



***Application No.:***

***V-2016-021(g)***

## **Attachment “B”**

### **Variance Application**

**1622 Investment Corp**

**VARIANCE**

**V-2016-021(g)**

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A VARIANCE APPLICATION TO ARTICLE VII, LANDSCAPING AND TREE PRESERVATION, **SEC. 3-102 OF THE TOWN CODE RELATING TO THE LANDSCAPING REQUIRED FOR SURFACE PARKING AREAS AND BUILDING PERIMETERS** FOR 1622 INVESTMENT CORP GENERALLY LOCATED SOUTHWESTERLY OF CARIBBEAN BOULEVARD AND U.S. 1 EXTENDING A DISTANCE OF 917.27 FEET (FOLIO NOS. 36-6007-000-0333, 36-6007-000-0334, 36-6007-000-0330, 36-6007-000-0336); AND PROVIDING FOR AN EFFECTIVE DATE.



Community Development Department  
10720 Caribbean Boulevard, Suite 120  
Phone: 305-234-4262 Fax: 305-234-4251

**ZONING, VARIANCE, SPECIAL EXCEPTION, ADMINISTRATIVE WAIVER,  
AND/OR UNUSUAL USE APPLICATION**

**LIST ALL FOLIO #S:** 36-6007-000-0333; 36-6007-000-0334; 36-6007-000-0330; 36-6007-000-0336

**DATE RECEIVED:** \_\_\_\_\_

- 1. NAME OF APPLICANT** (Provide complete name of applicant, exactly as recorded on deed, if applicable. If applicant is a lessee, an executed 'Owner's Sworn-to-Consent' and copy of a valid lease for 1 year or more is required. If the applicant is a corporation, trust, partnership, or like entity, a 'Disclosure of Interest' is required).

Ben Fernandez, Esq., on behalf of 1622 Investment, Corp.

**2. APPLICANT'S MAILING ADDRESS, TELEPHONE NUMBER:**

Mailing Address: 200 South Biscayne Boulevard

City: Miami State: FL Zip: 33131 Phone#: 305-377-6235

**3. OWNER'S NAME, MAILING ADDRESS, TELEPHONE NUMBER:**

Owner's Name (Provide name of ALL owners): 1622 Investment Corp.

Mailing Address: 655 West Flagler Street, Suite 201

City: Miami State: FL Zip: 33130 Phone#: \_\_\_\_\_

**4. CONTACT PERSON'S INFORMATION:**

Name: Ben Fernandez Company: Bercow Radell & Fernandez, PLLC

Mailing Address: 200 South Biscayne Boulevard, Suite 850

City: Miami State: FL Zip: 33131

Phone# 305-377-6235 Fax# 305-377-6222 E-mail: BFernandez@BRZoningLaw.com



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**5. LEGAL DESCRIPTION OF ALL PROPERTY COVERED BY THE APPLICATION**

(Provide complete legal description, i.e., lot, block, subdivision name, plat book & page number, or metes and bounds. Include section, township, and range. If the application contains multiple rezoning requests, then a legal description for each sub-area must be provided. Attach separate sheets, as needed).

Seer attached Exhibit A.

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**6. ADDRESS OR LOCATION OF PROPERTY** (For location, use description such as NE corner of, etc.)

The property is located on the west side of South Dixie Highway south of Caribbean Boulevard (SW 203rd Street)

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between US 1 and the South Miami Dade busway.

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**7. SIZE OF PROPERTY** (in acres): \_\_\_\_\_ (divide total sq. ft. by 43,560 to obtain acreage)

**8. DATE** property ☒ acquired ☐ leased: Sept. 2015 **9. LEASE TERM:** \_\_\_\_\_ Years  
(Month & year)

**10. IF CONTIGUOUS PROPERTY IS OWNED BY THE SUBJECT PROPERTY OWNER(S),** provide Complete legal description of said contiguous property.

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**11. Is there an option** to purchase ☐ or lease ☐ the subject property or property contiguous thereto?

☒ no ☐ yes (if yes, identify potential purchaser or lessee and complete 'Disclosure of Interest' form)

**12. PRESENT ZONING CLASSIFICATION:** Town Center

**13. APPLICATION REQUESTS** (check all that apply and describe nature of the request in space provided) (DBC's require special exception to permit site plan approval unless rezoning 3 acres or less to residential categories)

☐ District Boundary Changes (DBC) (Zone class requested): \_\_\_\_\_

☐ Unusual Use: \_\_\_\_\_

☒ Variance: Variance of Section 3-102(b) to allow a zero foot (0') minimum landscape perimeter planting where one foot and eight inches (1' 8") is otherwise required along the side of the perimeter of the proposed buildings. Please refer to the letter of intent for more details.

☐ Alternative Site Development (PUD): \_\_\_\_\_

☐ Special Exception: \_\_\_\_\_

☐ Administrative Waiver: \_\_\_\_\_

☐ Modification of previous resolution/plan: \_\_\_\_\_

☐ Modification of Declaration or Covenant: \_\_\_\_\_

☐ Other: \_\_\_\_\_

**14. Has a public hearing been held on this property within the last year & a half?** ☒

**No** ☐ **Yes.**

If yes, provide applicant's name, and date, purpose and results of hearing, and resolution number.

\_\_\_\_\_

\_\_\_\_\_



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**15. Is this hearing is as a result of a violation notice?** ☒ **No** ☐ **Yes.** If yes, give name to whom the Violation notice was served: \_\_\_\_\_ and describe the violation:

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**16. Describe structures on the property:** 2,280 square-foot retail building

**17. Is there any existing use on the property?** ☐ **No** ☒ **Yes.** If yes, what use and when established?

Use: Retail Year: \_\_\_\_\_

**18. Submitted Materials Required:**  
**Please check all that Apply:**

- ☒ Letter of intent
- ☐ Justifications for change
- ☐ Statement of hardship
- ☐ Proof of ownership or letter from owner
- ☐ Power of attorney
- ☐ Contract to purchase
- ☐ Current survey (1 original sealed and signed/ 1 reduced copy at 11" x 17")
- ☐ (12) Copies of Site Plan and Floor Plans
- ☐ (1) Reduced copy at 11"x 17"
- ☐ 20% Property owner signatures (If required)
- ☐ Mailing Labels (3 sets) and map (If required)
- ☒ Required Fee(s)



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### APPLICANT'S AFFIDAVIT

The Undersigned, first being duly sworn depose that all answers to the questions in this application, and all supplementary documents made a part of the application are honest and true to the best of (my)(our) knowledge and belief. (I)(We) understand this application must be complete and accurate before the application can be submitted and the hearing advertised.

### OWNER OR TENANT AFFIDAVIT

(I)(WE), N/A, being first duly sworn, depose and say that (I am)(We are) the ☐ owner ☐ tenant of the property described and which is the subject matter of the proposed hearing.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

Sworn to and subscribed to before me  
This \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

Notary Public: \_\_\_\_\_  
Commission Expires: \_\_\_\_\_

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### CORPORATION AFFIDAVIT

(I)(WE), Eduardo Rodriguez, of 1622 Investment Corp., being first duly sworn, depose and say that (I am)(We are) the ☐ President ☐ Vice-President ☐ Secretary ☐ Asst. Secretary of the aforesaid corporation, and as such, have been authorized by the corporation to file this application for public hearing; and that said corporation is the ☐ owner ☐ tenant of the property described herein and which is the subject matter of the proposed hearing.

Attest: Eduardo Rodriguez

\_\_\_\_\_  
Authorized Signature  
President  
Office Held

(Corp. Seal)

Sworn to and subscribed to before me  
This 13th day of May, 2016

Notary Public: Maria E. Villamil  
Commission Expires: \_\_\_\_\_

\*\*\*\*\*







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### PARTNERSHIP AFFIDAVIT

(I)(WE), N/A, being first duly sworn, depose and say that (I am )(We are) partners of the hereinafter named partnership, and as such, have been authorized to file this application for a public hearing; and that said partnership is the ☐ owner ☐ tenant of the property described herein which is the subject matter of the proposed hearing.

By \_\_\_\_\_ %  
 By \_\_\_\_\_ %

\_\_\_\_\_  
 (Name of Partnership)  
 By \_\_\_\_\_  
 By \_\_\_\_\_

Sworn to and subscribed to before me  
 This \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

Notary Public: \_\_\_\_\_  
 Commission Expires: \_\_\_\_\_

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### ATTORNEY AFFIDAVIT

I, Ben Fernandez, being first duly sworn, depose and say that I am a State of Florida Attorney at Law, and I am the Attorney for the Owner of the property described and which is the subject matter of the proposed hearing.

[Signature]  
 Signature

Sworn to and subscribed to before me  
 This 12 day of May, 2016

Notary Public: [Signature]  
 Commission Expires: \_\_\_\_\_





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### **RESPONSIBILITIES OF THE APPLICANT**

#### **I AM AWARE THAT:**

1. The Department Environmental Resources Management (DERM), and other agencies review and critique zoning applications which may affect the scheduling and outcome of applications. These reviews may require additional public hearings before DERM's Environmental Quality Control Board (EQCB), or other boards, and /or the proffering of agreements to be recorded. I am also aware that I must comply promptly with any DERM conditions and advise this office in writing if my application will be withdrawn.
2. Filing fees may not be the total cost of a hearing. Some requests require notices to be mailed to property owners up to a mile from the subject property. In addition to mailing costs, fees related to application changes, plan revisions, deferrals, re-advertising, etc., may be incurred. Application withdrawn within 30 days of the filing are eligible for a refund of 25% of the hearing fee but after that time hearings withdrawn or returned will be ineligible for a refund. I understand that fees must be paid promptly.
3. The South Florida Building Code requirements may affect my ability to obtain a building permit even if my zoning application is approved; and that a building permit will probably be required. I am responsible for obtaining permits and inspections for all structures and additions proposed, or built without permits. And that a Certificate of Use and Occupancy must be obtained for the use of the property after it has been approved at Zoning Hearing and that failure to obtain the required permits and/or Certificates of Completion or of Use and Occupancy will result in enforcement action against any occupant and owner. Submittal of the Zoning Hearing application may not forestall enforcement action against the property.
4. The 3<sup>rd</sup> District Court of Appeal has ruled that zoning applications inconsistent with the Comprehensive Development Master Plan (CDMP) cannot be approved by a zoning board based upon considerations of fundamental fairness. Therefore, I acknowledge that if the hearing request is inconsistent with the CDMP and I decide to go forward then my hearing request can only be denied or deferred, but not approved.
5. In Miami-Dade County v. Omnipoint Holdings, Inc. Case No. 3d01-2347 (Fla. 3<sup>rd</sup> DCA 2002), the 3<sup>rd</sup> District Court of Appeal has held invalid the standards for non-use variances, special exceptions, unusual uses, new uses requiring a public hearing and modification of covenants. This is not a final decision and the County Attorney's Department professional staff to develop new standards that will address the Court's concerns. While the new standards are being developed, applicants are advised that any non-use variance, special exception, unusual use, new use requiring a public hearing or request for modification of covenants granted under the existing standards are subject to being reversed in the courts. An applicant wishing to avoid the substantial legal risks associated with going forward under the existing standard may seek a deferral until the new standards are developed.





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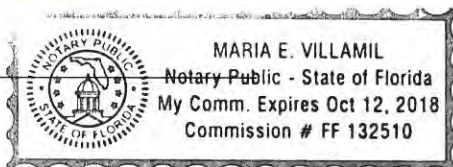
6. Any covenant to be proffered must be submitted to the Town of Cutler Bay Legal Counsel, on Town form, at least 1 month prior to the hearing date. The covenant will be reviewed and the applicant will be notified if changes or corrections are necessary. Once the covenant is acceptable, the applicant is responsible to submit the executed covenant with a current 'Opinion of Title' within 1 week of the hearing. And that Legal Counsel must carry a cover letter indicating subject matter, application number and hearing date.
7. The Town of Cutler Bay Department of Public Works reviews and critiques Zoning applications and may require conditions for approval.
8. **THE APPLICANT IS RESPONSIBLE FOR TRACKING THE STATUS OF THE APPLICATION AND ALL HEARINGS THAT MAY BE ASSOCIATED WITH THIS APPLICATION.**

  
 (Applicant's Signature)

Sworn to and subscribed before me this 13th day of May, 2016.  
 Affiant is personally known to me or has produced \_\_\_\_\_ as  
 identification.

  
 (Notary Public)

My Commission Expires: \_\_\_\_\_





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### COST RECOVERY AFFIDAVIT

I hereby acknowledge and consent to the payment of **all applicable fees** involved as part of my application process. These fees include but are not limited to: application fees, postage, advertising, and attorney fees **regardless of the outcome of the public hearing.**

Please type or print the following:

Date: May 13, 2016

Public Hearing No. \_\_\_\_\_

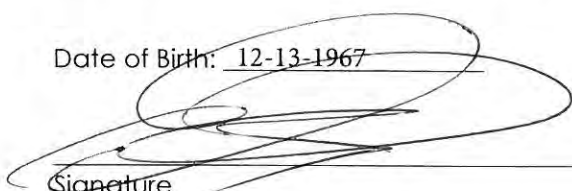
Full Name:

Mr. Mrs. Ms. Eduardo Rodriguez

Current Address: 655 West Flagler Street, Suite 201 City: Miami

State: Florida Zip: 33130 Telephone Number ( 305 ) 262-4102 ext 101

Date of Birth: 12-13-1967

  
 Signature

SWORN AND SUBSCRIBED BEFORE ME THIS 13th DAY OF May 20 16

  
 Notary Public, State of Florida at Large

My Commission expires \_\_\_\_\_



Pursuant to Ordinance No. 2000-09-33-Cost Recovery

## Exhibit A

### LEGAL DESCRIPTION:

The land referred to herein below is situated in the County of Miami-Dade, State of Florida, and is described as follows:

#### PARCEL 1:

A Parcel of land lying in the NW  $\frac{1}{4}$  of the NE  $\frac{1}{2}$  of Section 7, Township 56 South, Range 40 East, Miami-Dade County, Florida, Being Particularly described as follows:

Commence at the Southwest corner of the NW  $\frac{1}{4}$  of the NE  $\frac{1}{2}$  of said Section 7; Thence run S90°07'19"E along the West boundary of the SW  $\frac{1}{4}$  of the NE  $\frac{1}{2}$  of said Section 7 for a distance of 495.24 feet to the Point of Intersection with the Northwestern Right-Of-Way boundary of State Road No. 5; Thence run N42°15'01"E along the last described line for a distance of 910.00 feet to the Point of Beginning of the Parcel of land hereinafter to be described; Thence on the last described course for a distance of 172.27 feet to a Point; Thence run N47°44'59"W for a distance of 50.00 feet to the Point of Intersection with the Southeastly Right-Of-Way boundary of the Florida East Coast Railway; Thence run S42°15'01"W along the last described line a distance of 172.27 feet to a point, said point being 955.19 feet Northeasterly as measured along Southeastly Right-Of-Way boundary of said Florida East Coast Railway from the West boundary of the SW  $\frac{1}{4}$  of the NE  $\frac{1}{2}$  of said Section 7; Thence run S47°44'59"E a distance of 50.00 feet to the Point of Beginning.

#### PARCELS 2 AND 3:

A Parcel of land lying in the NE  $\frac{1}{4}$  of Section 7, Township 56 South, Range 40 East, Miami-Dade County, Florida, more particularly described as follows:

Commence at the Northwest corner of the SW  $\frac{1}{4}$  of the NE  $\frac{1}{2}$  of said Section 7; Thence run S00°07'18"E along the Westerly line of the SW  $\frac{1}{4}$  of the NE  $\frac{1}{2}$  of said Section 7 for a distance of 411.05 feet to a point on the Southeastly Right-Of-Way line of the Florida East Coast Railroad; Thence run N42°15'01"E along the Southeastly Right-Of-Way line of the Florida East Coast Railroad for a distance of 1332.46 feet to the Point of Beginning of the parcel of land herein described; Thence continue along the last mentioned course, (The Southeastly Right-Of-Way of Florida East Coast Railroad) for a distance of 440 feet to a point on the South Right-Of-Way Line of Caribbean Blvd.; Thence run S47°44'59"E for a distance of 50 feet to a point of the Northwestern Right-of-Way Line of State Road No. 5 (U.S. Highway No. 1); Thence run S42°15'01"W along the Northwestern Right-of-Way line of said State Road No. 5 for a distance of 440 feet to a point; Thence run N47°44'59"W for a distance of 50 feet to the Point of Beginning;

Less that Portion of the above-described property deeded to Miami-Dade County, Florida which is more particularly described as follows:

That Area Bounded by the Northwestern Right-Of-Way Line of State Road No. 5 (US No. 1) as shown on State Road Right-Of-Way Map in the NE  $\frac{1}{2}$  of Section 7, Township 56 South, Range 40 East, and recorded in Plat Book 95, at Page 51, of the Public Records of Miami-Dade County, Florida, and bounded by the Southwestern Right-Of-Way of Caribbean Boulevard as shown on the Right-Of-Way Deed, dated October 16, 1957 and recorded in Official Records Book 2195 at Page 456, of the Public Records of Miami-Dade County, Florida, and bounded by 25 foot radius arc concave to the West, said arc being tangent to both of the last described lines.

#### PARCEL 4:

A Parcel of land lying in the NW  $\frac{1}{4}$  of the NE  $\frac{1}{2}$  of Section 7, Township 56 South, Range 40 East, Miami-Dade County, Florida, more Particularly described as follows:

Commencing at the Northwest corner of the SW  $\frac{1}{4}$  of the NE  $\frac{1}{2}$  of said Section 7; thence run S00°07'18"E along the Westerly line of the SW  $\frac{1}{4}$  of the NE  $\frac{1}{2}$  of said Section 7, a distance of 411.05 feet; Thence run N42°15'01"E along the Southeastly Right-Of-Way line of the Florida East Coast Railway a distance of 1027.46 feet to the Point of Beginning of the Parcel of land hereinafter to be described; Thence continue along the last mentioned course, along the Southeastly Right-Of-Way of the Florida East Coast Railway a distance of 305 feet; Thence run S47°44'59"E for a distance of 50 feet to a Point on the Northwestern Right-Of-Way line of State Road No. 5, also known as Dble Highway; Thence run S42°15'01"W along the Northwestern Right-Of-Way line of said State Road No. 5, a distance of 305 feet; Thence run N47°44'59"W for a distance of 50 feet to the Point of Beginning.





**BERCOW RADELL & FERNANDEZ**  
ZONING, LAND USE AND ENVIRONMENTAL LAW

Direct: 305-377-6235  
E-Mail: [BFernandez@BRZoningLaw.com](mailto:BFernandez@BRZoningLaw.com)

**VIA HAND DELIVERY**

September 16, 2016

Kathryn Lyon AICP CFM  
Town of Cutler Bay  
10720 Caribbean Boulevard, Suite 105  
Cutler Bay, FL 33189

Re: Property Located at Approximately SW 203<sup>rd</sup> Street and US-1

Dear Ms. Lyon:

This law firm represents 1622 Investment Corp., the property owner in relation to the reference property. The property is approximately 1.05 acres in size and is located on the west side of South Dixie Highway, south of Caribbean Boulevard (SW 203<sup>rd</sup> Street). The property is located across from a large retail center that includes Kmart, TJ Maxx, Ross, Old Navy and a Regal Cinema 16. This letter shall serve as the applicant's initial letter of intent in support of certain variances from the Town of Cutler Bay Land Development Regulations ("Code") to allow development of the property in accordance with the enclosed plans prepared by Rammos Martinez Architects.

The property is extremely narrow and borders both South Dixie Highway and the South Miami Dade busway. This condition presents inherent design difficulties. The property is only fifty feet (50') wide and approximately four hundred and forty feet (440') long. The narrowness and length of the Property make it difficult to provide workable commercial and office spaces that meet the applicable requirements of the Code and also provide adequate surface parking.

Kathryn Lyon AICP CFM  
September 16, 2016  
Page 3

The area with reduced landscaping is oriented towards the busway. The proposed variance would therefore allow the efficient use of land while not affecting an area that is prominent.

The applicant is also requesting a variance in order to allow parking spaces that are eight feet and eighteen inches (8' 6" x 18') which is one foot (1') less than is required by the code. This variance is also requested based on the limited lot width and in order to maximize the landscape buffer along South Dixie Highway.

Given the property's narrow dimensions, location, and abutting principal transportation corridors, the applicant believes that the proposed variances comply with section 33-36 of the Town of Cutler Bay land development regulations. In response to the requirements of the Code for a variance the Applicant states:

1. The particular provision of the code that prevents the proposed construction is Section 3-60 (4) and 3-102 (b);
2. The existing zoning of the property is Town Center (TC) Core and there are no prior development approvals for the property;
3. The special circumstances, conditions or characteristics of the land in support of the variance is that the platted lot is only 50 feet wide. In addition, the property is presently developed with buildings that the applicant intends to improve, while accommodating new development on the site.
4. If the proposed were to comply with the typical code provision, the amount of developable floor area would be greatly decreased. In addition, the buildings would be rendered impractical for the proposed commercial use for which the property is presently zoned.

Based on the unique circumstances applicable to the property, and the commercial character of the adjacent properties, the applicants proposed plan and the requested variance would maintain the intended purpose of the applicable TC zoning regulations, and the general welfare, stability and appearance of the immediate area. In addition, the project will be compatible with the surrounding land uses, and with the Cutler Bay Comprehensive Plan.