proposed park will be in keeping with CDMP policies and objectives.

When considered under Section 33-311(A)(4)(b), the Non-Use Variance (NUV) standards, Requests #2 thru 5 comply with said standard. Allowing the proposed mixed use development on Parcel A to setback into required setback areas (Request #2), to have a greater floor area ratio than permitted (Request #4), and to be three stories in height (Request #5) will be compatible with the surrounding area and will allow the applicant to provide two-story apartment units above the commercial units which will be located on the ground floor. Request #3 to waive the required 5' high decorative wall along the east property line where the business lot abuts the residential lot will allow the residential/retail development on Parcel A to connect to the proposed park on Parcel B which will benefit the residents and patrons of the proposed development on Parcel A. The aforementioned requests maintain the basic intent and purpose of the zoning, subdivision and other land use regulations and will be compatible with the surrounding area. As such, Requests #2 thru 5 can be approved under the NUV standard.

When considered under Section 33-311(A)(16), Alternative Site Development Option (ASDO) for the BU Zoning District, Requests #2 through 5 cannot be approved under same. The request to allow a setback of 12' (25' required) from the rear property line reduces the setback below 50% of the rear setback required by the underlying BU-1 zoning district [(c)(19)(D)] and the request to allow a setback of 15' from the side street (south) property

line reduces the side street setback by more than 25% of the underlying district regulations [(c)(19)(B)]. Further, the applicant has not submitted a shadow study that demonstrates that any area of shadow cast by the proposed alternative development upon an adjoining property will be no larger than would be cast by a structure constructed pursuant to the underlying district regulations, or will have no more than a de minimus impact on the use and enjoyment of the adjoining parcel of land as set forth in subsection (c)(4). As such, Requests #2 through 5 cannot be approved under Section 33-311(A)(16).

Requests #2 thru 5 could be considered under the alternative non-use variance (ANUV) standard [311(A)(4)(c)], however, the applicant has not proven that a literal enforcement of the provisions thereof will result in unnecessary hardship since the site can be utilized in accordance with BU-1 or AU zoning requirements. As such, said requests cannot be approved under said standard.

Accordingly, staff recommends approval of the zone change on Parcel A to BU-1 and on Parcel B to RU-1 in lieu of RU-3M, subject to the Board's acceptance of the proffered covenant; approval with conditions of Requests #2 thru 5 under Section 33-311(A)(4)(b) (NUV); denial without prejudice of Requests #2 thru 5 under Section 33-311(A)(4)(c) (ANUV) and Section 33-311(A)(16) (ASDO); and denial without prejudice of Requests #7 thru 9, unless withdrawn by the applicant.

I. RECOMMENDATION:

Approval of the zone change on Parcel A to BU-1 and on Parcel B to RU-1 in lieu of RU-3M, subject to the Board's acceptance of the proffered covenant; approval with conditions of Requests #2 thru 5 under Section 33-311(A)(4)(b) (NUV); denial without prejudice of Requests #2 thru 5 under Section 33-311(A)(4)(c) (ANUV) and Section 33-311(A)(16) (ASDO); and denial without prejudice of Requests #7 thru 9, unless withdrawn by the applicant.

J. CONDITIONS:

The following conditions pertain to Requests #2 thru 5 only.

1. That a site plan be submitted to and meet with the approval of the Director upon the submittal of an application for a building permit; said plan to include among other things but not be limited thereto, location of structure or structures, types, sizes and location of signs, light standards, off-street 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 "Summerville Town Center," as prepared by Corwil Architects, Inc., dated August 30, 2004 and consisting of 6 sheets.

3. That the use be established and maintained in accordance with the approved plan.

4. That the applicant submit to the Department for its review and approval a landscaping plan which indicates the type and size of plant material prior to the issuance of a building permit and to be installed prior to the issuance of a Certificate of Use.

5. That a recordable agreement be submitted to and meet with the approval of the Director providing for permanent and safe access for pedestrian and vehicular traffic within the development and particularly for right of access for fire, police, health, and sanitation and other public service personnel and vehicles. The agreement, which shall be a covenant running with the land, shall also include a stipulation that the streets, or access ways, shall be installed and maintained by the applicant, including, but not limited to, sidewalks, drainage facilities, water, sewers and fire hydrants, meeting with the approval of the Director and the Director of the Public Works Department. Such agreement shall be executed by the property owner and any and all parties having an interest in the land, such as mortgagees, etc., and its improvements.

6. That in the event of multiple ownership, a homeowners' association, community development district, or special taxing district be established in accordance with applicable regulations to assure that all common areas and facilities for use of all residents and the proposed park on Parcel B shall be maintained in a continuous and satisfactory manner, and without expense to the general taxpayer of Miami-Dade County. The instrument incorporating such provisions shall be approved by the County Attorney as to form and legal sufficiency and shall be recorded in the public records of Miami-Dade County at the time of the recording of the subdivision plat.

7. That the applicant comply with all the conditions and requirements of the Public Works Department.

8. That the applicant comply with all the conditions and requirements of the Department of Environmental Resources Management (DERM).

DATE INSPECTED: 06/22/04
DATE TYPED: 07/01/04
DATE REVISED: 09/13/04
DATE FINALIZED: 10/04/04
DO'QW:AJT:MTF:JDR

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

This instrument was prepared by:
Name: Alan S. Krischer, Esq.
Address: One S.E. Third Avenue
Miami, Florida 33131

(Space reserved for Clerk)

DECLARATION OF RESTRICTIONS

WHEREAS, the undersigned Owner ("Owner") holds the fee simple title to the land in Miami-Dade County, Florida, described in Exhibit "A," attached hereto, and hereinafter called the "Property," which is supported by the attorney's opinion, and

IN ORDER TO ASSURE the **County** that the representations made by the owner during consideration of Public Hearing No. 03-262 will be abided by the Owner freely, voluntarily and without duress makes the following Declaration of Restrictions covering and running with the Property:

(1) That said Property shall be developed substantially in accordance with the plans previously submitted, prepared by Corwil Architects, Inc. entitled, "Summerville Town Center", dated the 30th day of August, 2004, said plans being on file with the Miami-Dade County Department of Planning and Zoning, and by reference made a part of this agreement.

(2) The total residential density of the Property shall be limited to no more than thirty-three (33) residential units.

(3) That portion of the Property which is rezoned to RU-1, described in Exhibit "B", shall be used solely for a recreational park, and shall not be developed with residential units. Said recreational park shall be maintained by either a duly-created property owners' association or a duly-created condominium association; or, upon the approval and with the consent of the County, said recreational park may be maintained by a special taxing district.

County Inspection. As further part of this Declaration, it is hereby understood and agreed that any official inspector of Miami-Dade County, or its agents duly authorized, may have the privilege at any time during normal working hours of entering and inspecting the use of the premises to determine whether or not the requirements of the building and zoning regulations and the conditions herein agreed to are being complied with.

Covenant Running with the Land. This Declaration on the part of the Owner shall constitute a covenant running with the land and may be recorded, at Owner's expense, in the public records of Miami-Dade County, Florida and shall remain in full force and effect and be binding upon the undersigned Owner, and their heirs, successors and assigns until such time as the same is modified or released. These restrictions during their lifetime shall be for the benefit of, and limitation upon, all present and future owners of the real property and for the benefit of Miami-Dade County and the public welfare. Owner, and their heirs, successors and assigns, acknowledge that acceptance of this Declaration does not in any way obligate or provide a limitation on the County.

Term. This Declaration is to run with the land and shall be binding on all parties and all persons claiming under it for a period of thirty (30) years from the date this Declaration is recorded after which time it shall be extended automatically for successive periods of ten (10) years each, unless an instrument signed by the, then, owner(s) of the Property has been recorded agreeing to change the covenant in whole, or in part, provided that the Declaration has first been modified or released by Miami-Dade County.

Modification, Amendment, Release. This Declaration of Restrictions may be modified, amended or released as to the land herein described, or any portion thereof, by a written instrument executed by the, then, owner(s) of all of the Property, including joinders of all mortgagees, if any, provided that the same is also by the Board of County Commissioners or Community Zoning Appeals Board of Miami-Dade County, Florida, whichever by law over such matters, after public hearing.

Should this Declaration of Restrictions be so modified, amended or released, the Director of the Miami-Dade County Department of Planning and Zoning, or the executive officer of the successor of such Department, or in the absence of such director or executive officer by his assistant in charge of the office in his absence, shall forthwith execute a written instrument effectuating and acknowledging such modification, amendment or release.

Enforcement. Enforcement shall be by action against any parties or person violating, or attempting to violate, any covenants. The prevailing party in any action or suit pertaining to or arising out of this declaration shall be entitled to recover, in addition to costs and disbursements allowed by law, such sum as the Court may adjudge to be reasonable for the services of his attorney. This enforcement provision shall be in addition to any other remedies available at law, in equity or both.

Authorization for Miami-Dade County to Withhold Permits and Inspections. In the event the terms of this Declaration are not being complied with, in addition to any other remedies available, the County is hereby authorized to withhold any further permits, and refuse to make any inspections or grant any approvals, until such time as this declaration is complied with.

Election of Remedies. All rights, remedies and privileges granted herein shall be deemed to be cumulative and the exercise of any one or more shall neither be deemed to constitute an election of

remedies, nor shall it preclude the party exercising the same from exercising such other additional rights, remedies or privileges.

Presumption of Compliance. Where construction has occurred on the Property or any portion thereof, pursuant to a lawful permit issued by the County, and inspections made and approval of occupancy given by the County, then such construction, inspection and approval shall create a rebuttable presumption that the buildings or structures thus constructed comply with the intent and spirit of this Declaration.

Severability. Invalidation of any one of these covenants, by judgment of Court, shall not affect any of the other provisions which shall remain in full force and effect. However, if any material portion is invalidated, the County shall be entitled to revoke any approval predicated upon the invalidated portion

Recording. This Declaration shall be filed of record in the public records of Miami-Dade County, Florida at the cost to the Owner following the adoption by the Miami-Dade County Board of County Commissioners or Community Zoning Appeals Board of a resolution approving the application.

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

Owner. The term Owner shall include the Owner, and its heirs, successors and assigns.

[Execution Pages Follow]

IN WITNESS WHEREOF, we have hereunto set our hands and seal this 6 day of OCTOBER, 2004.

WITNESSES:

SUMMERVILLE DEVELOPMENT, INC., a Florida corporation

Signature
By: Ray Castellanos
ISABEL ABREU
Printed Name

Signature
Edlett N. Tolosa.
Printed Name

STATE OF FLORIDA)
) SS
COUNTY OF DADE)

The foregoing instrument was acknowledged before me by RAY Castellanos, as _____ of Summerville Development, Inc., a Florida corporation, and for the purposes stated herein on behalf of the company. He is personally known to me or has produced _____ as identification.

Witness my signature and official seal this 6 day of OCTOBER, 2004, in the County and State aforesaid.

My Commission Expires: 7/2006
Notary Public - State of Florida

Printed Name

CARIDAD RODRIGUEZ
NOTARY PUBLIC - STATE OF FLORIDA
COMMISSION #DD129699
EXPIRES 07/20/2006
BONDED THRU 1-888-NOTARY1

{M2119170;3}{M2119170;1
(Public Hearing)
Section-Township-Range: 19-56-40
Folio number: 30-6019-000-0150/30-6019-0000-0050

EXHIBIT "A": The south ½ of the SW¼of the SW¼of the SW¼of Section 19, Township 56 South, Range 40 East, less the south 65' and less the west 40' thereof, AND: The west 86' of the SW¼of he SE ¼of the SW¼of the SW¼of Section 19, Township 56 South, Range 40 East, less the south 65' thereof for road.

EXHIBIT "B": Commence at the Southeast corner of Section 24, Township 56 South, Range 39 East; thence N1° 4'14"E, for 65.03'; thence N89° 03'18"W, for 40' to the Point of beginning; thence N1° 4'14"E, for 266.39'; thence N89° 01'53"W, for 790.84'; thence S01° 11'31"W, for 266.36'; thence S89° 03'18"E, for 790.27' to the Point of beginning. LESS AND EXCEPT: The south ½ of the SW¼of the SW¼of the SW¼of Section 19, Township 56 South, Range 40 East, less the south 65' and less the west 40' thereof, AND: The west 86' of the SW¼of the SE ¼of the SW¼of the SW¼of Section 19, Township 56 South, Range 40 East, less the south 65' thereof for road.

(Summerville-Commercial)

MIAMI- DADE COUNTY - PUBLIC WORKS
ENGINEERING-SUBDIVISION CONTROL

OPINION OF TITLE

TO: Miami-Dade County, a Political Subdivision of the State of Florida

With the understanding that this opinion of title is furnished to Miami-Dade County, Florida, in compliance with its Ordinance No. 57-30, and as an inducement issuing final plat covering the real property hereinafter described, it is hereby certified that I have examined title to the property by using the following instruments:

Attorneys' Title Insurance Fund, Inc., Owner's Title Insurance Policy, OPM-2339358, effective February 19, 2003, together with a certified computer search covering the period from the effective date of such policy through September 19, 2004, at 11:00 P.M.;

(the "Search"), inclusive, of the following described parcels:

COMMENCE AT THE SOUTHEAST CORNER OF SECTION 24, TOWNSHIP 56 SOUTH, RANGE 39 EAST; THENCE N01°04'14"E,FOR 65.03 FEET; THENCE S89°03'18"E,FOR 40.00 FEET TO THE POINT OF BEGINNING; THEN N01°04'14E, FOR 266.39 FEET; THENCE S89°01'53"E,FOR 790.84 FEET; THENCE S01°11'31"W,FOR 266.36 FEET; THENCE N89°03'18"W, FOR 790.27 FEET TO THE POINT OF BEGINNING.

Basing our opinion on an examination of the above instruments, I am of the opinion that on the abovementioned date the fee simple title to the above property described is vested in:

Summerville Development, Inc., a Florida corporation

said property is subject to the following liens, encumbrances, and other exceptions:

GENERAL EXCEPTIONS

1. All taxes for the year in which this opinion is rendered, unless noted below that such taxes have been paid.

2. Rights or claims of persons other than the above owners who are in possession.

3. Easement or claims of easements not shown by the Public Records, boundary line disputes, overlaps, encroachments and any facts or matters not of record which would be disclosed by an accurate survey and inspection of the premises.

4. Any unrecorded labor, mechanics' or materialmens' liens.

5. Zoning and other restrictions imposed by governmental authority.

SPECIAL EXCEPTIONS

1. Agreement for Water and Sanitary Sewage Facilities between Miami-Dade County and Summerville Development, Inc., recorded October 14, 2003, in O.R. Book 21737 at Page 2287, as amended by Addendum No. 1 for the Phase I Water and Sanitary Sewage Facilities recorded January 21, 2004, in O.R. Book 21986 at Page 2962; Amended by Addendum #2 recorded June 4, 2004, in O.R. Book 22371, Page 947.

2. Memorandum and Ordinance creating and establishing Street Lighting Special Taxing District dated July 13, 2004, and recorded August 5, 2004, in O.R. Book 22548, at Page 4487.

3. Memorandum and Ordinance creating Multipurpose Special Taxing District dated July 13, 2004, and recorded August 5, 2004, in O.R. Book 22548 at Page 4519.

4. Memorandum and Resolution adopting preliminary assessment roll for Street Lighting Special Taxing District dated July 13, 2004, recorded in O.R. Book 22548, at Page 4605.

ALL REFERENCE IS TO THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

Therefore, it is my opinion that the following parties must join in the platting of the above described real property in order to grant DADE COUNTY, FLORIDA, and the public, a good and proper title to the dedicated areas shown on the final Plat of the aforedescribed property, the subdivision there to be known as _____:

Name	Interest	Special Exception No.
Summerville Development, Inc.	fee simple	none

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

Respectfully submitted this 7th day of October, 2004.

ELLIOTT HARRIS, ESQ.
Fla. Bar No. 097072
111 S.W. 3rd Street, 6th Floor
Miami, Florida 33130
(305) 358-0146

STATE OF FLORIDA)
ss.
COUNTY OF MIAMI-DADE)

THE FOREGOING INSTRUMENT was acknowledged before me this 7th day of October, 2004, by Elliott Harris, who is personally known to me and who did/did not take an oath.

My commission expires: NOTARY PUBLIC

Liza A. Garcia
My Commission DD198809
Expires April 03, 2007

This instrument was prepared under the supervision of:

Name: Alan S. Krischer, Esq.
Address: Akerman, Senterfitt, P.A.
One Southeast Third Avenue
28th Floor
Miami, Florida 33131

(Space Reserved for Clerk of the Court)

DECLARATION OF RESTRICTIONS IN FAVOR OF THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA

WHEREAS, the undersigned Owner holds the fee simple title to that certain parcel of land located in unincorporated Miami-Dade County, Florida (the "Property"), which is legally described in Exhibit "A" to this Declaration;

WHEREAS, the Property is the subject of an Application for public hearing under Public Hearing Number 03-262 (the "Application"), which seeks a rezoning of the Property to BU-1A and RU-3M zoning; and

WHEREAS, the Owner has submitted a site plan in connection with the Application, which site plan provides for thirty-three (33) residential units;

WHEREAS, the Owner desires to help mitigate the future public school needs generated by the Application.

NOW, THEREFORE, IN ORDER TO ASSURE The School Board of Miami-Dade County, Florida ("The School Board"), that the representations made by the Owner during the consideration of the Application will be abided by, the Owner freely, voluntarily, and without duress make the following Declaration of Restrictions covering and running with the Property:

1. **Monetary School Contribution.** In order to help meet the future public schools needs generated by the Application, the Owner agrees to voluntarily contribute funds to the School Board equal to $7,200.00 (the "Contribution"), based on the proposed density of thirty-three (33) multi-family residential dwelling units, which funds shall be utilized first for capital improvements at Redland Middle School and Homestead Senior High School, and to the extent that there are no pending or proposed capital improvements at the foregoing schools as of the date of payment of the contribution, then for capital improvements at other schools within the affected feeder pattern. The total Contribution shall be paid in one (1) payment becoming due and payable prior to the final plat approval for the subject development.

The Owner acknowledges and agrees that the Contribution shall not entitle the Owner or its successors and assigns to a credit against the amount of the educational facilities impact fee that will be assessed against the future development of the Property under Chapter 33K of the Miami-Dade County Code. In the event that the Community Zoning Appeals Board, the Board of County Commissioners, or the Miami-Dade County Plat Committee approves fewer than the maximum density of thirty-three (33) multi-family residential dwelling units, the amount of the Contribution shall be reduced on a pro rata basis, in an amount equal to $1,200 per student, as calculated by the School District.

2. **Miscellaneous.**

A. **Covenant Running with the Land/Release**. This Declaration on the part of the Owner shall constitute a covenant running with the land and shall be recorded by the Owner, at the Owner's expense, in the public records of Miami-Dade County, Florida, and shall remain in full force and effect and be binding upon the undersigned Owner and its heirs, successors, and assigns until such time as the same is modified or released with

the approval of the School Board. These restrictions, during their lifetime, shall be for the benefit of, and limitation upon, all present and future owners of the Property and for the public welfare; provided, however, upon payment of the Contribution, the Superintendent of Schools or his/her designee shall release this Declaration by forthwith executing a written instrument in recordable form effectuating and acknowledging such release.

B. **Term**. This Declaration shall run with the land and shall be binding on all parties and all persons claiming under it for a period of thirty (30) years from the date that this Declaration is recorded. After which time, it shall be extended automatically for successive periods of ten (10) years each, unless an instrument signed by the then owner(s) of the Property has been recorded agreeing to change the Declaration in whole, or in part, provided that the Declaration has first been modified or released by the School Board.

C. **Modification, Amendment, Release**. This Declaration of Restrictions may be modified, amended, or released as to the land herein described, or any portion thereof, by a written instrument executed by the, then, owner(s) of all of the Property covered under the modification, amendment, or release, including joinders of all mortgagees, if any, provided that the modification, amendment, or release is also approved by the School Board after public hearing.

D. **Enforcement**. Enforcement shall be by action against any parties or person violating, or attempting to violate, the covenants. This enforcement provision shall be in addition to any other remedies available at law, in equity, or both.

E. **Election of Remedies**. All rights, remedies, and privileges granted herein shall be deemed to be cumulative and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other additional rights, remedies or privileges.

F. **Severability**. Invalidation of any one of these covenants by judgment of Court shall not affect any of the other provisions which shall remain in full force and effect.

G. **Recording**. This Declaration shall be filed of record by the Owner in the public records of Miami-Dade County, Florida, at the cost to the Owner, and shall become effective following the adoption by the Miami-Dade County Board of County Commissioners of a resolution approving the Application and the expiration of any applicable filing periods without an appeal having been filed. Upon recordation, the Owner shall provide a copy of the recorded Declaration to the School Board.

[Signature Page(s) Follow]

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 1 day of SEPTEMBER, 2004.

WITNESSES:

Signature
ISABEL ABREU
Printed Name

Signature
CARIDAD RODRIGUEZ
Printed Name

SUMMERVILLE DEVELOPMENT, INC.,
a Florida corporation

By: _____
RAY CASTELLANOS, V.P.

STATE OF FLORIDA)
) SS
COUNTY OF DADE)

The foregoing instrument was acknowledged before me by RAY CASTELLANOS, as VICE PRESIDENT of Summerville Development, Inc., a Florida corporation, and for the purposes stated herein on behalf of the company. He is personally known to me or has produced _____ as identification.

Witness my signature and official seal this 1 day of SEPTEMBER, 2003, in the County and State aforesaid.

My Commission Expires:

CARIDAD RODRIGUEZ
NOTARY PUBLIC - STATE OF FLORIDA
COMMISSION #DD129699
EXPIRES 07/20/2006
BONDED THRU 1-888-NOTARY1

Notary Public - State of Florida

CARIDAD RODRIGUEZ
Printed Name

G.C. Homes

FACSIMILE TRANSMITTAL SHEET

TO: Alan Krischer	FROM: Isabel Abreu
COMPANY: Akerman Senterfitt	DATE: 9.1.04
FAX NUMBER: 305.374.5095	TOTAL NO. OF PAGES INCLUDING COVER: 6
PHONE NUMBER: 305.755.5858	CC:
RE: Summerville Declaration	CC FAX NUMBER:

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

See attached executed document

14600 SW 136 St. Miami, FL 33186 ❖ **Tel** 305.259.3100 *Ext.28* **Fax** 305.252.3551 ❖ Isa@gchomes.com

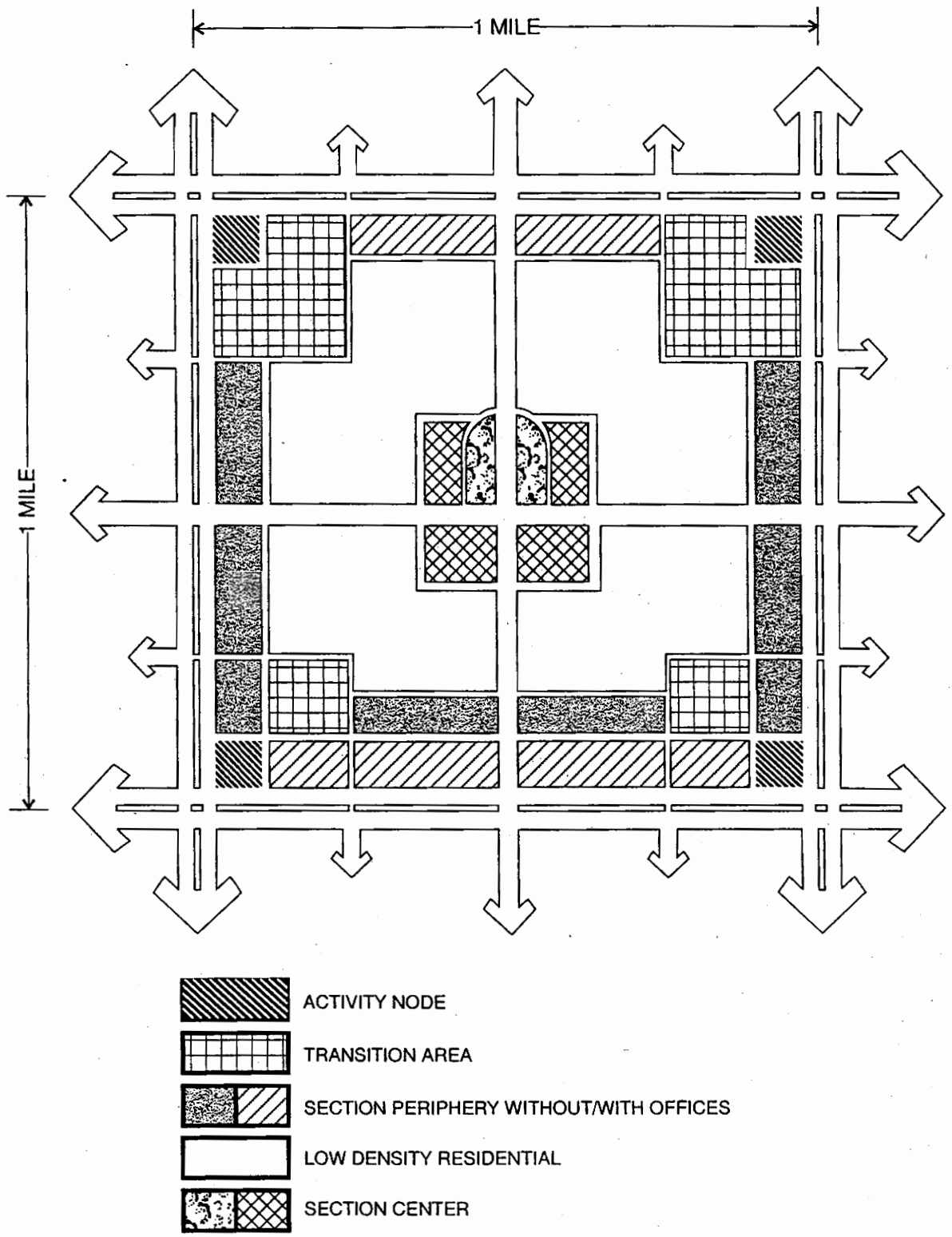

Figure 1
GENERALIZED NEIGHBORHOOD DEVELOPMENT PATTERN

S C A L E
0 660' 1,320' N

DEPARTMENT OF PLANNING, DEVELOPMENT AND REGULATION

DISK 1 D:\ BASEMAPS\ GEO\ SCHEMATS.CDR.1/97

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.

Residential uses, and mixing of residential use with commercial, office and hotels are also permitted in Business and Office areas provided that the scale and intensity, including height and floor area ratio of the residential or mixed use development, is not out of character with that of adjacent or adjoining development and zoning, and it does not detrimentally impact, and it provides a sensitive well designed transition to any adjacent or adjoining residentially developed or designated areas of different development intensity. Where these conditions are met residential development may be authorized to occur in the Business and Office category at a density up to one density category higher than the LUP - designated density of the adjacent or adjoining residentially designated area on the same side of the abutting principal roadway, or up to the density of any such existing residential development, or zoning if the adjacent or adjoining land is undeveloped, whichever is higher. If there is no adjacent or adjoining residential use existing, zoned or designated on the same side of the roadway, the maximum allowable residential density will be that which exists or which this plan allows across the roadway. Where there is no residential use, zoning or designation on either side of the roadway, the intensity of residential development, including height, bulk and floor area ratio shall be no greater than that which would be permitted for an exclusively commercial use of the site. Where SURs are transferred to Business-designated parcels which are zoned or to be used for residential development the SUR allowances of the Residential section may be used within the limits provided in this paragraph.

Strips and Nodes. The plan recognizes existing strip commercial development along many roadways. However, commercial development in newly developing areas is designated as nodes at major intersections. Allocation of commercial development rights among quadrants of such nodes will depend on locational factors, geographic constraints, ownership fragmentation, compatibility with adjacent uses and availability of highway capacity and other public services and facilities.

Ribbons or strips of commercial use along roadway frontages are identified along one or both block faces fronting certain roadways. Where only one block face is indicated, this specifically provides that only that block face is intended for commercial use and is not to suggest that the opposite face is also included. The lateral boundary of the ribbon indicates the extent to which business uses may be allowed to expand along the roadway frontage.

The depth of the ribbon is more generalized. In general, the depth should be limited to the norm for the strip, but may be approved at such other depth necessary to ensure compatibility with, and liberal permanent buffering of adjacent residential uses, or transition to adjacent commercial uses in keeping with the Plan's policies. Extension of commercial strip depth beyond the mid-block to the frontage of an interior street does not necessarily authorize vehicular access on that interior street, and such access may be prohibited if it would be incompatible with neighboring development. Intervening areas between commercial ribbons along a highway face may be used only for the uses permitted in the designated land use category. Further lateral extension of the ribbon beyond that shown on the Plan map will require a Plan amendment.

Uses and Zoning Not Specifically Depicted. 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." The limitations referenced in this paragraph pertain to existing zoning and uses. All approval of new commercial locations must be consistent with the LUP map or the specific exceptions provided in the various LUP map categories, and the objectives and policies of this Plan.

Office/Residential

Uses allowed in this category include both professional and clerical offices, hotels, motels, and residential uses. Office developments may range from small-scale professional office to large-scale office parks. A specific objective in designing developments to occur in this category is that the development should be compatible with any existing, or zoned, or Plan-designated adjoining or adjacent residential uses. The maximum scale and intensity, including height and floor area ratio of office, hotel and motel development in areas designated Office/Residential shall be based on such factors as site size, availability of services, accessibility, and the proximity and scale of adjoining or adjacent residential uses. Where the Office/Residential category is located between residential and business categories, the more intensive activities to occur on the office site, including service locations and the points of ingress and egress, should be oriented toward the business side of the site, and the residential side of the site should be designed with sensitivity to the residential area and, where necessary, well buffered both visually and acoustically.

Residential uses are also allowed in the Office/Residential category. In these locations, residential density may be approved up to one density category higher than that allowed in the adjoining or adjacent residentially designated area on the same side of the abutting principal roadway, or up to the density of existing adjoining or adjacent residential

Where both measures – projected commercial land depletion year and the commercial acres per 1,000 population ratio – indicate a future need for additional commercial land, it is probable that this need will become apparent during the projection period if no additional land is designated on the LUP map for Commercial or Office use. Thus, both the vacancy condition and the adequacy of the commercial land to population ratio need to be considered when determining locations where additional commercial land should or need not be added.

Another factor that must be considered is the existence of vacant industrial land. There has been a continuing pattern in which there is much crossover in the use of industrial land for commercial purposes. The Research Section of the Planning and Zoning Department analyzed a sample (5,614 acres) of vacant industrially zoned or designated land for the period between 1985-2000. It found that only 20.9 percent was developed for industrial uses and that 18.6 percent was still vacant and zoned or designated for industrial uses. Of the 5,614 vacant industrial land analyzed, 17 percent went to residential capacity, 4.4 percent was built residential, and 13 percent was built for transportation and utilities. Some 7.3 percent was built for commercial uses and 7.1 percent was rezoned to commercial uses. Only 39 percent of the sample of vacant industrially zoned acres in 1985 remained either vacant industrial or in industrial use in 2000. Hence, the availability of vacant industrial land must be appraised before the final determination is made to add more commercial land.

In addition to the traditional depletion analysis, a new procedure was added to analyze the adequacy of small-scale applications for commercial uses. The procedure is what is commonly known as a Trade Area analysis. It consists of drawing a radius (the size of the radius depends on the project's size) around the proposed project and computing the population, in-use commercial acreage, and the vacant commercially zoned land inside its radius. Using guidelines developed by the Urban Land Institute, the feasibility of the proposed project (See Table 11.1) can be assessed.

Table 2-9
Trade Area Guidelines

Type	Gross Leasable Area	Minimum Population Support Required	Radius
Neighborhood	30,000-100,000	3,000-40,000	1 ½
Community	100,000-300,000	40,000-150,000	3-5
Regional	300,000+	150,000+	8-12

Source: Adopted from Urban Land Institute, 1985.

Industrial Land

Table 2-10 presents countywide projections of industrial land absorption. The first step in projecting Miami-Dade County's future industrial land use was to develop control totals for countywide use of this type of land in each projection year. Historical land use data for 1985, 1994, 1998, 2000, 2001, and 2003 was divided by relevant employment data to obtain employees per acre ratios, which projected by linear regression. These ratios were applied to employment projections to obtain projected industrial land. Using historical land use data, the share of industrial land was projected and applied to the total for each projection year.

OCT 8 2004

THE CHEESE COURSE
STOP
OCT 8 2004

N STREET
PURPLE RAIN
OCT 8 2004

MALTS
OCT 8 2004

For Lease
OCT 8 2004

RESOLUTION NO. CC15-05-02

RESOLUTION OF SOUTH BAY COMMUNITY COUNCIL (15) ISSUING RECOMMENDATION ON OCTOBER 2001 CYCLE AMENDMENT APPLICATION NO. 10 REQUESTING SMALL SCALE AMENDMENT TO THE COMPREHENSIVE DEVELOPMENT MASTER PLAN LAND USE PLAN MAP

WHEREAS, Section 20-40 of the Code of Miami-Dade County establishes Community Councils in the unincorporated area; and

WHEREAS, Section 2-116.1 of the Code of Miami-Dade County provides exclusive procedures for amending the Comprehensive Development Master Plan (CDMP) consistent with requirements of Chapter 163, Part 2, Florida Statutes, and the Florida Administrative Code; and

WHEREAS, the Community Councils may, at their option, make recommendations to the Planning Advisory Board and the Board of County Commissioners on proposed amendments to the CDMP that would directly impact the Council's area; and

WHEREAS, Section 2-116.1(3)(e) of the Code of Miami-Dade County provides that Community Council recommendations may address the decisions to be made by the Board of County Commissioners regarding transmittal of the application to the State land planning agency for review and comment, and regarding ultimate adoption, adoption with change, or denial of the applications; and

WHEREAS, at its meeting of March 21, 2002, South Bay Community Council (15) conducted a public hearing as authorized by Section 20-41 of the County Code;

NOW, THEREFORE, BE IT RESOLVED THAT SOUTH BAY COMMUNITY COUNCIL (15) recommends that October 2001-cycle (Small Scale) CDMP amendment Application No. 10 be Adopted.

The foregoing resolution was offered by Council Member Paul S. Vrooman, who moved its adoption and was seconded by Council Member Gail Betancourt, and upon being put to a vote, the vote was as follows:

Daniel L. Adams	Aye	Leonard Anthony	Aye
Gail Betancourt	Aye	Nancy McCue, Vice Chair	Aye
Paul S. Vrooman	Aye		

Timothy G. Sander, Chair Absent

The Chair thereupon declared the resolution duly passed and adopted this 21st day of March 2002.

I hereby certify that the above information reflects the action of the Council.

Henry Davis, Executive Secretary

RESOLUTION NO. CC15-05-02

RESOLUTION OF SOUTH BAY COMMUNITY COUNCIL (15) ISSUING RECOMMENDATION ON OCTOBER 2001 CYCLE AMENDMENT APPLICATION NO. 10 REQUESTING SMALL SCALE AMENDMENT TO THE COMPREHENSIVE DEVELOPMENT MASTER PLAN LAND USE PLAN MAP

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Gail Betancourt	Aye	Nancy McCue, Vice Chair	Aye
Paul S. Vrooman	Aye		

Timothy G. Sander, Chair Absent

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Daniel L. Adams	Aye	Leonard Anthony	Aye
Gail Betancourt	Aye	Nancy McCue, Vice Chair	Aye
Paul S. Vrooman	Aye		

Timothy G. Sander, Chair Absent

The Chair thereupon declared the resolution duly passed and adopted this 21st day of March 2002.

I hereby certify that the above information reflects the action of the Council.

Henry Davis, Executive Secretary

CZAB15-22-02
Administrative Reformation

WHEREAS, **SUMMERVILLE DEVELOPMENT, INC.** applied for the following:

To permit the reformation of Resolution No. CZAB15-22-02 in order to correct a scrivener's error in the legal description.

From: SUBJECT PROPERTY: EXHIBIT "B": The NE ¼ of the SE ¼, less the north 902.55' and the north ½ of the SE ¼ of the SE ¼, less the street dedication, in Section 24, Township 56 South, Range 39 East. LESS that W/ly portion described as follows: Commence at the Southeast corner of the NE ¼ of the SE ¼ and run N0°37'15'W along the east line of the SE ¼ of Section 24, Township 56 South, Range 39 East for a distance of 422.88' to a point; thence run S88°18'35"W along a line being 902.55' from the north line of the SE ¼ of said Section 24, measured at right angle for a distance of 1,009.78' to the Point of beginning; thence continue S88°18'35"W for a distance of 330.26' to a point; thence run S0°42'47"E for a distance of 757.84' to a point; thence run N88°9'38"E for a distance of 330.52' to a point; thence run N0°43'53"W, for a distance of 756.98' to the Point of beginning. EXHIBIT "C": The north ½ of the SW ¼ of the SW ¼ of the SW ¼ of Section 19, Township 56 South, Range 40 East, less the west 35' thereof. AND: The SW ¼ of the NW ¼ of the SW ¼ less the east 175' of the north 75' and the NW ¼ of the SW ¼ of the SW ¼ in Section 19, Township 56 South, Range 40 East. AND: The north ¾ o f the west ½ of the east ½ of the SW ¼ of the SW ¼ of Section 19, Township 56 South, Range 40 East, less the south 65' thereof for road. EXHIBIT "D":

Commence at the Southeast corner of the NE ¼ of the SE ¼ and run N0°37'15'W along the east line of the SE ¼ of Section 24, Township 56 South, Range 39 East for a distance of 422.88' to a point; thence run S88°18'35"W along a line being 902.55' from the north line of the SE ¼ of said Section 24, measured at right angle for a distance of 1,009.78' to the Point of beginning; thence continue S88°18'35"W for a distance of 330.26' to a point; thence run S0°42'47"E for a distance of 757.84' to a point; thence run N88°9'38"E for a distance of 330.52' to a point; thence run N0°43'53"W, for a distance of 756.98' to the Point of beginning.

To: SUBJECT PROPERTY: EXHIBIT "B": The NE ¼ of the SE ¼, less the north 902.55' and the north ½ of the north ½ of the SE ¼ of the SE ¼, less the street dedication, in Section 24, Township 56 South, Range 39 East. LESS that W/ly portion described as follows: Commence at the Southeast corner of the NE ¼ of the SE ¼ and run N0°37'15'W along the east line of the SE ¼ of Section 24, Township 56 South, Range 39 East for a distance of 422.88' to a point; thence run S88°18'35"W along a line being 902.55' from the north line of the SE ¼ of said Section 24, measured at right angle for a distance of 1,009.78' to the Point of beginning; thence continue S88°18'35"W for a distance of 330.26' to a point; thence run S0°42'47"E for a distance of 757.84' to a point; thence run N88°9'38"E for a distance of 330.52' to a point; thence run N0°43'53"W, for a

distance of 756.98' to the Point of beginning. AND The north ½ of the SW ¼ of the SW ¼ of the SW ¼ of Section 19, Township 56 South, Range 40 East, less the west 35' thereof. AND: The SW ¼ of the NW ¼ of the SW ¼ less the east 175' of the north 75' and the NW ¼ of the SW ¼ of the SW ¼ in Section 19, Township 56 South, Range 40 East. AND: The north ¾ of the west ½ of the east ½ of the SW ¼ of the SW ¼ of Section 19, Township 56 South, Range 40 East, less the south 65' thereof for road. AND

Commence at the Southeast corner of the NE ¼ of the SE ¼ and run N0°37'15'W along the east line of the SE ¼ of Section 24, Township 56 South, Range 39 East for a distance of 422.88' to a point; thence run S88°18'35"W along a line being 902.55' from the north line of the SE ¼ of said Section 24, measured at right angle for a distance of 1,009.78' to the Point of beginning; thence continue S88°18'35"W for a distance of 330.26' to a point; thence run S0°42'47"E for a distance of 757.84' to a point; thence run N88°9'38"E for a distance of 330.52' to a point; thence run N0°43'53"W, for a distance of 756.98' to the Point of beginning.

LOCATION: North of S.W. 248 Street and both sides of S.W. 117 Avenue, Miami-Dade County, Florida, and

WHEREAS, upon consideration having been given to the matter and to Section 33-310. 1 (A)(II) of the Code of Miami-Dade County, the Director makes the following findings:

1. That the administrative modification will allow the zoning action to accurately reflect the Board's intent.

2. That the administrative modification will comply with all the standards stated in Section 33-310.01.

3. That failure to approve this administrative modification will lead to an unjust result.

WHEREAS, the requested administrative modification to permit the reformation of Resolution No. Z-28-02 in order to correct the legal description was approved on October 3, 2002.

NOW THEREFORE BE IT RESOLVED by the Director of Miami-Dade County, Department of Planning and Zoning that the requested administrative modification to permit the reformation of Resolution CZAB15-22-02 to correct the legal description be and the same was hereby approved.

BE IT FURTHER RESOLVED, **that Resolution No. CZAB15-22-02, as reformed, shall read as follows:**

(1) AU to PAD

REQUEST #1 ON EXHIBITS "B" & "C"

(2) AU to EU-1

REQUEST #2 ON EXHIBIT "D"

OR IN THE ALTERNATIVE TO REQUESTS #1 & #2, REQUESTS #3 & #4 & #5

(3) AU to PAD

REQUEST #3 ON EXHIBIT "C"

AND:

(4) AU to RU-1

REQUEST #4 ON EXHIBIT "B"

(5) AU to EU-1

REQUEST #5 ON EXHIBIT "D"

SUBJECT PROPERTY: EXHIBIT "B" : The NE ¼ of the SE ¼, less the north 902.55' and the north ½ of the north ½ of the SE ¼ of the SE ¼ less the street dedication, in Section 24, Township 56 South, Range 39 East. LESS that W/ly portion described as follows: Commence at the Southeast corner of the NE ¼ of the SE ¼ and run N0°37'15'W along the east line of the SE ¼ of Section 24, Township 56 South, Range 39 East for a distance of 422.88' to a point; thence run S88°18'35"W along a line being 902.55' from the north line of the SE ¼ of said Section 24, measured at right angle for a distance of 1,009.78' to the Point of beginning; thence continue S88°18'35"W for a distance of 330.26' to a point; thence run S0°42'47"E for a distance of 757.84' to a point; thence run N88°9'38"E for a distance of 330.52' to a point; thence run N0°43'53"W, for a distance of 756.98' to the Point of beginning. AND The north ½ of the SW ¼ of the SW ¼ of the SW ¼ of Section 19, Township 56 South, Range 40 East, less the west 35' thereof. AND: The SW ¼ of the NW ¼ of the SW ¼ less the east 175' of the north 75' and the NW ¼ of the SW ¼ of the SW ¼ in Section 19, Township 56 South, Range 40 East. AND: The north ¾ of the west ½ of the east ½ of the SW ¼ of the SW ¼ of Section 19, Township 56 South, Range 40 East, less the south 65' thereof for road. AND

Commence at the Southeast corner of the NE ¼ of the SE ¼ and run N0°37'15'W along the east line of the SE ¼ of Section 24, Township 56 South, Range 39 East for a distance of 422.88' to a point; thence run S88°18'35"W along a line being 902.55' from the north

line of the SE ¼ of said Section 24, measured at right angle for a distance of 1,009.78' to the Point of beginning; thence continue S88°18'35"W for a distance of 330.26' to a point; thence run S0°42'47"E for a distance of 757.84' to a point; thence run N88°9'38"E for a distance of 330.52' to a point; thence run N0°43'53"W, for a distance of 756.98' to the Point of beginning.

LOCATION: North of S.W. 248 Street and both sides of S.W. 117 Avenue, Miami-Dade County, Florida, and

WHEREAS, a public hearing of the Miami-Dade County Community Zoning Appeals Board 15 was advertised and held, as required by law, and all interested parties concerned in the matter were given an opportunity to be heard, and at which time the applicant requested permission to withdraw the requests for district boundary changes from AU to PAD (Item #3), AU to RU-1 (Item #4), and AU to EU-1 (Item #5) and at which time the applicant proffered a Planned Area Development Agreement which among other things provided for:

1. That the Property shall be developed substantially in accordance with the plans entitled "Summerville", as prepared by Jarosz, Rosello & Balboa Architecture & Town Planning, dated stamped received July 15, 2002, and consisting of twenty-two (22) sheets, including cover sheet, and the landscape plans entitled, "Proposed 60 Acre P.A.D.," as prepared by Witkin Design Group, dated 7/9/02, and consisting of five (5) sheets (collectively, the "Plans"), as may be modified at the public hearing on the application

2. That the maximum number of dwelling units on the Property shall be two hundred sixty-seven (267) units, consisting of one hundred fifty-six (156) detached units and one hundred eleven (111) attached units.

3. That the Development of the Property is projected to commence no later than June 2003.

4. Additional Quantitative Data

    A. That the total number of bedrooms on the Property shall not exceed 935.

    B. That the total area of building coverage for the Property shall not exceed 474,976 square feet, or 22.67% of the Property.

    C. That the total area of common open space for the Property shall be in accordance with Section 33-284.27 (I) of the Code of Miami-Dade County, as may be amended from time to time. The private open space for each

unit shall be in accordance with Section 33-284.27 (K) of the Code of Miami-Dade County, as may be amended from time to time.

D. That the maximum density on the Property shall be 5.55 units per gross acre.

E. That the total green space on the Property, including Park Tracts, Bowers, and Sidewalks shall be 21.19 acres.

F. That the roadways within the proposed PAD shall be public roadways. The area of pavement shall be 8.03.

G. That the estimated population projection resulting from the development of the Property is 935 people, based on an average of 3.5 persons per dwelling unit: Type I, Type IIA, Type IIB, Type IIIA, Type IIIB, Type IVA, Type IVB, Type V, Type VIA, Type VIB. The development criteria for each type of dwelling unit is set forth below:

5. That the Owner agrees that the dwelling units within the Property shall be free-simple ownership, and that a homeowner's association shall be created for the maintenance of the common areas and easements. The homeowners' association shall also own and maintain all of the park tracts, green space, bowers, and sidewalks outside of the public right of way; said information shall be noted on the plat for the Property.

A. Type I (Large House). That the proposed interior gross area is 2,500 s.f.; the minimum unit private open space shall be 3,125 s.f.; the maximum lot coverage shall be 1,896 s.f.; the minimum lot area shall be 44,352 s.f.

B. Type IIA (Park House). That the proposed interior gross area is 2,500 s.f.; the minimum unit private open space be 3,062 s.f.; the maximum lot coverage be 1,780 s.f.; the minimum lot area shall be 4,140 s.f.

C. Type IIB (Park House). That the proposed interior gross area is 3,020 s.f.; the minimum unit private open space shall be 3,775 s.f.; the maximum lot coverage shall be 1,740 s.f.; the minimum lot area shall be 5,040 s.f.

D. Type IIIA (Large Courtyard House). That the proposed interior gross area is 2,950 s.f.; the minimum unit private open space shall be 1,770 s.f.: the maximum lot coverage shall be 2,430 s.f.; the minimum lot area shall be 4,140 s.f.

E. Type IIIB (Small Courtyard House). That the proposed unit interior gross area is 2,485 s.f.; the minimum unit private open space shall be 1,491 s.f.; the maximum lot coverage shall be 1,904 s.f.; the minimum lot square footage shall be 3,150 s.f.

F. Type IVA (Large Side yard House). That the proposed unit interior gross area is 2,800 s.f.; the minimum unit private open space shall be 3,500 s.f.; the maximum lot coverage shall be 2,135 s.f.; the minimum lot area shall be 5,040 s.f.

G. Type IVB (Small Side yard House). That the proposed unit interior gross area is 2,665 s.f.; the minimum unit private open space shall be 3, 020 s.f.; the maximum lot coverage shall be 1,725 s.f.; the minimum lot area shall be 4,050

H. Type V (Small House). 70'-76' Lot Depth: That the proposed unit interior gross area is 2,022 s.f.; the minimum unit private open space shall be 2,750 s.f.; the maximum lot coverage shall be 1,236 s.f.; the minimum lot area shall be 3,150 s.f.

90'-92' Lot Depth: That the proposed unit interior gross area is 2,330 s.f.; the minimum unit private open space shall be 2,912 s.f.; the maximum lot coverage shall be 2,120 s.f.; the minimum lot area shall be 4,140 s.f.

I. Type VIA (Small Attached House). That the proposed unit interior gross area is 2,520 s.f. ; the minimum unit private open space shall be 1,410 s.f.; the maximum lot coverage shall be 1,476 s.f. the minimum lot area shall be 2,310 s.f.

J. Type VIB (Large Attached House). That the proposed unit interior gross area is 2, 250 s.f.; the minimum unit private open space shall be 1,410 s.f.; the maximum lot coverae shall be 1, 476 s.f.; the minimum lot area shall be 2,310 s.f.

6. That the Owner agrees that the dwelling units within the Property shall be free-simple ownership, and that a homeowner's association shall be created for the maintenance of the common areas and easements. The homeowners' association shall also own and maintain all of the park tracts, green space, bowers, and sidewalks outside of the public right of way; said information shall be noted on the plat for the Property.

7. That the Owner agrees that the accessory uses on the Property shall be limited to the following:

   A. Studio apartment, guest house, or loft as an accessory to the principal use. Said structure shall not be used for rental purposes.

   B. Pool Gazebo

   C. Plant conservatory/Greenhouse

   D. Exercise Room/Sauna/Toilets

8. That the Owner agrees to reserve in perpetuity the following lots for future roadway dedications: Park Tract 3 and Park Tract 4 (the "Future Roadway Dedications"), which shall serve as future connections to the parcels adjacent to the north and south (the "Adjacent Parcels") when those parcels are developed. Upon the approval of a final plat for the Adjacent Parcels, showing connections to the Property that align with the Future Roadway Dedications, the Owner shall construct or cause the construction of public roadways (the "Roadways") as connections to the Adjacent Parcels. Provided the roadways have not been constructed prior to the issuance of a building permit for the 267th dwelling unit, the Owner shall provide such legally sufficient financial assurances, as may be acceptable to the Director of the Public Works Department, to assure the Director of the Public Works Department that the Owner will have the financial ability to construct the Roadways. The Owner agrees to maintain Park Tract 3 and Park Tract 4 in a manner that complies with the Miami-Dade County Code, until such time as said lots are improved as roadways. Notwithstanding anything in this Agreement to the contrary, the obligation of the Owner to build the Roadways shall ten (10) years following the issuance of a building permit for the 267th dwelling unit.

9. That the Owner agrees to construct both halves of the southernmost east-west roadway, including the entire traffic roundabout, which roadway and roundabout separate the Property from the "Future Mixed Use District" and "Future Fire Station Site", as designated on the Site Plan.

10. That the Owner agrees to provide permanent and safe access for pedestrian and vehicular traffic within the Property at all times. Access shall also be provided at all times to fire, police, health, sanitation and other public service personnel and vehicles. Furthermore, all streets or accessways shall be installed by the Owner, including, but not limited to, sidewalks, drainage facilities, water, sewers, and fire hydrants, meeting with the approval of the appropriate departments of Miami-Dade County.

11. That the Owner shall set aside for future conveyance to Miami-Dade County that certain 1± acre parcel of land (the "Fire Station Site"), which is legally described in Exhibit "B" to this Agreement, for the construction of a fire station. At he request of the Miami-Dade County Fire Rescue Department, prior to the approval of a tentative plat for any portion of the Property that is contiguous to the Fire Station Site, the Owner shall convey the Fire Station to Miami-Dade County.

    The fire station Site shall be platted, at the Owner's cost and expense, at the time of platting of any portion of the Property that is contiguous to the Fire Station Site. The Fire Station Site shall be filled to 12" above the crown of the road compacted and stabilized to 3,000 pounds per square foot ("psf") with all utilities to the site (water, sewer, electrical, telephone) ready for connection and of sufficient quality and quantity to support a fire station site. The Owner shall provide engineering certification attesting to the compacting and stabilization to 3,000 psf and that fill and subsoil are clean and free of hazardous materials. The Owner shall provide either an environmental assessment by a reputable environmental firm or a certification by the Department of Environmental assessment by a reputable

environmental firm or a certification by the Department of Environmental Resources Management ("DERM") that environmental requirements have been met and that the Fire Station Site is free of hazardous materials and/or gases. The Fire Station Site shall be conveyed by statutory warranty deed, free of all encumbrances and liens subsequent to the verification that all site work is complete and meets the standards set forth in this paragraph. The Owner shall provide an opinion of title and a topological survey of the Fire Station Site prior to final transfer. The conveyance of the Fire Station Site may entitle the Owner to a credit against the impact fees that would be assessed against the development of the Property under the provisions of Chapter 33J of the Code of Miami –Dade County. Should Miami-Dade County elect not to accept conveyance of the Fire Station Site, title to the Fire Station Site shall revert to the Owner and the Owner shall be released of any further obligation under this paragraph.

12. That prior to the issuance of the first certificate of occupancy for the Property, the Owners shall identify a 2.5± acre site within the Property (the "School Site") for the construction and operation of a K-8 charter school (the "Charter School"). The Charter School shall be subject to approval by the County under separate application. Said application shall be subject to review and approval by the Public Works Department Traffic Concurrency Section, in addition to the review and approvals required by local and state laws and regulations. Subject to said approvals, the Charter School shall be in operation prior to the issuance of a certificate of occupancy for the one hundred sixty-sixth (166th) dwelling unit. Until all of the required approvals for the Charter School are granted, the School Site shall be maintained as open/green space. In the event that the Charter School is not approved by all of the appropriate agencies, the School Site remain as open/green space, and the Owner may proceed with the development of the Property as provided herein.

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 district boundary changes to PAD (Item #1) and EU-1 (Item #2) would be compatible with the neighborhood and area concerned and would not be in conflict with the principle and intent of the plan for the development of Miami-Dade County, Florida, and should be approved, that the proffered Planned Area Development Agreement should be accepted, and that the request to withdraw the

requested district boundary changes from AU to PAD (Item #3), AU to RU-1 (Item #4), and AU to EU-1 (Item #5) should be granted, and

WHEREAS, a motion to approve Item #1, accept the proffered Planned Area Development Agreement and to grant the withdrawal of Items #3, 4, & 5 was offered by Nina Betancourt, seconded by Paul S. Vrooman, and upon a poll of the members present the vote was as follows:

Daniel L. Adams	aye	Nina Betancourt	aye
Leonard Anthony	nay	Paul S. Vrooman	aye

Nancy McCue aye

NOW THEREFORE BE IT RESOLVED by the Miami-Dade County Community Zoning Appeals Board 15, that the requested district boundary changes to PAD (Item #1) and EU-1 (Item #2) be and the same are hereby approved and said properties are hereby zoned accordingly.

BE IT FURTHER RESOLVED that, pursuant to Section 33-6 of the Code of Miami-Dade County, Florida, the County hereby accepts the proffered covenant and does exercise its option to enforce the proffered restrictions wherein the same are more restrictive than applicable zoning regulations.

BE IT FURTHER RESOLVED that the request to withdraw district boundary changes from AU to PAD (Item #3), AU to RU-1 (Item #4), and AU to EU-1 (Item #5) be and the same are hereby approved and said Items are hereby withdrawn without prejudice.

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

PASSED AND ADOPTED this 3rd day of October, 2002.

Hearing No. 02-6-CZ15-1
ej

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

I, Earl Jones, as Deputy Clerk for the Miami-Dade County Department of Planning and Zoning as designated by the Director of the Miami-Dade County Department of Planning and Zoning and Ex-Officio Secretary of the Miami-Dade County Community Zoning Appeals Board CZAB 15, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of Resolution No. CZAB15-22-02 adopted by said Community Zoning Appeals Board at its meeting held on the 3rd day of October, 2002.

IN WITNESS WHEREOF, I have hereunto set my hand on this the 16th day of October, 2002.

Earl Jones, Deputy Clerk (3230)
Miami-Dade County Department of Planning and Zoning

SEAL

This instrument was prepared by:

Name: Alan S. Krischer
Address: Akerman Senterfitt, P.A.
One Southeast Third Avenue, 28th Floor
Miami, Florida 33131

RECEIVED BY CLERK
Item # 03-262
CZAB # 15 Exhibit # A-3
OCT 12 2004
CLERK OF THE BOARD

(Space Reserved for Clerk of the Court)

DECLARATION OF RESTRICTIONS

WHEREAS, the undersigned property owner (the "Owner"), holds the fee simple title to that certain parcel of land, which is legally described as follows:

See attached Exhibit "A"

(hereinafter the "Property").

NOW, THEREFORE, in order to assure Miami-Dade County (the "County") that the representations made by the Owner during consideration of Public Hearing No. 03-262 (the "Application") will be abided by, the Owner freely, voluntarily and without duress, makes the following Declaration of Restrictions covering and running with the Property:

1. **Land Use Restriction.** Notwithstanding the zoning classification, the uses on the Property shall be restricted to a temporary sales office and ancillary uses serving that temporary sales office until such time as the Owner complies with the requirements of Paragraph #2 below.

Section-Township-Range: 16-54-40
Folio Numbers: 30-4016-003-0010
{M2036824;1}

2. **Administrative Site Plan Approval.** Prior to making any use of the Property other than those described in Paragraph #1 above, the Owner shall seek and obtain an Administrative Site Plan Approval ("ASPR") from the County's Planning and Zoning Department, or such successor agency or municipality as may have jurisdiction over the Property. Upon obtaining such ASPR, the Property may thereafter be used for such uses as are consistent with the ASPR (as such is approved or may be amended by the County from time to time) and the underlying zoning.

3. **Miscellaneous.**

A. **County Inspection**. As further part of this Declaration, it is hereby understood and agreed that any official inspector of Miami-Dade County, or its agents duly authorized, may have the privilege at any time during normal working hours of entering and inspecting the use of the premises to determine whether or not the requirements of the building and zoning regulations and the conditions herein agreed to are being complied with.

B. **Covenant Running with the Land**. This Declaration on the part of the Owner shall constitute a covenant running with the land and may be recorded, at the Owner's expense, in the public records of Miami-Dade County, Florida, and shall remain in full force and effect and be binding upon the undersigned Owner, and its heirs, successors and assigns until such time as the same is modified or released. These restrictions during their lifetime shall be for the benefit of, and limitation upon, all present and future owners of the real property and for the benefit of Miami-Dade County

and the public welfare. Owner, and its heirs, successors and assigns, acknowledge that acceptance of this declaration does not in any way obligate or provide a limitation on the County.

C. **Term**. This Declaration is to run with the land and shall be binding on all parties and all persons claiming under it for a period of thirty (30) years from the date that this Declaration is recorded, after which time it shall be extended automatically for successive periods of ten (10) years each, unless an instrument signed by the, then, owner(s) of the Property has been recorded agreeing to change the covenant in whole, or in part, provided that the Declaration has first been modified or released by Miami-Dade County.

D. **Modification, Amendment, Release**. This Declaration of Restrictions may be modified, amended or released as to the land herein described, or any portion thereof, by a written instrument executed by the, then, owner(s) of all of the Property, including joinders of all mortgagees, if any, provided that the same is also approved by the Board of County Commissioners or Community Zoning Appeals Board of Miami-Dade County, Florida, or other procedure permitted under the Miami-Dade County Code, whichever by law has jurisdiction over such matters, after public hearing, if required.

Should this Declaration of Restrictions be so modified, amended or released, the Director of the Miami-Dade County Department of Planning and Zoning, or the executive officer of the successor of such Department, or in the absence of such director or executive officer by his assistant in charge of the office in his absence, shall forthwith

execute a written instrument effectuating and acknowledging such modification, amendment or release.

E. **Enforcement**. Enforcement shall be by action against any parties or person violating, or attempting to violate, any covenants. The prevailing party in any action or suit pertaining to or arising out of this declaration shall be entitled to recover, in addition to costs and disbursements allowed by law, such sum as the Court may adjudge to be reasonable for the services of his attorney. This enforcement provision shall be in addition to any other remedies available at law, in equity or both.

F. **Authorization to Withhold Permits and Inspections**. In the event the terms of this Declaration are not being complied with, in addition to any other remedies available, the County is hereby authorized to withhold any further permits, and refuse to make any inspections or grant any approvals, until such time as this Declaration is complied with.

G. **Election of Remedies**. All rights, remedies and privileges granted herein shall be deemed to be cumulative and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other additional rights, remedies or privileges.

H. **Presumption of Compliance**. Where construction has occurred on the Property or any portion thereof, pursuant to a lawful permit issued by the County, and inspections made and approval of occupancy given by the County, then such construction,

inspection and approval shall create a rebuttable presumption that the buildings or structures thus constructed comply with the intent and spirit of this Declaration.

I. **Severability**. Invalidation of any one of these covenants, by judgment of Court, shall not affect any of the other provisions which shall remain in full force and effect. However, if any material portion is invalidated, the County shall be entitled to revoke any approval predicated upon the invalidated portion.

J. **Recording**. This Declaration shall be filed of record in the public records of Miami-Dade County, Florida, at the cost to the Owner, following the adoption by the Miami-Dade County Board of County Commissioners or Community Zoning Appeals Board of a resolution approving the Application.

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

L. **Owner.** The term Owner shall include the Owner, and its heirs, successors and assigns.

[Signature Pages Follow]

IN WITNESS WHEREOF, we have hereunto set our hands and seal this 3rd day of DECEMBER, 2003.

WITNESSES:

Signature
JUSTO L. FERNANDEZ
Printed Name

Signature
VIVIAN MARAZZI
Printed Name

SUMMERVILLE DEVELOPMENT, INC.,
a Florida corporation

By: _____

STATE OF FLORIDA)
) SS
COUNTY OF DADE)

The foregoing instrument was acknowledged before me by MICHAEL CORREA-CARELLA as PRESIDENT of Summerville Development, Inc., a Florida corporation, and for the purposes stated herein on behalf of the company. He is personally known to me or has produced DL as identification.

Witness my signature and official seal this 3rd day of DECEMBER, 2003, in the County and State aforesaid.

My Commission Expires:

VIVIAN T. MARAZZI
MY COMMISSION # DD 144863
EXPIRES: August 26, 2006
Bonded Thru Notary Public Underwriters

_____
Notary Public - State of Florida

_____
Printed Name

Section-Township-Range: 19-56-40
Folio Numbers: 30-6019-000-0150 & 30-6019-000-0050
{M2036824;1}

EXHIBIT "A"

Legal Description

THE SOUTH HALF (S ½) OF THE SOUTHWEST QUARTER (SW ¼) OF THE SOUTHWEST QUARTER (SW ¼) OF THE SOUTHWEST QUARTER (SW ¼) OF SECTION 19, TOWNSHIP FIFTY SIX (56) SOUTH, RANGE 40 EAST, LYING AND BEING IN MIAMI-DADE COUNTY, FLORIDA. LESS THE SOUTH 65.00 FEET AND LESS THE WEST 40.00 FEET THEREOF, AND

THE WEST 86 FEET OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST QUARTER (SW ¼) OF THE SOUTHWEST QUARTER (SW ¼) OF SECTION 19, TOWNSHIP FIFTY SIX (56) SOUTH, RANGE 40 EAST, LESS THE SOUTH 65.00 FEET THEREOF FOR ROAD, LYING AND BEING IN MIAMI-DADE COUNTY, FLORIDA

JOINDER AND CONSENT OF MORTGAGEE

COMMERCEBANK, NA, being the mortgagee under that certain mortgage from Summerville Development, Inc., recorded at Official Records Book 21036 at Page 1898 of the Public Records of Miami-Dade County, Florida, covering all or a portion of the property described in the foregoing Declaration of Restrictive Covenants, encumbering all or portions of the real property described in the foregoing Declaration of Restrictive Covenants, hereby consents to and acknowledges that the terms of the Declaration of Restrictive Covenants are and shall be binding upon the undersigned and its successors in title..

Signed, sealed and delivered in the presence of:

_____

_____

COMMERCEBANK, N.A.

By: _____

Name: _____

Title: _____

(CORPORATE SEAL)

STATE OF FLORIDA)
) ss:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 3rd day of December, 2003, by JUSTO L. FERNANDEZ, SENIOR VICE-PRESIDENT of **COMMERCEBANK, N.A.**, on behalf of the bank. He/she is personally known to me or has produced _____ (type of identification) as identification.

_____

NOTARY PUBLIC, STATE OF FLORIDA

VIVIAN T. MARAZZI
MY COMMISSION # DD 144863
EXPIRES: August 26, 2006
Bonded Thru Notary Public Underwriters

_____

(Print, Type or Stamp Commissioned Name of Notary Public)

SMALLER SCALE !!

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711? Are we talking strip center? Are we talking big boxes?

MR. ROSELLO: No, under the -- the BU-1 selection was actually done in our office under a great study in respect to what was originally proposed was Summerville. The intent here is to create a very small-scale neighborhood businesses, mom-and-pop type shops that you can get to by foot. You would not see any parking from the streets whatsoever. They're all internal to the buildings. They're basically small two-story buildings. They're not out of character with the residential fabric that's being proposed for Summerville right now.

So, basically, from the street you are going to have multiple entrances coming in off 248 and you are going to have multiple entrances coming off of 117, just like the fown itself is working, so that it's totally porous. You enter into the backs of these buildings and then you filter back out into the street. So what you have is a walkable street scape. There is no strip shopping mode. There is no 711 per se. There is no gas station. A gas station is not even permitted under a BU-1 and no store can ever exceed more than 4,000 square feet. The stores that we're contemplating here are much, much smaller in scale, so that you can have a small

antique store, a small clothier, you can have an ice cream shop! They're basically day-to-day functions that the neighborhood itself needs. You're going to have maybe a pet shop, a pet groomer. These are basically just services that not only Summerville themselves are going to use, but adjacent neighborhood is going to use as well. So they don't have to get into their car and drive all the way down to U.S.1, especially if 248 Street is as congested as everybody is suggesting.

Now, part of any new development that happens on 248 Street will have to improve 248 Street, because that is an 86-foot right-of-way, so that development over time will have to create a four-lane highway, at least half of it on its side of the property as part of any development just like Summerville is doing on 117 Avenue. So that neighborhood in scale is going to be very compatible to what is being proposed in Summerville right now. The character of the buildings are going to be very similar. It's going to be very walkable. It's going to have very lush landscape. It's not a strip shop. You don't see a sea of asphalt in front of this.

Actually, what it becomes is -- it actually -- it's the -- in the old days, that would have come first. The town would have come later. In this case, we're going to build town. You have Islandia. You have Lennar

Single Folio

MR. DORTA-DUQUE: And last, but not least, for this 500 or, I don't know, half-a-mile radius -- I know that it's nice to walk to the 711.

MR. BERNSTEIN: Let me just interrupt you for a second. This is an opportunity for cross-examination. It's not an opportunity for another speech.

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MR. DORTA-DUQUE: Okay, thank you.

COUNCILMAN VROOMAN: Okay, Mr. Krischer.

MR. KRISCHER: With the Chair's permission, I will not rebut or add anymore testimony. I would like to clarify, just if there is a legal subject property question, this property from my pen south is more than 4.3 acres. It's actually close to six acres. The subject property of this application does not include the acreage that as part of the Summerville P.A.D. application was to be dedicated to the fire station. This property is the single tax folio that is the remainder of that property south of where I designated my pen and includes this house. It is that property, if there's any question concerning what property is the subject of this application.

COUNCILMAN VROOMAN: Okay, thank you very much. That concludes our public hearing.

I will now ask the Council if they have any questions.

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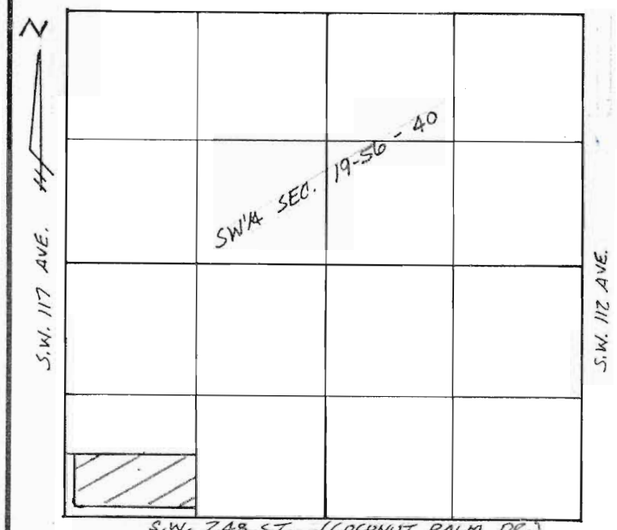
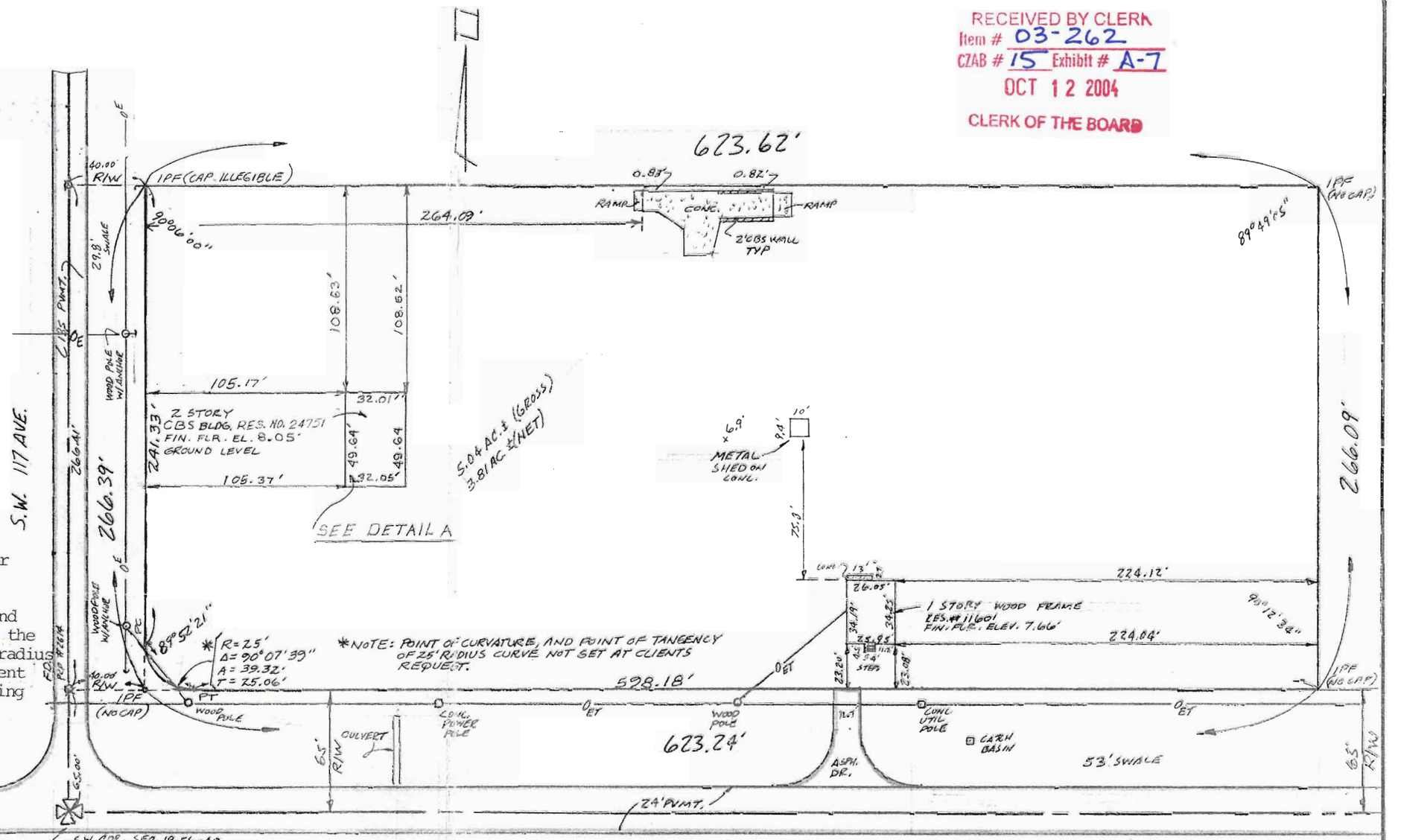


LOCATION SKETCH
SCALE: 1" = 800'

LEGAL DESCRIPTION

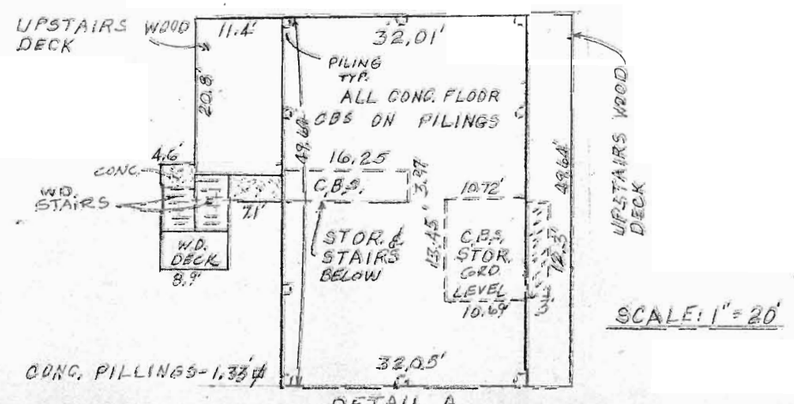
The South½ of the SW¼, of the SW¼, of the SW¼, of Section 19, Township 56 South, Range 40 East, Dade County, Florida, LESS the following for road right of way: The West 40 feet and the South 65 feet and the area bounded by the East line of the West 40 feet of the SW¼ of said Section 19, and bounded by the North line of the South 65 feet of the SW¼ of said Section 19, and bounded by a 25 foot radius arc concave to the Northeast, said arc being tangent to both of the last described lines; lying and being in Dade County, Florida.



LEGEND

ASPH. = ASPHALT	CBS= CONCRETE BLOCK STRUCTURE
CLR. = CLEAR	C/L= CENTERLINE
CONC. = CONCRETE	IPF= 1/2" IRON PIPE FOUND
ENCR. = ENCROACHMENT	IPS= 1/2" IRON PIPE SET LB#4787
FD. = FOUND	OE= OVERHEAD ELECTRIC LINE
LT. = LIGHT	OT= OVERHEAD TELEPHONE LINE
MEAS. = MEASURED	PCP= NAIL & METAL DISC
MON. = MONUMENT	P/L= PROPERTY LINE
SEC. = SECTION	R/W= RIGHT OF WAY
S/L= SECTION LINE	UE= UTILITY EASEMENT
W/= WITH	UP= UTILITY POLE
WD. = WOOD	

Certified to: Combank Mortgage Company, Marcus & Marcus P.A., Attorneys Title Insurance Fund, and Wilfred J. & Pamela P. Vick



SCALE: 1" = 20'

DETAIL A

MAKOWSKI & RICE, INC. TEL. (305)247-1356
LAND SURVEYORS-ENGINEERS-PLANNERS, 1135 N. KROME AVE., HMSTD., FL. 33030

PREPARED FOR: WILFRED J. & PAMELA P. VICK

TYPE OF SURVEY: BOUNDARY

FEDERAL FLOOD ZONE: AE EL 7' 0358 F

I HEREBY CERTIFY that this "SKETCH OF SURVEY" of the property described hereon is true and correct to the best of my knowledge and belief as recently surveyed and drawn under my supervision. This survey complies with the Minimum Technical Standards adopted by the Florida State Board of Land Surveyors pursuant to Chapter 21 HH-6, Florida Administative Code.

VALID COPIES OF THIS SURVEY WILL BEAR THE EMBOSSED SEAL OF THE ATTESTING LAND SURVEYOR

Date of field survey 3-20-91

By Frank Makowski
FRANK MAKOWSKI
PROFESSIONAL LAND SURVEYOR No. 2614
STATE OF FLORIDA

1) Elevations when shown, refer to National Geodetic Vertical Datum 1929 Adjustment (NGVD29).
2) Unless otherwise noted, this firm has not attempted to locate footings and/or foundations.
3) This survey is subject to easements, rights-of-way, and other matters which might be reflected in a search of title to the subject lands.

BENCHMARK DESCRIPTION – DADE CO. BM #U-727, EL. 5.52'

BASIS OF BEARING SYSTEM

REVISIONS LEGAL DESCP.	BY FLM	FB/PG ——	DATE 3/21/91
DRAWN BY	SCALE	DATE	FB/PG	JOB#
JLM	1"=60'	3-20-91	169/27	85-1744

315702

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SURVEY

SINGLE FOLIO

VICK

248 st + 117 AVE

Farmer cannot sell produce unless grown on that particular property, Yet this builder has the audacity of requesting a Zoning Change where he can sell the houses he is growing on another property on this one ; which although part of the parcel the purchase the kept out of the original Rez zoning request