

**RESOLUTION NO. 2009-25-970**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AUTHORIZING THE ISSUANCE OF TAXABLE LAND ACQUISITION REVENUE BONDS IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT EXCEEDING SEVEN MILLION THREE HUNDRED THOUSAND DOLLARS (\$7,300,000) FOR THE PURPOSE OF FINANCING THE COSTS OF PURCHASING CERTAIN PROPERTY DESCRIBED ON EXHIBIT "C" ATTACHED HERETO, AND PAYING COSTS OF ISSUANCE OF THE BONDS; AWARDING THE SALE OF THE BONDS TO WACHOVIA BANK, NATIONAL ASSOCIATION; PROVIDING FOR A WAIVER OF THE COMPETITIVE REQUIREMENTS OF THE CITY'S PURCHASING ORDINANCE; PROVIDING FOR SECURITY FOR THE BONDS; CONTAINING OTHER PROVISIONS RELATING TO THE BONDS; MAKING CERTAIN COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT OF SALE AND PURCHASE; PROVIDING FOR ADOPTION OF REPRESENTATIONS; REPEALING ALL RESOLUTIONS IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, as part of its economic development activities and in order to foster economic growth in the enterprise zone, the City of Miami Gardens, Florida (the "City") desires to purchase certain property described on Exhibit "C" attached hereto (the "Property") from Warren Henry Acquisitions, LLC (the "Company") to use for economic development purposes pursuant to an Agreement of Sale and Purchase (the "Purchase Agreement") between the City and the Company, and

**WHEREAS**, on January 28, 2009, the City Council (the "Council") of the City adopted Ordinance No. 2009-06-178 (the "Ordinance"), authorizing the issuance of Taxable Land Acquisition Revenue Bonds in an aggregate principal amount of not exceeding Seven Million Three Hundred Thousand Dollars (\$7,300,000) for the purpose of financing the costs of purchasing the Property (the "Project") and paying costs of issuance of the Bonds, and

**WHEREAS**, due to the time constraints associated with the nature of the transaction, City staff was not able to follow the competitive requirements of the Purchasing Ordinance, but in fact contacted three banking institutions regarding this transaction, and

**WHEREAS**, the City Manager is recommending that the City Council waive the competitive requirements of the City's Purchasing Ordinance and contract with Wachovia Bank for this purpose,

**WHEREAS**, the Council has determined that it is in the best interest of the City and its citizens to accept a commitment (the "Commitment") from Wachovia Bank, National Association (the "Bank") to purchase the Bonds, and

**WHEREAS**, the Council desires to set forth the details of the Bonds in this Bond Resolution,

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AS FOLLOWS:**

**SECTION 1. ADOPTION OF REPRESENTATIONS:** The foregoing Whereas Clauses are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

**SECTION 2. AUTHORIZATION OF BONDS:** Pursuant to the provisions of this Resolution, taxable revenue bonds of the City to be designated "City of Miami Gardens, Florida, Taxable Land Acquisition Revenue Bonds, Series 2009" (the "Bonds"), are hereby authorized to be issued in an aggregate principal amount not to exceed Seven Million Three Hundred Thousand Dollars (\$7,300,000) for the purpose of financing the costs of the Project and paying costs of issuance of the Bonds.

**SECTION 3. TERMS OF THE BONDS:**

(a) **General Provisions.** The Bonds shall be issued in fully registered form without coupons. The principal of and interest on the Bonds shall be payable when due in lawful money of the United States of America by wire transfer or by certified check delivered on or prior to the date due to the registered Owners of the Bonds ("Owners") or their legal representatives at the addresses of the Owners as they appear on the registration books of the City.

The Bonds shall be dated the date of their issuance and delivery and shall be initially issued as one Bond in a denomination, not to exceed \$7,300,000, as shall be determined by the Mayor, after consultation with the City Manager, based on the final purchase price of the Property that is negotiated with the Company. The execution and delivery of the Bonds by the Mayor shall be conclusive evidence of such officer's determination of the final principal amount of the Bonds. The Bonds shall mature on February 1, 2014 (the "Maturity Date").

THE BONDS SHALL NOT BE DEEMED TO CONSTITUTE AN INDEBTEDNESS OF THE CITY OR A PLEDGE OF THE FAITH AND CREDIT OF THE CITY, BUT SHALL BE PAYABLE EXCLUSIVELY FROM THE PLEDGED REVENUES, AS DEFINED IN THIS

RESOLUTION. THE ISSUANCE OF THE BONDS SHALL NOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE THE CITY TO LEVY OR TO PLEDGE ANY FORM OF AD VALOREM TAXATION WHATEVER THEREFOR, NOR SHALL THE BONDS CONSTITUTE A CHARGE, LIEN, OR ENCUMBRANCE, LEGAL OR EQUITABLE, UPON ANY PROPERTY OF THE CITY, AND THE HOLDERS OF THE BONDS SHALL HAVE NO RECOURSE TO THE POWER OF AD VALOREM TAXATION.

(b) Interest Rate. Subject to adjustment as provided below, the Bonds shall bear interest on the outstanding principal balance from their date of issuance payable semiannually on each February 1 and August 1 (the "Interest Payment Dates"), commencing August 1, 2009, at an interest rate equal to the 5 year U.S. Dollar Swap Offering Rate (the "Index Rate"), determined as of three business days prior to the date of issuance of the Bonds, plus 225 basis points (2.25%) (the "Fixed Rate"). The "Index Rate" is currently published at the website: <http://federalreserve.gov/releases/h15/current/>.

Interest on the Bonds shall be computed on the basis of a 360-day year consisting of twelve (12) thirty-day months.

Adjustment of Interest Rate Upon an Event of Default. If an "event of default" occurs under Section 19 of this Resolution, the interest rate on the Bonds shall immediately be adjusted to a rate equal to the rate on the Bonds, plus three percent (3%).

(c) Prepayment Provisions

(i) Mandatory Prepayment. The principal of the Bonds shall be subject to mandatory prepayment in annual installments on each February 1, commencing February 1, 2010 (each a "Scheduled Due Date"). The schedule of principal and interest payments due on each Scheduled Due Date shall be determined by the Bank three business days prior to the date of issuance of the Bonds, based upon the Fixed Rate and a twenty (20) year amortization schedule of substantially level payments of principal and interest, with the final payment due in full on the Maturity Date.

(ii) Optional Prepayment. The Bonds are subject to optional prepayment as follows:

(A) from the date of issuance of the Bonds to but not including the date that is two years after the date of issuance of the Bonds (the "Second Anniversary Date"), the Bonds are subject to prepayment in whole but not in part at any time at a price of par, plus accrued interest to the date of prepayment, plus a premium equal to the "Prepayment Penalty" described in Exhibit "A" attached hereto, upon written notice to the Owners thereof given by the City at least five (5) days prior to the date fixed for prepayment, and

(B) the Bonds are subject to prepayment in whole but not in part on the Second Anniversary Date and on any Interest Payment Date thereafter at a price of

par plus accrued interest to the date of prepayment, upon written notice to the registered Owners thereof given by the City at least five (5) days prior to the date fixed for prepayment;.

**SECTION 4. EXECUTION OF BONDS:** The Bonds shall be signed in the name of the City by the Mayor and attested to by the City Clerk, and its seal shall be affixed thereto or imprinted or reproduced thereon. The signatures of the Mayor and the City Clerk on the Bonds may be manual or facsimile signatures, provided that the signature of one of such officers shall be a manual signature. In case any one or more of the officers who shall have signed or sealed any of the Bonds shall cease to be such officer of the City before the Bonds so signed and sealed shall have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed and sealed such Bonds had not ceased to hold such office. Any Bonds may be signed and sealed on behalf of the City by such person as at the actual time of the execution of such Bonds shall hold the proper office, although at the date of issuance of such Bonds such person may not have held such office or may not have been so authorized.

**SECTION 5. NEGOTIABILITY, REGISTRATION AND CANCELLATION:** The City shall serve as Registrar and as such shall keep books for the registration of Bonds and for the registration of transfers of Bonds. Bonds may be transferred or exchanged upon the registration books kept by the City, upon delivery to the City, together with written instructions as to the details of the transfer or exchange, of such Bonds in form satisfactory to the City and with guaranty of signatures satisfactory to the City, along with the social security number or federal employer identification number of any transferee and, if the transferee is a trust, the name and social security or federal tax identification numbers of the settlor and beneficiaries of the trust, the date of the trust and the name of the trustee. Bonds may be exchanged for one or more Bonds of the same aggregate principal amount and maturity and in denominations in integral multiples of \$250,000 (except that an odd lot is permitted to complete the outstanding principal balance). No transfer or exchange of any Bond shall be effective until entered on the registration books maintained by the City.

The City may deem and treat the person in whose name any Bond shall be registered upon the books kept by the City as the absolute Owner of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal of and interest on such Bond as they become due and for all other purposes. All such payments so made to any such Owner or upon his order shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

In all cases in which Bonds are transferred or exchanged in accordance with this Section, the City shall execute and deliver Bonds in accordance with the provisions of this Resolution. All Bonds surrendered in any such exchanges or transfers shall forthwith be canceled by the City. There shall be no charge for any such exchange or transfer of Bonds, but the City may require the payment of a sum sufficient to pay any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer. The City shall not be required to transfer or exchange Bonds for a period of fifteen (15) days next preceding an interest payment date on such Bonds.

All Bonds, the principal and interest of which has been paid, either at or prior to maturity, shall be delivered to the City when such payment is made, and shall thereupon be canceled.

**SECTION 6. BONDS MUTILATED, DESTROYED, STOLEN OR LOST:** In case any Bond shall become mutilated or be destroyed, stolen or lost, the City may in its discretion issue and deliver a new Bond of like tenor as the Bond so mutilated, destroyed, stolen or lost, in the case of a mutilated Bond, in exchange and substitution for such mutilated Bond upon surrender of such mutilated Bond or in the case of a destroyed, stolen or lost Bond in lieu of and substitution for the Bond destroyed, stolen or lost, upon the Owner furnishing the City proof of his ownership thereof, satisfactory proof of loss or destruction thereof and satisfactory indemnity, complying with such other reasonable regulations and conditions as the City may prescribe and paying such expenses as the City may incur. The City shall cancel all mutilated Bonds that are surrendered. If any mutilated, destroyed, lost or stolen Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the City may pay the principal of and interest on such Bond upon the Owner complying with the requirements of this paragraph.

Any such duplicate Bonds issued pursuant to this section shall constitute original contractual obligations of the City whether or not the lost, stolen or destroyed Bonds be at any time found by anyone, and such duplicate Bonds shall be entitled to equal and proportionate benefits and rights as to lien on and source and security for payment from the funds, as hereinafter pledged, to the extent as all other Bonds issued hereunder.

**SECTION 7. FORM OF BONDS:** The text of the Bonds shall be of substantially the following tenor, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted by this Resolution.

No. R-

UNITED STATES OF AMERICA  
STATE OF FLORIDA  
CITY OF MIAMI GARDENS  
TAXABLE LAND ACQUISITION REVENUE BOND  
SERIES 2009

Registered Owner:

Principal Amount: \_\_\_\_\_ Dollars (\$\_\_\_\_\_)

KNOW ALL MEN BY THESE PRESENTS, that the City of Miami Gardens, Florida (the "City"), for value received, hereby promises to pay in installments to the Registered Owner shown above, or registered assigns, on the dates set forth below, the Principal Amount specified above. Subject to the rights of prior prepayment and amortization described in this Bond, this Bond shall mature on February 1, 2014.

This Bond is issued under authority of and in full compliance with the Constitution and laws of the State of Florida, including particularly Part II of Chapter 166, Florida Statutes, as amended, the Charter of the City, Ordinance No. 2009-06-178 duly adopted by the City Council of the City on January 28, 2009, and Resolution No. 2009-25-970 duly adopted by the City Council of the City on January 28, 2009 (the "Bond Resolution"), and is subject to the terms of the Bond Resolution. This Bond is issued for the purpose of financing the costs of purchasing the Property identified in the Bond Resolution, and paying costs of issuance of the Bonds.

Subject to adjustment as provided below, this Bond shall bear interest on the outstanding principal balance from its date of issuance payable semiannually on each February 1 and August 1 (the "Interest Payment Dates"), commencing August 1, 2009, at an interest rate equal to \_\_\_\_% per annum.

Interest on this Bond shall be computed on the basis of a 360-day year consisting of twelve (12) thirty-day months.

Adjustment of Interest Rate Upon an Event of Default. If an "event of default" occurs under Section 19 of the Bond Resolution, the interest rate on the Bonds shall immediately be adjusted to a rate equal to the rate on the Bonds, plus three percent (3%).

#### Prepayment Provisions

##### Mandatory Prepayment

The principal of this Bond shall be subject to mandatory prepayment in annual installments on each February 1, commencing February 1, 2010 (each a "Scheduled Due Date"), in the amounts set forth on "Exhibit B" attached hereto.

Optional Prepayment. This Bond is subject to optional prepayment as follows:

(a) from the date of issuance of the Bonds to but not including the date that is two years after the date of issuance of the Bonds (the "Second Anniversary Date"), this Bond is subject to prepayment in whole but not in part at any time at a price of par, plus accrued interest to the date of prepayment, plus a premium equal to the "Prepayment Penalty" described in Exhibit "A" attached hereto, upon written notice to the Owners thereof given by the City at least five (5) days prior to the date fixed for prepayment, and

(b) this Bond is subject to prepayment in whole but not in part on the Second Anniversary Date and on any Interest Payment Date thereafter at a price of par plus accrued interest to the date of prepayment, upon written notice to the registered Owners thereof given by the City at least five (5) days prior to the date fixed for prepayment;

The principal of and interest on this Bond are payable in lawful money of the United States of America by wire transfer or by certified check delivered on or prior to the date due to the registered Owner or his legal representative at the address of the Owner as it appears on the registration books of the City.

This Bond and the interest hereon are secured by a first lien on the revenues received from the tax on the purchase of electricity, which constitutes a portion of the public service tax (also known as the utilities service tax) levied and received or to be received by the City pursuant to Section 166.231(1)(a), Florida Statutes, and Ordinance No. 2003-1 adopted by the City Council on August 20, 2003 (the "Pledged Revenues"). Reference is hereby made to the Bond Resolution for the provisions, among others, relating to the terms, lien and security of the Bonds, the custody and application of the proceeds of the Bonds, the rights and remedies of the Registered Owners of the Bonds, and the extent of and limitations on the City's rights, duties and obligations, to all of which provisions the Registered Owner hereof for himself and his successors in interest assents by acceptance of this Bond.

THIS BOND SHALL NOT BE DEEMED TO CONSTITUTE AN INDEBTEDNESS OF THE CITY OR A PLEDGE OF THE FAITH AND CREDIT OF THE CITY, BUT SHALL BE PAYABLE EXCLUSIVELY BY THE PLEDGED REVENUES. THE ISSUANCE OF THIS BOND SHALL NOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE THE CITY TO LEVY OR TO PLEDGE ANY FORM OF AD VALOREM TAXATION WHATEVER THEREFOR NOR SHALL THIS BOND CONSTITUTE A CHARGE, LIEN, OR ENCUMBRANCE, LEGAL OR EQUITABLE, UPON ANY PROPERTY OF THE CITY, AND THE HOLDER OF THIS BOND SHALL HAVE NO RECOURSE TO THE POWER OF AD VALOREM TAXATION.

The original registered Owner, and each successive registered Owner of this Bond shall be conclusively deemed to have agreed and consented to the following terms and conditions:

1. The City shall keep books for the registration of Bonds and for the registration of transfers of Bonds as provided in the Resolution. Bonds may be transferred or exchanged upon the registration books kept by the City, upon delivery to the City, together with written instructions as to the details of the transfer or exchange, of such Bonds in form satisfactory to the City and with guaranty of signatures satisfactory to the City, along with the social security number or federal employer identification number of any transferee and, if the transferee is a trust, the name and social security or federal tax identification numbers of the settlor and beneficiaries of the trust, the date of the trust and the name of the trustee. The Bonds may be exchanged for Bonds of the same principal amount and maturity and denominations in integral multiples of \$250,000 (except that an odd lot is permitted to complete the outstanding principal balance). No transfer or exchange of any Bond shall be effective until entered on the registration books maintained by the City.
2. The City may deem and treat the person in whose name any Bond shall be registered upon the books of the City as the absolute Owner of such Bond, whether such

Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal of and interest on such Bond as they become due, and for all other purposes. All such payments so made to any such Owner or upon his order shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

3. In all cases in which the privilege of exchanging Bonds or transferring Bonds is exercised, the City shall execute and deliver bonds in accordance with the provisions of the Resolution. There shall be no charge for any such exchange or transfer of Bonds, but the City may require payment of a sum sufficient to pay any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer. The City shall not be required to transfer or exchange Bonds for a period of fifteen (15) days next preceding an interest payment date on such Bonds.

4. All Bonds, the principal of which has been paid, either at or prior to maturity, shall be delivered to the City when such payment is made, and shall thereupon be canceled. In case part, but not all of an outstanding Bond shall be prepaid, such Bond shall not be surrendered in exchange for a new Bond.

It is hereby certified and recited that all acts, conditions and things required to happen, to exist and to be performed precedent to and for the issuance of this Bond have happened, do exist and have been performed in due time, form and manner as required by the Constitution and the laws of the State of Florida applicable thereto.

**IN WITNESS WHEREOF**, the City of Miami Gardens, Florida has caused this Bond to be executed by the manual or facsimile signature of its Mayor and of its City Clerk, and the Seal of the City of Miami Gardens, Florida or a facsimile thereof to be affixed hereto or imprinted or reproduced hereon, all as of the \_\_\_\_ day of \_\_\_\_, 2009.

CITY OF MIAMI GARDENS, FLORIDA

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

(SEAL)

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned\_\_\_\_\_ (the "Transferor"), hereby sells, assigns and transfers unto \_\_\_\_\_ (Please insert name and Social Security or Federal Employer identification number of assignee) the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ (the "Transferee") as attorney to register the transfer of the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Date \_\_\_\_\_  
Signature Guaranteed:

\_\_\_\_\_  
Social Security Number of Assignee

NOTICE: Signature(s) must be guaranteed by a member firm of the New York Stock Exchange or a commercial bank or a trust company

NOTICE: No transfer will be registered and no new Bond will be issued in the name of the Transferee, unless the signature(s) to this assignment corresponds with the name as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever and the Social Security or Federal Employer Identification Number of the Transferee is supplied.

The following abbreviations, when used in the inscription on the face of the within Bond, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM - as tenants in common

\_\_\_\_\_(Cust.)

Custodian for \_\_\_\_\_,  
(Minor)

TEN ENT - as tenants by  
the entirety

under Uniform Gifts to Minors  
Act of \_\_\_\_\_  
(State)

JT TEN -as joint tenants with right of survivorship and not as tenants in common

Additional abbreviations may also be used though not in the list above.

**[ATTACH EXHIBIT "A"—PREPAYMENT PENALTY AND  
EXHIBIT "B"--AMORTIZATION SCHEDULE]**

**SECTION 8. PLEDGE OF REVENUES:**

(a) The City hereby pledges, assigns and grants a first lien and security interest to the Bondholders in the revenues received from the tax on the purchase of electricity, which constitutes a portion of the public service tax (also known as the utilities service tax) levied and received or to be received by the City pursuant to Section 166.231(1)(a), Florida Statutes, and Ordinance No. 2003-1 adopted by the City Council on August 20, 2003 (the “Pledged Revenues”) in order to secure the principal of and interest on the Bonds. The City covenants that for so long as the Bonds are secured by the Pledged Revenues it shall take all necessary steps to continue to receive the Pledged Revenues as provided for in Section 166.231(1)(a), Florida Statutes. The City represents and warrants to the Bondholders that there are no other obligations of the City currently outstanding secured by the Pledged Revenues.

(b) Calculations of Pledged Revenues will be based on information derived from the most recently audited fiscal year end financial statements. For purposes of calculating Maximum Annual Debt Service, the interest rate to be assumed for indebtedness bearing interest at a variable rate shall be equal the higher of seven percent (7%) per annum or the actual rate of interest paid by the City with respect to such indebtedness during the month preceding the date of calculation, and such indebtedness shall be assumed to be fully funded. In addition, for purposes of calculating Maximum Annual Debt Service, the Bonds shall be assumed to amortize over a fifteen (15) year period.

**SECTION 9. BOND FUND:** There is hereby created a fund, entitled “City of Miami Gardens, Florida Taxable Land Acquisition Revenue Bonds, Series 2009 Bond Fund” (the “Bond Fund”). There shall be deposited into the Bond Fund on each Interest Payment Date sufficient amounts of Pledged Revenues as specified in Section 8 hereof which, together with the amounts already on deposit therein, will enable the City to pay the principal of and interest on the Bonds on each Interest Payment Date. Moneys in the Bond Fund shall be applied on each Interest Payment Date to the payment of principal of and interest on the Bonds coming due on each such date.

**SECTION 10. SWAP AGREEMENTS:** The City is authorized to enter into a swap agreement with the Bondholders or with another party with the consent of the Bondholders for the purpose of effectively lowering or fixing the interest rate on the Bonds for any period of time. For purposes of depositing sufficient moneys into the Bond Fund to pay principal and interest on the Bonds pursuant to Section 9 hereof, and for purpose of the calculations specified in Section 17(b) hereof, (i) any payments due under such swap agreement shall be considered to be the equivalent of debt service payments on the Bonds, and Pledged Revenues shall be set aside in each fiscal year in an amount at least equal to the greater of (x) the payments due under the swap agreement in such fiscal year or (y) the debt service payments due on the Bonds in such fiscal year, in order to make all such payments, and (ii) any payments actually received by the City under the swap agreement may be taken into account and, upon receipt, shall be deposited into the Bond Fund.

**SECTION 11. INVESTMENT OF BOND FUND:** Funds in the Bond Fund may be

invested in the following investments, maturing at or before the time such funds may be needed to pay principal of or interest on Bonds, to the extent such investments are legal for investment of municipal funds (“Authorized Investments”):

- (a) The Local Government Surplus Funds Trust Fund;
- (b) Negotiable direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States Government at the then prevailing market price for such securities;
- (c) Interest-bearing time deposits or savings accounts in banks organized under the laws of the State of Florida (the “State”), in national banks organized under the laws of the United States and doing business and situated in the State, in savings and loan associations which are under State supervision, or in federal savings and loan associations located in the State and organized under federal law and federal supervision, provided that any such deposits are secured by collateral as may be prescribed by law;
- (d) Obligations of the federal farm credit banks; the Federal Home Loan Mortgage Corporation, including Federal Home Loan Mortgage Corporation participation certificates; or the Federal Home Loan Bank or its district banks or obligations guaranteed by the Government National Mortgage Association;
- (e) Obligations of the Federal National Mortgage Association, including Federal National Mortgage Association participation certificates and mortgage pass-through certificates guaranteed by the Federal National Mortgage Association;
- (f) Securities of, or other interests in, any open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940, 15 U.S.C. ss. 80a-1 et seq., as amended from time to time, provided the portfolio of such investment company or investment trust is limited to United States Government obligations and to repurchase agreements fully collateralized by such United States Government obligations and provided such investment company or investment trust takes delivery of such collateral either directly or through an authorized custodian; or
- (g) Any other investments that at the time are legal investments for municipal funds.

**SECTION 12. APPLICATION OF BOND PROCEEDS:**

- (a) The proceeds received upon sale of the Bonds shall be used on the date of issuance of the Bonds to acquire the Property and to pay costs of issuance of the Bonds.
- (b) The registered Owners shall have no responsibility for the use of the proceeds of the Bonds, and the use of such Bond proceeds by the City shall in no way affect the

rights of such registered Owners. The City shall be obligated to apply the proceeds of the Bonds solely for financing costs of the Project. However, the City shall be irrevocably obligated to continue to pay the principal of and interest on the Bonds notwithstanding any failure of the City to use and apply such Bond proceeds in the manner provided herein.

**SECTION 13. FUNDS:** Each of the funds and accounts herein established and created shall constitute trust funds for the purposes provided herein for such funds and accounts respectively. The money in such funds and accounts shall be continuously secured in the same manner as deposits of City funds are authorized to be secured by the laws of the State of Florida. Earnings on any investments in any amounts on any of the funds and accounts herein established and created shall be credited to such respective fund or account.

The designation and establishment of the funds and accounts in and by this Bond Resolution shall not be construed to require the establishment of any completely independent, self-balancing funds, as such term is commonly defined and used in governmental accounting, but rather is intended solely to constitute an earmarking of certain revenues and assets of the City for the purposes herein provided and to establish certain priorities for application of such revenues and assets.

**SECTION 14. SPECIAL COVENANTS OF THE CITY; ADDITIONAL BONDS TEST:**

(a) The City shall, upon receipt by the City or within two hundred seventy (270) days of each fiscal year end, whichever is sooner, provide the Owners of the Bonds with a printed copy of its Comprehensive Annual Financial Report, its current year operating budget and its capital improvement plan. The City shall also provide to the Owners of the Bonds any other financial information reasonably requested by such Owners.

(b) The City will not issue any additional obligations secured by the Pledged Revenues, unless (i) the ratio of the amount of Pledged Revenues collected during each of the preceding two fiscal years of the City divided by the Maximum Annual Debt Service on all Debt Obligations secured by the Pledged Revenues and on the Debt Obligations proposed to be issued, is at least equal to 2.00, (ii) no Event of Default exists hereunder and (iii) the other covenants of the City contained herein will continue to be met. For purposes of determining compliance with (i) above, the assumptions set forth in Section 8(b) and the definitions set forth in Section 8(a) of this Resolution shall apply.

**SECTION 15. COVENANTS BINDING ON CITY AND SUCCESSOR:** All covenants, stipulations, obligations and agreements of the City contained in this Resolution shall be deemed to be covenants, stipulations, obligations and agreements of the City to the full extent authorized or permitted by law, and all such covenants, stipulations, obligations and agreements shall be binding upon the successor or successors thereof from time to time and upon the officer, board, body or commission to whom or to which any power or duty affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law.

Except as otherwise provided in this Resolution, all rights, powers and privileges conferred and duties and liabilities imposed upon the City or upon the City Council by the provisions of this Resolution shall be exercised or performed by the City Council or by such officers, board, body or commission as may be required by law to exercise such powers or to perform such duties.

No covenant, stipulation, obligation or agreement herein contained shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member of the City Council or officer, agent or employee of the City in his or her individual capacity, and neither the members of the City Council nor any officer, agent or employee of the City executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

**SECTION 16. EVENTS OF DEFAULT:** Each of the following events is hereby declared an “event of default”:

(a) payment of the principal of any of the Bonds shall not be made when the same shall become due and payable; or

(b) payment of any installment of interest on any of the Bonds shall not be made when the same shall become due and payable; or

(c) the City shall default in the due and punctual performance of any covenant, condition, agreement or provision contained in the Bonds or in this Resolution (except for a default described in subsection (a) or (b) of this Section) on the part of the City to be performed, and such default shall continue for sixty (60) days after written notice specifying such default and requiring same to be remedied shall have been given to the City by any Owner of any bond; provided that it shall not constitute an event of default if the default is not one that can be cured within such sixty (60) days, as agreed by the Bondholders and the City, and the City commences within such sixty (60) days and is proceeding diligently with action to correct such default;

(d) any proceeding shall be instituted with the consent of the City for the purpose of effecting a composition between the City and its creditors or for the purpose of adjusting the claims of such creditors pursuant to any federal or state statute now or hereafter enacted and such proceedings shall not have been dismissed within thirty (30) days after the institution of the same; or

(e) a payment default occurs under any other debt or obligation of the City which is secured by the Pledged Revenues.

**SECTION 17. REMEDIES; RIGHTS OF BONDHOLDERS:**

(a) Upon the occurrence and continuance of any event of default specified in Section 16(a), (b) or (e) hereof, the Owners of the Bonds may declare all payments of principal

and accrued interest to be immediately due and payable, whereupon the same shall become immediately due and payable.

(b) Upon the occurrence and continuance of any event of default specified in Section 16(c) or (d) hereof, the Owners of the Bonds may pursue any available remedy by suit, at law or in equity, to enforce the payment of the principal of and interest on the Bonds then outstanding.

No delay or omission to exercise any right or power accruing upon any default or event of default shall impair any such right or power or shall be construed to be a waiver of any such default or event of default or acquiescence therein; and every such right and power may be exercised from time to time and as often as may be deemed expedient. No waiver of any event of default hereunder shall extend to or shall affect any subsequent event of default or shall impair any rights or remedies consequent thereon.

The City agrees, to the extent permitted by law, to indemnify the Bank and its directors, officers, employees and agents from any against any losses, claims, damages, liabilities and expenses (including, without limitation, counsel fees and expenses) which may be incurred in connection with enforcement of the provisions of this Resolution and the Bonds.

**SECTION 18. DEFEASANCE:**

- (a) The covenants, liens and pledges entered into, created or imposed pursuant to this Resolution may be fully discharged and satisfied with respect to the Bonds in any one or more of the following ways.
  - (i) by paying the principal of, prepayment premium, if any, and interest on the Bonds when the same shall become due and payable; or
  - (ii) by depositing with an escrow agent certain moneys irrevocably pledged to the payment of the Bonds, which together with other moneys lawfully available therefor, if any, shall be sufficient at the time of such deposit with the escrow agent to pay when due the principal, prepayment premium, if any, and interest due and to become due on said Bonds on or prior to the prepayment date or maturity date thereof; or
  - (iii) by depositing with an escrow agent moneys irrevocably pledged to the payment of the Bonds, which together with other moneys lawfully available therefor, when invested by the escrow agent in direct obligations of the United States of America which shall not be subject to redemption prior to their maturity other than at the option of the holder thereof, will provide moneys which shall be sufficient (as evidenced by a verification report of an independent

certified public accountant or firm of accountants) to pay when due the principal, prepayment premium, if any, and interest due and to become due on said Bonds on or prior to the prepayment date or maturity date thereof.

Upon such payment or deposit with an escrow agent in the amount and manner provided in this Section 18, the Bonds shall be deemed to be paid and shall no longer be deemed to be Outstanding for the purposes of this Resolution and the covenants of the City hereunder and all liability of the City with respect to said Bonds shall cease, terminate and be completely discharged and extinguished and the holders thereof shall be entitled to payment solely out of the moneys or securities so deposited with the escrow agent; provided, however, that (i) if any Bonds are to be redeemed prior to the maturity thereof, notice of the redemption thereof shall have been duly given in accordance with the provisions of Section 3 hereof and (ii) in the event that any Bonds are not by their terms subject to redemption with the next succeeding sixty (60) days following a deposit of moneys with the escrow agent in accordance with this Section, the City shall have given the escrow agent in form satisfactory to it irrevocable instructions to mail to the Owners of such Bonds at their addresses as they appear on the registration books of the City, a notice stating that a deposit in accordance with this Section has been made with the escrow agent and that the Bonds are deemed to have been paid in accordance with this Section and stating such maturity or redemption date upon which moneys are to be available for the payment of the principal of, premium, if any, and interest on said Bonds.

- (b) Notwithstanding the foregoing, all references to the discharge and satisfaction of Bonds shall include the discharge and satisfaction of any portion of the Bonds.
- (c) If any portion of the moneys deposited with an escrow agent for the payment of the principal of, redemption premium, if any, and interest on any portion of the Bonds is not required for such purpose, the escrow agent shall transfer to the City the amount of such excess and the City may use the amount of such excess free and clear of any trust, lien, security interest, pledge or assignment securing said Bonds or otherwise existing under this Resolution.

**SECTION 19. SALE OF BONDS:** Based upon the uncertainty of the interest rate environment if sale of the Bonds is delayed, the City hereby determines and finds the necessity for a negotiated sale of the Bonds. The City has been provided all applicable disclosure information required by Section 218.385, Florida Statutes. The negotiated sale of the Bonds is hereby approved to the Bank at a purchase price of par.

**SECTION 20. APPROVAL OF PURCHASE AGREEMENT:** The Council hereby approves the form and content of the Purchase Agreement between the City and the Company, presented at this meeting and attached hereto as Exhibit "B". The Mayor is hereby authorized to execute and deliver the Purchase Agreement on behalf of the City, and the Clerk is authorized to place the City's seal thereon and attest thereto, in substantially the form presented at this

meeting, with such changes, modifications, deletions and insertions as the Mayor, with the advice of the City Attorney, may deem necessary and appropriate. Such execution and delivery shall be conclusive evidence of the approval thereof by the City.

**SECTION 21. AUTHORITY OF OFFICERS:** The Mayor, the City Manager and the City Clerk are and each of them is hereby authorized and directed to execute and deliver any and all documents and instruments and to do and cause to be done any and all acts and things necessary or proper for carrying out the transaction contemplated by this Resolution and the other documents identified herein.

**SECTION 22. SEVERABILITY:** In case any one or more of the provisions of this Resolution or of any Bonds issued hereunder shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Resolution or of the Bonds, but this Resolution and the Bonds shall be construed and enforced as if such illegal or invalid provision had not been contained therein. The Bonds are issued and this Resolution is adopted with the intent that the laws of the State shall govern their construction.

**SECTION 23. PAYMENTS DUE ON SATURDAYS, SUNDAYS AND HOLIDAYS:** In any case where the date of maturity of interest on or principal of the Bonds shall be a Saturday, Sunday or a day on which the banks in the State are required, or authorized or not prohibited, by law (including executive orders) to close and are closed, then payment of such interest or principal need not be made by the City on such date but may be made on the next succeeding business day on which the banks in the State are open for business, but such interest shall continue to accrue until payment is received by the Owners of the Bonds.

**SECTION 24. OPEN MEETING FINDINGS:** It is hereby found and determined that all official acts of the City Council concerning and relating to the adoption of this Resolution and all prior resolutions affecting the City Council's ability to issue the Bonds were taken in an open meeting of the City Council and that all deliberations of the City Council or any of its committees that resulted in such official acts were in meetings open to the public, in compliance with all legal requirements, including Section 286.011, Florida Statutes.

**SECTION 25. REPEALING CLAUSE:** All resolutions and parts thereof in conflict herewith, to the extent of such conflicts, are hereby superseded and repealed.

**SECTION 26. WAIVER OF JURY TRIAL:** To the extent permitted by applicable law, the City, knowingly, voluntarily and intentionally waives any right it may have to a trial by jury in respect of any litigation based on, or arising out of, under or in connection with this Resolution, the Bonds or any agreement contemplated to be executed in connection with this Resolution, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of the City or the Bank with respect hereto. The City acknowledges that this provision is a material inducement to the Bank to purchase the Bonds.

**SECTION 27. WAIVER OF COMPETITIVE REQUIREMENTS:** The City Council of the City of Miami Gardens hereby authorizes a waiver of the competitive bidding

requirements of its Purchasing Ordinance to contract with the Bank for the issuance of the bonds described herein.

**SECTION 28. EFFECTIVE DATE:** This Resolution shall take effect immediately upon its final passage and adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS AT ITS REGULAR MEETING HELD ON JANUARY 28, 2009.

  
SHIRLEY GIBSON, MAYOR

ATTEST:

  
RONETTA TAYLOR, MMC, CITY CLERK

Prepared by ADORNO & YOSS LLP, Bond Counsel

SPONSORED BY: DANNY O. CREW, CITY MANAGER

MOVED BY: Councilman Campbell

SECONDED BY: Vice Mayor Watson

VOTE: 6-1

Mayor Shirley Gibson	<u>X</u> (Yes)	___ (No)
Vice Mayor Barbara Watson	<u>X</u> (Yes)	___ (No)
Councilman Melvin L. Bratton	<u>X</u> (Yes)	___ (No)
Councilman Aaron Campbell, Jr.	<u>X</u> (Yes)	___ (No)
Councilman Oliver Gilbert III	<u>X</u> (Yes)	___ (No)
Councilwoman Sharon Pritchett	___ (Yes)	<u>X</u> (No)
Councilman Andre L. Williams	<u>X</u> (Yes)	___ (No)

**EXHIBIT "A"**

**PREPAYMENT PENALTY**

Any applicable prepayment penalty on the Bonds shall be calculated in accordance with the following:

"Break Event" means the optional or mandatory prepayment or acceleration, in whole or in part, of the principal of the Bonds occurring prior to the date such principal would, but for that prepayment or acceleration, have become due (a "Scheduled Due Date"). For each date on which a Break Event occurs (a "Break Date"), a Breakage Fee shall be due to the owners of the Bonds only if the rate under "A" below exceeds the rate under "B" below, such Breakage Fee to be determined as follows:

Breakage Fee = the Present Value of  $[(A-B) \times C]$ , plus LIBOR Breakage, where:

A = A rate per annum equal to the sum of [i] the bond equivalent yield (bid side) of the U.S. Treasury security with a maturity closest to the Maturity Date as reported by the Wall Street Journal (or other published source) on the date the Fixed Rate on the Bonds was set (the "Lock -in Date") plus [ii] the corresponding swap spread of the Bank on the Lock-in Date for fixed rate payor to pay the Bank the fixed rate side of an interest rate swap of that maturity, plus [iii] 0.25%;

B = A rate per annum equal to the sum [i] the bond equivalent yield (bid side) of the U.S Treasury security with a maturity closest to the Maturity Date as reported by the Wall Street Journal (or other published source) on the Break Date, plus [ii] the corresponding swap spread that the Bank determines another swap dealer would quote to the Bank on the Break Date for paying to the Bank the fixed rate side of an interest rate swap of that maturity;

C = The sum of the products of [i] each Affected Principal Amount for each Affected Principal Period, times [ii] the number of days in the Affected Principal Period divided by 360;

"Affected Principal Amount" for an Affected Principal Period is the principal amount of the Bonds scheduled to be outstanding during that Affected Principal Period determined as of the relevant Break Date before giving effect to the Break Event on that Break Date, and for any prepayment, multiplying each such principal amount times the Prepayment Fraction.

"Affected Principal Period" is each period from and including a Scheduled Due Date to but excluding the next succeeding Scheduled Due Date, provided that the first such period shall begin on and includes the Break Date.

“Libor Breakage” is any additional loss, cost or expense that the Bank may incur with respect to any hedge for the Fixed Rate on the Bonds based on the difference between the London interbank offered rate (for U.S. dollar deposits of the relevant maturity) available in the London interbank market at the beginning of the interest period in which the Break Date occurs and that which is available in that market on the Break Date.

"Maturity Date" is the date on which the final payment of principal of the Bonds would, but for any Break Event, have become due.

"Prepayment Fraction" is a fraction equal to the principal amount being prepaid over the principal amount of the Bonds outstanding immediately prior to that prepayment on the Break Date.

“Present Value” is determined as of the Break Date using “B” above as the discount rate.

In addition, a Break Event shall be deemed to occur hereunder if, on any date (“Borrowing Date”) prior to any acceleration of the Bonds, any advance of principal under the Bonds is scheduled to be made and that advance fails to be made on that Borrowing Date (whether due to the City’s default, the City’s failure to borrow, the termination of any loan commitment, any unsatisfied condition precedent, or otherwise), in which case that Borrowing Date shall be a Break Date, the Affected Principal Amount for that Break Event shall be based on the amount of the failed advance, and the City shall on demand pay to the Bank any Breakage Fee due hereunder for that Break Event.

Breakage Fees are payable as liquidated damages, are a reasonable pre-estimate of the losses, costs and expenses Bank would incur in the event of any prepayment or acceleration of the Bonds, are not a penalty, will not require claim for, or proof of, actual damages, and Bank's determination thereof shall be conclusive and binding in the absence of manifest error. For any Break Event hereunder, the foregoing Breakage Fee provisions supersede any breakage compensation agreement that City and Bank may have executed with respect to the Bonds.

Resolution No. 2009-25-970

**EXHIBIT "B"**

**FORM OF PURCHASE AGREEMENT**

Resolution No. 2009-25-970

**EXHIBIT "C"**

**DESCRIPTION OF PROPERTY**



## City of Miami Gardens Agenda Cover Memo

<b>Council Meeting Date:</b>	January 28, 2009		<b>Item Type:</b>	<b>Resolution</b>	<b>Ordinance</b>	<b>Other</b>	
			<i>(Enter X in box)</i>	X			
<b>Fiscal Impact:</b> <i>(Enter X in box)</i>	Yes	No	<b>Ordinance Reading:</b> <i>(Enter X in box)</i>	<b>1st Reading</b>		<b>2nd Reading</b>	
	X			<b>Public Hearing:</b> <i>(Enter X in box)</i>	Yes	No	Yes
			<i>(Enter X in box)</i>		X		X
<b>Funding Source:</b>	General Fund-Non Departmental		<b>Advertising Requirement:</b> <i>(Enter X in box)</i>	<b>Yes</b>		<b>No</b>	
						X	
<b>Contract/P.O. Required:</b> <i>(Enter X in box)</i>	Yes	No	<b>RFP/RFQ/Bid #:</b>	<i>(Enter #)</i>			
		X					
<b>Sponsor Name</b>	Dr. Danny O. Crew City Manager		<b>Department:</b>	Finance			

**Short Title:**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AUTHORIZING THE ISSUANCE OF TAXABLE LAND ACQUISITION REVENUE BONDS IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT EXCEEDING SEVEN MILLION THREE HUNDRED THOUSAND DOLLARS (\$7,300,000) FOR THE PURPOSE OF FINANCING THE COSTS OF PURCHASING CERTAIN PROPERTY DESCRIBED ON EXHIBIT "C" ATTACHED HERETO, AND PAYING COSTS OF ISSUANCE OF THE BONDS; AWARDING THE SALE OF THE BONDS TO WACHOVIA BANK, NATIONAL ASSOCIATION; PROVIDING FOR A WAIVER OF THE COMPETITIVE REQUIREMENTS OF THE CITY'S PURCHASING ORDINANCE; PROVIDING FOR SECURITY FOR THE BONDS; CONTAINING OTHER PROVISIONS RELATING TO THE BONDS; MAKING CERTAIN COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT OF SALE AND PURCHASE; PROVIDING FOR ADOPTION OF REPRESENTATIONS; REPEALING ALL RESOLUTIONS IN**

**CONFLICT; PROVIDING A SEVERABILITY CLAUSE;  
PROVIDING AN EFFECTIVE DATE.**

**Staff Summary:**

During the December 10, 2008 Council meeting in, Council was advised of the problem with financing associated with the Warren Henry property. At that meeting Council directed staff to proceed with obtaining various financing sources on an expedited manner. Due to the time constraints we were working under, staff did not have the time required for a formal "RFP" process and subsequent evaluations and recommendations. Staff contacted three major institutions in South Florida in order to obtain their proposals for this financing project. Wachovia Bank, Suntrust Bank, and TD Bank/Commercebank were contacted.

The City only received a firm proposal from Wachovia bank, the other two banks did not express an interest in participating in this transaction (see copies of their emails in Attachment A). The terms from Wachovia provide for a fixed rate of 4.35% for 5 years, with the option of prepaying the loan after 2 years with no penalty. At the end of five years, if the land had not been purchased by Warren Henry, the City will need to re-finance this debt to a long term instrument.

**Recommendation:**

Staff requests that Council waive the formal bid process and approve the commitment letter provided by Wachovia Bank for this financing arrangement.

**Attachment:**

- Attachment A- Copy of email responses from three institutions
- Attachment B- Commitment letter from Wachovia Bank
- Attachment C- Legal Description

**William Alonso**

---

**From:** Scott D Kreiger [Scott.Kreiger@yesbank.com]  
**Sent:** Tuesday, January 06, 2009 2:50 PM  
**To:** William Alonso  
**Subject:** Re: Loan proposal

William,

I can't seem to stay put for more than one or two days lately. In Tallahassee today and tomorrow to meet with Alex Sink and her deputies.

I just learned that Tom informed you he couldn't respond to the loan request. I'm EXTREMELY embarrassed...no mortified! Based on my communications with him and other personnel, I was led to believe we were bidding and you'd have the proposal on/before January 5.

I have shared this situation with the President to ensure it doesn't happen again. Please accept my sincere apology for the manner in which this situation was handled. I will be in touch with you on Thursday upon my return to South Florida.

Best regards,  
Scott

-----  
Scott D. Kreiger  
Vice President/Manager  
Government Banking  
TD Bank, N. A.  
5900 N. Andrews Avenue  
Fort Lauderdale, FL 33309  
954-233-2060 Office  
954-233-2037 Fax  
954-816-8656 Cell

---

**From:** "William Alonso" [walonso@miamigardens-fl.gov]  
**Sent:** 01/06/2009 10:07 AM EST  
**To:** Thomas te Riele; Scott Kreiger; Robert McCullough  
**Subject:** Loan proposal

Gentlemen:

We are getting ready to meet with Council and have not received any news from you regarding the loan request. Please advice ASAP.

Thank you

*William Alonso, CPA, CGFO*

**Finance Director**  
City of Miami Gardens  
" *Striving to be the best*"  
1515 NW 167th Street, Bldg 5, Suite 200  
Miami Gardens, Fla. 33169  
Office: (305) 622-8000 Ext. 2341  
Cell: (786) 219-6883  
Fax: (305) 474-1262

1/6/2009

**William Alonso**

---

**From:** Joseph.Delleperche [Delleperche.Joseph@SunTrust.com]  
**Sent:** Friday, January 02, 2009 11:08 AM  
**To:** William Alonso  
**Subject:** Loan Proposal - SunTrust Feedback  
**Attachments:** Miami Gardens - CBA 2 Step Anti Dilution Formula.12.08.xls

William:

After detailed analysis of the City's request for the land/bridge loan, we've opted not to submit a proposal on this transaction. When looking at the global cash flow from for non-ad valorem revenues and the City's reliance on such revenues to cover essential services, we've determined that a lot of duress would be put on the growing City to service this debt under the current prevailing terms in the marketplace.

SunTrust remains very committed to continue serving the needs of the City of Miami Gardens and look forward to supporting the City on future projects. There are various different and exciting initiatives underway with the City of Miami Gardens that SunTrust look forward to being a part of them. Please do not hesitate to contact me with any questions or comments regarding our analysis of this transaction and/or structuring scenarios that we may have explored.

Thanks

**Delle Joseph**  
First Vice President, Commercial Banking  
Institutional & Government (I&G) Group

SunTrust Banks, Inc.  
Mail Code FL-MIA-1042  
777 Brickell Avenue, Suite 400  
Miami, FL 33131  
Tel: 305.579.7014 Mobile: 305.495.0519  
Fax: 305.579.7133

**Live Solid. Bank Solid.**

**LEGAL DISCLAIMER**

The information transmitted is intended solely for the individual or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of or taking action in reliance upon this information by persons or entities other than the intended recipient is prohibited. If you have received this email in error please contact the sender and delete the material from any computer.

SunTrust is a federally registered service mark of SunTrust Banks, Inc. Live solid. Bank solid. is a service mark of SunTrust Banks, Inc.  
[ST:XCL]

1/5/2009

**William Alonso**

---

**From:** lance.aylsworth@wachovia.com  
**Sent:** Monday, December 29, 2008 1:40 PM  
**To:** William Alonso  
**Subject:** Dealership / Land purchase loan

Dear William:

Wachovia Bank has approved the City's request for a loan in the amount of \$7.3MM for the above referenced transaction discussed on 12-16-08. The terms of the loan will have a 5 year term based on a 20 year amortization. Wachovia will provide two fixed rate options: 1) Fixed rate for full 5 year term; and 2) Fixed rate for full 5 year term with an annual prepayment option beginning the 2nd year of the loan. Current indicative rates are 4.00% for option 1) and 4.35% for option 2). The rate will be fixed once Wachovia has issued a commitment letter and the City has accepted the terms and conditions. Wachovia will provide the commitment letter to you by January 8, 2009 and its commitment will last until January 16, 2009, whereas an indication from the City of an acceptance of the commitment will lock in the rate until a specified closing date. Interest rates have come down recently and while the loan is based on a 20 year amortization, the rate will be based on the 5 year term. A new indicative rate will also be provided in the Commitment Letter. Should you require any additional information, please do not hesitate in contacting me.

Regards,  
Lance Aylsworth  
Vice President  
Wachovia Bank NA  
Government & Institutional Banking  
200 S. Biscayne Blvd., 15th Floor  
Miami, FL 33131  
Phone: 305-789-4824  
Fax: 305-789-4809

"William Alonso" <walonso@miamigardens-fl.gov>

To <lance.aylsworth@wachovia.com>

12/03/2008 11:06 AM

cc  
Subject

Can you call me when you have a chance, I need to ask you a question.

Thanks

*William Alonso, CPA, CGFO*

*Finance Director*

*City of Miami Gardens*

*" Striving to be the best"*

*1515 NW 167th Street, Bldg 5, Suite 200*

12/29/2008

CCC No. 20703410  
Local No. FT54-07004861  
Site Reference Wal-Mart Warren Henry Auto - Miami Gardens, FL

## EXHIBIT "A"

### LEGAL DESCRIPTION

Being a parcel of land located in the Northwest 1/4 and the Southwest 1/4 of Section 12, Township 52 South, Range 41 East, Miami-Dade County, Florida said parcel being the remainder portion of Parcel "B" as conveyed to Wal-Mart Stores East, LP. by Special Warranty Deed recorded in Official Record Book 23354, Page 4447 of the Miami-Dade County Public Records and the remainder portions of Parcels "C", "D" and "G" as conveyed to Wal-Mart Stores East, L.P. by Special Warranty Deed recorded in Official Record Book 23354, Page 4451 of said Public Records, all of said remainders being more particularly described by metes and bounds as follows:

Commence at the center of said Section 12; thence South  $86^{\circ}56'24''$  West, along the South line of the Northwest 1/4 of said section 12, said South line also being the centerline of N.W. 175th Street, a distance of 658.83 feet, to a point on the existing centerline of N.W. 3rd Avenue; thence South  $03^{\circ}18'59''$  East, along said centerline, a distance of 654.96 feet to a point on the Northwesterly right-of-way line of State Road No. 7 (U.S. Route 441); thence South  $46^{\circ}47'49''$  West, along said Northwesterly right-of-way line of State Road No. 7 (U.S. Route 441), a distance of 51.28 feet, to the point of beginning of the following described Parcel:

Thence continue South  $46^{\circ}47'49''$  West, along said right-of-way line of State Road No. 7 (U.S. Route 441), a distance of 771.48 feet, to the beginning of a curve, concave to the North and having a radius of 25.00 feet; thence Southwesterly, Westerly and Northwesterly, 39.27 feet, along the arc of said curve, through a central angle of  $90^{\circ}00'56''$ , to a point of tangency with the northeasterly right-of-way line of N.W. 7th Avenue; thence North  $43^{\circ}11'15''$  West, along said Northeasterly Right-of-Way line, a distance of 330.21 feet to the beginning of a curve concave to the Southwest and having a radius of 999.93 feet; thence Northwesterly, 414.59 feet, along the arc of said curve and along said Northeasterly Right-of-Way line, through a central angle of  $23^{\circ}45'21''$  to a point on a curve non-tangent to the previously described curve, said curve being concave to the Southeast and having a radius of 777.72 feet; thence Northeasterly 163.13 feet, along the arc of said curve and along the Easterly line of Tract "A", legacy points, as recorded in Plat Book 163, page 85 of said Public Records, through a central angle of  $12^{\circ}01'06''$ , to the beginning of a compound curve, said curve being concave to the Southeast and having a radius of 270.00 feet; thence Northeasterly, 96.16 feet, along the arc of said curve and along the easterly line of Tract "C", Wal-Mart Norland as recorded in Plat Book 165, Page 40 of said Public Records, through a central angle of  $20^{\circ}24'20''$  to a point of tangency; thence North  $46^{\circ}47'40''$  East, along said Easterly line, a distance of 404.33 feet, to the beginning of a curve, concave to the Northwest and having a radius of 200.00 feet; thence Northeasterly 34.33 feet, along the arc of said curve and along said Easterly line, through a central angle of  $09^{\circ}50'10''$ , to a point on a line radial to the previously described curve, said point also being a point on the southerly line of Tract "A", of said Wal-Mart Norland; thence South  $53^{\circ}02'30''$  East, along said radial line and along said Southerly line, a distance of 70.00 feet; thence North  $86^{\circ}58'02''$  East, along said Southerly line, a distance of 134.75 feet; thence South  $43^{\circ}12'23''$  East, along said Southerly line, a distance of 373.66 feet; thence North  $46^{\circ}47'40''$  East, along said Southerly line, a distance of 164.89 feet, to the beginning of a curve concave to the Southeast and having a radius of 70.00 feet; thence Northeasterly and Easterly, 49.08 feet, along the arc of said curve and along said Southerly line, through a central angle of  $40^{\circ}10'22''$ , to a point of tangency; thence North  $86^{\circ}58'02''$  East, along said Southerly line, a distance of 97.97 feet; thence South  $58^{\circ}41'33''$  East, along said Southerly line, a distance of 21.37 feet, to a point on the Westerly Right-of-Way line of N.W. 3rd Avenue; thence South  $03^{\circ}18'59''$  East, along

CCC No. 20703410  
Local No. FT54-07004861  
Site Reference Wal-Mart Warren Henry Auto - Miami Gardens, FL

said Westerly Right-of-Way line, a distance of 268.74 feet, to the beginning of a curve concave to the Northwest and having a radius of 40.00 feet; thence Southerly and Southwesterly, 34.99 feet, along the arc of said curve and along said Westerly right-of-way line, through a central angle of  $50^{\circ}06'49''$  to the point of beginning.



**WACHOVIA**

January 8, 2009

Office of City Clerk  
City of Miami Gardens  
1515 NW 167<sup>th</sup> Street; Bldg 5 Suite 200  
Miami Gardens, Florida 33169

Dear City Clerk:

Wachovia Bank, National Association (the "Bank") is pleased to submit the Commitment described below to the City of Miami Gardens, Florida (the "City") subject to the following terms and conditions:

**Borrower:** City of Miami Gardens, Florida (the "City")

**Amount:** Not to exceed \$7,300,000.00

**Facility:** Term Loan

**Purpose:** To provide funds for the acquisition of 15 acres to be held for later sale.

**Term:** The loan will mature five years from closing. Principal will be due and payable annually commencing one year from closing and annually thereafter. Interest will be due and payable semi-annually commencing six months from closing and semi-annually thereafter. Principal shall amortize based on a twenty year amortization. Interest on the outstanding balance of the loan will be calculated on a 30/360 day-year basis.

**Security:** The Loan will be secured by a senior lien on the City's Electric Public Service Taxes.

**Interest Rate:** NOTE: The City must indicate the closing date at the time of acceptance.

**Option 1: Taxable Fixed Rate: 4.05%**

The above fixed rate is an indication rate subject to change based on market conditions. The above rate approximates the 5 year US Dollar Swap Offering Rate (Currently 2.10%) plus 195 basis points as

established by the Federal Reserve Board H.15 Release as of January 5, 2008. The Bank will set the rate three days prior to the close date.

**Option 2: Taxable Fixed Rate: 4.35%**

Should this Fixed Rate be chosen, the City may prepay the loan commencing two years from closing and on any payment date thereafter, but only on that specific date.

The above fixed rate is an indication rate subject to change based on market conditions. The above rate approximates the 5 year US Dollar Swap Offering Rate (Currently 2.10%) plus 225 basis points as established by the Federal Reserve Board H.15 Release as of January 5, 2008. The Bank will set the rate three days prior to the close date.

**Prepayment:** Should the City choose Option 1 and prepay during the life of the loan, or choose Option 2 and prepay on any date other than the dates specified above, the City may incur a breakage fee as outlined in the attached Exhibit "A".

**Conditions**

1. The City, by official action, shall approve entering into this commitment and the loan facility described herein.
2. The City covenants that it shall take all necessary steps and will do nothing to jeopardize its ability to receive the Pledged Revenues for as long as the subject facility remains outstanding.
3. **Additional Bonds Test:** The City may not issue any additional parity debt secured by the Pledged Revenues unless the historic (for each of the last two years), Pledged Revenues cover maximum annual debt service on all existing and prospective debt by **2.0x**.
4. For purposes of calculating maximum annual debt service or annual debt service, all variable rate borrowings secured by the Pledged Revenues shall be assumed to be fully funded and bear interest at the greater of 7% per annum or the actual interest rate borne by the variable rate debt for the month preceding the date of the calculation.
5. Loan documents relating to this facility shall be prepared by Adorno & Yoss and be acceptable to the Bank. The Bank will receive a standard opinion of bond counsel as to the due authorization and enforceability of the documents and as to tax-exemption under state and federal law, and an opinion of the issuer's attorney as to litigation and other matters. The loan documents and such opinions shall be in form and content acceptable to the Bank. Documents must be available for review at

- least 5 business days prior to closing. The Bank will retain counsel to review the documents on its behalf. Bank counsel will charge a fee of \$4,000.00. All costs relating to the preparation of documents and to otherwise complete this transaction, including the Bank counsel fee, will be paid by the City (whether or not the transaction closes).
7. On an ongoing basis, the City agrees that it shall deliver to the Bank **printed copies of**, (i) when available, or within 270 days of each fiscal year end, whichever is sooner, a Comprehensive Annual Financial Report, (ii) a Current Year Operating Budget as soon as it is completed and a Capital Improvement Plan and (iii) promptly any other such information as reasonably requested by Bank.
  8. This Commitment shall remain in full force and effect through 3:00 p.m., local time, January 16, 2009, at which time, if not accepted by execution of the acceptance clause below and mailed to the Bank at its 200 S. Biscayne, 15<sup>th</sup> Floor, Miami, FL 33131, office to my attention, this Commitment shall expire and shall not be enforceable by either the Bank or the City unless extended by the Bank in writing. Unless extended by the Bank in writing, this facility must close on or prior to March 16, 2009 after which this commitment shall expire.
  9. If the Bank chooses to waive any covenant, paragraph, or provision of this Commitment, or if any covenant, paragraph, or provision of this Commitment is construed by a court of competent jurisdiction to be invalid, it shall not affect the applicability, validity or enforceability of the remaining covenants, paragraphs or provisions.
  10. The preceding terms and conditions are not exhaustive. Any final documents will include other covenants, terms and closing conditions as are customarily required by the Bank for similar transactions including but not limited to a Cross Default with other debt, Note Rate + 3%, Events of Default, Acceleration upon Default and waiver of jury trial. This Commitment Letter shall not survive closing.
  11. The City represents and agrees that all information provided to the Bank is correct and complete. No material adverse change may occur in, nor may any adverse circumstance be discovered as to, the financial condition of the City prior to closing. The Bank's obligations under this Commitment are conditioned on the fulfillment to the Bank's sole satisfaction of each term and condition referenced by this Commitment.
  12. This Commitment supersedes all prior Commitments and proposals with respect to this transaction, whether written or oral, including any previous loan proposals made by the Bank or anyone acting within its authorization. No modification shall be valid unless in writing and signed by an authorized Officer of the Bank. This Commitment is not assignable and no entity other than the City shall be entitled to rely on this Commitment.
  13. The Bank will make the loan for its own account and not with the intent to distribute the loan or interests therein. However, the Bank may in the future enter into

participation agreements or securitization transactions with respect to the loan. No transfer restrictions will apply to the loan. If requested, the Bank will deliver an appropriate investor letter at closing.

Wachovia Bank, National Association appreciates the opportunity to submit this Commitment to you and looks forward to your favorable response. Should you have any questions, please do not hesitate to contact me at 305-789-4824.

Best Regards,  
WACHOVIA BANK, NATIONAL ASSOCIATION



Lance Aylsworth  
Vice President

**ACCEPTANCE**

The above Commitment is hereby accepted on the terms and conditions outlined therein by authority of the Governing Board of the **City**:

Closing Date: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_

Its: \_\_\_\_\_

## EXHIBIT "A"

In addition to principal, interest and any other amounts due under this Note, Borrower shall on demand pay to Bank any "Breakage Fee" due hereunder for each Break Event. "Break Event" means any voluntary or mandatory prepayment or acceleration, in whole or in part, of principal of this Note occurring prior to the date such principal would, but for that prepayment or acceleration, have become due ("Scheduled Due Date"). For each date on which a Break Event occurs ("Break Date"), a Breakage Fee shall be due only if the rate under "A" below exceeds the rate under "B" below and shall be determined as follows:

**Breakage Fee = the Present Value of  $((A-B) \times C)$  + LIBOR Breakage, where:**

- A = The rate per annum equal to the sum of (i) the bond equivalent yield (bid side) of the U.S. Treasury security with a maturity closest to the Maturity Date as reported by the Wall Street Journal (or other published source) on the date the Interest Rate of this Note was set ("Lock in Date"), plus (ii) the corresponding swap spread of Bank on the Lock in Date for a fixed rate payor to pay Bank the fixed rate side of an interest rate swap of that maturity, plus (iii) .25%.
- B = A rate per annum equal to the sum of (i) the bond equivalent yield (bid side) of the U.S. Treasury security with a maturity closest to the Maturity Date as reported by the Wall Street Journal (or other published source) on the Break Date, plus (ii) the corresponding swap spread that Bank determines another swap dealer would quote to Bank on the Break Date for paying to Bank the fixed rate side of an interest rate swap of the maturity.
- C = The sum of the products of (i) each Affected Principal Amount for each Affected Principal Period, times (ii) the number of days in that Affected Principal Period divided by 360 (if this Note uses the Actual/360 Computation) or the actual number of days in the year (if this Note uses the Actual/Actual Computation).

"Affected Principal Amount" for an Affected Principal Period is the principal amount of this Note scheduled to be outstanding during that Affected Principal Period determined as of the relevant Break Date before giving effect to the Break Event on that Break Date, and for any prepayment, multiplying each such principal amount times the Prepayment Fraction.

"Affected Principal Period" is each period from and including a Scheduled Due Date to but excluding the next succeeding Scheduled Due Date, provided that the first such period shall begin on and includes the Break Date.

"LIBOR Breakage" is any additional loss, cost or expense that Bank may incur with respect to any hedge for the fixed rate of this Note based on the difference between the London interbank offered rate (for U.S. dollar deposits of the relevant maturity) available in the London interbank market at the beginning of the interest period in which the Break Date occurs and that which is available in that market on the Break Date.

"Maturity Date" is the date on which the final payment of principal of this Note would, but for any Break Event, have become due.

"Prepayment Fraction" is a fraction equal to the principal amount being prepaid over the principal amount of this Note outstanding immediately prior to that prepayment on the Break Date.

"Present Value" is determined as of the Break Date using "B" above as the discount rate.

In addition, a Break Event shall be deemed to occur hereunder if, on any date ("Borrowing Date") after the date hereof but prior to any acceleration of this Note, any advance of principal under this Note is scheduled to be made and that advance fails to be made on that Borrowing Date (whether due to Borrower's default, Borrower's failure to borrow, the termination of any loan commitment, any unsatisfied condition precedent, or otherwise), in which case that Borrowing Date shall be a Break Date, the Affected Principal Amount for that Break Event shall be based on the amount of the failed advance, and the Borrower shall on demand pay to the Bank any Breakage Fee due hereunder for that Break Event.

Breakage Fees are payable as liquidated damages, are a reasonable pre-estimate of the losses, costs and expenses Bank would incur in the event of any prepayment or acceleration of this Note, are not a penalty, will not require claim for, or proof of, actual damages, and Bank's determination thereof shall be conclusive and binding in the absence of manifest error. For any Break Event hereunder, the foregoing Breakage Fee provisions supersede any breakage compensation agreement that Borrower and Bank may have executed with respect to this Note.

**APPRAISAL REVIEW OF:**

**Appraisal Report prepared by  
Roe Minor Realty Consultants**

**SUBJECT PROPERTY:**

**Proposed Warren Henry Automobile Site  
17650 NW 2<sup>nd</sup> Avenue  
Miami Gardens, Florida**

**PREPARED FOR:**

**City of Miami Gardens  
1515 NW 167<sup>th</sup> Street  
Miami Gardens, Florida 33169**

*Lawrence R. Pendleton, MAI*

REAL ESTATE APPRAISER • CONSULTANT

January 22, 2009

Dr. Danny O. Crew  
City Manager  
City of Miami Gardens  
1515 NW 167 Street, Bldg 5, ste 200  
Miami Gardens, Florida 33169

Dear Dr. Crew:

In compliance with our appraisal review agreement, I have made a technical desktop review of the appraisal report prepared by Michael Jacobs of Roe Minor Realty Consultants. The property that is the subject of his appraisal report is identified as commercial land located at 17650 NW 2<sup>nd</sup> Avenue, Miami Gardens, Florida.

The intended use of this review is to ascertain the adequacy and appropriateness of the report being reviewed, and to ensure that the report is in substantial compliance with acceptable appraisal methodology and procedures and the Uniform Standards of Professional Appraisal Practice. As requested, I have made a technical desktop review and have not personally inspected the subject property nor the comparable data.

As a result of my review, I have found that this report is basically in compliance with the reporting requirements of USPAP. **Please refer to the Reviewer's Comments on pages 7 through 9.**

This transmittal letter is followed by the certification of the Reviewer and the review appraisal report, further describing the extent of the appraisal review process that was conducted, and the appraisal report under review. Your attention is directed to the "General Underlying Assumptions" and "Limiting Conditions" which are considered usual for this type of assignment and have been included at the beginning of the report.

Respectfully submitted,



LAWRENCE R. PENDLETON, MAI  
STATE-CERTIFIED GENERAL REAL  
ESTATE APPRAISER #RZ725

## CERTIFICATION

The undersigned does hereby certify that to the best of my knowledge and belief, and except as otherwise noted in this appraisal review:

The facts and data reported by the Review Appraiser and used in the review process are true and correct.

The analyses, opinions, and conclusions in this review are limited only by the assumptions and limiting conditions stated in this review report, and are my personal, unbiased, professional analyses, opinions, and conclusions.

I have no present or prospective interest in the property that is the subject of this report, and I have no personal interest or bias with respect to the parties involved.

I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.

My engagement in this assignment was not contingent upon developing or reporting predetermined results. I was not requested to give my own opinion of market value.

My compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions in, or the use of, this review report.

My analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute, which include the *Uniform Standards of Professional Appraisal Practice*.

I did not make a personal inspection of the subject property of the work under review.

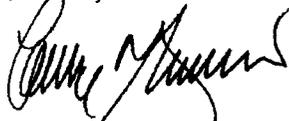
No person, unless so stated, provided significant professional assistance to the person signing this review report.

The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.

The State of Florida has a certification program for real estate appraisers. This appraisal review is made in conformity with their requirements and is subject to review by their duly authorized representatives.

As of the date of this report, Lawrence R. Pendleton, MAI, has completed the requirements of the continuing education program of the Appraisal Institute.

Certified By:



LAWRENCE R. PENDLETON, MAI  
STATE-CERTIFIED GENERAL REAL  
ESTATE APPRAISER #RZ725

---

*Lawrence R. Pendleton, MAI*

# CONDITIONS OF THE REVIEW APPRAISAL

## GENERAL UNDERLYING ASSUMPTIONS

### Legal Matters:

The legal description used is assumed to be correct, but it may not necessarily have been confirmed by survey. No responsibility is assumed in connection with a survey or for encroachments or overlapping or other discrepancies that might be revealed thereby.

No responsibility is assumed for an opinion of legal nature, such as to ownership of the property or condition of title.

The Reviewer assumes the title to the property to be marketable; that, unless stated to the contrary, the property is appraised as an unencumbered fee which is not used in violation of acceptable ordinances, statutes or other governmental regulations.

### Unapparent Conditions:

The Reviewer assumes that there are no hidden or unapparent conditions of the property, subsoil or structures which would render it more or less valuable than otherwise comparable property. The Reviewer is not an expert in determining the presence or absence of hazardous substances, defined as all hazardous or toxic materials, waste, pollutants or contaminants (including, but not limited to, asbestos, PCB, UFFI, or other raw materials or chemicals) used in construction or otherwise present on the property.

The Reviewer assumes no responsibility for the studies or analysis which would be required to conclude the presence or absence of such substances or for loss as a result of the presence of such substances. The client is urged to retain an expert in this field, if desired. The review is based on the assumption that the subject property is not so affected.

### Information and Data:

Information, estimates, and opinions furnished to the Reviewer and considered in the review, were obtained from sources considered reliable and believed to be true and correct. However, no responsibility for accuracy of such items furnished to the Reviewer can be assumed by the Reviewer.

All mortgages, liens, encumbrances, and servitudes have been disregarded unless so specified within the appraisal review.

### Zoning and Licenses:

It is assumed that all applicable zoning and use regulations and restrictions have been complied with, unless a nonconforming use has been stated, defined and considered in the valuation.

It is assumed that the subject property complies with all applicable federal, state and local environmental regulations and laws unless noncompliance is stated, defined and considered in the valuation.

## CONDITIONS OF THE REVIEW APPRAISAL (CONT.)

### GENERAL UNDERLYING ASSUMPTIONS (CONT.)

It is assumed that the information relating to the location of or existence of public utilities that has been obtained through a verbal inquiry from the appropriate utility authority, or has been ascertained from visual evidence is correct. No warranty has been made regarding the exact location or capacities of public utility systems.

It is assumed that all licenses, consents or other legislative or administrative authority from local, state or national governmental or private entity or organization have been, or can be, obtained or renewed for any use on which the value estimate contained in the valuation report is based.

### GENERAL LIMITING CONDITIONS

The Reviewer will not be required to give testimony or appear in court due to preparing the review with reference to the subject property in question, unless prior arrangements have been made.

Possession of the report does not carry with it the right of publication. Out-of-context quoting from or partial reprinting of this review report is not authorized. Further, neither all nor any part of this review report shall be disseminated to the general public by the use of media for public communication without the prior written consent of the Reviewer.

The authentic copies of this report are bound with a cover. Any copy that does not have original signatures of the Reviewer is unauthorized and may have been altered, and is considered invalid.

Disclosure of the contents of this report is governed by the By-Laws and Regulations of the Appraisal Institute. Neither all nor any part of the contents of this report (especially any conclusions as to value, the identity of the Reviewer or the firm with which he is connected, or any reference to the Appraisal Institute or to the appraisal designations) shall be disseminated to the public through advertising media, public relations media, news media, sales media or any other public means of communication without the prior written consent and approval of the author.

No environmental or concurrency impact studies were either required or made in conjunction with this review report. The reviewer, thereby, reserves the right to alter, amend, revise, or rescind any of the opinions based upon any subsequent environmental or concurrency impact studies, research or investigation.

A review appraisal related to an estate in land that is less than the whole fee simple estate applies only to the fractional interest involved. The value of this fractional interest plus the value of all other fractional interests may or may not equal the value of the entire fee simple estate considered as a whole.

The appraisal review related to a geographical portion of a larger parcel is applied only to such geographical portion and should not be considered as applying with equal validity to other portions of the larger parcel or tract. The value of such geographical portions plus the value of all other geographical portions may or may not equal the value of the entire parcel or tract considered as an entity.

CONDITIONS OF THE REVIEW APPRAISAL (CONT.)

**GENERAL LIMITING CONDITIONS (CONT.)**

The function of this review is not for use in conjunction with a syndication of real property. This report cannot be used for said purposes and, therefore, any use of this report relating to syndication activities is strictly prohibited and unauthorized. If such an unauthorized use of this report takes place, it is understood and agreed that the Reviewer has no liability to the client and/or third parties.

Acceptance of and/or use of this appraisal review report constitutes acceptance of the foregoing General Underlying Assumptions and General Limiting Conditions. The Reviewers' duties, pursuant to the employment to make the review, are complete upon delivery and acceptance of the report. However, any corrections or errors should be called to the attention of the reviewer within 60 days of the delivery of the report.

SUMMARY OF SALIENT FACTS & CONCLUSIONS
--

**Report Under Review:**

Reporting option:	Summary appraisal report
Prepared By:	Michael Jacobs, State Certified General REA #RZ2621 & Charles Minor, MAI State Certified General REA #RZ2252 (Reviewed and concurred)
Prepared For:	Warren Henry Automobiles, Inc.
Property Type:	Commercial Land
Land Size:	719,306 SF, or 16.51 acres
Zoning:	BU-1A
Location:	17650 NW 2 <sup>nd</sup> Avenue Miami Gardens, FL
Property Rights Appraised:	Fee Simple Interest
Reported Highest and Best Use:	Commercial development
Date of value:	December 19, 2008
Market Value Estimate:	\$10,800,000

SUMMARY OF SALIENT FACTS & CONCLUSIONS (CONT)

**Review Report**

Purpose of the Assignment: The purpose of this review assignment was to ascertain if the report under review meets all of the appraisal reporting requirements according to USPAP. I was not required to give my own opinion of value.

Date of Review: January 22, 2009

Type of Review: The Reviewer has made a technical desktop review which is work performed in accordance with Standard 3 of USPAP for the purpose of forming an opinion as to whether the analyses, opinions, and conclusions in the report are appropriate and reasonable given the data presented therein.

Reviewer: Lawrence R. Pendleton, MAI  
State-Certified General Real Estate Appraiser  
#RZ725

Reviewer's Client: City of Miami Gardens

Intended Use: The client is the only intended user, and the only intended use is to help the City in their decisions regarding a possible purchase.

## SCOPE OF THE APPRAISAL REVIEW

In making this appraisal review, the Reviewer has taken into consideration many factors in forming an opinion as to the adequacy and appropriateness of the report being reviewed. In conformance with Standards Rule 3-1(c-g) of USPAP, the extent of my review process is outlined as follows:

- 1) I made a public records investigation to ascertain the validity of the sales data presented within the appraisal report. This included checking the Miami-Dade County Property Appraiser's website and checking the recorded deed.
- 2) I made a desktop review of the final appraisal report which included reading the entire document.
- 3) I checked all of the calculations and mathematics presented therein.
- 4) I compared the data which was contained in the public records with the data utilized by the Appraiser, and checked the completeness of the report in light of the requirements promulgated by the Uniform Standards of Professional Appraisal Practice, 2008 edition.
- 5) The appraisal review was conducted in the context of market conditions as of the effective date of the opinion in the work being reviewed. Information available to the reviewer that could not have been available to the appraiser as of or subsequent to the date of the work being reviewed was not used by the reviewer in the development of an opinion as to the quality of the work under review.
- 6) I was not required to develop my own personal opinion of value.
- 7) I developed an opinion as to the completeness of the material under review within the scope of work applicable in the assignment.
- 8) I developed an opinion as to the apparent adequacy and relevance of the data and the propriety of any adjustments to the data.
- 9) I developed an opinion as to the appropriateness of the appraisal methods and techniques used.
- 10) I developed an opinion as to whether the analyses, opinions, and conclusions in the work under review are appropriate and reasonable.
- 11) I did *not* make a personal inspection of the subject property or the comparable data.

## REVIEWER'S COMMENTS

Since I was not requested to give my own opinion of the market value of the property that is the subject of this review, this report is not to be construed as an appraisal. The appraised value appears to be in-line with the market data. The Reviewer also made his own independent sales research and found other sales that were also deemed pertinent that were within the same market area, and that add support to the reported value. The adjustments made to the comparable sales data were quantitative, and were made without any reported market support or evidence. But, they appear to be reasonable based on typical appraisal practice and the Reviewer's own personal knowledge of the market. This does not mean that my own analyses would be the same, but that they appear to be within a reasonable range considering the data and analysis within the report. The adjusted values of the sales reflect a range of \$11.20 to \$17.69/SF, which brackets the final conclusion of \$15/SF.

The final value indication of \$10,800,000 is basically supported by the previous sale history and the December 2007 purchase price of \$9,300,000. The increase in value from the purchase a year earlier is stated by the appraisers to be attributable to an incremental increase in local traffic and exposure due to the recent opening of the adjacent Walmart. It should be noted that since the date of the comparable sales used in this report, the commercial sector of the real estate market has started to feel the effects of the poor economic conditions. There is little, or no data quantifying any specific downturn at this time, but it is quite possible that most commercial markets could experience a downturn within the next twelve to eighteen months.

Please note that there are a few errors in the report. These errors should have no bearing on the appraised value. The errors found are noted on the following pages.

## REVIEWER'S COMMENTS

### **USPAP COMPLIANCE**

There are no known major violations of USPAP within the report. USPAP does not require an estimate of marketing time, but requires an estimate of exposure time linked to the market value. The appraiser provided both. Since marketing time has no bearing on the appraisal process or market value, it traditionally should be reported after the conclusion of value, so that it is not construed to be a part of the valuation process.

### **Errors & Items of note:**

[1] pages 14, 34, 36 & 44 - all of these pages make reference to the subjects' age and improvements, although there are none. This is most likely a word processing error and leftover from a previous report and has no bearing on the reported value.

[2] page 33 - the appraiser makes reference to the size an, type and design of the Warren Henry facility and has opinions about the configuration in regard to current automotive trends and market conditions. There are no plans, specs, or any discussion of the proposed facility within the report, and the reader could not properly understand any statements relating to the facility unless some were included. This has no bearing on the reported value.

[3] Sales Data Sheets in the Addenda - there are errors in some of the data as follows:

Sale #1 has the Grantor wrong, the correct seller was Raven Holding Corp. The date of sale on the deed is April 2005, not May 2005.

Sale #2 has omitted the second parcel that sold in this transaction. The correct size of the parcel should have been 521,388 SF (\$39.61/SF), not 470,566 SF (\$43.88/SF).

## REVIEWER'S COMMENTS

### Errors & Items of note:

Pages 42 & 43 are the Land Sales Summary Chart and Adjustment Grid. They also have the same size error for Sale #2. If I utilize the same adjustments for Sale #2 that were made using the correct size, the resultant indication of value would be \$14.60/SF, not \$16.17/SF. This is actually closer to the value conclusion of \$15/SF.

There appears to be a little inconsistency in the market conditions adjustment for Sale #3 & #4. The appraiser states in the report that there was appreciation in the market before 2006, but these sales occurred in 2006 & 2007. From my knowledge, it appears that the market condition adjustment for Sale #4 is too low. This would result in a lower indication by this sale than the \$14.63/SF. Regardless, the five sales would still bracket the final opinion of value.

In summary, the report tends to support the value conclusion and there are no major errors within that should have a substantial impact on the value as reported therein. It should also be reiterated the Reviewer's caution concerning future purchases especially vacant land in Miami-Dade County within the next 18 months. It is still too early to know, but most indications lead to a possible downturn in the commercial sector of the real estate market.

**LAWRENCE R. PENDLETON, MAI**  
Qualifications

PRESENTLY: **The Ernest Jones Company**  
President  
Hollywood, Florida

EDUCATION: **University of Florida**  
Bachelor of Science Degree, 1972  
Major - Real Estate and Urban Land Studies

COURSES: **University of Florida**

- *Real Estate Law, Real Estate Finance,*
- *Real Estate Management, Real Estate Investment Analysis*
- *Urban Land Utilization, Real Estate Appraising*
- *Valuation of Special Purpose Properties*

**Appraisal Institute / Society of Real Estate Appraisers**

- *Course 101-Principles of Real Estate Value*
- *Course 201-Valuation of Income-Producing Properties*
- *Course R-2-Residential Case Study*
- *Course 202-Applied Income Property Valuation*
- *Litigation Valuation*
- *Standards of Professional Practice (SPP)*
- *Course 430-SPP Part C*
- *Comprehensive Examination*

**National Association of Independent Fee Appraisers**

- *Course 1-Techniques of Capitalization*
- *Course 2-Residential Real Estate Valuation*

SEMINARS:

• <i>Narrative Report Writing</i>	• <i>Florida Commercial Construction</i>
• <i>Cash Equivalency</i>	• <i>Appraising Nursing Homes</i>
• <i>Americans w/Disabilities Act(ADA)</i>	• <i>Special Purpose Properties/Limited Markets</i>
• <i>Understanding Limited Appraisals</i>	• <i>Appraising Wetlands</i>
• <i>Uniform Residential Appraisal Report</i>	• <i>Regression Analysis</i>
• <i>How to Verify Market Data</i>	• <i>Environmental Considerations</i>
• <i>Rates, Ratios and Reasonableness</i>	• <i>Appraising 2-4 family properties</i>

**LAWRENCE R. PENDLETON, MAI**  
Qualifications

AFFILIATIONS: **Appraisal Institute**  
• MAI Designated Member #9442

**State of Florida**  
• Licensed Real Estate Broker Since 1973  
• State-Certified General Real Estate Appraiser #RZ725

EXPERIENCE: **Chief Appraiser**  
The Ernest Jones Company  
1972 to Present

**Appraised various types of properties including:**

<i>Vacant Land, Subdivisions</i>	<i>Office Buildings</i>
<i>Shopping Centers</i>	<i>Industrial Buildings, Self-Storage</i>
<i>Apartment Buildings</i>	<i>Facilities</i>
<i>Hotels, Motels</i>	<i>Cold Storage Plants</i>
<i>Condominium</i>	<i>Special Purpose Properties, Gasoline</i>
<i>Complexes/Conversions</i>	<i>Stations</i>
<i>Nursing Homes, Hospitals, Medical</i>	<i>Churches, Schools, Camps</i>
<i>Buildings</i>	<i>Mobile Home Parks</i>
<i>Residences, Condominium units</i>	<i>Golf Courses, Country Clubs</i>
<i>Automotive Buildings, Car</i>	<i>Airport/Aviation Properties</i>
<i>Dealerships</i>	

INSTRUCTOR: **Barry College, Miami-Adjunct**  
**Professor of Real Estate Appraising**  
• *Instructor for Residential and Capitalization Courses*  
**University of Pittsburgh, Pennsylvania**  
• *Residential Real Estate Appraising*  
**Freehold, New Jersey**  
• *Residential Real Estate Appraising*  
**University of Missouri, St. Louis**  
• *NAIFA Instructor's Certification, 1977*  
• *(National Instructor 1977-1980)*  
**University of Illinois, Champaign - Urbana**  
• *SREA Instructor's Clinic, 1987*  
**Miami, Florida**  
• *SREA Course 101, 1988*

**LAWRENCE R. PENDLETON, MAI**  
Qualifications

LENDERS:	Admiralty Bank	InterBank Savings & Loan
	Atico Savings Bank	InterBay Funding
	BankAtlantic	Metro Bank
	Bank of Florida	National Bank of St. Petersburg
	Biscayne Bank	Ocean Banks
	Boatmens Trust	Optimum Bank
	Central Bank	Pioneer Savings (Tampa)
	Chase Manhattan Bank (NY)	Plaza Bank
	Chase Lincoln First Bank (NY)	PointeBank
	Citibank	Regent Bank
	City National Bank	Riggs National Bank (Washington, DC)
	Colonial Bank	River Oaks Bank (Illinois)
	Commercial Bank	SF Partners Mortgage
	Equitable Bank	St. Paul Insurance Company
	Executive Bank of Fort	Southtrust
	Lauderdale	SunTrust
	First Federal Savings (Georgia)	Turnberry Savings
	Florida Community Bank	Talman Savings & Loan (Texas)
	Floridian Community Bank	Teachers Insurance Company of
	Glendale Federal (California)	America
	Gibraltar Bank, FSB	TransAtlantic Bank
	Great Western Banks	United National Bank
	Hemisphere National Bank	US Century Bank
	Home Federal Bank	Wachovia
	Independent Bankers	
COMPANIES:	Amerada Hess Corporation	Knights of Columbus
	Broward County PBA	The Jockey Club
	Burger King Corporation	Southern States Utilities
	Coca-Cola Bottling Company	Shell Oil Company
	Dade County PBA	Suburban Propane
	Employee Transfer Corporation	Triarc- R.C. Cola
	Merrill Lynch Relocation	Star Enterprise (Texaco)
	Management	Victoria's Secret
	Prudential Real Estate	Western Electric
		YMCA

**LAWRENCE R. PENDLETON, MAI**  
Qualifications

GOVERNMENTAL & MUNICIPAL	Federal Deposit Insurance Corporation (FDIC)	City of Aventura
	Federal National Mortgage Association (FNMA)	City of Hialeah Gardens
	Federal Home Loan Mortgage Corporation (FHLMC)	City of Hollywood
	Dade County - H.U.D.	City of Miramar
	City of North Miami	City of Parkland
	City of Hialeah	City of Hallandale Beach
	City of Miami Gardens	Broward County, Florida
	Town Of Davie	Orange County, Florida
	Trust for Public Lands	Village of Miami Shores
		Volusia County, Florida
		State of Florida -D.E.P

LITIGATION: Qualified as an expert witness on Real Estate Evaluation in various Florida Courts

RECERTIFICATION: I am currently certified under the Appraisal Institute Continuing Education Program.

	<u>Budget 08-09</u>
Bond costs	\$363,000
police	\$1,939,180
PW	\$563,707
City Hall	\$4,188,792
City Hall <del>Const</del> Design	\$2,250,000 <sup>250,000</sup>
Rolling Oaks	\$2,700,000 <sup>250,000</sup>
Fuel	\$1,300,000 <sup>240,000</sup>
Mt. H	\$1,049,085
	<u>\$14,353,764</u>

183<sup>rd</sup> Underpass Phase 1 500,000  
 City Hall Demo 100,000

	<u>Summary Budget</u>
200 <sup>th</sup> Reserve	2,500,000
Professional Fees	200,000
183 <sup>rd</sup> Underpass	500,000
12 <sup>th</sup> St Ramp	100,000
183 <sup>rd</sup> Phase II	500,000
	<u>3,800,000</u>

