BERCOW & RADELL
ZONING, LAND USE AND ENVIRONMENTAL LAW

Direct: 305-377-6235
E-Mail: BFernandez@brzoninglaw.com

**VIA HAND DELIVERY**

April 21, 2006

Ms. Corina S. Esquijarosa
Zoning Evaluator II
Miami-Dade County
Department of Planning & Zoning
111 NW 1st Street, 11th Floor
Miami, FL 33128

RE: Emily Development – PH # 05-317
10 Acres Southeast corner of SW 192nd Avenue and SW 316th Street

Dear Ms. Esquijarosa:

This law firm represents Emily Development, LLC (the Applicant), with respect to the above captioned application. This letter shall serve as the Applicant's revised letter of intent.

The Applicant had initially requested a rezoning of the property from EU-M to Modified Single Family Residential, RU-1MA in order to avoid being barred by the doctrine of res judicata. However, the Applicant believes that the doctrine of res judicata should not bar the approval of RU-1 zoning at this time since the circumstances have changed considerably since the Application was originally considered by the Board and hereby amends its request in order to rezone the property from EU-M to RU-1

Three recent zoning approvals from AU to RU-1 for properties of comparable size in the immediate and nearby area as the subject property indicate a significant change to the area. The zoning history of these approvals emphasizes a growing trend of properties at least 50% surrounded by AU being changed to RU-1.

The first property is a 10 acre parcel located at the northwest corner of SW 188 Avenue and SW 320 Street. At the time of the application, the northeast corner of the property touched an RU-1 neighborhood. The property was adjacent to AU to the north and west, with the City of Homestead located to the south and east. The next closest RU-1 was west of SW 192 Avenue. Under these conditions, the CZAB approved a district boundary change to RU-1 instead of the requested RU-1M(a). See CZAB14-18-05, 07/07/05.

The second property is a 10 acre parcel located directly to the west of the first property, at the northeast corner of SW 190 Avenue and SW 320 Street. At the time of the application, the property was bordered by AU to the east and north, EU-M to the west and the City of Homestead to the south. Until the CZAB approved a change to RU-1 for the property to the east a few months prior to its approval of the same change to this property, the property did not touch a RU-1 zone. The nearest RU-1 zone was located west of SW 192 Avenue. In the Miami-Dade County Planning Department Staff Recommendation, dated 10/12/05, Staff stated that this property is "located in an area that is undergoing transformation from agricultural zoning/uses to residential urban uses. This is occurring, not only in the City of Homestead lying to the south of SW 320 Street, but also in the agricultural unincorporated area lying to the north, where this tract is located." Staff Recommendation, page 5. By staff's own words, the single district boundary approval from AU to RU-1 on the property to the east, coupled with similar changes in the municipality of Homestead, in which the CZAB has no jurisdiction, was enough to signify a trend towards residential urban uses. The CZAB approved the change to RU-1, instead of the requested RU-1M(a). See CZAB14-41-05, 10/17/05.

The third property is a 5 acre parcel located west of SW 187 Avenue and approximately 330' south of SW 312 Avenue. The property was surrounded on three sides by AU, to the north, west and south, with I-1 in the City of Homestead to the east. The property did not abut any RU-1 zone. The nearest RU-1 zones were located beyond the surrounding AU zone, north of SW 312 Street, south of SW 316 Street and west of SW 189 Avenue. In the Staff Recommendation Report dated 11/10/05, Staff stated that the "surrounding area is predominately zoned AU and RU-1 and developed with single-family residences." As such, Staff recommended that the change to RU-1 would be compatible with the surrounding area, even though the property did not abut any RU-1 zone. The CZAB agreed and approved the change to RU-1. See CZAB14-47-05, 11/15/05.

These three district boundary changes from AU to RU-1 in the vicinity of the subject property, occurred in a four-month period roughly two years after the denial of a change from EU-M to RU-1 on the subject property and after the subject application was filed. Collectively, these three recent approvals account for a change of 25 acres of AU to RU-1, nearly doubling the acreage of older RU-1 zones in the general area. The trend in this area to RU-1 is unmistakable and the subject property fits in the same fashion as the three above approvals.

For all of the foregoing reasons, we believe that the doctrine of res judicata does not present a bar to the rezoning of the property to RU-1 and we hereby request your favorable review and recommendation of our amended request. Enclosed is the covenant that the Applicant intends to proffer to the CZAB which ties the property to the lot layout plan previously submitted.

Sincerely,

Ben Fernandez

BF/bl

cc: Juan Carlos Uribarri

**This instrument was prepared by:**
**Name:** Ben Fernandez, Esq.
**Address:** 200 South Biscayne Boulevard
Suite 850
Miami, FL 33131
305-377-6235 phone
305-377-3222 fax

**(Space reserved for Clerk)**

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## DECLARATION OF RESTRICTIONS

*WHEREAS*, the undersigned 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. 05-317 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 Bellon & Milanes Architects, Planners entitled, Countryside Estates, dated stamped received the 16th day of February, 2006, 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) Development shall not exceed 6 units per acre.

**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 approved by the Board of County Commissioners or Community Zoning Appeals Board of Miami-Dade County, Florida, whichever by law has jurisdiction 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 of the Owners following the approval of the Application. This Declaration shall become effective immediately upon recordation. Notwithstanding the previous sentence, if any appeal is filed, and the disposition of such appeal results in the denial of the application, in its entirety, then this Declaration shall be null and void and of no further effect. Upon the disposition of an appeal that results in the denial of the Application, in its entirety, and upon written request, the Director of the Planning and Zoning Department or the executive officer of the successor of said department, or in the absence of such director or executive officer by his/her assistant in charge of the office in his/her absence, shall forthwith execute a written instrument, in recordable form, acknowledging that this Declaration is null and void and of no further effect.

**Acceptance of Declaration.** 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 or dedication.

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

[Execution Pages Follow]

## ACKNOWLEDGMENT
## CORPORATION

Signed, witnessed, executed and acknowledged on this ____ day of _____, 2006.

*IN WITNESS WHEREOF*, _____ (Corporate name) has caused these presents to be signed in its name by its proper officials.

**Witnesses:**

**Emily Development, LLC**
5333 Collins Avenue, Suite 1408
Miami Beach, FL 33140

_____
Signature

_____
By: Juan Carlos Uribarri

_____
Print Name

_____
Signature

_____
Print Name

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me by Juan Carlos Uribarri the Managers of Emily Development, LLC, on behalf of the corporation. He is personally known to me or has produced _____, as identification.

Witness my signature and official seal this _____ day of _____, 2006, in the County and State aforesaid.

_____
Notary Public-State of _____

_____
Print Name

My Commission Expires:

**(Space reserved for Clerk)**

## JOINDER BY MORTGAGEE CORPORATION

The undersigned Regions Bank, an Alabama banking corporation and Mortgagee under that certain Florida Real Estate Mortgage Assignment of Leases and rents and Security Agreement given by Emily Development, LLC dated the 20th day of January, 2006, and recorded in Official Records Book 24180, Page 2326, of the Public Records of Miami-Dade County, Florida, covering all/or a portion of the property described in the foregoing agreement, does hereby acknowledge that the terms of this agreement are and shall be binding upon the undersigned and its successors in title.

*IN WITNESS WHEREOF*, these presents have been executed this _____ day of April, 2006.

**Witnesses:**

_____
Signature

_____
Print Name

_____
Signature

_____
Print Name

**Regions Bank, an Alabama banking corporation**
2800 Ponce de Leon Boulevard
Coral Gables, FL 33134

By _____
**(President, Vice-President or CEO*)**
Print Name: _____
**[*Note: All others require attachment of original corporate resolution of authorization]**

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me by _____ _____ the _____ of Regions Bank, an Alabama banking corporation, on behalf of the corporation. He/She is personally known to me or has produced _____, as identification.

Witness my signature and official seal this ____ day of April,2006, in the County and State aforesaid.

_____
Notary Public-State of _____

_____
Print Name

My Commission Expires:

**EXHIBIT "A"**

**Legal Description**

The NW ¼ of the SW ¼ of the NE ¼ of Section 14, Township 57 South, Range 38 East, Less the North 25 feet thereof, and Less the West 35 feet of the North ½ thereof, lying and being in Miami-Dade County, Florida.

Tax Folio #: 30 7814 000 0270

# OPINION OF TITLE

To: Miami-Dade

With the understanding that this Opinion of Title is furnished to Miami-Dade County, as an inducement of a Declaration of Restrictions or in compliance with Chapter 28, and as an inducement for acceptance of a proposed final subdivision plat covering, covering the real property, hereinafter described, it is hereby certified that I have examined an Owners Title Policy Number OPM-1852154, issued through Attorneys Title Insurance Fund, Inc, dated September 2, 2003, at 13:24:51 P.M.., and a Mortgagee Policy FA-36-1160988 issued through First American Title Insurance Company, dated January 26, 2006, at 11:49 A.M. and the following:

First American Title Insurance Company title up date covering the period:

From November 30, 2005 through January 27, 2006 at 6:00 A.M.

and

From January 27, 2006, at 6:00 A. M. through February 21,2006, at 6:00 A.M.

inclusive, of the following described real property:

The NW 1/4 of the SW 1/4 of the NE 1/4 of Section 14, Township 57 South, Range 38 East, less the North 25 feet thereof, and less the West 35 feet of the North ½ thereof, lying and being in Miami-Dade County, Florida.

**I am in the opinion that on the last mentioned date the fee simple title to the above described real property was vested in:**

EMILY DEVELOPMENT LLC, a Florida limited liability company

**Parties comprising the Limited Liability company and parties authorized to execute documents on behalf of the company**

Angel Menes, Manager
Juan Carlos Uribarri, Manager

Subject to the following encumbrances, liens and other exceptions:

1. RECORDED MORTGAGES:

(a) Subject to that certain Florida Real Estate Mortgage, Assignment of Leases and Rents and Security Agreement given by Emily Development LLC, a Florida limited liability company to Regions Bank, an Alabama banking corporation dated January 20, 2006, and recorded January 26, 2006, in Official Records Book 24180, at Page 2326, of the Public Records of Miami-Dade County, Florida, in the original amount of $1,500,000.00 and UCC Financing Statement filed for record January 26, 2006, in Official Records Book 24180, at Page 2344, of the Public Records of Miami-Dade County, Florida.

2. RECORDED CONSTRUCTION LIENS, CONTRACT LIENS AND JUDGMENTS:

None

3. GENERAL EXCEPTIONS:

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

(b) Rights of persons other than the above owners who are in possession.

(c) Facts that would be disclosed upon accurate survey.

(d) Any unrecorded labor, mechanics' or materialmens' liens.

(e) Zoning and other restrictions imposed by governmental authority.

2. SPECIAL EXCEPTIONS:

(a) Any matters appearing on tentative plat and boundary survey prepared by Manuel G. Vera and Associates, Inc., Job No. 04-05-37.

NOTE: **All of the recording information contained herein refers to the Public Records of Dade County, Florida, unless otherwise indicated.**

I, hereby certify that I have reviewed all the aforementioned encumbrances and exceptions.

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

| Name | Interest | Special Exception |
|---|---|---|
| EMILY DEVELOPMENT LLC a Florida limited liability company | Fee Simple Owner | |
| Regions Bank, an Alabama Banking Corporation | Mortgagee | Recorded Mortgages |

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

| Number | Company | Period Covered |
|---|---|---|
| OPM-1852154 | Attorneys Title Insurance Fund, inc. | September 2, 2003, at 13:24:51 P.M. |
| FA-36-1160988 | First American Title Insurance Company | January 26, 2006, at 11:49 A.M. |
| 1053970 | First American Title Insurance Company | November 30, 2005, through January 27, 2006 at 6:00 A.M. |
| 2053970 | First American Title Insurance Company | January 27, 2006, at 6:00 A.M. through February 21, 2006, at 6:00 A.M. |

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

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

Respectfully submitted this 15h day of March, 2006.

SIGNATURE

OSCAR R. RIVERA
PRINTED SIGNATURE

**Florida Bar No.: 329193**

SIEGFRIED, RIVERA, LERNER, DE LA TORRE & SOBEL, P.A.
201 Alhambra Circle, Suite 1102
Coral Gables, Florida 33134
Phone (305) 441-3334

**STATE OF FLORIDA**
**COUNTY OF MIAMI-DADE**

The foregoing instrument was acknowledged before me this 15th Day of March, 2006, by Oscar R. Rivera, who is personally known to me.

Notary Public

Print Name

MARANA C. DE VARONA
MY COMMISSION # DD 125866
EXPIRES: July 17, 2006
Bonded Thru Notary Public Underwriters

BERCOW & RADELL
ZONING, LAND USE AND ENVIRONMENTAL LAW

Direct: 305-377-6235
E-Mail: BFernandez@brzoninglaw.com

RECEIVED
05-317
FEB 16 2006
ZONING HEARINGS SECTION
MIAMI-DADE PLANNING AND ZONING DEPT.
BY

**VIA HAND DELIVERY**

February 16, 2006

Ms. Donna Jacoby
Zoning Hearings Processor
Miami-Dade County P&Z Department
Stephen P. Clark Center
111 NW 1st Street, 11th Floor
Miami, Florida 33128

317

**RE: Emily Development PH #~~05-251~~**

Dear Ms. Jacoby:

As we discussed, enclosed is the revised lot layout plan which the applicant intends to present to CZAB 14 at its April 2006 meeting. The plan provides a combination of 10,000 square foot lots along the northern perimeter, oversized RU-1 lots in the middle of the property, and some RU-1MA lots in the southern part of the property. We would appreciate your reviewing the revised plan and forwarding it to Ms. Esquijarosa in the zoning evaluation section. Thank you for your attention to this matter.

Sincerely,

Ben Fernandez

BF/bl

Enclosure

cc: Corina Esquijarosa

BERCOW & RADELL
ZONING, LAND USE AND ENVIRONMENTAL LAW

DIRECT LINE: (305) 377-6235
E-Mail: BFernandez@BRZoningLaw.com

317
205(-251)
2005
MIAMI- ... AND ZONING DEPT.
BY DJ

**VIA HAND DELIVERY**

August 15, 2005

Ms. Diane O'Quinn Williams
Director
Department of Planning and Zoning
Stephen P. Clark Center
111 NW 1st Street, 11th Floor
Miami, FL 33128

RE: Zoning Application for Ten Acre Parcel Located at Southeast Corner of S.W. 192 Avenue and S.W. 316 Street.

Dear Diane:

This law firm represents Emily Development, LLC (the "Applicant"), the owners of the above-captioned property ("Property"). This letter shall serve as the Applicant's letter of intent requesting a district boundary change on the Property from Estate Modified (EU-M) to Modified Single Family Residential (RU-1MA).

The Property. The Property consists of approximately ten (10) gross acres in unincorporated Miami-Dade County just north and west of the current municipal boundaries of Homestead. The CDMP designates the Property for Low Density Residential use. The Property is currently zoned Estate Modified (EU-M).

Surrounding Zoning and Uses. Immediately south of the Property is a platted residential community zoned RU-1. To the southeast of the Property, the approximately 10 acre parcel lying on the northwest corner of S.W. 320 Street and S.W. 188 has recently been rezoned to RU-1. To the east of this parcel, north of SW 320 Street and between S.W. 187 Avenue and S.W. 188 Avenue, there is an existing residential development of varying intensity. There are also currently three rezoning applications in the area seeking either RU-1 or RU-1MA, most

notably the ten-acre tract to the southwest of the Property that is currently the subject of a rezoning application to RU-1MA. All of the surrounding area within Miami-Dade County is designated for Low Density Residential Use.

Zoning Request. The proposed single family community will complement the existing development in the area and will allow for more diversity in housing than what is currently available in this area of the County and the City of Homestead. To that end, the Applicants request a district boundary change from Estate Modified (EU-M) to Modified Single Family Residential (RU-1MA).

The Applicants will be providing staff with a site plan for the proposed development and will proffer a Declaration of Restrictive Covenants to the Community Zoning Appeals Board requiring the Property to be developed in substantial accordance with the submitted plan.

Conclusion. We look forward to your favorable recommendation. Should you have any questions or concerns, please do not hesitate to phone my direct line at (305) 377-6235.

Sincerely,

Ben Fernandez

cc: Juan Carlos Urribarri