copy DPZ

ZONING MEETING

Board of County Commissioners

July 26, 2007

Prepared by: Nelson Diaz

EXHIBITS LIST

NO.	DATE	ITEM #	DESCRIPTION
1	7/26/2007	A-1	**EUREKA COVE L.L.C. (06-9-CZ-14 -4/06-3)** Binder booklet titled "EUREKA Cove, LLC." submitted by Holland & Knight.
2	7/26/2007	A-2	Letter from Alexander and Margaret Delval in support of the zoning change from RU-TH (town homes) to RU-1M (single family homes).
3	7/26/2007	B-1	**VARIETY CHILDREN'S HOPITAL D/B/A:** **MIAMI CHILDREN'S HOSPITAL (07-3-CZ10-9/07-13)** Binder booklet titled "THE SCHENLEY PARK PRESERVATION SOCIETY INC. DOES NOT HAVE STANDING TO BRING THIS APPEAL" submitted by Bilzin Sumberg Baena Price & Axelrod LLP.
4	7/26/2007	B-2	Declaration of Restriction submitted by William W. Riley, Esq. Bilzin Sumberg Baena Price & Axelrod LLP.
5	7/26/2007	B-3	Declaration of Restriction submitted by William W. Riley, Esq. Bilzin Sumberg Baena Price & Axelrod LLP.
6	7/26/2007	B-4	One sheet showing the breakdown of petitions submitted by Miami Children's Hospital. (by district) -District 1: 2 small boxes -District 2: 2 small boxes -District 3: 2 small boxes -District 4: 2 small boxes -District 5: 2 small boxes -District 6: 3 large boxes -District 7: 2 small boxes -District 8: 2 small boxes -District 9: 2 small boxes -District 10: 3 small boxes -District 11: 2 small boxes -District 12: 1 large box & 1 small box -District 13: 2 small boxes

EUREKA COVE, LLC.

Hearing No. 06-003

BEFORE THE MIAMI-DADE COUNTY
BOARD OF COUNTY COMMISSIONERS

JULY 26, 2007

Received by the Clerk
for the record.
JUL 6 2 2007
Item A
Exhibit A
Appl.

Holland+Knight
701 Brickell Avenue
Suite 3000
Miami, Florida 33131
(305) 374-8500 Phone
(305) 789-7799 Fax

Received by the Clerk
for the record.
JUL 2 6 2007
Item A
Exhibit A-1
Appl. A (06-003)

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Declaration of Restrictions in Favor of the School Board of Miami-Dade County 5

4226898_v3

SW 171ST Ter
SW 172ND St
Google
© 2005
SW 173RD Ter
SW 113TH Ct
SW 174TH Ter
SW 175TH St
SW 176TH St
SUBJECT PROPERTY
SW 117TH Ave
SW 115TH Ave
SW 113TH Ave
SW 112TH Pl
SW 112TH Ct
SW 112TH Ave
SW 179TH St
SW 181ST St
SW 181ST Ter
SW 114TH Ct
N
W
E
S

Richmond Dr
SW 172ND St
SW 176TH St
SW 178TH Ter
SW 179TH Ter
SW 180TH St
SW 181ST St
SW 181ST Ter
SW 121ST Ave
SW 119TH Ave
SW 116TH Ave
SW 115TH Ave
Florida's Tpke
821
SW 114TH Ave
SW 112TH Ave
SW 107TH Ave
SW 109TH Ct
SW 108TH Ave
SW 108TH Ct
SW 107TH Ave
SW 107TH Ct
SW 105TH Ave
© 2006 Navteq
Google
Pointer 25°36'25.95" N 80°22'30.94" W elev 7 ft Streaming 100% Eye alt 6589 ft

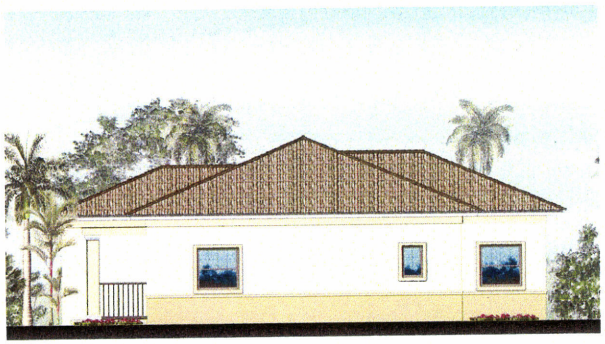
EUREKA COVE LLC

At S.W. 178 Terrace and S.W. 176 ST.

ELEVATIONS - SFH

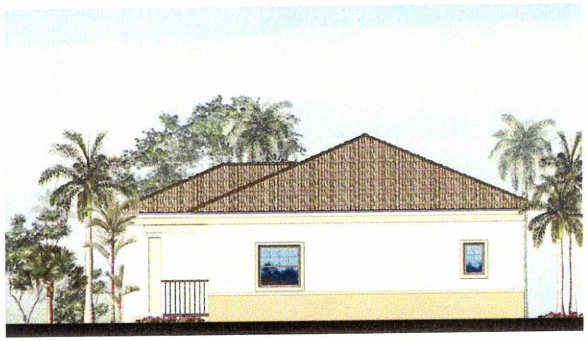
FRONT ELEVATION - MODEL "A" & "B"

N.T.S



SIDE ELEVATION- MODEL "A"

N.T.S



SIDE ELEVATION- MODEL "B"

N.T.S

Revisions

No.	Date	Description

Date	7-16-2007
Drawn by	G.S
Checked by	M.A.D
Scale	AS SHOWN

MARTIN A. D. YABOR AIA, NCARB

Lic. # AR0015332

COPYRIGHT 2005 ALL RIGHTS RESERVED. THESE DRAWINGS AND SPECIFICATIONS ARE INSTRUMENTS OF SERVICE AND SHALL REMAIN THE PROPERTY OF MARTIN A. DIAZ-YABOR & ASSOC., WHETHER THE PROJECT FOR WHICH THEY WERE PREPARED IS EXECUTED OR NOT, THEY ARE NOT TO BE USED IN ANY MANNER ON OTHER PROJECTS OR EXTENSIONS TO THIS PROJECT EXCEPT BY AGREEMENT IN WRITING AND WITH THE APPROPRIATE COMPENSATION TO MARTIN A. DIAZ-YABOR & ASSOC., REPRODUCTIONS OF DRAWINGS AND SPECIFICATIONS WITHOUT THE WRITTEN CONSENT OF MARTIN A. DIAZ-YABOR & ASSOC. IS PROHIBITED. CONTRACTOR IS RESPONSIBLE FOR VERIFYING ALL SITE CONDITIONS PRIOR TO PROCEEDING WITH WORK.

Sheet name

MP-2

Owner Project Number

Issued For

Schematic Design

MARTIN A.D. YABOR & ASSOC., INC.
AA 0002791

ARCHITECTS PLANNERS INTERIORS

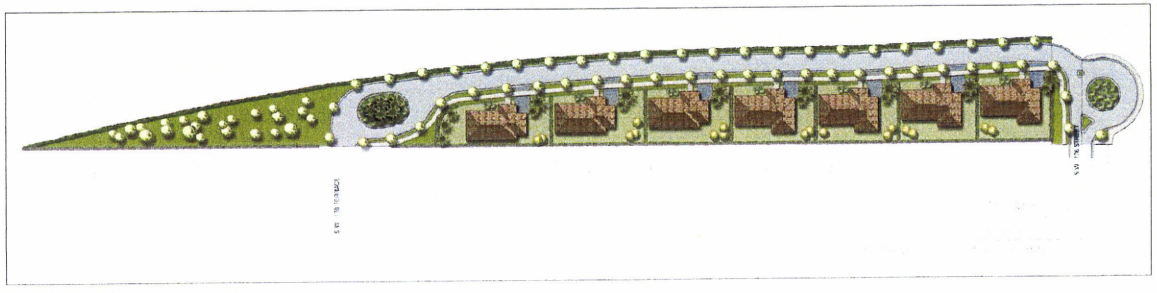
12124 S.W. 131 AVENUE MIAMI, FLORIDA 33186

PH. (305)256-0071 • E-MAIL: www.madp-pdf.com • FAX(305)256-0073

EUREKA COVE LLC

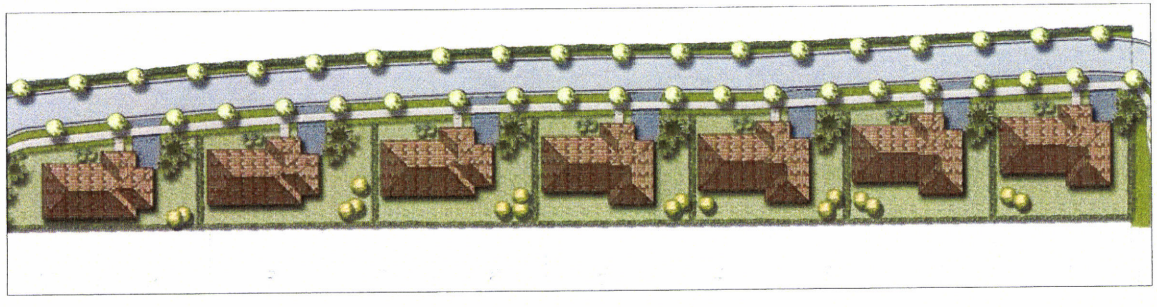
At S.W. 178 Terrace and S.W. 176 ST.

SITE PLAN & TABULATION DATA



SITE PLAN

N.T.S



SITE PLAN (DETAIL)

N.T.S

PROJECT DATUM	PROVIDED	REQUIRED/ALLOWED
NET LAND AREA	101,933.81 sq.ft.(2.34 ACRES)	
NET DENSITY	7 units or 2.99 units/net acre	14.94 units or 6.00 units/net acre
EXISTING ZONING	AU	------
PROPOSED ZONING	RU - 1M (b)	------
BUILDING LOT COVERAGE	15,527.40 S.F. (15.00%)	40% MAX.
PAVED AREA	29,221.51 S.F. (28.99%)	
PERVIOUS AREA	86,752.51 S.F. (85.00%)	
IMPERVIOUS AREA	43,181.60 S.F. (42.00%)	
OPEN SPACE CRITERIA:		
COMMON OPEN SPACE	32,691.87 S.F. (32.00%)	30%
TOTAL NUMBER OF UNITS	7 Units	14 Units
PARKING SPACES:	2 sp. X 7 units = 14	3 spaces per unit
BUILDING SETBACKS		
FRONT SETBACK	7 FEET	15 FEET(for 50% of the house width)
	15 FEET min.	25 FEET(for balance of the house width except 20' for attached garage)
REAR SETBACK	VARIES 7'-9" min. 22'-9" max.	25 FEET
STREET SIDE	10 FEET	10 FEET
INTERIOR SIDE	6 FEET	6 FEET
MINIMUM LOT SIZE	8,400.87 SQ.FT. AVG.	7,500 SQ.FT.
LOT WIDTH	VARIES 62'-0" min. 132'-2" max.	N/A
LOT DEPTH	VARIES 48'-0" min. 72'-0" max.	N/A

NOTE: ALL AREAS ARE SHOWN IN SQUARE FEET WITH SOME EXCEPTIONS

UTILITY AND SERVICE COMPANIES FOR THE DEVELOPMENT

TELEPHONE COMPANY: BELLSOUTH
ELECTRIC UTILITY: FLORIDA POWER AND LIGHT
WATER AUTHORITY: MIAMI-DADE WATER AND SEWER AUTHORITY
SEWER AUTHORITY: MIAMI-DADE WATER AND SEWER AUTHORITY
GARBAGE AND TRASH COLLECTION SERVICE: MIAMI-DADE DEPARTMENT OF SOLID WASTE

AVERAGE LOT SIZES

	TOTAL SQ. FEET	NUMBER OF UNITS	AVERAGE LOT SIZE
SFH	49,046.40 S.F.	7	8,435.20 SQ.FT.

ESTIMATE OF POPULATION/PROJECTED FOR DEVELOPMENT: 3.5 PERSONS/DWELLING UNIT (7 Dwelling Units x 3.5 People = 24.5 People)

Revisions

No.	Date	Description

Date	7-16-2007
Drawn by	G.S
Checked By	M.A.D
Scale	AS SHOWN

MARTIN A. D. YABOR AIA, NCARB

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Sheet name:

MP-1

Owner Project Number

Issued For

Schematic Design

MARTIN A.D. YABOR & ASSOC., INC.

AA 0002791

ARCHITECTS PLANNERS INTERIORS

12124 S.W. 131 AVENUE MIAMI, FLORIDA 33186

PH. (305)255-0071 • E-MAIL: www.mady-yab.com • FAX(305)255-0072

EUREKA COVE
average lot size
6,401 sq.ft.
average lot size
6,042 sq.ft.
average lot size
6,095 sq.ft.
N
W
E
S
EUREKA COVE

This instrument was prepared by:

Name: Felix M. Lasarte, Esq.
Address: Holland & Knight LLP
701 Brickell Avenue, Suite 3000
Miami, Florida 33131

(Space Reserved for Clerk of the Court)

DECLARATION OF RESTRICTIONS

WHEREAS, the undersigned, Eureka Cove, LLC., a Florida limited liability corporation (the "Owner"), holds the fee simple title to that certain 2.0 ± acres of real property, which is legally described in Exhibit "A" to this Declaration (the "Property");

WHEREAS, the Owner has filed an application with the Department of Planning and Zoning in Miami-Dade County, which application is currently pending under Public Hearing Application No. Z06-03 (the "Zoning Application") with regard to the Property, for the purpose of seeking a district boundary change from AU to RU-1M(b);

NOW, THEREFORE, IN ORDER TO ASSURE Miami-Dade County (the "County") that the representations made by the Owner during consideration of Public Hearing No. 06-03 (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. **Controlling Site Plan**. The Property shall be developed substantially in accordance with that certain plan entitled "Eureka Cove Site Plan" as prepared by Martin A.D. Yabor & Associates, dated stamped received June 5, 2007 and consisting of seventeen (17) sheets (the "Plan"), as may be modified at the public hearing on the Zoning Application.

2. **Landscaping.** The Owner shall provide additional landscaping along the East property line in the form of Live Oak, Green Bottonwood and Sweet Viburnum tree specimens. Specifically, the Owner agrees to plant 12 foot high trees at planting, planted at a minimum of thirty-five (35) feet on center for the length of the Eastern portion of the property.

3. **Water Conservation Requirements.** The Owner hereby agrees to develop the Property and construct the proposed dwelling units in accordance with the "Florida Water Star Basic Qualification Checklist," a copy of which is attached to this Declaration as Exhibit "B".

4. **Private Drive.** As depicted in the Plan, the Owner intends to serve the development of the Property by means of a private drive in lieu of the dedication and construction of S.W. 114th Avenue (the "Private Road"). The Private Road shall be designed, constructed and maintained in accordance with the standards established by the Miami-Dade County Public Works Department. The Owner shall not restrict ingress or egress into the development through the use of an access gate or other traffic regulating device along the Private Road in order to ensure the efficient and unobstructed flow of traffic.

5. **Creation of Homeowners Association.** The Owner shall establish a homeowner's association in accordance with applicable regulations to assure that all common areas within the Property, including the Private Road, shall be maintained in a continuous and satisfactory manner, and without expense to 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 recording the subdivision plat.

6. **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 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 public welfare.

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.

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 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.

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.

J. **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.

[Signature Page(s) Follow]

IN WITNESS WHEREOF, we have hereunto set our hands and seal this 27th day of June, 2006.

WITNESSES

Print Name: Higinia Nuñez

Print Name: Carlos E Garcia

Eureka Cove, LLC., a Florida limited liability corporation

By: _____
Albert Vivas, Managing Member

STATE OF FLORIDA)
) SS
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me by Albert Vivas, who is personally known to me or has produced Florida Driver License as identification.

Witness my signature and official seal this 27th day of June, 2006, in the County and State aforesaid.

My Commission Expires: 08/17/2010

_____
Notary Public - State of Florida

JEANNETTE NUCETE
Notary Public - State of Florida
My Commission Expires Aug 17, 2010
Commission # DD 586491
Bonded By National Notary Assn.

Jeannette Nucete
Printed Name

EXHIBIT "A"

LEGAL DESCRIPTION

A portion of the Southwest 1/4 of Section 31, Township 55 South, Range 40 East, being bounded on the West by the Easterly Right-of-Way line of the Homestead Extension of Florida's Turnpike (State Road #821), as shown on the Florida Department of Transportation, Right-of-Way Map, Section 87005-23-6, Sheet 11 of 25, dated May 1970, and bounded on the East by the West line of the East 1/2 of the Southwest 1/4 of said Section 31, also being the Westerly boundary line of "Torrent Subdivision", according to the Plat thereof as recorded in Plat Book 147, at Page 77 of the Public Records of Miami-Dade County, Florida and bounded on the North by the South line of the North 35.0 feet of the Southwest 1/4 of said Section 31, all lying and being in the Southwest 1/4 of Section 31, Township 55 South, Range 40 East, Miami-Dade County, Florida.

JOINDER BY MORTGAGEE
CORPORATION

The undersigned, BBU Bank, a State Chartered Bank, and Mortgagee under that certain mortgage from Eureka Cove, LLC, a Florida limited liability company, recorded in Official Records Book 24721, Page 975, in the public records of Miami-Dade County, Florida, covering all/or a portion of the property described in the Declaration of Restrictions, does hereby consent to the execution of the foregoing Declaration of Restrictions by Eureka Cove, LLC, a Florida limited liability company, and agrees that in the event Mortgagee or any other party shall obtain title to the property through foreclosure or deed-in-lieu of foreclosure, this Declaration of Restrictions shall be binding upon the entity obtaining title as the then owner of such property.

IN WITNESS WHEREOF, these presents have been executed this 28th day of June, 2007.

WITNESSES:

Deicy Ning Sotolongo
Signature
Deicy Ning Sotolongo
Print or Type Name

Ana V. Del Hierro
Signature
ANA V. DEL HIERRO
Print or Type Name

BBU Bank, a State Chartered Bank

By: _____

Title: Executive Vice President
Print name: Alina D. Garcia
Address: 150 Alhambra Circle, Suite 100
Coral Gables, FL 33134

(Corporate Seal)

STATE OF FLORIDA)
) SS
COUNTY OF)

The foregoing instrument was acknowledged before me this 28 day of June, 2007 by Alina D. Garcia, EVP, of BBU Bank, a State Chartered Bank, on behalf of the corporation. He/She is personally known to me or has produced _____, as identification and did/did not take an oath.

Pamela Grey
Notary Public -State of Florida
Print Name Lourdes Escarza

My Commission Expires:

4526888_v1

NOTARY PUBLIC STATE OF FLORIDA
LOURDES ESCARZA
MY COMMISSION # DD 248829
EXPIRES: January 9, 2008
Bonded Thru Budget Notary Services

This instrument was prepared under the supervision of:

Name: Felix M. Lasarte, Esq.
Address: Holland & Knight, LLP.
701 Brickell Avenue
Suite 3000
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; and

WHEREAS, the Property is the subject of an application for public hearing (the "Application"), which is currently pending as Public Hearing No. 06-03 with Miami-Dade County, which seeks a district boundary change on the Property from GU to RU-TH to permit the development of a residential community on the Property; and

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

WHEREAS, the School Board of Miami-Dade County ("School Board") has developed criteria by which to calculate the amount of the contribution necessary for the Applicant to mitigate such impacts based on the estimated amount of the educational facilities impact fees to be paid by the Applicant (the "Estimated Impact Fees") pursuant to Section 33K of the Miami-Dade County Code of Ordinances (estimated by School Board for purposes of this Declaration at

$27,300.00) and the actual cost of providing additional student stations generated by the Applicant; and

NOW, THEREFORE, IN ORDER TO ASSURE 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 makes 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 $38,145.00 (the "Contribution"), based on the proposed density of fourteen (14) residential dwelling units. The Contribution shall be subject to (i) the Final Approval of the Application and (ii) the School Board utilizing the Contribution for capital educational improvements providing relief at Miami Southridge Senior High School. The Contribution shall be paid in one (1) payment becoming due and payable prior to the final plat approval for the subject development.

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 requested density of 14 dwelling units, the amount of the Contribution shall be prorated and adjusted downward for the reduced number of students at the elementary and middle school levels, as calculated by the School District. Furthermore, if, prior to final plat approval, the estimated amount of the educational facilities impact fees to be paid by the Owner changes based on either (i) the approval by Miami-Dade County Commission and School Board of an increase in the amount of the educational facilities impact fee that will be assessed against the future development of the Property pursuant to Chapter 33K of the Miami-Dade County Code of

Ordinances and related Interlocal Agreements or (ii) an increase in the amount of the square footage of the homes proposed for the subject development, as depicted on a site plan, over the estimated square footage of the homes (1,950 square feet) used by School Board in calculating the Estimated Impact Fee, then the Contribution shall be adjusted accordingly.

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 of 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 (the "Final Approval").

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 14 day of 08, 2006.

WITNESSES:

Signature

Claudia Herrera
Print Name

Signature

SIUBY FLEITES
Print Name

Eureka Cove, LLC, a Florida limited liability company

By: _____

Print: ALBERT VIVAS

Title: DIRECTOR.

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

The foregoing instrument was acknowledged before me this 14 day of 08, 2006, by _____, as _____ of Eureka Cove, LLC, who is personally known to me or has produced _____ as identification, and acknowledged that he did execute this instrument freely and voluntarily for the purposes stated herein.

My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA
FLORA HERNANDEZ
MY COMMISSION # DD 302252
EXPIRES: April 13, 2008
Bonded Thru Budget Notary Services

Flora Hernandez
Notary Public, State of _____

Print Name

3984363_v1

EXHIBIT "A"

LEGAL DESCRIPTION

A portion of the Southwest 1/4 of Section 31, Township 55 South, Range 40 East, being bounded on the West by the Easterly Right-of-Way line of the Homestead Extension of Florida's Turnpike (State Road #821), as shown on the Florida Department of Transportation, Right-of-Way Map, Section 87005-23-6, Sheet 11 of 25, dated May 1970, and bounded on the East by the West line of the East 1/2 of the Southwest 1/4 of said Section 31, also being the Westerly boundary line of "Torrent Subdivision", according to the Plat thereof as recorded in Plat Book 147, at Page 77 of the Public Records of Miami-Dade County, Florida and bounded on the North by the South line of the North 35.0 feet of the Southwest 1/4 of said Section 31, all lying and being in the Southwest 1/4 of Section 31, Township 55 South, Range 40 East, Miami-Dade County, Florida.

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IN WITNESS WHEREOF, these presents have been executed this 28th day of June, 2007.

WITNESSES:

Deicy Hing-Sotolongo
Signature
Deicy Hing-Sotolongo
Print or Type Name

Ana V. Del Hierro
Signature
ANA V. DEL HIERRO
Print or Type Name

BBU Bank, a State Chartered Bank

By: _____

Title: Executive Vice President
Print name: Alina D. Garcia
Address: 150 Alhambra Circle, Suite 100
Coral Gables, FL 33134

(Corporate Seal)

STATE OF FLORIDA)
) SS
COUNTY OF)

The foregoing instrument was acknowledged before me this 28 day of June, 2007 by Alina D. Garcia, EVP, of BBU Bank, a State Chartered Bank, on behalf of the corporation. He/She is personally known to me or has produced _____, as identification and did/did not take an oath.

Lourdes Escarza
Notary Public -State of Florida
Print Name Lourdes Escarza

My Commission Expires:

4526888_v1

NOTARY PUBLIC STATE OF FLORIDA
LOURDES ESCARZA
MY COMMISSION # DD 248829
EXPIRES: January 9, 2008
Bonded Thru Budget Notary Services

Received by the Clerk
for the record.
JUL 26 2007
Item A
Exhibit A-2
Appl. A- (06-003)

Alexander N. Delval
Margaret S. Delval
17654 SW 114 Avenue
Miami, FL 33157

July 24, 2007

Re: Eureka Cove, LLC - #06-003

Dear Commissioners:

We reside at 17654 SW 114th Avenue, Miami, FL 33157, and our property abuts the proposed development. I appeared at the last two commission meetings and objected to the application to rezone the property to RU-TH (townhomes). This letter is to express our support of the application to rezone the property to RU-1M(b) (single family homes).

The developer has met with me and my wife over the course of the last few months and showed us the proposed site plan. My wife and I believe that the site is compatible to the area and will serve as a nice buffer from the Turnpike. Please approve this application.

Sincerely,

Alexander N. Delval
personally known

Margaret S. Delval
personally known

NOTARY PUBLIC STATE OF FLORIDA
DUNIA SOTO
MY COMMISSION # DD336268
EXPIRES: July 08, 2008
1-300-3-NOTARY
Fl. Notary Discount Assoc. Co.

Copy
DP2.

ZONING MEETING
Board of County Commissioners
July 26, 2007

Prepared by: Nelson Diaz

EXHIBITS LIST

NO.	DATE	ITEM #	DESCRIPTION
1	7/26/2007	A-1	**EUREKA COVE L.L.C. (06-9-CZ-14 -4/06-3)** Binder booklet titled "EUREKA Cove, LLC." submitted by Holland & Knight.
2	7/26/2007	A-2	Letter from Alexander and Margaret Delval in support of the zoning change from RU-TH (town homes) to RU-1M (single family homes).
3	7/26/2007	B-1	**VARIETY CHILDREN'S HOPITAL D/B/A:** **MIAMI CHILDREN'S HOSPITAL (07-3-CZ10-9/07-13)** Binder booklet titled "THE SCHENLEY PARK PRESERVATION SOCIETY INC. DOES NOT HAVE STANDING TO BRING THIS APPEAL" submitted by Bilzin Sumberg Baena Price & Axelrod LLP.
4	7/26/2007	B-2	Declaration of Restriction submitted by William W. Riley, Esq. Bilzin Sumberg Baena Price & Axelrod LLP.
5	7/26/2007	B-3	Declaration of Restriction submitted by William W. Riley, Esq. Bilzin Sumberg Baena Price & Axelrod LLP.
6	7/26/2007	B-4	One sheet showing the breakdown of petitions submitted by Miami Children's Hospital. (by district) -District 1: 2 small boxes -District 2: 2 small boxes -District 3: 2 small boxes -District 4: 2 small boxes -District 5: 2 small boxes -District 6: 3 large boxes -District 7: 2 small boxes -District 8: 2 small boxes -District 9: 2 small boxes -District 10: 3 small boxes -District 11: 2 small boxes -District 12: 1 large box & 1 small box -District 13: 2 small boxes

ZONING MEETING
Board of County Commissioners
July 26, 2007

Prepared by: Nelson Diaz

EXHIBITS LIST

7	7/26/2007	B-5	Variance Request History (1 sheet)
8	7/26/2007	B-6	Copy of Property Information Map from Miami-Dade County Website
9	7/26/2007	B-7	3 sky view computer images of Children's Hospital shown from different angles.
10	7/26/2007	B-8	Copy of resolution titled " A RESOLUTION OF THE HOLLYWOOD HILLS CIVIC ASSOCIATION IN THE CONDITIONAL SUPPORT OF THE BROWARD HOSPITAL DISTRICT'S REZONING REQUESTAND INTERLOCAL AGREEMENT WITH THE CITY OF HOLLYWOOD."
11	7/26/2007	B-9	Submitted document describing the zoning history of Schenley Park until present.
12	7/26/2007	B-10	Document highlighting the qualifications of John Richard Medina. (Architect)
13	7/26/2007	B-11	Copy of facts sheet including "Full Disclosure" forms
14	7/26/2007	B-12	Petition from architect Nilo Puentes urging the Board of County Commissioners to deny the expansion plans for the proposed application.
15	7/26/2007	1-A	**MICHAEL MUSKAT is appealing the decision of COMMUNITY ZONING APPEALS BOARD # 12 (06-5-CZ12-1/05-167)** Copy of a Hearing Map with showing the proposed application area highlighted in yellow.
16	7/26/2007	1-B	Booklet titled "Say NO to Dice Point".
17	7/26/2007	1-C	Letters submitted from the East Kendall Homeowners Organization, Continental Park Homeowner's Associations, Inc. and the Board of Directors of the Kendall Trace homeowners association all in opposition of the re-zoning application
18	7/26/2007	1-D	Email printout from Jack Luft.
19	7/26/2007	1-E	Continental Park Neighborhood Traffic Study
20	7/26/2007	1-F	Letter from James M. Jones in opposition to the zoning change.

THE SCHENLEY PARK PRESERVATION SOCIETY INC. DOES NOT HAVE STANDING TO BRING THIS APPEAL

1. THE PETITION OF APPEAL
2. INCORPORATION DOCUMENTS
3. SECTION 33-313, MIAMI-DADE COUNTY CODE
4. LETTER TO JONI ARMSTRONG COFFEY, ESQ.

Received by the Clerk
for the record.
JUL 26 2007
Item B
Exhibit B-1
Appl. B
(07-013)

PETITION OF APPEAL FROM DECISION OF
MIAMI-DADE COUNTY COMMUNITY ZONING APPEALS BOARD
TO THE BOARD OF COUNTY COMMISSIONERS

CHECKED BY RK AMOUNT OF FEE 2609.53

RECEIPT # I 200722123.

DATE HEARD: 04/17/07

BY CZAB # 10

RECEIVED
207.013
MAY - 7 2007
ZONING HEARINGS SECTION
MIAMI-DADE PLANNING AND ZONING DEPT.
BY

DATE RECEIVED STAMP

****

This Appeal Form must be completed in accordance with the "Instruction for Filing an Appeal" and in accordance with Chapter 33 of the Code of Miami-Dade County, Florida, and return must be made to the Department on or before the Deadline Date prescribed for the Appeal.

RE: Hearing No. Z2007000013

Filed in the name of (Applicant) Variety Children's Hospital D/B/A: Miami Children's Hospital

Name of Appellant, if other than applicant

Address/Location of APPELLANT'S property: 6078 S.W. 33 St. Miami, FL 33155

Application, or part of Application being Appealed (Explanation): Section 1-10 (please see attached explanation)

Appellant (name): ~~Or~~ Miken Gonzalez Schenley Park Preservation Society, Inc. hereby appeals the decision of the Miami-Dade County Community Zoning Appeals Board with reference to the above subject matter, and in accordance with the provisions contained in Chapter 33 of the Code of Miami-Dade County, Florida, hereby makes application to the Board of County Commissioners for review of said decision. The grounds and reasons supporting the reversal of the ruling of the Community Zoning Appeals Board are as follows:
(State in brief and concise language)

(Please see attached reason for appeal)

APPELLANT MUST SIGN THIS PAGE

Date: 7 day of May, year: 2007

Signed _____

_____
Print Name

_____
Mailing Address

_____ _____
Phone Fax

REPRESENTATIVE'S AFFIDAVIT
If you are filing as representative of an association or other entity, so indicate:

Schenley Park Preservation Society, Inc.
Representing

_____
Signature

Milen Gonzalez
Print Name

7003 N. Waterway Dr., # 209
Address

Miami FL 33155
City State Zip

305-260-2341 ext. 5000
Telephone Number

Subscribed and Sworn to before me on the 7th day of May, year 2007

_____
Notary Public

(stamp/seal)

Notary Public State of Florida
Lakeisha M Moss
My Commission DD355562
Expires 09/16/2008

Commission expires:

APPEAL

Re: Z2007000013

On April 17, 2007, the Community Zoning Appeals Board – Area 10, approved, in part, the application submitted by Variety Children's Hospital A/K/A Miami Children's Hospital ("MCH").

Items numbered 1 through 10 of the application are being appealed:

1. **MODIFICATION of Condition #2 of Resolution 4-ZAB-217-70, and last modified by 4-ZAB-125-93, both passed and adopted by the Zoning Appeals Board.**

2. **MODIFICATION of Condition #4 of Resolution 4689 passed and adopted by the Board of County Commissioners as last modified by Resolution #4-ZAB-102-87, passed and adopted by the Zoning Appeals Board.**

Buffer zones are generally required by governmental agencies to preserve and protect the quality of life of the residents in the immediate vicinity as well as "..to provide a logical transition to adjoining area use." See Miami Dade County Code.

The approval by the Zoning Appeals Board of this application appears to be in direct conflict with the mission of Miami-Dade County for its residents.

"Quality of life" is described in the Miami Dade County Strategic Plan Mission Statement to "make life better, easier for our residents; not more complicated". The granting of all of these changes to the zoning code will not make the residents of Schenley Park easier but much more difficult.

The approved modification provides for a reduction in the buffer zone in the south side of the property from the required 50 feet to 36 feet 11 inches. This reduction in no way preserves the quality of life of the area residents; in fact, it is detrimental to the quality of life. It allows for less of a barrier to noise, light, odors, car exhaust, etc.

While it may not appear on its face to be a significant change in area, the less area between this commercial property and the surrounding residential properties will cause the area to become more commercial in nature.

3. **MODIFICATION of Condition #7 of Resolution #4689, passed and adopted by the Board of County Commissioners as last modified by Resolution #4-ZAB-105-83, passed and adopted by the Zoning Appeals Board.**

Six (6) stories for hospital purposes is in actuality closer to ten (10) stories as each floor is fifteen (15) feet in height. These buildings at these heights will tower over each residence. This is incompatible with residential life. There is the potential for the breach of the residents' right to privacy as well as the intrusion of lights and glare into the homes of the surrounding neighbors.

4. **Applicant is requesting to permit a lot coverage of 48.67% (40% maximum permitted).**

5. **Applicant is requesting to permit drives within 25 feet of an official right-of-way (not permitted).**

Permitting drives to be within 25 feet of an official right-of-way creates the potential to create safety hazards and risks not only to area residents but also to hospital visitors and patients.

6. **Applicant is requesting to permit a landscape open space of 30.98% (40% required).**

Reduction of the open space requirement is detrimental to the community as it allows for more pavement and concrete and less residential qualities.

7. **Applicant is requesting to permit a temporary modular building with a setback of 7 feet 8 inches (25 feet required) from the side street (east) property line.**

8. **Applicant is requesting to permit buildings with a maximum height of 98 feet (60 feet maximum permitted, based on the width of the widest street).**

Six (6) stories for hospital purposes is in actuality closer to ten (10) stories as each floor is fifteen (15) feet in height. These buildings at these heights will tower over each residence.

MCH has already filed numerous zoning change requests with the county in the past several years.

It must stop now. Now is the time for the County and MCH to consider relocation. Relocate to a more appropriate area near transportation and other medical and professional offices.

The additional building height will detract from the privacy of the residential home owners as it will block natural light and, the area has the potential to become an industrial like community with lights on at all hours of the night.

We recognize and acknowledge that MCH is a premiere children's hospital – it is just in the wrong location to serve the needs of Miami Dade and surrounding counties.

Further, MCH is requesting approval of this application to increase the number of beds from 268 to 409 beds, but has stated that it will never exceed 300 patients at any given time. This begs the question as to why not just add an additional 32 beds instead of increasing the number of buildings from 19 to 23 and the square footage of the site from 701,647 to 949,460?

9. **Applicant is requesting to permit 8 detached directional signs with a maximum size of 35 square feet (18 square feet maximum permitted) and to permit each sign with a clearance of 1.5 feet (4 feet minimum required) from the bottom of the sign to grade.**

These signs will detract from the beauty of the neighborhood and its residential qualities.

10. **Applicant is requesting to permit the directional signs with names and logos (not permitted).**

This is not permitted in this zoning area and will further detract from the beauty of the neighborhood and its residential qualities.

By approving Requests 1 through 10 of MCH's application, the Community Zoning Appeals Board in essence has done the following:

Permitted increases in building sizes,
Reduced the size of buffer zones,
Increased the height of buildings,
Reduced the size of the driveways,
Reduced the size of the landscaped open space,
Increased the amount of lot coverage permitted,
Increased the maximum size of directional signs allowed, and
Permitting directional signs with names and logos.

All of these changes are to a zoning code that was established and developed for the preservation of Miami-Dade County as well as the area residents of Schenley Park. These approved modifications and the ultimate result of them are not compatible with residential neighborhood.

The summary report states that this expansion will not cause an undue burden on roadways. This cannot be true with the increase in property size, beds, services and parking garage, etc. It will create traffic, noise and possibly have an impact on the roadways themselves. There can only be an increase in traffic caused by more patients, more visitors and more service providers.

The summary report also states that the development will not have any substantial negative impact on the public safety due to automobile movements, vehicular or pedestrian conflicts, etc. When there are more cars on the road there is a potential for more pedestrian automobile conflict, especially in a residential neighborhood.

Re-zoning and variances are generally permitted to meet the changing needs of the community. While Miami Dade County is very large and supports many different zoning areas, this particular community is residential and should be allowed to maintain its residential qualities.

While the care of children is important and necessary, there are other means by which to accomplish this. MCH and the County can work together to relocate the hospital to an area that is much more compatible with hospital uses as well as major transportation and other medical facilities.

Although the existing hospital may be erroneously considered consistent with the comprehensive development master plan (CDMP), the proposed expansion of MCH by permitting increases in building sizes, reducing the size of buffer zones, reducing the size of the driveways, reducing the size of the landscaped open spaces, increasing the amount of lot coverage permitted, increasing the maximum size of directional signs allowed, and permitting directional signs with names and logos, is incompatible with the residential nature of Schenley Park.

It is therefore respectfully requested that this Honorable Commission grant this appeal and overturn the decision in Items 1 through 10, of the Community Zoning Appeals Board.

Respectfully Submitted,

Milen Gonzalez, President
Schenley Park Preservation Society, Inc.

APPELLANT'S AFFIDAVIT OF STANDING
(must be signed by each Appellant)

STATE OF Florida

COUNTY OF Dade

Before me the undersigned authority, personally appeared Milen Gonzalez (Appellant) who was sworn and says that the Appellant has standing to file the attached appeal of a Community Zoning Appeals Board decision.

The Appellant further states that they have standing by virtue of being of record in Community Zoning Appeals Board matter because of the following:

(Check all that apply)

✓ 1. Participation at the hearing
___ 2. Original Applicant
___ 3. Written objection, waiver or consent

Appellant further states they understand the meaning of an oath and the penalties for perjury, and that under penalties of perjury, Affiant declares that the facts stated herein are true.

Further Appellant says not.

Witnesses:

Signature

Isabel Molina
Print Name

Signature

Sadiz Torres
Print Name

Appellant's signature

Milen Gonzalez
Print Name

Sworn to and subscribed before me on the 7 day of May, year 2007

Appellant is personally know to me or has produced _____ as identification.

Notary
(Stamp/Seal)

Notary Public State of Florida
Lakeisha M Moss
My Commission DD355562
Expires 09/16/2008

Commission Expires:

[b:forms/affidapl.sam(11/03)]

N07000004462

Florida Department of State
Division of Corporations
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To:
Division of Corporations
Fax Number : (850)205-0381

From:
Account Name : CORPORATE CREATIONS INTERNATIONAL INC.
Account Number : 110432003053
Phone : (561)694-8107
Fax Number : (561)694-1639

FLORIDA PROFIT/NON PROFIT CORPORATION

Schenley Park Preservation Society Inc.

Certificate of Status	1
Certified Copy	0
Page Count	05
Estimated Charge	$78.75

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TALLAHASSEE, FLORIDA

ARTICLES OF INCORPORATION

Article I. Name

The name of this Florida not-for-profit corporation is:
Schenley Park Preservation Society Inc.

Article II. Address

The street and mailing address of the Corporation's initial principal office is:
Schenley Park Preservation Society Inc.
7003 North Waterway Drive
#209
Miami FL 33155

Article III. Purpose

The Corporation is organized exclusively to engage in all lawful acts or activities for which Florida not-for-profit corporations may be organized, including one or more of the following purposes: title holding corporations pursuant to Code Section 501(c)(2); civic league or organization operating exclusively for the promotion of social welfare pursuant to Code Section 501(c)(4); labor, agricultural or horticultural organization pursuant to Code Section 501(c)(5); business league, chamber of commerce, real estate board, or board of trade pursuant to Code Section 501(c)(6); or club organized for pleasure, recreation and other nonprofitable purposes pursuant to Code Section 501(c)(7); fraternal beneficiary societies providing life, sick, accident or other benefits pursuant to Code Section 501(c)(8); voluntary employees' beneficiary associations pursuant to Code Section 501(c)(9); domestic fraternal societies not providing life, sick, accident or other benefits pursuant to Code Section 501(c)(10); benevolent life insurance associations, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations pursuant to Code Section 501(c)(12); cemeteries, crematoria, and like corporations pursuant to Code Section 501(c)(13); mutual insurance companies or associations, other than life or marine pursuant to Code Section 501(c)(15); a post, organization or auxiliary unit of past or present members of the Armed Forces of the United State pursuant to Code Section 501(c)(19); organization for prepaid group legal services pursuant to Code Section 501(c)(20); title holding corporations pursuant to Code Section 501(c)(25). All references to "Code" are to the Internal Revenue Code of 1986 as amended or to corresponding provisions of future federal tax legislation.

Corporate Creations International Inc.
11380 Prosperity Farms Road #221E
Palm Beach Gardens FL 33410
(561) 694-8107

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Article IV. Board of Directors

The name of each member of the Corporation's Board of Directors is:

Milen Gonzalez
Eduardo M. Perez-Heydrich
Lourdes Naranjo
Henry Serrano
Marcia Breiter
Rosalie Carifio
Ivonne Reilly
Maria Hernandez

The affairs of the Corporation shall be managed by a Board of Directors consisting of no less than three directors. The number of directors may be increased or decreased from time to time in accordance with the Bylaws of the Corporation, but may never be less than three. The election of directors shall be done in accordance with the Bylaws. The directors shall be protected from personal liability to the fullest extent permitted by law.

Article V. Membership

All persons interested in the purposes of the Corporation are eligible for membership in the Corporation if they are capable of contributing to the achievement of those purposes and the effective operation of the Corporation, and if they comply with the requirements established from time to time in the Bylaws. Members shall have no voting rights or other rights except as provided in the Bylaws.

Article VI. Limitations

No part of the net earnings of the Corporation shall inure to the benefit of (or be distributable to) its directors, officers, members or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of any of its purposes.

Article VII. Registered Agent

The name and address of the registered agent of the Corporation is:

Corporate Creations Network Inc.
11380 Prosperity Farms Road #221E
Palm Beach Gardens FL 33410

Article VIII. Incorporator

The name and address of the incorporator is:

Corporate Creations International Inc.
11380 Prosperity Farms Road #221E
Palm Beach Gardens FL 33410

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Article IX. Dissolution

Upon the dissolution or winding up of the Corporation, the assets remaining after payment (or provision for payment) of the Corporation's debts and liabilities shall be distributed pursuant to the Corporation's plan of distribution of assets.

Article X. Corporate Existence

The corporate existence of the Corporation shall begin effective as of May 3, 2007.

The authorized representative of the incorporator executed these Articles of Incorporation on May 3, 2007.

CORPORATE CREATIONS INTERNATIONAL INC.
Megan Allen Assistant Secretary

Corporate Creations International Inc.
11380 Prosperity Farms Road #221E
Palm Beach Gardens FL 33410
(561) 694-8107

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CERTIFICATE OF DESIGNATION
REGISTERED AGENT/OFFICE

CORPORATION:
Schenley Park Preservation Society Inc.

REGISTERED AGENT/OFFICE:
Corporate Creations Network Inc.
11380 Prosperity Farms Road #221E
Palm Beach Gardens FL 33410

I agree to act as registered agent to accept service of process for the corporation named above at the place designated in this Certificate. I agree to comply with the provisions of all statutes relating to the proper and complete performance of the registered agent duties. I am familiar with and accept the obligations of the registered agent position.

CORPORATE CREATIONS NETWORK INC.
Megan Allen, Assistant Secretary

Date: 5/3/2007.

FILED
07 MAY -3 AM 10:49
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

Corporate Creations International Inc.
11380 Prosperity Farms Road #221E
Palm Beach Gardens FL 33410
(561) 694-8107

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Sec. 33-313. Appeals to Board of County Commissioners.

Any appealable decision of the Community Zoning Appeals Board may be appealed by an applicant, governing body of any municipality, if affected, or any aggrieved party, including neighborhood, community and civic associations, whose name appears in the record of the appropriate Community Zoning Appeals Board by filing with the Department a petition in a form prescribed by the Director and a written statement specifying in brief, concise language the grounds and reasons for reversal of the ruling made by the Community Zoning Appeals Board, together with a fee for the processing of the appeal, as provided by Administrative Order No. 4-40, as amended from time to time, within the fourteen (14) days provided by Section 33-312 hereof, whereupon, the Director shall transmit to the County Commission the appeal papers, and the decision and record of the Community Zoning Appeals Board. If the ground for reversal is a failure to provide notice as required by Section 33-310, the name of the appellant need not appear in the record. If the decision of the Community Zoning Appeals Board is for approval and has not been appealed within the fourteen-day period, the County Manager pursuant to Section 33-314(B)(8) or the Director may appeal such decision within four (4) additional days in the manner aforestated, except that a fee will not be required. Upon the taking of an appeal, the County Commission shall conduct a de novo hearing and shall consider why the decision of the Community Zoning Appeals Board should or should not be sustained or modified. By resolution, the Board shall either affirm, modify or reverse the Community Zoning Appeals Board's decision and such action of the County Commission shall be by a majority vote of all members present except that a two-thirds (2/3) vote of all members present shall be required to reverse any Community Zoning Appeals Board decision denying a request for zoning action or to approve any Development of Regional Impact or modifications thereof, substantial deviation determination or related request pursuant to Section 33-314 where a Community Zoning Appeals Board's recommendation is for denial. No appeal shall be heard or considered until notice has been provided in accordance with the provisions of Section 33-310(c), (d), (e) and (f). With respect to appeals arising from the Downtown Kendall Urban Center District a two-thirds (2/3) vote of all members present shall be required to reverse any Community Zoning Appeals Board decision denying a request for zoning action for a development proposed within the Center or Edge Sub-Districts of the Downtown Kendall Urban Center District. For any application for a development proposed within the Core Sub-District of the Downtown Kendall Urban Center District pursuant to Section 33-311 shall be decided by a majority vote of all members then in office.
(Ord. No. 60-14, 4-19-60; Ord. No. 61-30, § 1, 6-27-61; Ord. No. 62-48, § 1D, 12-4-62; Ord. No. 64-3, § 2, 2-4-64; Ord. No. 64-65, § 5, 12-15-64; Ord. No. 65-11, § 1, 2-16-65; Ord. No. 66-66, § 4, 12-20-66; Ord. No. 74-20, § 6, 4-3-74; Ord. No. 74-40, § 4, 6-4-74; Ord. No. 77-54, § 1, 7-19-77; Ord. No. 78-18, § 1, 3-21-78; Ord. No. 78-52, § 2, 7-18-78; Ord. No. 80-88, § 1, 9-2-80; Ord. No. 87-29, § 1, 5-19-87; Ord. No. 89-129, § 1, 12-19-89; Ord. No. 95-215, § 1, 12-5-95; Ord. No. 96-127, § 35, 9-4-96; Ord.No. 97-16, § 3, 2-25-97; Ord. No. 99-166, § 4, 12-16-99; Ord. No. 00-31, § 2, 2-24-00; Ord. No. 00-100, § 1, 7-25-00; Ord. No. 05-32, § 1, 2-1-05)

4

Bilzin Sumberg
ATTORNEYS AT LAW

Stanley B. Price, Esquire
Direct Dial: (305) 350-2374
Direct Facsimile: (305) 351-2204
E-mail: Sprice@Bilzin.com

June 12, 2007

VIA HAND DELIVERY

Joni Armstrong Coffey, Esq.
Assistant County Attorney
Miami-Dade County Attorney
111 N.W. First St., Suite 2801
Miami, FL 33128-1993

RE: MIAMI CHILDREN'S HOSPITAL
PUBLIC HEARING APPLICATION NO. Z2007000013

Dear Joni:

Please accept this letter as a follow-up discussion to our meeting on June 5, 2007. This law firm represents Variety Children's Hospital, Inc., a Florida non-profit corporation doing business as Miami Children's Hospital (hereinafter referred to as "Miami Children's"). For the reasons discussed below, Miami Children's challenges the legal sufficiency of the petition filed by Schenley Park Preservation Society, Inc., a Florida non-profit corporation, appealing the decision of the Community Zoning Appeals Board for Area 10 ("CZAB 10") that approved, in part, Public Hearing Application No. Z2007000013.

A. BACKGROUND

For the past several years Miami Children's has worked with Miami-Dade County's professional staff and the local community to design a comprehensive improvement program for the Schenley Park hospital campus that addresses both community concerns and advances in the healthcare profession.[1] The cooperative effort between the hospital, the community, and the county was highlighted through a two year neighborhood charrette process that led to the production of a 25-

[1] The subject property includes the following mailing addresses: 3200 SW 60 Court, 6150 SW 30 Street, & 2934 SW 60 Court, Miami-Dade County, Florida.

MIAMI 1343916.2 7330014710
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year phased redevelopment plan that includes a mass reduction, if not an elimination, of double and triple occupancy patient rooms at Miami Children's through an increase in hospital floor area, the expansion of open space with the addition of a community park, a reduction in the existing building footprints by increasing building heights, the addition of local traffic calming devices, and a pledge to provide meeting space for the Schenley Park Homeowner's Association. For your review, I have attached as Composite Exhibit 1 copies of the proposed redevelopment plan, the Declaration of Restrictions proffered to Miami-Dade County, and the Declaration of Restrictions proffered to the Schenley Park Homeowner's Association.

On November 22, 2006, Miami Children's filed a public hearing application with the Department of Planning and Zoning (the "Department") seeking approval of the redevelopment program (the "Application").[2] The Application was divided into two sets of requests. The first set of requests sought modifications of previously approved development plans and associated non-use variances that, if approved, would permit improvements to the existing hospital campus. The second set of requests, number 11 through 22 on draft Resolution No. CZAB10-32-07 attached hereto as Exhibit 2, sought to expand the hospital campus with the inclusion of 0.26 gross acres of land located at the northwest corner of SW 60th Court and SW 30th Street. The inclusion of said property was proposed as a district boundary change from RU-1 to RU-5A with associated non-use variances or, in the alternative, as a special exception and unusual use with associated non-use variances.

The Application was heard at public hearing by CZAB 10 on March 13, 2007 and April 17, 2007. For your review, copies of both the March and April hearing transcripts are attached as Composite Exhibit 3. As demonstrated in the hearing transcripts, the only objectors to the Application that appeared at the hearing and that were made a part of the record to the proceedings were the following individuals appearing solely in their individual capacities: (1) Mayline Gonzalez, (2) Eduardo Perez-Heydrich, (3) Henry Serrano, (4) Laura Perez-Heydrich, (5) Jose Martin, and (6) Pilar Benitez.

On April 17, 2007, CZAB 10 unanimously approved the first set of requests (the proposed modifications of previously approved development plans and associated non-use variances) and denied the second set of requests (the proposed expansion of the hospital campus by a district boundary change or a special exception and unusual use).

B. SCHENLEY PARK PRESERVATION SOCIETY, INC., A FLORIDA NON-PROFIT CORPORATION.

Schenley Park Preservation Society, Inc. (the "Preservation Society") filed a petition of appeal from the decision of CZAB 10 on May 7, 2007 (the "Petition"). The Petition, a copy of which

2 The Department assigned process number Z2007000013 to the Application, as amended.

is attached hereto as Exhibit 4, was expressly limited to Sections 1 through 10 of draft Resolution No. CZAB10-32-07. Those sections include only the first set of requests made by Miami Children's, which sought modifications of previously approved development plans and associated non-use variances. The Preservation Society did not appeal that part of the CZAB decision denying the hospital's second set of requests, which sought approvals of a district boundary change, a special exception, and an unusual use.

C. THE PRESERVATION SOCIETY DOES NOT HAVE STANDING TO BRING THE PETITION.

The petition filed by the Preservation Society should be denied for lack of standing. Section 33-313 of the Code describes the test applicable to standing.

> Any appealable decision of the Community Zoning Appeals Board may be appealed by an applicant, governing body of any municipality, if affected, or any aggrieved party, including neighborhood, community and civic associations, **whose name appears in the record of the appropriate Community Zoning Appeals Board** by filing with the Department a petition in a form prescribed by the Director and a written statement specifying in brief, concise language the grounds and reasons for reversal of the ruling made by the Community Zoning Appeals Board . . .

The Preservation Society is not an aggrieved party whose name appears in the record below. It did not even exist when the CZAB rendered its decision.

The Preservation Society was not organized under Articles of Incorporation until May 5, 2007, eighteen days after the second and last CZAB hearing on this matter.[3] Furthermore, the Preservation Society was never mentioned during the proceedings before the CZAB.[4]

In *Chabau v. Dade County*, 385 So. 2d 129 (Fla. 3d DCA 1980), the Third District ruled that a corporate appellant that does not qualify as an "aggrieved party" within the meaning of Section 33-313 of the Code cannot properly appeal a zoning board decision to the County Commission. More importantly, the court ruled that "any decision of the Commissioners [resulting from such improper appeal] would be void ab initio." *Id.*; *see also Peacock v. City of Miami*, 646 So. 2d 291 (Fla. 3d DCA 1994).

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[3] A copy of the Preservation Society's Articles of Incorporation is attached as Exhibit 5.
[4] See Hearing Transcripts included as Composite Exhibit 1.

In *F & R Builders, Inc. v. Durant*, 390 So. 2d 784 (Fla. 3d DCA 1980), the Third District again addressed the issue of standing under Section 33-313 of the Code. In that case, a neighboring property owner who did not appear at a zoning board hearing timely appealed an approval to the County Commission. The County Commission reaffirmed the zoning decision and the complainant appealed to circuit court. On review by the Third District, the court ruled that the complainant did not have standing to bring the appeal to the County Commission or to perfect the petition for certiorari since her name did not appear in the record produced at the zoning board hearing.

In rendering its decision, the Third District cited the definition of the word "record" provided in Section 33-302(k) of the Code. The definition remains substantially unchanged and currently reads as follows:

> The word "record" when pertaining to the record of any board shall mean and include any application, exhibits, appeal papers, written objections, waivers or consents, considered by such board, transcript or stenographic notes taken for the Department at a hearing held before such board, if any, the board's minutes and resolution showing its decision or action, and if the record of a lower board is transmitted to a higher board, the record of the higher board shall include that of the lower board. The word "record" shall also include any and all applicable portions of Chapter 33 of the Code of Miami-Dade County, Florida, the report and recommendations of the Director and the Developmental Impact Committee; the Comprehensive Development Master Plan for Miami-Dade County, Florida; and Ordinance No. 75-22, or as amended, or applicable neighborhood or area studies or plans approved by action of the Board of County Commissioners, as well as applicable district boundary maps, aerial photographs and final zoning resolutions. It shall also include the record made as a result of any previous zoning application on the same property. The Clerk of the County Commission shall identify all exhibits used or referred to at the zoning hearing. All exhibits so identified or introduced shall be a part of the record. The record shall not include documents prepared or relied upon by an expert not filed in accordance with the provisions of Section 33-f(D) of the Code, or any oral testimony or written reports or documents which were not filed in accordance with the provisions of Section 2-114.1 of the Code.

The court ruled that the County Commission could extend appellate remedies by enlarging the definitions of "aggrieved party" and/or "record on appeal." The County Commission has chosen not to extend these remedies.

The Preservation Society did not exist until over two weeks had passed from the CZAB decision and its name does not appear in the record below. Thus, the Preservation Society does not have standing to bring the instant appeal and, as such, the petition should be denied.

D. THE BOARD OF COUNTY COMMISSIONER'S DOES NOT HAVE JURISDICTION TO HEAR THE APPEAL.

Section 33-314(2) of the Code of Miami-Dade County, Florida (the "Code") clearly defines the Board of County Commissioner's jurisdiction when it comes to petitions appealing a CZAB decision. In pertinent part, Section 33-314(2) reads as follows:

> The County Commission shall have jurisdiction to hear appeals from decisions of the Community Zoning Appeals Boards as follows:
>
> (1) Applications for district boundary changes on individual pieces of property or on a neighborhood or area-wide basis.
>
> (2) Applications for district boundary changes which also contain requests for unusual use, new use, variance or special exception which is incidental or related thereto, or where there is pending on the same property or portion thereof more than one (1) application for district boundary change, variance, special exception, unusual or new use. When possible an appeal containing such requests shall be acted upon at the same public hearing.

Based on this language, we believe it is clear that the County Commission's jurisdiction over petitions seeking to overturn a decision of the CZAB in cases like the one currently at issue is dependent on whether the petition appeals one or more requests for a district boundary change with or without incidental requests for unusual uses, new uses, variances or special exceptions.

In the present case, the Preservation Society chose to appeal the CZAB's decision to approve the requested modification of previous development approvals and associated non-use variances and to expressly exclude the decision denying the hospital's request for a district boundary change, special exception, unusual use, and incidental non-use variances. This intention is clearly established on the first page of the petition filed by the Preservation Society and attached hereto. The petition

asks the appellant to identify the application, *or part of the application*, being appealed. The Preservation Society only appealed sections 1-10 of the Application and expressly excluded all those requests lying within the purview of the County Commission's appellate jurisdiction.

Section 33-314 does not grant appellate jurisdiction to the County Commission over all applications including a district boundary change. Jurisdiction is only granted where the application, or part of the application, that is being appealed includes a request for a district boundary change or a special exception, unusual use, new use, or variance incidental or related to the district boundary change. In the present case, the first set of requests made by Miami Children's, which relates only to the existing hospital campus, and the second set of requests, which relates only to that one separately platted lot located at the northwest corner of SW 60 Court and SW 30 Street, are separate and distinct. The first set and second set of requests are in no way dependent on the success of the other. In other words, the redevelopment program of the existing campus can proceed regardless of whether the district boundary change, the special exception, the unusual use, and the associated non-use variances were approved or not. Therefore, the approvals granted by CZAB 10 were not incidental or related to the district boundary change, the special exception, the unusual use, and the associated non-use variances.

The Preservation Society's appeal is not within the jurisdiction of the County Commission but, rather, rests within the appellate jurisdiction of the circuit court. As such, a hearing on the present appeal should be denied by the County Commission.

Thank you for meeting with me on this issue and thank you for your attention to the issues discussed in this letter. As always, if you have any questions regarding the foregoing or the attachments, please do not hesitate to contact me at (305) 350- 2374.

Cordially,

for:

Stanley B. Price

WWR/wwr
Enclosure
cc: Robert Nowlan
William W. Riley, Esq.

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