Village of Palmetto Bay

To: Mayor and Village Council

Date: November 26, 2013

From: Darby P. Delsalle, AICP
Planning and Zoning Director

Re: BMW Park
2nd Reading

AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, ACTING IN ITS CAPACITY AS THE LOCAL PLANNING AGENCY AND AS THE VILLAGE COUNCIL, RELATING TO A SMALL SCALE AMENDMENT OF THE FUTURE LAND USE MAP CONSISTENT WITH 163.3161, 163.3184 AND 163.3187, FLORIDA STATUTES; CHANGING 3.0973 ACRES (+/-) OF THE TOTAL 9.4678 ACREAGE FROM LOW DENSITY RESIDENTIAL TO PARKS AND RECREATION FOR A PORTION OF THE PROPERTY LOCATED AT 9271 SW 164 STREET BEARING FOLIO 33-5028-002-0070 AND A PORTION OF THE ADJACENT PROPERTY BEARING FOLIO 33-5028-002-0080, PALMETTO BAY, FLORIDA; PROVIDING FOR ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.

AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO ZONING; AMENDING THE OFFICIAL ZONING MAP TO REFLECT A DISTRICT BOUNDARY ZONE; CHANGING 3.0973 ACRES (+/-) OF THE TOTAL 9.4678 ACREAGE, FROM R-1 SINGLE FAMILY DISTRICT TO INTERIM ZONING DISTRICT; FOR A PORTION OF THE PROPERTY LOCATED AT 9271 SW 164 STREET BEARING FOLIO 33-5028-002-0070 AND A PORTION OF THE ADJACENT PROPERTY BEARING FOLIO 33-5028-002-0080, IN PALMETTO BAY, FLORIDA; PROVIDING FOR ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE. [4/5 Vote].

A. BACKGROUND

As part of the master zoning application VPB-13-001, South Motor Company of Dade County, (South Motors) proposes to transfer title, or alternatively, place a covenant, easement or leasehold that would run with the land providing for a park use, as to that portion of the property identified in the plans as 3.0973± acres. The project is located at 16215 South Dixie Highway, and 9271 SW 164 Street, bearing Folio 33-5028-002-0070

together with the adjacent property bearing Folio 33-5028-002-0080. The South Motors master zoning application includes a modification of the existing site plan, a Future Land Use Map (FLUM) amendment, and a rezoning of the two eastern parcels of the property. The two parcels total 9.4678 acres. The rezoning from R-1, Single Family District to B-2, Business District, comprises of 6.3705 acres of which 1.9344 acres is subject to the FLUM amendment from Low Residential Density to Business Office. The remaining 3.0973± acres is the subject of this request.

The intent of offering a park facility is to buffer the proposed commercial structures from the adjacent residential uses to the east and south. Should the Council accept the land through one of the prescribed instruments, the Village would be required to amend the FLUM to reflect the Park and Recreation land use designation. Staff further suggests the property be rezoned to I, Interim District, to remove the existing residential zoning district thus eliminating the previously approved site plan element which provided for a residential cluster development, and to covenant the land for park use as the property will not be used for a residential zoning purpose. The requests for the FLUM amendment and rezoning are predicated upon the transfer of title, or the recording of a perpetual easement or long-term leasehold that would run with the land authorizing the Village to use the 3.0973± acres as a park accessible to the public. South Motors' donation of the 3.0973± acres in contingent upon approval of their request for a modified site plan, FLUM amendment, and rezoning, together with the modification or release of the existing recorded Declaration of Restrictions, dated May 28, 1980, and associated resolutions and plans. As noted in South Motors' application, South Motors, as per the requirements of its recorded covenant, obtained the required number of signatures authorizing its request for rezoning. The Village is seeking this rezoning to ensure compliance with the Comprehensive Plan and to ensure that the land will be used, in perpetuity, for a park.

As an ordinance involving a rezoning under 10 acres only requires a public hearing during second reading, staff scheduled the public hearing as to the modification of the related covenants and restrictions for that second reading, public hearing date.

Update since first reading. On October 7, 2013, the item was heard on passed on First Reading and forwarded to second reading to be heard in conjunction with South Motors zoning application for modification of an existing site plan and associated FLUM amendment and rezoning. One minor change was subsequently made to the ordinance when it was identified that the word "and" was used as opposed to "an" in the legal description of the property. The rest of the Ordinance and this report remain unchanged.

Attached herein for consideration at second reading is the draft easement agreement between the Village and South Motors which is part of staff conditional support for the FLUM and re-zoning requests. The agreement keeps ownership of the land with South Motors, with operation of the facility to be managed by the Village. The agreement provides for the initial construction of the park and its maintenance costs over the next ten years to borne by South Motors (maintenance provision shall be $5,000 a year for ten years). Finally, the agreement has an option for purchase by the Village for a nominal fee.

B GENERAL INFORMATION

REQUESTS:

1. A **Future Land Use Map change** (Small Scale Amendment) from Low Density Residential to Parks and Recreation (Pursuant to Section 30-30.8 – Amendment to the Comprehensive Plan).

2. A **Rezoning** from R-1 Single-Family Residential District to I, Interim District (Pursuant to Section 30-30.7 – Amendment to the official zoning map).

Area subject to FLUM Amendment and Rezoning:

A portion of Tract 7 and 8, EAST HILL, according to the plat thereof, as recorded in Plat Book 46, Page 43, of the public records of Miami-Dade County, Florida; more fully described as follows:

Commencing at the Northwest corner of said Tract 7; thence South 00°05'42" East, on the West line of said Tract 7, a distance of 413.79 feet to the Point of Beginning; thence continuing South 00°05"42" East, on the said West line of said Tract 7, a distance of 52.80 feet to the Southwest corner of said Tract 7 and a point on a curve; thence Easterly on the South line of said Tracts 7 and 8 and also on the North right-of-way line of S.W. 164th Street and on said curve to the left, whose radius point bears North 51°49'30", with a radius of 475.00 feet, a central angle of 51°07'36", and arc distance of 423.86 feet; thence South 89°11'33" East, on the South line of said Tract 8 and on said North right-of-way line, a distance of 307.43 feet to the Southeast corner of said Tract 8; thence North 00°10'11" West, on the East line of said Tract 8, a distance of 229.36 feet; thence North 89°14'49" West, on a line 229.33 feet North of and parallel with the South line of said Tract 8 and Westerly extension thereof, a distance of 673.58 feet to the Point of Beginning.

Said lands situate, lying and being in Miami-Dade County, Florida, and containing 134,918 square feet or 3.0973 acres, more or less.

OVERALL LOT SIZE:	13.2347 net acres
AMENDMENT SIZE:	134,918 square feet or 3.0973 acres, more or less.
REZONING:	134,918 square feet or 3.0973 acres, more or less.
FOLIO NUMBERS:	33-5028-002-0070 & 33-5028-002-0080

C. ZONING HEARING HISTORY:

The prior zoning property for the remainder of the property has been consolidated. The full history can be found in the South Motors FLUM, rezoning, site plan modification, and covenant release application hearing file.

On February 4, 1982, the Dade County Board of County Commissioners pursuant to **Resolution No. Z-38-82** heard South Realty Associates' renewed application on the same item as heard in 1980, as there had been an error in the legal description from the original hearing item. Due to the foregoing, the County Commission affirmed the basic intent of the original **Resolution Z-198-80**, and specifically ruled:

(1) To allow the rezoning to RU-1, Single-Family Residential, from EU-M, Estate Modified Residential, (the property that is the subject of this pending application);

(2) To allow the rezoning to BU-3, Liberal Business District from AU, Agricultural, (16165 South Dixie Highway), subject to conditions.

(3) To allow a special exception on a portion of the property that is the subject of this pending application, with conditions to allow a cluster development with 5.6 units, per net acre.

(4) To deny the rezoning to BU-3, Liberal Business District, from RU-1, Single-Family Residential.

(5) To grant the use variance for a portion of the RU-1 property (part of the property that is the subject of this pending application) for outdoor car storage.

(6) The Applicant in 1980 proffered and recorded a covenant, which was accepted by the Commission, which provided that the RU-1 cluster plan could not be modified, and the property could not be rezoned without the approval of the defined community, as provided under the covenant. Additionally, approval no. (5) would preclude structures that would permit automobile repairs, painting, cleaning body and top work. This additional covenant term is the other major provision contained in the Declaration of Restriction, recorded at Official Record Book 10973, at Pages 1003 through 1009.

On or about May 28, 1980, the Covenant, Declaration of Restrictions, was recorded at Official Record Book 10973 at Pages 1003 through 1009. It provided, amongst other things, that the RU-1 cluster zoning on the south portion of the entire application (property that is the subject of this memorandum). If a new zoning or rezoning, or use variance is requested, the Applicant is required to obtain a release or revision of the covenant relating to the RU-1 zoning by the Board of County Commissioners, at a public hearing, after obtaining the following:

(a) consent of all fee holders of the following immediately adjacent properties: 9200, 9220, 9240, 9260 and 9280 SW 164th Street; and,

(b) consent of fee holders of 75% of the separate properties located within the adjoining area bounded by SW 164th Street and SW 94th Avenue.

In 2010, the Village created its Land Development Code and Comprehensive Zoning Map, and re-designated the subject property as R-1. (Documentation not provided in this back-up as it is voluminous and is existing Code).

Once the Village incorporated all covenants on a property are to be applied by the Village. Any release of a covenant, would be released according to the Village's Code of Ordinances, Section 30-30.9, which requires a quasi-judicial zoning hearing. South Motors, has requested to rezone 6.3705+/- acres of its property in order to expand the car dealership use. Before obtaining the rezoning, it is required they first seek the release of that portion of an existing covenant, recorded at Official Record Book 10973, at pages 1003-1009. The same applies to the park rezoning. South Motors has obtained the required signatures as delineated in the recorded covenant and may proceed with the rezoning request. The acquired signatures equally apply to the proposed park rezoning. Ultimately, prior to second reading of the park rezoning ordinance, the Village will need to hear and rule upon releasing South Motor's existing covenant. The hearing as to the release of the covenant, to allow the rezoning to proceed, will be held during second reading of the ordinance on rezoning the property to B-2, Business District.

D. NEIGHBORHOOD CHARACTERISTICS:

ZONING	LAND USE DESIGNATION
Subject Property:	
R-1; Single Family Residential	Low Density Residential
Surrounding Properties:	
NORTH:	
R-1 (Pending B-2; Business District)	Business and Office
EAST:	
R-1; Single Family Residential District	Low Density Residential (2.5-6 D.U.'s)
SOUTH:	
E-M; Estate Modified – Single Family R-1; Single Family Residential District (2.5 to 6 D.U.'s) AG; Agricultural/Residential	Low Density Residential (2.5 to 6 D.U.'s)
WEST:	
B--2; Business District Business and Office	

D.U. = Dwelling Units

E. REZONING/FLUM AMENDMENTS – PROCEDURALLY

The Village's companion FLUM amendment and rezoning requests to South Motor's master zoning application, is a small-scale (less than 10 acres) amendment to the FLUM, to change approximately 3.0973± acres to the Parks and Recreation designation. Without the Future Land Use Map modification, the 3.0973± acres could not be used for park, as doing so would be inconsistent with the Future Land Use Map designations and intensities of use.

Consistent with the Village's Code requirements and State law, a public hearing must be held on the Comprehensive Plan amendment to the FLUM. The state, for a small-scale amendment, only requires one public hearing on the ordinance, which public hearing would occur at second reading. As the Village is to enact an Ordinance to allow for the FLUM modification to the 3.0973± acres, the Council will hold two readings on the ordinance, with the public hearing held during second reading. At that time the Council will hold with the public hearing to release the Declaration of Restriction and its associated resolutions and plans. There shall also be a hearing of the Council acting as the Land Planning Agency. After the necessary public hearings, the Village Council shall take action to deny or approve the application, or approve it with modifications or conditions for purposes of transmittal to the Florida Department of Community Affairs [now known as the Department of Economic Opportunity (DEO)] pursuant to the requirements of Section 163.3161, Florida Statutes. If denied, the Village may resubmit the application as provided under Section 30-30.2, of the Village's Code. If approved for purposes of transmittal, the Village shall thereafter provide the necessary administrative support for the DEO's review process required under Section 163.3161, et seq., Florida Statutes, and the Village's ordinance would go into effect.

Pursuant to Village Charter, Section 10.2.2, four affirmative votes are required to rezone any lands that have an initial Land Use designation of Residential. As such, the rezoning request must receive a minimum of four affirmative votes. The land use change would ensure that the land would always be utilized as park land and would provide assurances to the community of the Village's intent as to this land. In order to proceed with the modification of the Future Land Use Map, the Applicant must comply with the Village's procedures for authorizing the changes. The following section provides a review of the request pursuant to the Village's Land Development Code and applicable elements of the Village's Comprehensive Plan.

The proposed amendment to the FLUM would be contingent upon approval of the underlying zoning application requests, as the 3.0973± acres is currently owned by the Applicant, and is being dedicated for a park purpose, only if the applications proceed and are approved in substantial form.

F. GENERAL DISCUSSION OF FLUM AND ZONING

Future Land Use Map (FLUM). The current designation of the two parcels subject to the FLUM amendment is Low Density Residential (LDR). The LDR designation permits residential densities to range from a minimum of 2.5 to a maximum of 6.0 dwelling units per gross acre. This density category is generally characterized by detached single-family homes. It can also include large fee-simple town homes with extensive surrounding open space or a mixture of both housing types, provided that the maximum gross density is not exceeded.

The adopted 2009 Village of Palmetto Bay Comprehensive Plan, Future Land Use Element (FLUE), as amended, identifies Parks and Recreation (PR) as a category that accommodates a full range park/recreational activities in a manner compatible with the surrounding area.

The maximum intensity of ancillary structures and building within PR shall not exceed a floor to area ratio (FAR) of 0.2.

Zoning Designation. The existing zoning of the undeveloped land that is the subject of this application is R-1, Single-Family Residential District, which principally permits single-family homes and associated accessory structures. The district also permits certain places of congregation as further regulated by Section 30-110 of the Land Development Code. The proposed zoning district, I, Interim District, permits the consideration of a "trending" of the development pattern. The ultimate trend for this property will be park use.

G. ANALYSIS

This analysis is provided in three parts. The first subsection completes a review of the relevant Comprehensive Plan's Goals, Policies, and Objectives. The second subsection reviews the FLUM amendment request, and third subsection reviews the rezoning request. The analysis portion of both the FLUM and rezoning requests incorporate all portions of Subsection I below. Further, the Background Section of this report is hereby incorporated into all parts of the analysis and is incorporated herein by reference.

All "Findings" in each of the analysis subsections delineated below for the FLUM amendment and the rezoning request, shall include the following specific conditions: that the South Motors master application be approved in substantial form, as failure to approve the master application would result in South Motors' withdrawal of the offer of donating 3.0973± acres of park land to the Village. Also, the 3.0973± acres would be tied to a recorded document running with the land, in a form approved by the Village Attorney, ensuring the perpetual park use.

SUBSECTION I – COMPREHENSIVE PLAN

The application was reviewed for consistency with the Villages Comprehensive Land Use Plan and corresponding Goals, Objectives and Policies thereof. The following is an analysis of that review.

Future Land Use Element

Goal 1: To guide the Village of Palmetto Bay from birth to early maturity as an outstanding and truly livable community in southeast Florida by building on, and improving, the existing land use blueprint through visionary planning and place-making, cost efficient provision of high quality facilities and services, quality neighborhood protection, and enhancement of its unique and beautiful coastal environmental resources.

Analysis: South Motors' master application (VPB-13-001) plan provides a 3.0973± acre park buffer to the single-family residential properties just south of the project site. The park plan reflects landscape treatments for the enhancement of the neighborhood. The proposed park functions as a buffer, contributes to the Village's LOS park requirement, and removes the potential a future

residential cluster development on the 3.0973± portion of the site as approved per Resolution No. Z-38-82.

Finding: Conditionally consistent provided South Motors provides a covenant, easement or leasehold document running with the land relating to the park use of the 3.0937± acres in a form to be approved by the Village Attorney.

Parks Element

Policy 7.1.2: Through the maintenance and expansion of existing park facilities and the acquisition and/or development of new parks and open space, achieve a Level of Service (LOS) Standard of 5.2 acres of developed park area per 1,000 residents by 2009, and an LOS of 5.0 acres by 2025.

Analysis: Based on the current Village population (approximately 24,100) and inventory of existing Village parks (85 acres), current LOS equals approximately 3.41 per 1,000 residents. The South Motors proposes, via covenant to the Village, to convert the south three acres of the property to park land to serve as a transition area to the adjacent single-family residential to the south. This addition will result in an increase LOS of .13 for a total LOS of 3.54 per 1,000 residents.

Finding: Conditionally consistent provided South Motors provides a covenant, easement or leasehold document running with the land relating to the park use of the 3.0973± acres in a form to be approved by the Village Attorney.

SUBSECTION II – FUTURE LAND USE AMENDMENT

The following is a review of the request pursuant to the Village's variance criteria found at Section 30-30.8(b) of the Land Development Code. The Background Section and the Analysis Section, at Subsection I of this report is hereby incorporated by reference into this analysis.

Criteria (1) Whether the proposal is internally consistent with the Comprehensive Plan, including the adopted infrastructure minimum levels of service standards and the concurrency management program.

Analysis: Please see Subsection I of this Analysis. If the 3.0973± acres is to be transferred to the Village for park purposes, the Village would be moving forward with complying with Policy 7.1.2 of the Comprehensive Plan.

Finding: Conditionally consistent as per the findings of Subsection I of this Analysis.

Criteria (2) Whether, and the extent to which, land use and development conditions have changed since the effective date of the existing Comprehensive Plan, and whether the changes support or work against the proposed amendment.

Analysis: The History Section is hereby incorporated as back-up to this analysis herein by reference. As presented in the History Section of this report, a number of events have occurred regarding conditions that affect the existing and future development of the site starting with Resolution No. Z-38-82 and the associated Declaration of Restrictions, which granted an "unusual use" variance to a portion of the property and required a written consent from surrounding residents prior to seeking a rezoning or another unusual use request.

South Motors' master zoning application was permitted to proceed because they were successful in securing the requisite number of signatures from the surrounding community allowing them to request a rezoning, and therefore, to also seek the site plan modification. Their site plan modification is not precluded by the Declaration of Restrictive Covenants, except to the extent that the covenant required a cluster home development on that portion of land, and required the community "sign-off" to request the rezoning. It is where the cluster development was to located that South Motors' is offering to the Village for use as a park. Addition of the park land would provide a buffer to the adjacent residential uses.

Finding: Consistent.

Criteria (3) Whether, and the extent to which, the proposal would result in any incompatible land uses, considering the type and location of uses involved, the impact on adjacent or neighboring properties, consistency with existing development, as well as compatibility with existing and proposed neighboring property land use.

Analysis: Goal 1 for Subsection I, above, is incorporated into this analysis herein by reference. The area subject to the FLUM amendment is proposed to convert the south 3.0973± acres of residentially designated land as a park to be dedicated to Village via a covenant, leasehold or easement. The park buffer would result in a buffer of over 200 feet (north to south). The park would not only provide screening of the proposed commercial use but may also increase property values of the single-family homes adjacent to the use.

Finding: Consistent.

Criteria (4) Whether, and the extent to which, the proposal would adversely affect the property values in the affected area, or adversely affect the general welfare.

Analysis: Please see Criteria 2 and 3. Development of a park would buffer the residential community and increase property values.

Finding: Consistent.

Criteria (5) Whether the proposal would result in an orderly and compatible land use pattern. Any positive and negative effects on such pattern shall be identified.

Analysis: The south 3.0973± acres of residentially designated land of South Motors' proposed project is to be dedicated as a park to the Village via a covenant, or other legal instrument. The park would serve as a buffer and covers a distance of over 200 feet (north to south). The park would not only provide screening of the commercial use but may also increase property values of the single-family homes adjacent to the use.

Finding: Consistent

Criteria (6) Whether the proposal would be in conflict with the public interest, and whether it is in harmony with the purpose and interest of the Comprehensive Plan.

Analysis: The History Section, Subsection I, and Criteria 1, 3, 4, and 5 are incorporated herein by reference.

Finding: Consistent.

Criteria (7) Whether the proposed amendment meets the requirements of Section 163.3161, Florida Statutes, entitled "The Local Government Comprehensive Planning and Land Development Regulation Act."

Analysis: Recent changes to Florida land use laws leveraged greater authority in the review and processing of small-scale land use amendments (those less than 10 acres). Submission, review and proposed implementation of the application is consistent with those provisions. The proposed small-scale amendment to amend the 3.0973± acre area from Low Density Residential to Parks and Recreation meets the requirements of Section 163.3161, Florida Statutes, as amended.

Finding: Consistent.

Criteria (8) Other matters which the Local Planning Agency or the Village Council, in its legislative discretion, may deem appropriate.

Finding: Decision for the Village Council.

SUBSECTION III – REZONING

The following is a review of the request pursuant to the Village's rezoning criteria found at Section 30-30.7(b), of the Land Development Code. The Background Section and the Analysis Subsection I and II of this report is hereby incorporated by reference into this analysis.

Criteria (1) Whether the proposal is consistent with the Comprehensive Plan, including the adopted infrastructure minimum levels of service standards and the Village's concurrency management program.

Analysis: Please see Subsection I and Subsection II, Criteria 1, of this Analysis.

Finding: Consistent.

Criteria (2) Whether the proposal is in conformance with all applicable requirements of Chapter 30.

Analysis: Please see Subsection II, Criteria 2, and provided a covenant or other legal instrument runs with land tying the property to the park use for the south 3.0973± acres.

Finding: Consistent.

Criteria (3) Whether, and the extent to which, land use and development conditions have changed since the effective date of the existing regulations, and whether the changes support or work against the proposed change in land use policy.

Analysis: Please see Subsection II, Criteria 2.

Finding: Consistent.

Criteria (4) Whether, and the extent to which, the proposal would result in any incompatible land uses, considering the type and location of uses involved, the impact on adjacent or neighboring properties, consistency with existing development, as well as compatibility with existing and proposed land uses.

Analysis: Please see Subsection II, Criteria 5.

Findings: Consistent.

Criteria (5) Whether, and the extent to which, the proposal would result in demands on transportation systems, public facilities and services; would exceed the capacity of the facilities and services, existing or programmed, including: transportation, water and wastewater services, solid waste disposal, drainage, recreation, education, emergency services, and similar necessary facilities and services.

Analysis: Please see Subsection I and Subsection II, Criteria 1 of this Analysis and provided a covenant or other legal instrument runs with land tying the property to the park use for the south 3.0973± acres.

Finding: Consistent.

Criteria (6) Whether, and to the extent to which, the proposal would result in adverse impacts on the natural environment, including consideration of wetland protection, preservation of groundwater aquifer, wildlife habitats, and vegetative communities.

Analysis: The south 3.0973± acres of residentially designated land of South Motors' proposed project is to be dedicated as a park to the Village via a covenant, or other legal instrument. The park would serve as a buffer and covers a distance of over 200 feet (north to south).

Finding: Consistent.

Criteria (7) Whether, and the extent to which, the proposal would adversely affect the property values in the affected area, or adversely affect the general welfare.

Analysis: Please see Subsection II, Criteria 4.

Finding: Consistent.

Criteria (8) Whether the proposal would result in an orderly and compatible land use pattern. Any positive and negative effects on land use pattern shall be identified.

Analysis: Please see Subsection II, Criteria 5.

Finding: Consistent.

Criteria (9) Whether the proposal would be in conflict with the public interest, and whether it is in harmony with the purpose and intent of Chapter 30.

Analysis: Please see Subsection II, Criteria 2. The proposed park will buffer the adjacent residential areas from South Motor's proposed development plan.

Finding: Consistent.

Criteria (10) Other matters which the Local Planning Agency or the Village Council in its legislative discretion may deem appropriate.

Finding: Decision for the Village Council.

H. RECOMMENDATION

The FLUM amendment and rezoning are consistent, with the Zoning, Land Development Regulations and Comprehensive Plan provided the following conditions are met:

1. Prior to second reading of the rezoning, the Village Council authorizes the release of the exiting Declaration of Restrictive Covenants, dated May 28, 1980, and recorded at Official Record Book 10973 at Pages 1003 through 1009.

2. Approve, in substantial form, the master plan application of South Motors for the FLUM amendment to BO; the rezoning to B-2; and the site plan modification under VPB-13-001. Failure to approve the master zoning application requests, would result in South Motors withdrawing its offer of providing the Village with 3.0973± acres of land for park purposes.

3. Covenant, easement or leasehold type document running with the land relating to the park use of the 3.0973± acres in a form to be approved by the Village Attorney.

4. Prior to second reading of the rezoning the FLUM amendment must be approved.

ATTACHMENT "A"
ZONING HISTORY

Corrected Copy

28-55-40/80-113

RESOLUTION NO. Z-198-80

The following resolution was offered by Commissioner Barry D. Schreiber, seconded by Commissioner Clara Oesterle, and upon poll of members present the vote was as follows:

Barbara M. Carey	aye	Harvey Ruvin	aye
Clara Oesterle	aye	Barry D. Schreiber	aye
William G. Oliver	aye	Ruth Shack	absent
Beverly B. Phillips	aye	Stephen P. Clark	aye
James F. Redford, Jr.	nay		

9/4/80

WHEREAS, SOUTH REALTY ASSOC., had applied for the following:

NEED COV

(1) A district boundary change from EU-M (Estate Use Modified) to RU-1 (Single Family Residential)) on Parcel A;

A portion of Tract 7 and 8, East Hill, Plat book 46, Page 43, more particularly described as follows:

Begin at the Southeast corner of said Tract B, thence run North 00 degrees 56 minutes 30 seconds West along the East line of said Tract 8 for a distance of 125.02 feet to a point; thence run West along a line 125 feet North of the South line of said Tract B for a distance of 480.07' to a point; thence run South 26 degrees 37 minutes 21 seconds West for a distance of 83.49' to the point of intersection with a circular curve concave to the left, said curve being the South line of said Tracts 7 and 8; thence run Southeasterly along said circular curve to the left having for its elements a radius of 475' through a central angle of 26 degrees 37 minutes 21 seconds for an arc distance of 220.71' to the Point of Tangency; thence run East along the South line of said Tract 8 for a distance of 306.68' to the Point of Beginning.

AND

(2) A district boundary change from AU (Agricultural) to BU-3 (Liberal Business) on Parcel B;

Description of a portion of Tract 4, East Hill as recorded in Plat book 46, Page 43, of the Public Records of Dade County, Florida in Section 28, Township 55 South, Range 40 East, lying and being in Dade County, Florida, bing more particulary described as follows:

COMMENCE at the Northeast corner of said Tract 4; thence due south a distance of 90.94' to the POINT OF BEGINNING: thence, due south continuing with said easterly line a distance of 206.08'; thence due West a distance of 103.29'; thence North 25 degrees 46 minutes 20 seconds East, a distance of 230.49' to a point; thence South 64 degrees 13 minutes 40 seconds East a distance of 3.41' to the POINT OF BEGINNING.

(3) SPECIAL EXCEPTION to permit a cluster development to be serviced by private drives on Parcel C;

Tracts 7 and 8, less the North 287' thereof, of EAST HILL according to the Plat therof, as recorded in Plat book 46 at Page 43 of the Public Records of Dade County, Florida.

LESS

Begin at the Southeast corner of said tract B, thence run North 00 degrees, 56 minutes 30 seconds West along the East line of said Tract 8 for a distance of 125.02 feet to a point; thence run West along a line 125' North of the South line of said Tract 8 for a distance of 480.07' to a point; thence run South 26 degrees 37 minutes 21 seconds West for a distance of 83.49' to the point of intersection with a circular curve concave to the left, said curve being the South line of said Tracts 7 and 8; thence run Southeasterly along said circular curve to the left having for its elements a radius of 475 feet through a central anagle of 26 degrees 37 minutes 21 seconds for an arc distance of 220.71 feet to the Point of Tangency; thence run East along the South line of said Tract B for a distance of 306.68' to the Point of Beginning.

(4) A district boundary change from RU-1 to BU-3

OR IN THE ALTERNATIVE

(5) USE VARIANCE to permit the outdoor storage of cars in the RU-1 zone as it would be permitted in the BU-3 zone on Parcel D;

The North 287' of Tract 7 and 8 of EAST HILL, according to the Plat thereof as recorded in Plat book 46 at Page 43 of the Public Records of Dade County, Florida.

Plans of the site are on file and may be examined in the Zoning Department entitled "Site Plan" as prepared by Smith and Associates and dated January 28, 1980.

SUBJECT PROPERTY: Tracts 7 and 8 EAST HILL according to the Plat thereof as recorded in Plat book 46 at Page 43 of the Public Records of Dade County, Florida.

LOCATION: North of S.W. 164 Street and approximately 300 feet West of S.W. 92 Avenue, Dade County, Florida, and

WHEREAS, a public hearing of the Board of County Commissioners, Dade County, Florida, was advertised and held, as required by law, and all interested parties concerned in the matter were heard, at which time the applicant proffered a Declaration of Restrictions pertaining to the use of the subject property and, among other things, including a provision that the proposed RU-1 cluster zoning on a portion of the subject property could not be modified for an initial period of 30 years and that that portion of the property devoted to the outdoor storage of cars could not be utilized for any structure which could be used for top and body work, painting or cleaning or repair of any type and providing further that the property would be properly maintained to prohibit overgrowth and would otherwise be kept in a clean and presentable manner to the satisfaction of surrounding property owners, and it is the opinion of this Board that the requested district boundary changes to RU-1 on Parcel A and BU-3 on Parcel B would be compatible with the neighborhood and area concerned and would not be in conflict with the principles and intent of the plan for the development of Dade County, Florida, and should be approved, subject to conditions, but that the requested district boundary change to BU-3 on Parcel D would be incompatible with the neighborhood and area concerned and would be in conflict with the principles and intent of the plan for the development of Dade County, Florida, and should be denied with prejudice and that the requested special exception and alternate requested use variance would be compatible with the area and its development and would be in harmony with the general purpose and intent of the regulations and would conform with the requirements and intent of the Zoning

Procedure Ordinance and should be approved, subject to conditions, and that the proffered restrictions should be accepted;

NOW THEREFORE BE IT RESOLVED by the Board of County Commissioners, Dade County, Florida, that the requested district boundary change to BU-3 on Parcel D be and the same is hereby denied with prejudice;

BE IT FURTHER RESOLVED that the requested district boundary change to RU-1 on Parcel A be and the same is hereby approved and said property is hereby zoned accordingly;

BE IT FURTHER RESOLVED that the requested district boundary change to BU-3 on Parcel B be and the same is hereby approved and said property is hereby zoned accordingly, subject to the following conditions:

1. That a plot use plan be submitted to and meet with the approval of the Zoning Director; said plan to include among other things but be not limited thereto, location of building or buildings, type and location of signs, light standards, parking areas, exits and entrances, drainage, walls, fences. landscaping, etc.

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

BE IT FURTHER RESOLVED that the requested special exception to permit a cluster development on Parcel C be and the same is hereby approved, subject to the following conditions:

1. That the dedication of rights-of-way shall be made in accordance with Sec. 33-133 of the Code of Metropolitan Dade County unless the Director of Public Works deems such are not necessary or requires a lesser amount. Improvements shall be made of such rights-of-way in order to comply with and in accordance with the requirements of the manual of Public Works construction, as may be deemed lacking, desirable and necessary by the Public Works Director.

2. That a plot use plan be submitted to and meet with the approval of the Zoning Director; said plan to include among other things, but not be limited thereto, location of building or buildings, type and location of signs, light standards, parking areas, exits and entrances, drainage, walls, fences, landscaping, etc.

3. That in the approval of the plan, the same be substantially in accordance with that submitted for the hearing entitled, "Site Plan", prepared by Smith and Associates and dated January 28, 1980. . .

4. That the density for the cluster development shall not exceed 5.6 units per net acre.

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

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

7. That where the proposed development is in excess of the minimum site area requirements the same may be developed in stages providing that each stage meets minimum site area requirements and all other requirements of residential cluster development regulations are met for each stage.

8. That all nonpublic areas and facilities for the common or joint use of all residents shall be maintained in a continuous and satisfactory manner and without expense to the general taxpayer of Dade County; an instrument incorporating provisions for such maintenance shall be approved by the County Attorney as to form and legal sufficiency.

9. That if the development is not commenced within 18 months from the date of this Resolution, the approval shall be null and void; if the development is approved in stages, subsequent stages must be developed within 18 months of the completion of the previous stage, otherwise the approval shall be null and void.

BE IT FURTHER RESOLVED that the alternate requested use variance to permit the outdoor storage of cars in the RU-1 zone as would be permitted in the BU-3 zone on Parcel D be and the same is hereby approved;

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

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

PASSED AND ADOPTED this 4th day of September, 1980.

Heard September, 1980
No. 80-5-CC-22
vp
9/12/80

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

By _____
Deputy Clerk

This resolution transmitted to the Clerk of the Board of County Commissioners on the 15th day of September, 1980.

Corrected Copy

28-55-40/80-113

RESOLUTION NO. Z-38-82

2/4/82

The following resolution was offered by Commissioner Clara Oesterle, seconded by Commissioner Jorge (George) Valdes, and upon poll of members present the vote was as follows:

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

WHEREAS, SOUTH REALTY ASSOC., had applied for the following:

A district boundary change from EU-M (Estate Use Modified) to RU-1 (Single Family Residential)) on Parcel A;

A portion of Tract 7 and 8, East Hill, Plat book 46, Page 43, more particularly described as follows:

Begin at the Southeast corner of said Tract B, thence run North 00 degrees 56 minutes 30 seconds West along the East line of said Tract 8 for a distance of 125.02 feet to a point; thence run West along a line 125 feet North of the South line of said Tract B for a distance of 480.07' to a point; thence run South 26 degrees 37 minutes 21 seconds West for a distance of 83.49' to the point of intersection with a circular curve concave to the left, said curve being the South line of said Tracts 7 and 8; thence run Southeasterly along said circular curve to the left having for its elements a radius of 475' through a central angle of 26 degrees 37 minutes 21 seconds for an arc distance of 220.71' to the Point of Tangency; thence run East along the South line of said Tract 8 for a distance of 306.68' to the Point of Beginning.

AND

A district boundary change from AU (Agricultural) to BU-3 (Liberal Business) on Parcel B;

Description of a portion of Tract 4, East Hill as recorded in Plat book 46, Page 43, of the Public Records of Dade County, Florida in Section 28, Township 55 South, Range 40 East, lying and being in Dade County, Florida, bing more particulary described as follows:

COMMENCE at the Northeast corner of said Tract 4; thence due south a distance of 90.94' to the POINT OF BEGINNING: thence, due south continuing with said easterly line a distance of 206.08'; thence due West a distance of 103.29'; thence North 25 degrees 46 minutes 20 seconds East, a distance of 230.49' to a point; thence South 64 degrees 13 minutes 40 seconds East a distance of 3.41' to the POINT OF BEGINNING.

SPECIAL EXCEPTION to permit a cluster development to be serviced by private drives on Parcel C;

Tracts 7 and 8, less the North 287' thereof, of EAST HILL according to the Plat therof, as recorded in Plat book 46 at Page 43 of the Public Records of Dade County, Florida.

LESS

Begin at the Southeast corner of said tract B, thence run North 00 degrees, 56 minutes 30 seconds West along the East line of said Tract 8 for a distance of 125.02 feet to a point; thence run West along a line 125' North of the South line of said Tract 8 for a distance of 480.07' to a point; thence run South 26 degrees 37 minutes 21 seconds West for a distance of 83.49' to the point of intersection with a circular curve concave to the left, said curve being the South line of said Tracts 7 and 8; thence run Southeasterly along said circular curve to the left having for its elements a radius of 475 feet through a central anagle of 26 degrees 37 minutes 21 seconds for an arc distance of 220.71 feet to the Point of Tangency; thence run East along the South line of said Tract B for a distance of 306.68' to the Point of Beginning.

A district boundary change from RU-1 to BU-3

OR IN THE ALTERNATIVE

USE VARIANCE to permit the outdoor storage of cars in the RU-1 zone as it would be permitted in the BU-3 zone on Parcel D;

The North 287' of Tract 7 and 8 of EAST HILL, according to the Plat thereof as recorded in Plat book 46 at Page 43 of the Public Records of Dade County, Florida.

Plans of the site are on file and may be examined in the Zoning Department entitled "Site Plan" as prepared by Smith and Associates and dated January 28, 1980.

SUBJECT PROPERTY: Tracts 7 and 8 EAST HILL according to the Plat thereof as recorded in Plat book 46 at Page 43 of the Public Records of Dade County, Florida.

LOCATION: North of S.W. 164 Street and approximately 300 feet West of S.W. 92 Avenue, Dade County, Florida, and

WHEREAS, pursuant to public hearing, this Board did approve the application, upon compliance with certain conditions, as is evidenced by its Resolution Z-198-80, adopted on September 4, 1980, and

WHEREAS, it has been brought to the attention of this Board that there was a clercial error in the legal description advertised for said hearing, and

WHEREAS, the Director of the Dade County Building & Zoning Department has readvertised said application, in his name, to correct the clerical error and has requested this Board to recertify its previous approval of the application for:

Item 1: A district boundary change from EU-M (Estate Use Modified) to RU-1 (Single Family Residential)

ON

A portion of Tracts 7 and 8, EAST HILL, Plat book 46, Page 43, more particularly described as follows:

Begin at the southeast corner of said Tract 8, thence run N00°56'30"W along the east line of said Tract 8 for a distance of 125.02' to a point; thence run west along a line 125' north of the south line of said Tract 8 for a distance of 480.07' to a point; thence run S26°37'21"W for a distance of 83.49' to the Point of intersection with a circular curve concave to the left, said curve being the south line of said Tracts 7 and 8; thence run SE/ly along said circular curve to the left having for its elements a radius of 475' through a central angle of 26°37'21" for an arc distance of 220.71' to the Point of tangency; thence run east along the south line of said Tract 8 for a distance of 306.68' to the Point of beginning.

AND

Item 2: A district boundary change from AU (Agricultural) to BU-3 (Liberal Business)

ON

Description of a portion of Tract 4, EAST HILL, Plat book 46, Page 43, in Section 28, Township 55 South, Range 40 East, being more particularly described as follows:

Commence at the northeast corner of said Tract 4; thence due south a distance of 90.94' to the Point of beginning; thence due south continuing with said E/ly line a distance of 206.08'; thence due west a distance of 103.29'; thence N25°46'20"E, a distance of 230.49' to a point; thence S64°13'40"E a distance of

3.41' to the Point of beginning.

Item 3: SPECIAL EXCEPTION to permit a cluster development to be serviced by private drives.

ON

Tracts 7 and 8, less the north 287' thereof, EAST HILL, Plat book 46, Page 43.

Item 4: A district boundary change RU-1 (Single Family Residential) to BU-3 (Liberal Business)

OR IN THE ALTERNATIVE

Item 5: USE VARIANCE to permit the outdoor storage of cars in the RU-1 zone as it would be permitted in the BU-3 zone.

ON

The north 287' of Tracts 7 and 8, EAST HILL, Plat book 46, Page 43.

Plans of the site are on file and may be examined in the Zoning Department entitled "Site Plan" as prepared by Smith and Associates and dated January 28, 1980.

SUBJECT PROPERTY: Tracts 7 and 8 and portion of Tract 4, EAST HILL, Plat book 46, Page 43.

LOCATION: North of S.W. 164 Street and approximately 300' west of S.W. 92 Avenue, Dade County, Florida, and

WHEREAS, a public hearing of the Board of County Commissioners, Dade County, Florida, was advertised and held, as required by law, and all interested parties concerned in the matter were heard, at which time the Director explained that the reason for the hearing was to correct an error in the previous advertisement pertaining, particularly, to the proposed cluster development and advising this Board that, pursuant to said application, a covenant had been proffered in the form of a Declaration of Restrictions pertaining to the use of the subject property and, among other things, including a provision that the proposed RU-1 cluster zoning on a portion of the subject property could not be modified for an initial period of thirty (30) years and that that portion of the property devoted to the outdoor storage of cars could not be utilized for any structure which could be used for top and body work, painting or cleaning or repair of any type and providing, further, that the property would be properly maintained to prohibit overgrowth and would otherwise be kept in a clean and presentable manner to the satisfaction of surrounding property owners, and upon due and proper consideration having been given to the purpose of the hearing and to the matter at hand, it is the opinion of this Board that its previous action should be reaffirmed and that the requested district boundary changes to RU-1 (Item 1) and BU-3 (Item 2) would be compatible with the neighborhood and area concerned and would not be in conflict with the principles and intent of the plan

for the development of Dade County, Florida, and should be approved, subject to conditions, but that the requested district boundary change to BU-3 (Item 4) would be incompatible with the neighborhood and area concerned and would be in conflict with the principles and intent of the plan for the development of Dade County, Florida, and should be denied with prejudice and that the requested special exception (Item 3) and alternate requested use variance (Item 5) would be compatible with the area and its development and would be in harmony with the general purpose and intent of the regulations and would conform with the requirements and intent of the Zoning Procedure Ordinance and should be approved, subject to conditions, and that the proffered restrictions should be accepted;

NOW THEREFORE BE IT RESOLVED by the Board of County Commissioners, Dade County, Florida, that the previous decision of this Board be and the same is hereby reaffirmed and that the previous acceptance of the proffered Declaration of Restrictions is reaffirmed and the County does exercise its option to enforce the same wherein they are more restrictive than applicable zoning regulations;

BE IT FURTHER RESOLVED that the requested district boundary change to BU-3 (Item 4) be and the same is hereby denied with prejudice;

BE IT FURTHER RESOLVED that the requested district boundary change to RU-1 (Item 1) be and the same is hereby approved and said property is hereby zoned accordingly;

BE IT FURTHER RESOLVED that the requested district boundary change to BU-3 (Item 2) be and the same is hereby approved and said property is hereby zoned accordingly, subject to the following conditions:

1. That a plot use plan be submitted to and meet with the approval of the Zoning Director; said plan to include among other things but be not limited thereto, location of building or buildings, type and location of signs, light standards, parking areas, exits and entrances, drainage, walls, fences. landscaping, etc.

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

BE IT FURTHER RESOLVED that the requested special exception to permit a cluster development (Item 3) be and the same is hereby approved, subject to the following conditions:

1. That the dedication of rights-of-way shall be made in accordance with Sec. 33-133 of the Code of Metropolitan Dade County unless the Director of Public Works deems such are not necessary or requires a lesser amount. Improvements shall be made of such rights-of-way in order to comply with and in accordance with the requirements of the manual of Public Works construction, as may be deemed lacking, desirable and necessary by the Public Works Director.

2. That a plot use plan be submitted to and meet with the approval of the Zoning Director; said plan to include among other things, but not be limited thereto, location of building or buildings, type and location of signs, light standards, parking areas, exits and entrances, drainage, walls, fences, landscaping, etc.

3. That in the approval of the plan, the same be substantially in accordance with that submitted for the hearing entitled, "Site Plan", prepared by Smith and Associates and dated January 28, 1980.

4. That the density for the cluster development shall not exceed 5.6 units per net acre.

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

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

7. That where the proposed development is in excess of the minimum site area requirements the same may be developed in stages providing that each stage meets minimum site area requirements and all other requirements of residential cluster development regulations are met for each stage.

8. That all nonpublic areas and facilities for the common or joint use of all residents shall be maintained in a continuous and satisfactory manner and without expense to the general taxpayer of Dade County; an instrument incorporating provisions for such maintenance shall be approved by the County Attorney as to form and legal sufficiency.

9. That if the development is not commenced within 18 months from the date of this Resolution, the approval shall be null and void; if the development is approved in stages, subsequent stages must be developed within 18 months of the completion of the previous stage, otherwise the approval shall be null and void.

BE IT FURTHER RESOLVED that the alternate requested use variance to permit the outdoor storage of cars in the RU-1 zone as would be permitted in the BU-3 zone (Item 5) be and the same is hereby approved;

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

PASSED AND ADOPTED this 4th day of February, 1982.

Heard September, 1980
No. 80-5-CC-22
vp
2/10/82

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

By _____
Deputy Clerk

This resolution transmitted to the Clerk of the Board of County Commissioners on the 12th day of February, 1982.

1980 DEC 31 AM 9:23

80R352244

OFF REC 10973 PG 1003

DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS, made and entered into this 28th day of May, 1980, by SOUTH REALTY ASSOCIATES, a Florida general partnership, hereinafter referred to as "DEVELOPER", and running in favor of the Board of County Commissioners of Metropolitan Dade County, Florida, hereinafter referred to as the "COUNTY", is as follows:

W I T N E S S E T H :

WHEREAS, the DEVELOPER is the applicant before the COUNTY pursuant to Application No. 80-113, scheduled to be heard by the COUNTY as Hearing No. 80-5-CC-22, at a public hearing on September 4, 1980, as per the notice attached hereto and made a part hereof; and

WHEREAS, the DEVELOPER, for the benefit of the COUNTY and the fee holders of separate properties within the area bounded by S. W. 164th Street, S. W. 168th Street, S. W. 90th Avenue, and S. W. 94th Avenue, hereinafter referred to as the "PROPERTY OWNERS", voluntarily desires to restrict the use and development of the aforesaid property;

NOW, THEREFORE, in consideration of the foregoing, as well as the sum of Ten Dollars ($10.00) and other good and valuable consideration, receipt of which is hereby acknowledged, the DEVELOPER agrees as follows:

1. This Agreement is and shall be a covenant running with the land, and shall bind all heirs, successors, and assigns of the DEVELOPER.

2. The use variance sought on the North portion of the subject tract, as described on Exhibit "A" attached hereto and made a part hereof, and RU-1 cluster zoning on the South portion, as described on Exhibit "B" attached hereto and made a part hereof, shall not be modified by the granting of any new or different zoning or rezoning or use variances for a period of thirty years, which period shall be automatically renewable thereafter for successive ten (10) year periods, not to exceed 99 years, unless this restriction

This Instrument Was Prepared By:
ROBERT H. TRAURIG
OF THE LAW FIRM OF
GREENBERG, TRAURIG, HOFFMAN, LIPOFF, QUENTEL & WOLFF, P.A.
[illegible]

is released or revised by the Board of County Commissioners of Dade County, Florida, or its successors, pursuant to public hearing, after receiving the consent of the PROPERTY OWNERS as follows:

(a) The consent of all fee holders of properties located addresses which are immediately contiguous to the subject tract, to-wit: 9200, 9220, 9240, 9260, and 9280 S. W. 164th Street, and

(b) The consent of fee holders of 75% of the separate properties located within the adjoining area bounded by S. W. 164th Street, S. W. 168th Street, S. W. 90th Avenue, and S. W. 94th Avenue.

3. In regards to that portion in which a use variance is sought to permit the outdoor storage of cars, the DEVELOPER covenants and agrees that he will not construct any structure which would permit automobile body and top work, painting or cleaning, or showroom facilities or structures which would permit the housing of automobiles for the purpose of repair or other incidental services relative to the operation of an automobile agency, nor will the property be used for said purposes. The described property will be limited to the aforementioned outdoor storage of automobiles.

4. The DEVELOPER further covenants and agrees that the subject property shall at all times be kept free from debris and shall be properly maintained to prohibit overgrowth of shrubbery and vegetation and shall at all times be kept in a clean and presentable manner to the satisfaction of surrounding property owners.

5. This Agreement inures in favor of the COUNTY, as well as the aforementioned PROPERTY OWNERS and is binding upon the undersigned, as well as his heirs, personal representatives, successors and assigns.

6. This covenant shall be enforceable in court and the prevailing party shall be entitled to reasonable fees and costs incurred by it in such action.

IN WITNESS WHEREOF, the undersigned have set their hands and seals for the purposes herein expressed.

Signed, sealed and delivered in the presence of:

SOUTH REALTY ASSOCIATES, a Florida General Partnership

As to Esserman

RONALD ESSERMAN

CARLOS DASCAL

As to Dascal

ARMANDO CODINA

As to Codina

LARRY J. HOFFMAN

As to Hoffman

STATE OF FLORIDA)
COUNTY OF DADE) ss.

The foregoing Declaration of Restrictions was acknowledged before me by RONALD ESSERMAN, as a general partner of SOUTH REALTY ASSOCIATES, a Florida general partnership, for the purposes therein expressed on this 23rd day of May, 1980.

My commission expires:
NOTARY PUBLIC STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES JULY 16 1982
BONDED THRU GENERAL INS. UNDERWRITERS

NOTARY PUBLIC, STATE OF FLORIDA
AT LARGE

STATE OF FLORIDA)
COUNTY OF DADE) ss.

The foregoing Declaration of Restrictions was acknowledged before me by CARLOS DASCAL, as a general partner of SOUTH REALTY ASSOCIATES, a Florida general partnership, for the purposes therein expressed on this 23rd day of May, 1980.

My commission expires:
NOTARY PUBLIC STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES JULY 16 1982
BONDED THRU GENERAL INS. UNDERWRITERS

NOTARY PUBLIC, STATE OF FLORIDA
AT LARGE

STATE OF FLORIDA)
COUNTY OF DADE) ss.

The foregoing Declaration of Restrictions was acknowledged before me by ARMANDO CODINA, as a general partner of SOUTH REALTY ASSOCIATES, a Florida general partnership, for the purposes therein expressed on this 23rd day of May, 1980.

My commission expires:
NOTARY PUBLIC STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES JULY 16 1982
BONDED THRU GENERAL INS. UNDERWRITERS

NOTARY PUBLIC, STATE OF FLORIDA
AT LARGE

STATE OF FLORIDA)
COUNTY OF DADE) ss.

The foregoing Declaration of Restrictions was acknowledged before me by LARRY J. HOFFMAN, as a general partner of SOUTH REALTY ASSOCIATES, a Florida general partnership, for the purposes therein expressed on this 28th day of May, 1980.

MY COMMISSION EXPIRES JULY 16 1982
BONDED THRU GENERAL INS. UNDERWRITERS

NOTARY PUBLIC, STATE OF FLORIDA
AT LARGE

Approved for Legal Form & Sufficiency
Asst. City Atty 9/9/80

EXHIBIT "A"

The North 287 feet of Tracts 7 and 8 of EAST HILL, according to the Plat thereof as recorded in Plat Book 46, at Page 43, of the Public Records of Dade County, Florida.

EXHIBIT "B"

Tracts 7 and 8, less the North 287 feet thereof, of EAST HILL, according to the Plat thereof, as recorded in Plat Book 46, at Page 43, of the Public Records of Dade County, Florida.

OFF REC 10973 PG 1009

JOINDER

The undersigned, CITY NATIONAL BANK OF MIAMI, AS TRUSTEE, UNDER LAND TRUST NO. 5692-8 (WATERS LAND TRUST), Mortgagee under that certain mortgage from RONESS, INC., dated the 29th day of December, 1978, and recorded in Official Records Book 10273, at Page 864, under Clerk's File No. _____, of the Public Records of Dade County, Florida, in the original amount of $ 280,000.00, covering all or a portion of the property described in the foregoing Agreement, does hereby acknowledge that the terms of said Agreement are and shall be binding upon the undersigned and its (their) successors in title.

IN WITNESS WHEREOF, these presents have been executed this 13 day of November, 1980.

Signed, sealed and delivered in the presence of:

Jeanne Menas

Joyce W. Tucci

CITY NATIONAL BANK OF MIAMI, AS TRUSTEE, UNDER LAND TRUST #5692-8

By: Robert M. Riddle

VICE PRESIDENT AND TRUST OFFICER

STATE OF FLORIDA)
) ss.
COUNTY OF DADE)

The foregoing Joinder was acknowledged before me this 13 day of November, 1980, by ROBERT M. RIDDLE VICE PRESIDENT AND TRUST OFFICER for the purposes therein expressed.

My commission expires:
Notary Public, State of Florida at Large
My Commission Expires March 11, 1981

Joyce W. Tucci
NOTARY PUBLIC, STATE OF FLORIDA AT LARGE

RECORDED IN OFFICIAL RECORDS BOOK OF DADE COUNTY, FLORIDA.
RECORD VERIFIED
RICHARD P. BRINKER,
CLERK CIRCUIT COURT

ATTACHMENT "B"
DRAFT PARK EASEMENT AGREEMENT

This Instrument Prepared By:
Gunster, Yoakley & Stewart, P.A.
2 South Biscayne Boulevard, Suite 3400
Miami, Florida 33131
Attention: Simon Ferro, Esq.

PUBLIC RECREATION AND USE EASEMENT
(Miami-Dade County)

THIS PUBLIC RECREATION AND USE EASEMENT ("Easement") is made as of this _____ day of _____, 2013, by **SOUTH MOTOR COMPANY OF DADE COUNTY**, a Florida corporation, whose mailing address is 16165 South Dixie Highway, Miami, Florida 33157 ("Grantor"), in favor of **VILLAGE OF PALMETTO BAY, FLORIDA**, a Florida municipal corporation, whose mailing address is 9705 East Hibiscus Street, Palmetto Bay, Florida 33157 ("Grantee").

WITNESSETH THAT:

A. Grantor is the owner of that certain real property, lying and being in Miami-Dade County, Florida and more particularly described in Exhibit A attached hereto and made a part hereof ("Easement Area").

B. Grantor is the owner of that certain real property adjacent to and abutting the Easement Area, lying and being in Miami-Dade County, Florida and more particularly described in Exhibit B attached hereto and made a part hereof ("Adjoining Area").

C. The Easement Area and Adjoining Area are part of application VPB-13-001 submitted by Grantor to Grantee for a FLUM Amendment, rezoning, and site plan approval (collectively the "Public Hearing Application").

D. It is Grantor's intent to provide the Easement Area for use by Grantee and the public as a recreation and park area owned by Grantor consistent with Section 375.251(2), Florida Statutes.

E. It is Grantor's and Grantee's intent that, at all times during the term of this Easement and prior to Grantee's acquisition of the Easement Area as permitted herein, the Easement Area shall be the private property of Grantor, which Grantor shall make available for park use available to the public in accordance with the terms and provisions of this Easement.

F. It is further Grantor's and Grantee's intent that, at all times during the term of this Easement and prior to Grantee's acquisition of the Easement Area as permitted herein, the Easement Area shall be considered a "private park", and not a "public park", as those terms are used under the Village of Palmetto Bay Land Development Code and the Village of Palmetto Bay Code of Ordinances (jointly, the "Codes").

NOW, FOR AND IN CONSIDERATION OF the sum of $10.00, the mutual promises and covenants contained in this agreement, and for other good and valuable consideration, the receipt and legal sufficiency of which is acknowledged by both parties, the parties agree as follows:

1. **Scope of Easement.** The rights of use granted to Grantee by Grantor hereunder shall be limited to recreation and park use. During the term of this Easement and until the Easement Area is acquired by Grantee as herein provided, the Easement Area shall mean and be considered by both Grantor and Grantee as a "private park", which shall be made available to Grantee and the public for recreation and park use, and not a "public park", as those terms are used under the Code. During the term of this Easement, Grantee shall not assign this Easement or any interest therein, either voluntarily or involuntarily, to any other party, nor shall Grantee cause any mechanics' liens or any other encumbrances to affect the Easement Area.

2. **Grant of Easement**. Subject to Grantor's use rights as set forth in this Easement, Grantor hereby grants to Grantee an exclusive, perpetual easement on, over and across the Easement Area. Grantee shall maintain the Easement Area in accordance with Section 11 below. Grantor shall grade, sod and landscape the Easement Area in phases in accordance with Grantor's plans attached hereto as Exhibit C ("Park Plan") and the Phasing Plan (defined below). The easement granted to Grantee shall be exclusive, except to the extent otherwise provided in this Easement.

3. **Temporary Exclusive Use of Easement Area by Grantor.** Grantor shall initially have the exclusive right to use that portion of the Easement Area delineated on Exhibit C attached hereto and made a part hereof and the Phasing Plan as a staging and operations area ("Staging and Use Area"), both for the construction of improvements on the Adjoining Area and for temporary improvements, installations and facilities and their use in the conduct of Grantor's automobile dealership businesses in conjunction with its operations in the Adjoining Area, in accordance with the site plan ("Site Plan") and Phasing Plan approved in the Public Hearing Application. Grantors' use of the Staging and Use Area shall be for a period equal to the time table for construction of all improvements on the Adjacent Area and Park approved under the Public Hearing Application and Park Plan, including extensions granted by Grantee, and the expiration of all appeal periods without an intervening appeal ("Construction Period"). Specifically, Grantor's use of the Staging and Use Area shall terminate upon the issuance of the last final certificate of occupancy for all improvements to the Adjoining Area and the Park pursuant to the Phasing Plan ("Certificate of Occupancy") or the expiration of the Construction Period, whichever is later. During the Construction Period: (a) the Staging and Use Area, shall be closed to the public and shall not be used for recreation and park use; and (b) Grantor shall have exclusive control over and access to the Staging and Use Area, which may be fenced and made inaccessible to the public for their safety and protection. That portion of the Easement Area not contained within the Staging and Use Area ("First Park Phase") shall be developed by Grantor as the first phase of the Park in accordance with the Park Plan and Phasing Plan.

4. **Commencement of Use of Easement Area by Grantee.** Grantee's right to use the Easement Area, in stages, in accordance with the terms of this Easement (in each case a "Commencement of Use by Grantee") shall be as follows: a) the First Park Phase upon Grantor's completion of the first phase of the Phasing Plan; and b) the Staging and Use Area upon Grantor's completion of the sixth phase of the Phasing Plan. Each Commencement of Use by Grantee, first

of the First Park Phase and subsequently of the Staging and Use Area, shall be further evidenced by a written notification by Grantor to Grantee that all conditions precedent to such Commencement of Use by Grantee have been satisfied. Prior to each Commencement of Use by Grantee, Grantor shall reasonably demonstrate to Grantee (with a current Phase I Environmental Report) that the applicable portion of the Park which is being turned over for use by Grantee and the public is free of hazardous materials. In order to establish each date of Commencement of Use by Grantee, Grantor and Grantee shall execute a written confirmation of each of such dates once they occur.

5. **Recreation and Park Use Area Part of Approved Site Plan.** As is indicated in the Public Hearing Application, the Easement Area is and shall remain permanently part of the Site Plan, and shall be included along with the Adjoining Area for purposes of determining compliance with the requirements of the Code, including, but not limited to, the requirements of floor area ratio, net lot area, open space, landscaping, lot coverage and any other requirements or criteria imposed by the Code, or any other law, rule or regulation now or hereinafter enacted which is applicable to the currently existing improvements on the Adjoining Area, the construction, operation, maintenance, implementation and development of the Adjoining Area as indicated in the Site Plan, and any future modifications thereof (collectively, the "Applicable Laws"). Furthermore, Grantee shall only acquire ownership of the Easement Area pursuant to Section 6 below if (a) such conveyance does not create a non-conformity as to use, zoning, building, or any other requirements or criteria of, or otherwise violates, Applicable Laws with respect to the Adjoining Area; (b) such conveyance shall not prohibit other future improvements or administrative or public hearing requests for additional improvements to the Adjoining Area; (c) all development rights appurtenant to the Easement Area shall be retained in perpetuity by the owner(s) of the Adjoining Area; and (d) such conveyance is consistent with all provisions of this Easement and the terms of the form of Agreement for Sale and Purchase of Real Property (the "Purchase Agreement) attached as Exhibit D hereto. The foregoing conditions shall be deemed conditions precedent to Grantee's exercise of the option to purchase the Easement Area described in Section 6, below.

6. **Option to Purchase by Grantee.** For a period of ten (10) years commencing after the date of Commencement of Use by Grantee of the Staging and Use Area ("Option Period") Grantee shall have the option to purchase the Easement Area at a nominal fee ($1.00). The terms and conditions of the purchase shall be as set forth in the Purchase Agreement. Grantee may only exercise the right to purchase the Easement Area if all of the terms and conditions set forth in Section 5 of this Easement have occurred or been completed. Grantee shall exercise the option to purchase the Easement Area by notifying Grantor in writing of its election to purchase the Easement Area prior to the expiration of the Option Period, and the date of such written notification shall be deemed the Effective Date under the Purchase Agreement. Promptly thereafter the parties shall execute and deliver the Purchase Agreement.

7. **Use of Easement Area and Indemnification by Grantee.** Subject to the limitations of Chapter 768, *Florida Statutes*, where applicable, Grantee covenants, warrants, and agrees with Grantor that, from and after each Commencement of Use by Grantee, the portion(s) of the Easement Area under Grantee's control shall be used by Grantee only for recreation and park use, and that Grantee and all persons using such portion(s) of the Easement Area shall comply with all laws, rules, and regulations of the federal, state, county and municipal governments and other authorities having jurisdiction, and of any lawful order of any officer thereof. Grantee and all persons using the portion(s) of the Easement Area under Grantee's control pursuant to this Easement shall not store fuel (other than fuel in parked vehicles), or hazardous materials, solid waste

or other toxic materials on the Easement Area. As used in this Easement, the term "hazardous material" means any hazardous or toxic substance which is or becomes regulated by any local governmental authority in the State of Florida or by any governmental authority of the United States. The term "hazardous material" shall not include pesticides, fertilizers or other industry-accepted landscape maintenance materials generally used in the maintenance of parks and properly applied to the Park in accordance with the manufacturer's instructions. Grantee agrees to indemnify and hold Grantor harmless from any and all claims, demands, liabilities, losses, damages or expenses arising as a result of Grantee's or any such persons' breach or failure to perform any of the terms that are contained in this section. Grantee further covenants and agrees with Grantor that it will occupy and maintain the Park in good condition and that it will not commit, or suffer to be committed, any waste of or on the Easement Area. Grantee shall not use the Easement Area for any unlawful purpose and shall comply with all legal requirements. Grantee shall not permit any offensive, or dangerous activity, nor any nuisance or other conduct at the Easement Area in violation of the public policy of the Grantee, county or state. Nothing contained in this Easement shall be construed or interpreted to be a waiver of sovereign immunity by Grantee.

8. **Additional Indemnification by Grantee.** Subject to the limitations of Chapter 768, *Florida Statutes*, where applicable, upon Commencement of Use by Grantee, Grantee hereby indemnifies and agrees to defend, and hold harmless Grantor, its shareholders, officers, agents and employees from and against any and all claims, suits, actions, and causes of action, as well as the costs of removal, remediation and monitoring of any environmental contamination, arising during the term of this Easement after Grantee assumes control of any portion of the Easement Area, and with respect to any personal injury, loss of life, or damage to property sustained by any person or entity (including members of the general public), caused by or arising out of Grantee's (or its contractors', subcontractors' employees' or agents') construction, operation or maintenance of the Easement Area for recreation and Park use, including all costs, attorneys' fees, expenses, including any appeal, and including the investigations and defense of any action or proceeding and any order, judgment or decree which may be entered in any action or proceeding, except to the extent caused by or arising out of the negligence, strict liability, intentional torts or criminal acts of Grantor, its shareholders, officers, agents, employees or contractors. In the event that a judgment covered by the foregoing indemnity shall be rendered in any suit or action against Grantor, Grantee shall fully satisfy the judgment immediately after Grantee shall have received written notice from Grantor following the entry of the judgment. If Grantee shall fail to satisfy the judgment within the designated time period set forth in this Easement, then the failure shall be a violation of this Easement. Grantee shall not settle or compromise any claim against Grantor without Grantor's written consent, which shall not be unreasonably withheld. The provisions of this section shall survive the termination of this Easement. Nothing contained in this Easement shall be construed or interpreted to be a waiver of sovereign immunity by Grantee

9. **Enforcement of Rights Under Easement.** It is mutually understood and agreed by Grantor and Grantee that if suit be brought to correct any breach of any provision or condition of this Easement to be performed by either party, each party shall bear their own attorney fees and costs, including paralegal fees. Neither party shall be responsible for prejudgment interest. Venue for any litigation shall be Miami-Dade County, Florida.

10. **Insurance from and after the First Commencement of Use by Grantee.** From and after the first Commencement of Use by Grantee, and thereafter throughout the term of this Easement, Grantee shall maintain commercial general liability insurance with personal injury and

property damage liability with limits of not less than $1,000,000.00 for combined single limit per occurrence for bodily injury and property damage with a general aggregate limit of not less than $2,000,000.00. The policy shall name Grantee as additional insured. Nothing in this Easement will be construed to affect in any way the Village's rights, privileges, and immunities, including the monetary limitations of liability, set forth in Section 768.28 of the Florida Statutes (no liability for punitive damages or interest for the period before judgment; nor any claim or judgment which exceeds the sum of $200,000 for one person, or $300,000 total for all claims arising from the same incidence or occurrence) with respect to tort claims of third parties.

11. **Maintenance of Easement Area**. Upon Commencement of Use by Grantee of a portion of the Easement Area, Grantee shall begin maintaining that portion of the Easement Area in good order and repair, at Grantee's sole cost and expense, and in compliance with all Applicable Laws. For the first five (5) years after the date Grantee commences maintenance of the First Park Phase, Grantor shall contribute Five Thousand Dollars ($5,000.00) to Grantee annually, to be applied solely to the cost and maintenance of the First Park Phase and/or the Staging and Use Area (once Grantee commences to maintain the latter). For the first five (5) years after the date Grantee commences maintenance of the Staging and Use Area, Grantor shall contribute Five Thousand Dollars ($5,000.00) to Grantee annually, to be applied to the cost and maintenance of the Easement Area. The aggregate amount to be contributed by Grantor shall be Fifty Thousand Dollars ($50,000.00). If Grantee acquires title to the Easement Area prior to receipt of the full Fifty Thousand Dollars ($50,000.00), Grantor shall continue payment in accordance with the foregoing schedule until it completes payment of Fifty Thousand Dollars ($50,000.00). This provision shall survive the termination of this Easement upon Grantee's acquisition of the Easement Area.

12. **Grantor's Rights to Request Exemption or Reduction of Ad Valorem Taxation**. At any time during the term of this Easement, Grantor may apply for exemptions or reductions of ad valorem taxes to the Miami-Dade County Property Appraiser to exempt the Easement Area or reduce its assessed value for purposes of real property ad valorem taxation.

13. **No Interference**. After Commencement of Use by Grantee of any portion of the Easement Area, Grantor shall not develop or improve (except as necessary to complete the Park Plan), or grant any other rights or easements to others with respect to, such portion of the Easement Area and shall not interfere with the rights herein granted to Grantee.

14. **Acceptance of Easement.** Execution of this Easement by Grantor and Grantee after approval by the Village of Palmetto Bay Council of the Public Hearing Application shall be deemed Grantee's acceptance of and agreement to the terms of this Easement. This Easement shall be recorded in the Public Records of Miami-Dade County.

15. **No Liability to Grantor.** After Commencement of Use by Grantee of a portion of the Easement Area, Grantor shall not: (i) be presumed to extend any assurances that such portion of the Easement Area is safe for any purpose; (ii) incur any duty of care toward any person who goes on such portion of the Easement Area; (iii) be required to give warning to persons entering such portion of the Easement Area of any hazardous conditions, structures, or activities thereon; and (iv) be liable or responsible for any injury to any persons or property caused by the act or omission of any person who goes on such portion of the Easement Area.

16. **Binding Effect**. This Easement shall bind and inure to the benefit of Grantor's successors which may own, from time to time, the whole or any portion of the Adjoining Area.

17. **No Modification; Termination**. This Easement may not be amended or modified in any respect whatsoever or terminated or rescinded, in whole or in part, except by Grantor, its successors and/or assigns, and Grantee, and then only by written instrument duly executed with the formality of a deed, acknowledged and recorded in the Public Records of Miami-Dade County, Florida. If Grantee purchases the Easement Area pursuant to the terms hereof and of the Purchase Agreement, this Easement shall terminate and the parties shall execute an appropriate instrument to be recorded in said Public Records to reflect such termination, subject however, to the provisions hereof which by their terms are to survive such termination.

18. **Governing Law**. This Easement shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida.

19. **Recitals; Headings**. The recitals set forth above are true and correct and incorporated herein by reference. The headings used in this Easement are for convenience only, shall in no way define or limit the scope or content of this Easement, and shall not be considered in any construction or interpretation of this Easement or any part hereof.

20. **Entire Agreement**. This Easement and the incorporated Exhibits constitute the entire agreement and understanding between the parties and supersede all previous contracts or understandings, oral or written, between the parties. In the event a court must interpret any word or provision of this agreement, the word or provision shall not be construed against either party by reason of drafting or negotiating this agreement.

[SIGNATURES FOLLOW]

IN WITNESS WHEREOF, Grantor and Grantee have executed this Easement as of the day and year first above written.

WITNESSES:

GRANTOR:

SOUTH MOTOR COMPANY OF DADE COUNTY, a Florida corporation

_____
Signature of Witness

By:_____
Name:_____
Title:_____

_____
Printed Name

_____
Signature of Witness

_____
Printed Name

WITNESSES:

GRANTEE:

THE VILLAGE OF PALMETTO BAY, a political subdivision of the State of Florida

_____
Signature of Witness

By:_____
Name:_____
Title:_____

_____
Printed Name

_____
Signature of Witness

_____
Printed Name

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE AND RELIANCE OF THE VILLAGE OF PALMETTO BAY ONLY:

_____
John H. Herin, Jr.
Interim Village Attorney

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

The foregoing Easement was acknowledged before me this _____ day of _____, 2013, by _____, as _____ of **SOUTH MOTOR COMPANY OF DADE COUNTY**, a Florida corporation, on behalf of said company. He/she [ ] is personally known to me, or [ ] has produced _____ as identification.

(Notary Seal)

_____
Signature of Notary Public

_____
Name of Notary Typed, Printed or Stamped

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

The foregoing Easement was acknowledged before me this ___ day of October, 2013, by _____, as _____ of **THE VILLAGE OF PALMETTO BAY,** a political subdivision of the State of Florida, on behalf of said company. He/she [ ] is personally known to me, or [ ] has produced _____ as identification.

(Notary Seal)

_____
Signature of Notary Public

_____
Name of Notary Typed, Printed or Stamped

[EXHIBITS FOLLOW]

EXHIBIT A

EASEMENT AREA

EXHIBIT B

ADJOINING AREA

EXHIBIT C

PARK PLAN

EXHIBIT D

PURCHASE AGREEMENT

AGREEMENT FOR SALE AND PURCHASE OF REAL PROPERTY

Effective Date of this Agreement:

The date exercises of Buyer its option to purchase under the Easement Agreement (as defined below).

Buyer and Buyer's Address:

VILLAGE OF PALMETTO BAY
9705 East Hibiscus Street
Palmetto Bay, FL 33157

Seller and Seller's Address:

SOUTH MOTOR COMPANY OF DADE COUNTY
16165 South Dixie Highway
Miami, FL 33157

Total Purchase Price:

See Paragraph 3, below.

Property:

The real property described in Exhibit A, attached hereto, and improvements thereto, if any.

1. **PROPERTY**. Seller represents that Seller holds fee simple title to, and has good right to sell and convey, the Property.

2. **SALE AND PURCHASE PURSUANT TO EASEMENT AGREEMENT**. Buyer desires to obtain the Property for the purpose of use as a public park with green space and Seller desires to sell the Property for such public purpose in accordance to, and pursuant to, the terms of that certain Public Recreation and Use Easement Agreement ("Easement Agreement") entered into between Seller and Buyer dated _____ and approved by the Village Council of the Village of Palmetto Bay on _____, including all conditions precedent contained in the Easement Agreement. Therefore, Seller agrees to convey the Property to Buyer, and Buyer agrees to

accept the Property from Seller, upon the terms and subject to the conditions set forth in the Easement Agreement and herein. In the event of any conflict or discrepancy between this agreement and the Easement Agreement, the latter shall prevail.

3. **PURCHASE PRICE**. The Purchase price shall be $1.00 (One Dollar and No Cents) to be paid in full at time of closing.

4. **TITLE**. Acceptable title hereunder is a marketable fee simple record title vested in Seller as to all of the Property, subject to the title exceptions identified on Exhibit B hereto and any other easements, conditions and restrictions permitted by or provided for in the Easement Agreement (collectively, the "Permitted Exceptions"). Within 30 days after the Effective Date, Buyer, at Buyer's expense, may obtain and deliver to Seller a title insurance commitment issued by a title insurance company authorized to issue title insurance in the State of Florida, which title insurance commitment shall provide for the title insurance company, at or promptly after closing, to issue to Buyer a title insurance policy reflecting acceptable title in Buyer. Buyer will have ten days after receipt of the title insurance commitment to give Seller written notice that title to the Property is or is not acceptable as reflected in the title insurance commitment. The Permitted Exceptions shall in all events be deemed acceptable. If title is subject to any alleged unpermitted defect or encumbrance, the notice to Seller shall specify the title defects or encumbrances that render title to the Property unacceptable. If Buyer fails to give Seller notice that title is not acceptable within the period of time provided above, title to the Property shall be deemed acceptable. If title is defective and if Buyer gives Seller notice thereof within the time provided above, Seller shall have a period of time not to exceed sixty (60) days from the delivery of the notice of title unacceptability within which to remove the title defects and encumbrances, at Seller's expense, but Seller shall not be obligated to pursue a suit to quiet title, or expend any funds (except to satisfy any monetary liens). Buyer may waive any title defects and encumbrances and may extend the time allowed for removal thereof. When all unwaived title defects and encumbrances have been removed or cured and Seller has given Buyer proof thereof within the time specified above or extended, closing shall take place promptly thereafter. If Seller is not obligated to, unable or unwilling to remove the unwaived title defects and encumbrances, within the time specified above, Seller shall notify Buyer in writing, stating the reason therefor, and within ten days thereafter Buyer either shall waive the title defects and encumbrances and proceed with closing, or Buyer shall withdraw from the transaction and terminate the obligations of the parties hereunder. At closing, Buyer will pay for the title insurance policy to be issued to Buyer. [ISSUE: WILL A TITLE COMPANY INSURE FOR $1.00, WHICH IS THE PURCHASE PRICE]

5. **USE RESTRICTIONS; MAINTENANCE OF PARK; REVERTER.** Seller shall convey the Property to Buyer by quit-claim deed ("Deed"). The Deed shall include certain restrictions on the use of the Property and shall require Buyer to maintain the park and landscaping and improvements thereto existing or thereafter added in good condition; the restrictions shall include: (i) a prohibition against any use of the Property other than as a public park; (ii) a restriction providing that no rights to any portion of the Property may be conveyed, transferred, assigned, granted, leased or licensed to any third party for any use other than as a public park (i.e., no vending, entertainment, parking, etc., for any purpose other than as ancillary to the operation or use of the Property as a public park); and (iii) such other restrictions as may be reasonably necessary to ensure the continued use of the Property as a public park. The Deed shall also provide that fee simple title to the Property shall revert back to Seller upon any violation of the restrictions and obligations contained therein.

6. **RESERVATION OF EASEMENT.** In the Deed Seller shall also reserve an easement under the Property for any utilities then or thereafter serving the Adjoining Area, as provided in the Easement Agreement, including the construction, maintenance, operation and use of improvements related thereto. Buyer shall not be permitted to construct any improvements which materially interfere with the use of the Property as a park.

7. **SURVEY**. Within 30 days after the effective date, Buyer may, at Buyer's expense, obtain a current survey of the Property prepared by a Florida licensed surveyor. Upon completion of the survey Buyer shall deliver a copy to Seller. Seller shall not be required to cure or correct any encroachments or other matters of survey affecting the Property, unless the encroaching improvements were placed on the Property by the Seller in violation of the Park Plan (as defined in the Easement Agreement) and materially and adversely affect Buyers' use of the Property as a park. By way of illustration, encroachments by footers supporting any wall on Seller's property adjoining the Property or minor wall or paving surface encroachments shall not be deemed "material".

8. **SALE "AS IS".** Buyer acknowledges that Seller has previously made certain improvements to the Property consistent with the Park Plan and turned over possession and use thereof to Buyer, which currently has exclusive control of and the obligation to maintain same pursuant to the Easement Agreement (subject Seller's remaining monetary contribution obligations, if any, under the Easement Agreement, which shall survive Closing of this transaction until satisfied). Buyer accepts the Property and improvements and landscaping thereon in "As Is" condition and without any representations or warranties whatsoever.

9. **DEFAULT**. If Buyer fails to consummate the sale and purchase transaction as provided for herein and if Buyer is not entitled to withdraw from the

transaction under the terms of this Agreement, then Seller is entitled to terminate this Agreement, upon which neither party shall have any further obligations hereunder. If Seller fails to consummate the transaction as provided for herein and if Seller is not entitled to withdraw from the transaction under the terms of this Agreement, then Buyer shall be entitled to terminate the rights and obligations of the parties hereunder, or at Buyer's option, may seek and obtain specific performance of this Agreement by Seller as its sole remedy. Under no circumstances shall Buyer be entitled to seek or collect any damages from Seller.

10. **CLOSING**. Subject to extension of time for the curing of title defects as set forth in paragraph 4, closing shall take place sixty (60) days after the Effective Date at the law offices of Greenberg Traurig, P.A., Miami, Florida, or at such other place as the parties may agree. Real estate taxes shall be prorated as of the date of closing. Seller shall convey the Property to Buyer by the Deed in recordable form in accordance with the terms of Sections 5 and 6 of this Agreement. Buyer shall pay all documentary stamp taxes required on the Deed and the cost of recording the Deed.

11. **DEFAULT NOTICE**. Neither party shall declare the other in default hereunder without giving the other party, at least thirty (30) days in advance, written notice of intention to do so, during which time the other party shall have an opportunity to remedy the default. The notice shall specify the default with particularity.

12. **REAL ESTATE BROKER; CONSULTANTS**. Buyer and Seller each represent to the other that it has not engaged, or agreed to pay any commission to, any real estate broker with respect to this transaction.

13. **ASSIGNABILITY AND BINDING EFFECT**. Because the Property is to be used solely as a public park, Buyer shall not be entitled to assign its rights or obligations under this Agreement.

14. **COMMUNICATIONS; TIME**. Any notices or communications hereunder may be given to the parties by certified mail, return receipt requested, or by hand delivery at their respective addresses appearing on page one hereof. Notice given by mail shall be deemed given when received. If the last day for giving notice or performing any act hereunder falls on a Saturday, Sunday, or holiday celebrated generally in the State of Florida, the time shall be extended to the next day that is not a Saturday, Sunday, or holiday.

15. **RADON**. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

_____

Signed in the presence of:

VILLAGE OF PALMETTO BAY,
a Florida municipal corporation

_____
(name)_____

By:_____
Name:_____
As its:_____

_____
(name)_____
Two witnesses

Signed in the presence of:

SOUTH MOTOR COMPANY OF DADE COUNTY, a Florida corporation

_____
(name)_____

By:_____

_____
(name)_____
Two witnesses

EXHIBIT A
Legal Description
[PENDING]

EXHIBIT B
[PENDING]

1. Restrictions, covenants, conditions, dedications, easements and other matters as shown on the Plat of East Hill recorded in Plat Book 46, Page 43, together with Assignment and Quitclaim of Rights-of-Way, Permits and Easements recorded in Official Records Book 10244, Page 1115.

2. Restrictions, covenants, conditions, dedications, easements and other matters as shown on the Plat of Perrine East recorded in Plat Book 73, Page 31, together with Assignment and Quitclaim of Rights-of-Way, Permits and Easements recorded in Official Records Book 10244, Page 1115.

3. Right-of-Way Easement recorded in Official Records Book 7403, Page 839.

4. Declaration of Restrictions recorded December 31, 1980 in Official Records Book 10973, Page 1003.

5. Agreement by and between South Realty Associates and metropolitan Dade County (now Miami-Dade County) recorded April 7, 1981 in Official Records Book 11065, Page 1969.

6. Grant of Easement to the Miami-Dade Water and Sewer Authority recorded June 28, 1983 in Official Records Book 11831, Page 653.

7. Declaration of Restrictions, Grant of Easement and Operating Rights recorded July 9, 1984 in Official Records Book 12201, Page 368.

8. Declaration of Restrictive Covenants recorded December 12, 1984 in Official Records Book 12351, Page 2496.

9. Covenant Running with the Land recorded June 9, 1987 in Official Records Book 13306, Page 3164.

10. Covenant Running with the Land recorded September 9, 1988 in Official Records Book 13816, Page 2740. (As to Property One -South Main Dealership Site).

11. Agreement for Sanitary Sewage Facilities between Miami-Dade County and South Motor Company of Dade County recorded July 24, 2009 in Official Records Book 26952, Page 2824.

12. Covenant Running With The Land In Lieu Of Unity Of Title recorded July 24, 2009 in Official Records Book 26952, Page 2851.

PARK FLUM AMENDMENT

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, ACTING IN ITS CAPACITY AS THE LOCAL PLANNING AGENCY AND AS THE VILLAGE COUNCIL, RELATING TO A SMALL SCALE AMENDMENT OF THE FUTURE LAND USE MAP CONSISTENT WITH 163.3161, 163.3184 AND 163.3187, FLORIDA STATUTES; CHANGING 3.0973 ACRES (+/-) OF THE TOTAL 9.4678 ACREAGE FROM LOW DENSITY RESIDENTIAL TO PARKS AND RECREATION FOR A PORTION OF THE PROPERTY LOCATED AT 9271 SW 164 STREET BEARING FOLIO 33-5028-002-0070 AND A PORTION OF THE ADJACENT PROPERTY BEARING FOLIO 33-5028-002-0080, PALMETTO BAY, FLORIDA; PROVIDING FOR ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Village Council has been designated as the Local Planning Agency for the Village pursuant to Section 163.3174, Florida Statutes; and,

WHEREAS, the Comprehensive Plan for the Village of Palmetto Bay was adopted on August 1st, 2005; and amended in December 2009 to ensure that the development patterns for future land uses within the Village match the community vision and quality-of-life expectations of its residents; and,

WHEREAS, the Comprehensive Plan, together with the implementing tools, ensures that the development patterns for future land uses within the Village match the community vision and quality-of-life expectations of its residents; and,

WHEREAS, the specific authority and requirements for municipalities to do Comprehensive Planning in Florida emanates from Chapter 163, Florida Statutes, and,

WHEREAS, as the Comprehensive Plan, and amendments thereto are adopted via Ordinance; and,

WHEREAS, the property owner, South Motors Company of Dade County (South Motors), located at 16215 South Dixie Highway, and 9271 SW 164 Street, bearing Folio 33-5028-002-0070 together with adjacent property bearing Folio 33-5028-002-0080, is seeking a modification of its site plan which includes a land use map amendment of a portion of its property (1.9344± acres out of a total of 9.4678± acres) from Low Density Residential to Business Office; and,

WHEREAS, as part of that application, South Motors proposes to provide a park to the public, and submits together with its site plan modification application either a covenant, leasehold or easement for said land for possession and operation by the Village; and,

Additions shown by underlining and deletions shown by ~~overstriking~~.

WHEREAS, should the Village accept the park area, the Village desires to designate the area as Parks and Recreation under the Village's Future Land Use Map and modify the land use to reflect Park and Recreation; and,

WHEREAS, establishment of the park shall serve as a buffer from South Motors' proposed site plan to the adjacent residential areas to the east and south; and,

WHEREAS, the Village has copyrighted the term "The Village of Parks" representing the Village's support for parks and recreation; and,

WHEREAS, the Village, at its Recreation and Open Space Element, at Goal 7 is to provide a system of parks that meets or exceed the needs of Village residents, businesses and visitors; and,

WHEREAS, Policy 7.1.2 requires the village to expand existing park facilities and to acquire or develop new parks and open space to achieve a Level Of Service Standard of 5.2 acres of developed park area per 1,000 residents; and a Level of Service of 5.0 acres per 1,000 residents by 2025; and,

WHEREAS, the Village currently provides 3.41 acres of park land per 1,000 residents (85± acres), and the addition of 3.0973± acres will contribute to another .13 acres per 1,000 residents resulting in a total LOS of 3.54; and,

WHEREAS, by designating the proposed park area to be donated by South Motors as Parks and Recreation, the Village will move closer towards accomplishing policy 7.1.2 of the Comprehensive Plan; and,

WHEREAS, Policy 7.4.1 indicates that development of acquired park land shall be done in a way to be cost efficient; fulfill spatial and functional needs of the Village; enhance the Village's appearance; and establish visible Village focal points which reinforce a sense of community; and,

WHEREAS, the adoption of an ordinance requires two readings, a public hearing as the Land Planning Agency, and a public hearing for second reading of the ordinance.

WHEREAS, a small scale amendment to the Comprehensive Plan for the Village of Palmetto Bay has been prepared to be fully consistent with Chapter 163, Florida Statutes; and,

WHEREAS, the Village Council acting in its capacity as the Local Planning Agency has acted in accordance with state law, and in specific compliance with Section 163.3174, Florida Statutes and has reviewed and recommends approval of its small scale amendment to its Comprehensive Plan; and,

WHEREAS, the Village desires to amend its FLUM to provide the Parks and Recreation Designation for the 3.0973 acres located with the property located at 9271 SW 164 Street bearing folio 33-5028-002-0070 and a portion of the adjacent property bearing folio 33-5028-002-0080; and,

WHEREAS, after receiving extensive input and participation by the public, the Village Council shall transmit the proposed new Comprehensive Plan to the Florida Department of Economic Opportunity and to all other agencies, as required under law, for their review pursuant to Section 163.3184, Florida Statutes; and,

WHEREAS, the Florida Department of Economic Opportunity (DEO) shall review the proposed Comprehensive Plan and return its Objections, Recommendations and Comments (ORC) Report to the Village; and,

WHEREAS, the Village Council conducted a duly noticed public hearing on the Comprehensive Plan as required under law and upon receipt of approval by the DEO, shall within 30 days thereafter make the designation law.

WHEREAS, the proposed FLUM amendment shall be included in the "2013-2025 Future Land Use Map"; and,

WHEREAS, the Village Council shall consider the ORC and make certain changes to the proposed amendment to the Comprehensive Plan, which changes shall be incorporated in the Comprehensive Plan of the Village of Palmetto Bay, as applicable, which may require a subsequent hearing.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, ACTING IN ITS CAPACITY AS THE LOCAL PLANNING AGENCY OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above referenced whereas clauses are true and correct and are incorporated into this ordinance by reference. The amended Future Land Use Map and Element are incorporated by reference and attached hereto as Exhibit 1, and shall be included in the "2013-2025 Future Land Use Map."

Section 2. Compliance with Criteria. In evaluating an application for a FLUM amendment, from Low Residential to Parks and Recreation for the 3.0973± acres out of a total of 9.4678± acres for the location known as 9271 SW 164 Street, bearing folio 33-5028-002-0070 together with adjacent property bearing folio 33-5028-002-0080, Palmetto Bay the Village Council is to apply the standard under 30-30.8(b), of the Village's Code. Applicant has met the criteria of 30-30.8(b). The map amendment is attached and incorporated by reference herein as Exhibit 1.

Section 3. Legal Description. The property that is the subject of the rezoning bears the following legal description:

A portion of Tract 7 and 8, EAST HILL, according to the plat thereof, as recorded in Plat Book 46, Page 43, of the public records of Miami-Dade County, Florida; more fully described as follows:

Commencing at the Northwest corner of said Tract 7; thence South 00°05'42" East, on the West line of said Tract 7, a distance of 413.79 feet to the Point of Beginning; thence continuing South 00°05"42" East, on the said West line of said Tract 7, a distance of 52.80 feet to the Southwest corner of said Tract 7 and a point on a curve; thence Easterly on the South line of said Tracts 7 and 8 and also on the North right-of-way line of S.W. 164th Street and on said curve to the left, whose radius point bears North 51°49'30", with a radius of 475.00 feet, a central angle of 51°07'36", an~~d~~ arc distance of 423.86 feet; thence South 89°11'33" East, on the South line of said Tract 8 and on said North right-of-way line, a distance of 307.43 feet to the Southeast corner of said Tract 8; thence North 00°10'11" West, on the East line of said Tract 8, a distance of 229.36 feet; thence North 89°14'49" West, on a line 229.33 feet North of and parallel with the South line of said Tract 8 and Westerly extension thereof, a distance of 673.58 feet to the Point of Beginning.

Said lands situate, lying and being in Miami-Dade County, Florida, and containing 134,918 square feet or 3.0973 acres, more or less.

Section 4. Covenant, Leasehold or Easement. The South Motors Company of Dade County, Co., shall be required to transfer title, place a covenant, easement or leasehold document running with the land relating to the park use of the 3.0973± acres of the above reference folio numbers. Failure to obtain the title, covenant, easement, or leasehold as part of the FLUM and rezoning application, shall result in withdrawal of this proposed Parks and Recreation designation.

Section 5. Transmittal. The Village Council, acting in its capacity as the local planning agency, approves the above amendment, as further modified herein, to the Comprehensive Plan, which amendment is attached to this ordinance. The Village Council, acting in its capacity as the local planning agency, further recommends to the Village Council that it authorize the Village Clerk to transmit the attached amendments to the Comprehensive Plan to the State of the Florida Department of Economic Opportunity (DEO) and all other governmental bodies, agencies, or private individuals as required by State law.

Section 6. Severability. The provisions of this ordinance are declared to be severable, and if any section, sentence, clause or phrase of this ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this ordinance but they shall remain in effect, it being the legislative intent that this ordinance shall stand notwithstanding the invalidity of any part.

Section 7. Conflicts. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are repealed.

Section 8. Effective date. This ordinance shall take effect the later of compliance with the above referenced conditions or within 30 days of approval of the proposed Comprehensive Plan Amendment, associated with the application, by the Florida Department of Economic Opportunity as required under Section 163.3184, Florida Statutes, which amendment would modify the FLUM from Low Density Residential to Business Office.

PASSED and ENACTED this ____ day of _____ , 2013.

First Reading: _____

Second Reading: _____

Attest: _____ _____

Meighan Alexander
Village Clerk

Shelley Stanczyk
Mayor

APPROVED AS TO FORM:

_____

John H. Herin, Jr.
Interim Village Attorney

FINAL VOTE AT ADOPTION:

Council Member Patrick Fiore _____

Council Member Tim Schaffer _____

Council Member Joan Lindsay _____

Vice-Mayor John DuBois _____

Mayor Shelley Stanczyk _____

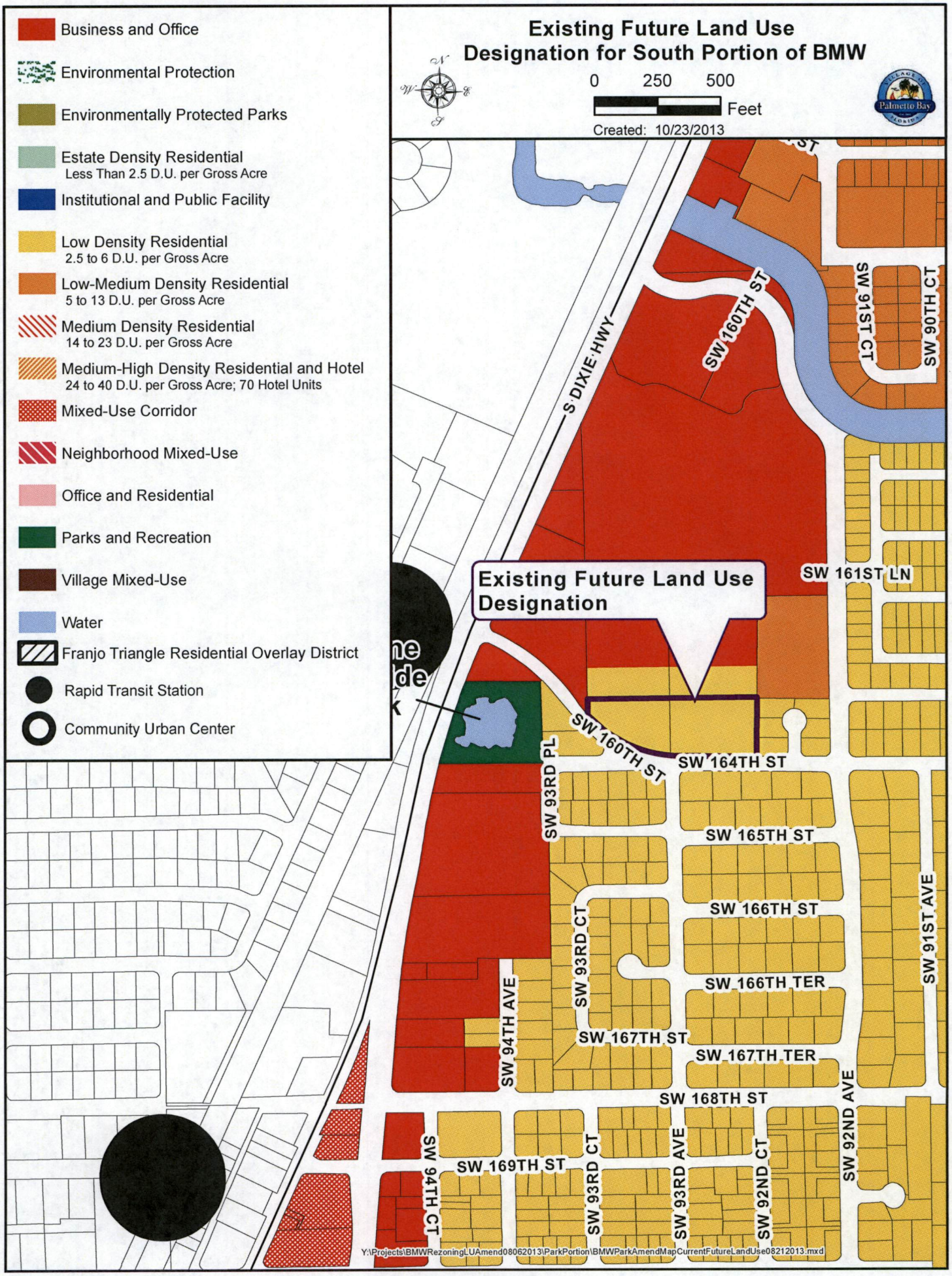
EXHIBIT 1

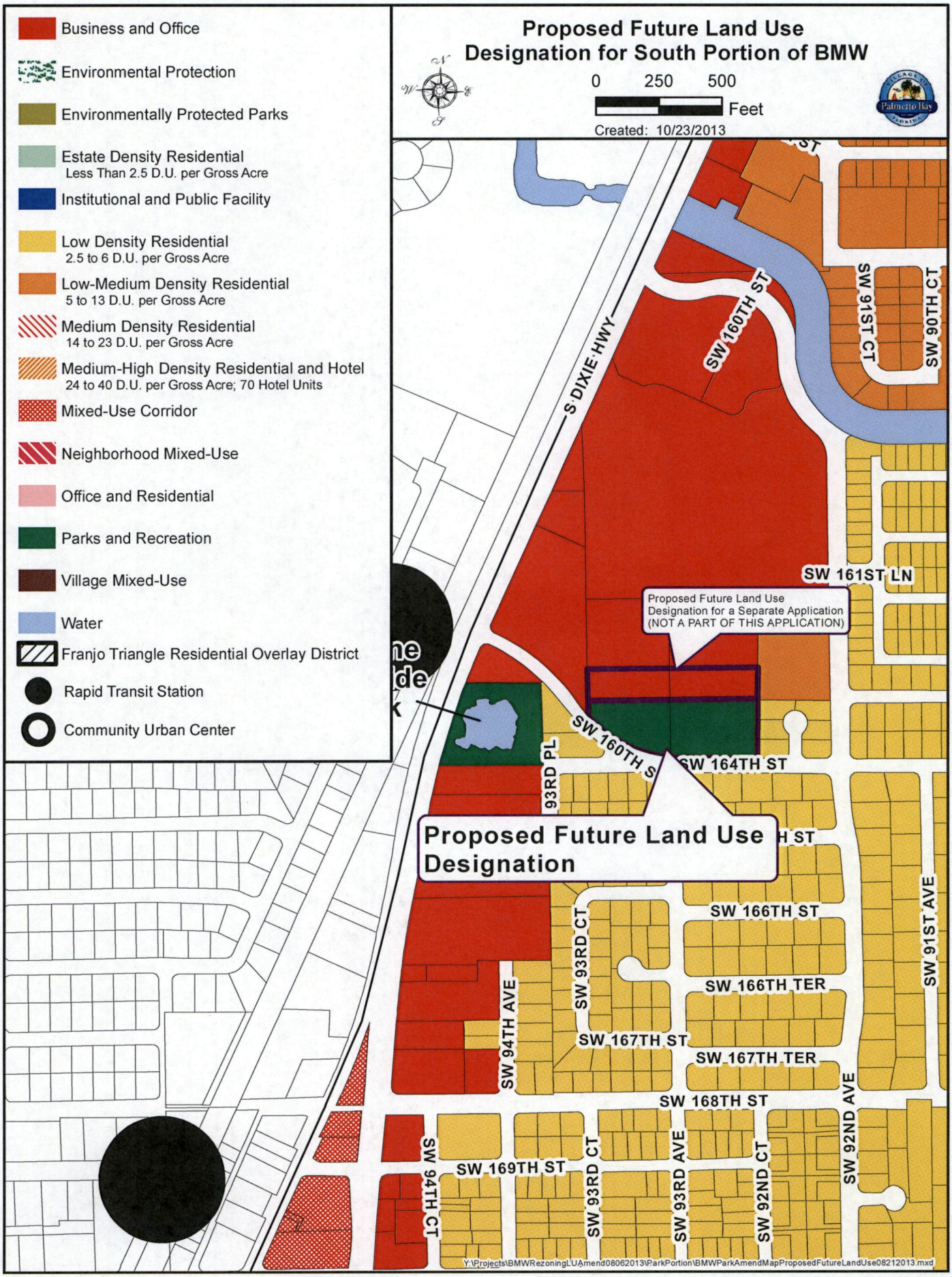
Existing Future Land Use Designation for South Portion of BMW

0 250 500 Feet

Created: 10/23/2013

- Business and Office
- Environmental Protection
- Environmentally Protected Parks
- Estate Density Residential
  Less Than 2.5 D.U. per Gross Acre
- Institutional and Public Facility
- Low Density Residential
  2.5 to 6 D.U. per Gross Acre
- Low-Medium Density Residential
  5 to 13 D.U. per Gross Acre
- Medium Density Residential
  14 to 23 D.U. per Gross Acre
- Medium-High Density Residential and Hotel
  24 to 40 D.U. per Gross Acre; 70 Hotel Units
- Mixed-Use Corridor
- Neighborhood Mixed-Use
- Office and Residential
- Parks and Recreation
- Village Mixed-Use
- Water
- Franjo Triangle Residential Overlay District
- Rapid Transit Station
- Community Urban Center




Proposed Future Land Use Designation for South Portion of BMW
0 250 500
Feet
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Business and Office
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14 to 23 D.U. per Gross Acre
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24 to 40 D.U. per Gross Acre; 70 Hotel Units
Mixed-Use Corridor
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Parks and Recreation
Village Mixed-Use
Water
Franjo Triangle Residential Overlay District
Rapid Transit Station
Community Urban Center
S DIXIE HWY
SW 160TH ST
SW 91ST CT
SW 90TH CT
SW 161ST LN
Proposed Future Land Use Designation for a Separate Application (NOT A PART OF THIS APPLICATION)
SW 160TH S
SW 164TH ST
93RD PL
Proposed Future Land Use Designation
SW 166TH ST
SW 93RD CT
SW 91ST AVE
SW 166TH TER
SW 94TH AVE
SW 167TH ST
SW 167TH TER
SW 168TH ST
SW 92ND AVE
SW 94TH CT
SW 169TH ST
SW 93RD CT
SW 93RD AVE
SW 92ND CT
Y:\Projects\BMWRezoningLUAmend08062013\ParkPortion\BMWParkAmendMapProposedFutureLandUse08212013.mxd

REZONING PARK

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO ZONING; AMENDING THE OFFICIAL ZONING MAP TO REFLECT A DISTRICT BOUNDARY ZONE; CHANGING 3.0973 ACRES (+/-) OF THE TOTAL 9.4678 ACREAGE, FROM R-1 SINGLE FAMILY DISTRICT TO INTERIM ZONING DISTRICT; FOR A PORTION OF THE PROPERTY LOCATED AT 9271 SW 164 STREET BEARING FOLIO 33-5028-002-0070 AND A PORTION OF THE ADJACENT PROPERTY BEARING FOLIO 33-5028-002-0080, IN PALMETTO BAY, FLORIDA; PROVIDING FOR ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE. [4/5 Vote].

WHEREAS, pursuant to Chapter 166, Florida Statutes, a change of zoning, otherwise known as a district boundary change, of less than 10 acres, requires a public hearing on second reading, and a Land Planning Agency public hearings prior to approval of the rezoning by ordinance; and,

WHEREAS, the property owner, South Motor Company of Dade County (South Motors), located at 16215 South Dixie Highway, and 9271 SW 164 Street, bearing Folio 33-5028-002-0070 together with adjacent property bearing Folio 33-5028-002-0080, is seeking a modification of its site plan which includes a rezoning of a portion of its property (6.3705± acres out of a total of 9.4678± acres) from R-1, Single-Family Residential to B-2, Business District; and,

WHEREAS, as part of that application, South Motors proposes to provide use of a portion of its property as a park to the public, and submits together with its site plan modification application either a covenant, leasehold or easement for said land for possession and operation by the Village; and,

WHEREAS, should the Village accept the park area, the Village desires to designate the area as Parks and Recreation under the Village's Future Land Use Map and modify the zoning to reflect an Interim District (I); and,

WHEREAS, establishment of the park use shall serve as a buffer from the South Motors proposed site plan to the adjacent residential areas to the east and south; and,

WHEREAS, the properties to the north and west and southwest are all zoned B-2; and,

WHEREAS, a rezoning request is reviewed under the standards found at Village of Palmetto Bay Code, Section 30-30.8(b); and,

WHEREAS, to approve a rezoning, the request must be consistent with the Village's Comprehensive Plan and a basic finding of compatibility must be rendered by the Council.

Additions shown by underlining and deletions shown by ~~overstriking~~.

BE IT ENACTED BY THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:

Section 1. In evaluating an application for a rezoning, from R-1, Single Family Residential to the I, Interim Zoning District for 3.0973± acres out of a total of 9.4678± acres for the location known as 9271 SW 164 Street, bearing folio 33-5028-002-0070, together with adjacent property bearing folio 33-5028-002-0080, the Palmetto Bay Village Council is to apply the standard under 30-30.8(b) of the Village's Code. Applicant has met the criteria of 30-30.8(b). The map amendment is attached and incorporated by reference herein as Exhibit 1.

Section 2. The property that is the subject of the rezoning bears the following legal description:

A portion of Tract 7 and 8, EAST HILL, according to the plat thereof, as recorded in Plat Book 46, Page 43, of the public records of Miami-Dade County, Florida; more fully described as follows:

Commencing at the Northwest corner of said Tract 7; thence South 00°05'42" East, on the West line of said Tract 7, a distance of 413.79 feet to the Point of Beginning; thence continuing South 00°05"42" East, on the said West line of said Tract 7, a distance of 52.80 feet to the Southwest corner of said Tract 7 and a point on a curve; thence Easterly on the South line of said Tracts 7 and 8 and also on the North right-of-way line of S.W. 164th Street and on said curve to the left, whose radius point bears North 51°49'30", with a radius of 475.00 feet, a central angle of 51°07'36", an~~d~~ arc distance of 423.86 feet; thence South 89°11'33" East, on the South line of said Tract 8 and on said North right-of-way line, a distance of 307.43 feet to the Southeast corner of said Tract 8; thence North 00°10'11" West, on the East line of said Tract 8, a distance of 229.36 feet; thence North 89°14'49" West, on a line 229.33 feet North of and parallel with the South line of said Tract 8 and Westerly extension thereof, a distance of 673.58 feet to the Point of Beginning.

Said lands situate, lying and being in Miami-Dade County, Florida, and containing 134,918 square feet or 3.0973 acres, more or less.

Section 3. Covenant, Leasehold or Easement. As a condition to proceed with the rezoning, the current property owner, South Motors Company of Dade County, Inc., has submitted an application for a Land Use FLUM Amendment, Rezoning request for the remainder of the 6.3705± acres of above described parcel to B-2, and as part of that application, and site plan modification, South Motors is required to provide a perpetual covenant, leasehold or easement to the Village for a park use. As such, the proposed rezoning of the 3.0973± acres shall require the placement of such covenant, easement or leasehold document running with the land relating to the passive park use of the 3.0973± acres on a portion of the above reference folio numbers. Failure to do so shall preclude the modification of the site to the Interim zoning designation.

Section 4. The Village Council in compliance with Chapter 166, Florida Statutes, after the first reading approved/denied the applicant's request to rezone.

Section 5. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are repealed.

Section 6. This ordinance shall be codified and included in the Code of Ordinances upon the above conditions being fulfilled.

Section 7. If any section, clause, sentence, or phrase of this ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the remaining portions of this ordinance.

Section 8. This ordinance shall take effect upon the later of compliance with the above conditions, or within 30 days of approval of the proposed Comprehensive Plan Amendment, associated with the application, by the Florida Department of Economic Opportunity as required under Section 163.3184, Florida Statutes, which amendment would modify the FLUM from Low Density Residential to Parks and Recreation; and upon release of the covenant recorded on May 28, 1980, the Covenant, Declaration of Restrictions, at Official Record Book 10973 at Pages 1003 through 1009.

PASSED and ENACTED this ____ day of _____, 2013.

First Reading: _____

Second Reading: _____

Attest: _____ _____

Meighan Alexander
Village Clerk

Shelley Stanczyk
Mayor

APPROVED AS TO FORM:

_____

John H. Herin, Jr.
Interim Village Attorney

FINAL VOTE AT ADOPTION:

Council Member Patrick Fiore _____

Council Member Tim Schaffer _____

Council Member Joan Lindsay _____

Vice-Mayor John DuBois _____

Mayor Shelley Stanczyk _____

EXHIBIT 1

Existing Zoning for South Portion of BMW

AG
Agricultural / Residential
Minimum 5.0 gross acres

B-1
Business District - Limited
Maximum floor area ratio 0.4 at (1) story increased by 0.11 for each additional story

B-2
Business District - Special
Maximum floor area ratio 0.4 at (1) story increased by 0.11 for each additional story

BO
Business Office
Maximum 13 units per net acre

E-1
Estate - Single Family
One unit per gross acre or more

E-1C
Estate - Single Family
One unit per 2.5 gross acres

E-2
Estate - Single Family
One unit per 5 gross acres or more

E-M
Estate Modified - Single Family
One unit per 15,000 net sq. ft.

E-S
Estate Use - Suburban Single Family
One unit per 25,000 net sq. ft.

I
Interim District

LW
Live-Work Neighborhood
Maximum 8.5 units per net acre

MC
Mixed-Use Corridor
Maximum 40 units per net acre

MM
Mixed-Use Main Street
Maximum 18 units per net acre

MN
Mixed-Use Neighborhood
Maximum 18 units per net acre

PAD
Planned Area Development
20 acres minimum, mixed residential and convenience retail services

R-1
Single Family Residential District
One unit per 7,500 net sq. ft.

R-1M
Modified Single Family Residential District
One unit per 5,000 net sq. ft.

R-2
Two-Family Residential District
One two-family structure per 7,500 net sq. ft.

R-3
Four-unit Apartment District
7,500 net sq. ft.

R-3M
Minimum Apartment House
12.9 units per net acre

R-4H
Hotel/Motel District
75 units per net acre

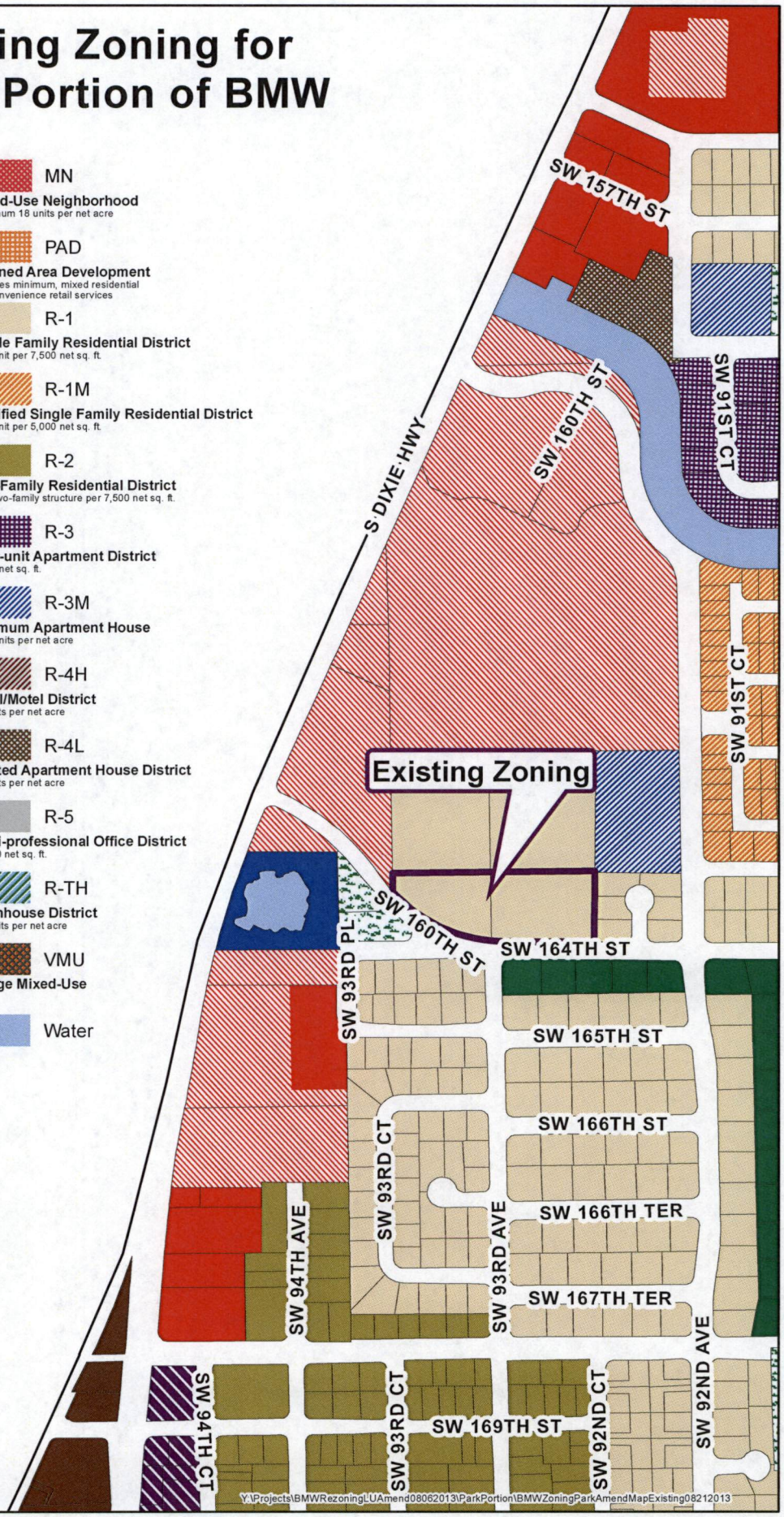
R-4L
Limited Apartment House District
23 units per net acre

R-5
Semi-professional Office District
10,000 net sq. ft.

R-TH
Townhouse District
8.5 units per net acre

VMU
Village Mixed-Use

Water



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0 250 500 Feet

Created: 10/23/2013

Proposed Zoning for South Portion of BMW

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Maximum floor area ratio 0.4 at (1) story increased by 0.11 for each additional story

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Business Office
Maximum 13 units per net acre

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Estate - Single Family
One unit per gross acre or more

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Estate - Single Family
One unit per 5 gross acres or more

E-M
Estate Modified - Single Family
One unit per 15,000 net sq. ft.

E-S
Estate Use - Suburban Single Family
One unit per 25,000 net sq. ft.

I
Interim District

LW
Live-Work Neighborhood
Maximum 8.5 units per net acre

MC
Mixed-Use Corridor
Maximum 40 units per net acre

MM
Mixed-Use Main Street
Maximum 18 units per net acre

MN
Mixed-Use Neighborhood
Maximum 18 units per net acre

PAD
Planned Area Development
20 acres minimum, mixed residential and convenience retail services

R-1
Single Family Residential District
One unit per 7,500 net sq. ft.

R-1M
Modified Single Family Residential District
One unit per 5,000 net sq. ft.

R-2
Two-Family Residential District
One two-family structure per 7,500 net sq. ft.

R-3
Four-unit Apartment District
7,500 net sq. ft.

R-3M
Minimum Apartment House
12.9 units per net acre

R-4H
Hotel/Motel District
75 units per net acre

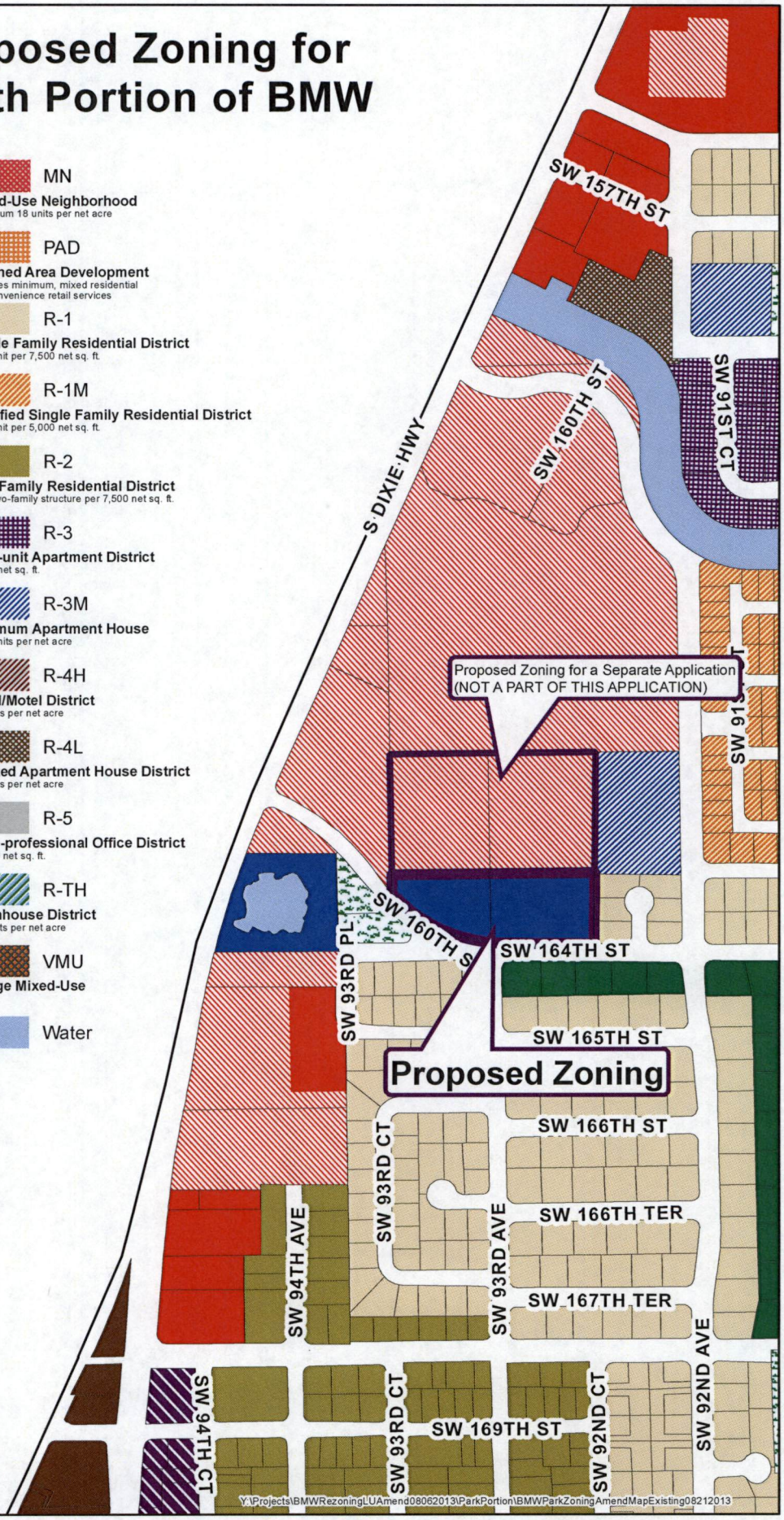
R-4L
Limited Apartment House District
23 units per net acre

R-5
Semi-professional Office District
10,000 net sq. ft.

R-TH
Townhouse District
8.5 units per net acre

VMU
Village Mixed-Use

Water



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0 250 500 Feet

Created: 10/23/2013

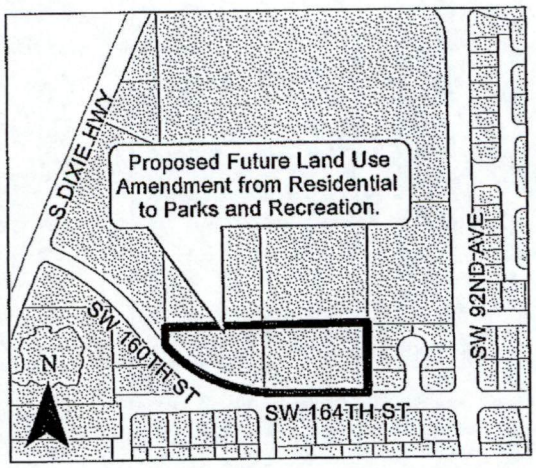
ADVERTISEMENT

VILLAGE OF PALMETTO BAY
NOTICE LOCAL PLANNING AGENCY/ZONING PUBLIC HEARINGS FOR A PROPOSED LAND USE MAP AMENDMENT AND ZONING DISTRICT BOUNDARY CHANGE

The Village of Palmetto Bay shall conduct a Local Planning Agency and Zoning Public Hearing to consider items for second reading on Monday, December 16, 2013, at 7:00 p.m. The hearings shall be held at Village Hall, 9705 East Hibiscus Street, Council Chambers, Palmetto Bay, FL 33157. Discussion and public input will be welcome concerning the following items that may be of interest to your immediate neighborhood.

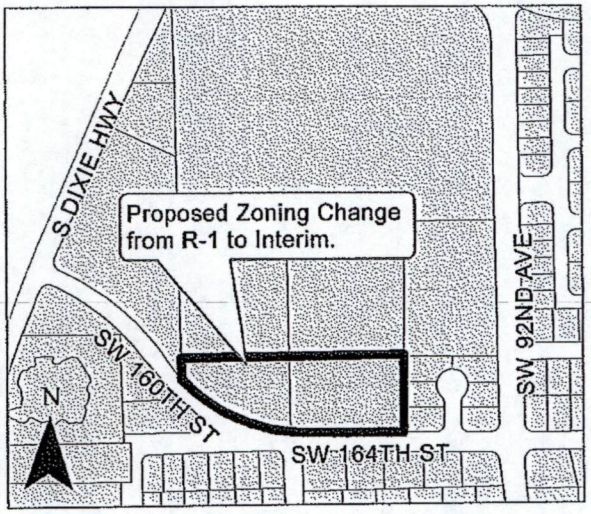
The Village of Palmetto Bay, in conjunction with a Zoning Application submitted by South Motor Company of Dade County, located at 16215 South Dixie Highway, and 9271 SW 164 Street (Folio 33-5028-002-0030, 33-5028-002-0070) together with adjacent property bearing Folio 33-5028-002-0080, Palmetto Bay, is requesting the following:

AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, ACTING IN ITS CAPACITY AS THE LOCAL PLANNING AGENCY AND AS THE VILLAGE COUNCIL, RELATING TO A SMALL SCALE AMENDMENT OF THE FUTURE LAND USE MAP CONSISTENT WITH 163.3161, 163.3184 AND 163.3187, FLORIDA STATUTES; CHANGING 3.0973 ACRES (+/-) OF THE TOTAL 9.4678 ACREAGE FROM LOW DENSITY RESIDENTIAL TO PARKS AND RECREATION FOR A PORTION OF THE PROPERTY LOCATED AT 9271 SW 164 STREET BEARING FOLIO 33-5028-002-0070 AND A PORTION OF THE ADJACENT PROPERTY BEARING FOLIO 33-5028-002-0080, PALMETTO BAY, FLORIDA; PROVIDING FOR ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE. [3/5 vote].



And,

AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO ZONING; AMENDING THE OFFICIAL ZONING MAP TO REFLECT A DISTRICT BOUNDARY ZONE; CHANGING 3.0973 ACRES (+/-) OF THE TOTAL 9.4678 ACREAGE, FROM R-1 SINGLE FAMILY DISTRICT TO INTERIM ZONING DISTRICT; FOR A PORTION OF THE PROPERTY LOCATED AT 9271 SW 164 STREET BEARING FOLIO 33-5028-002-0070 AND A PORTION OF THE ADJACENT PROPERTY BEARING FOLIO 33-5028-002-0080, IN PALMETTO BAY, FLORIDA; PROVIDING FOR ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE. [4/5 Vote].



THE APPLICATION MAY BE AMENDED BASED UPON THE REQUEST OF THE APPLICANT PRIOR TO THE PUBLIC HEARINGS OR MAY BE AMENDED AT THE PUBLIC HEARINGS PRIOR TO FINAL DECISION OF THE VILLAGE COUNCIL. ALL SUBMITTED PLANS ARE AVAILABLE FOR REVIEW AT THE VILLAGE'S PLANNING AND ZONING DEPARTMENT.

All persons are invited to appear and be heard. The documents pertaining to this public hearing may be inspected during regular working hours at the Department of Planning & Zoning at Village Hall, 9705 East Hibiscus Street, Palmetto Bay, FL 33157. Inquiries may be directed to the Village Clerk at (305) 259-1234. Any meeting may be opened and continued, and, under such circumstances, additional legal notice would not be provided. Any person may contact Village Hall for more information.

Pursuant to Section 286.0105, F.S., if any person decides to appeal any decision by the Village Council with regard to this or any matter, he/she will need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the Village for the introduction or admission of otherwise inadmissible evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

In accordance with the Americans with Disabilities Act of 1990, persons needing special accommodation (or hearing impaired) to participate in this proceeding or to review any documents relative thereto should contact the Village for assistance at (305) 259-1234 no later than seven (7) days prior to the proceedings.

Meighan Alexander, Village Clerk