



City Attorney's Communication #2016-143

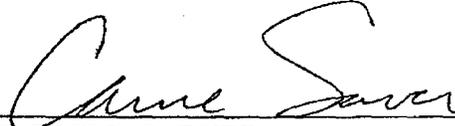
November 1, 2015

TO: Karen Friedman, AICP, Principal Planner
FROM: Carrie L. Sarver, Assistant City Attorney
RE: Resolution – Flex Unit Allocation for 225 N. Federal Highway

As requested in your memorandum of October 28, 2016, Department of Development Services Memorandum No. 15-572, the following form of Resolution, relative to the above-referenced matter, has been prepared and is attached:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, ALLOCATING A MAXIMUM OF ONE HUNDRED FORTY FIVE (145) FLEX UNITS FOR A PROPOSED MIXED USE REDEVELOPMENT PROJECT TO BE LOCATED ON THE NORTHWEST CORNER OF NORTH FEDERAL HIGHWAY AND NE 2ND STREET; PROVIDING AN EFFECTIVE DATE.

Please feel free to contact me if I may be of further assistance.


CARRIE L. SARVER

/jrm
l:cor/dev-srv/2016-143

Attachment

CITY OF POMPANO BEACH
Broward County, Florida

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, ALLOCATING A MAXIMUM OF ONE HUNDRED FORTY FIVE (145) FLEX UNITS FOR A PROPOSED MIXED USE REDEVELOPMENT PROJECT TO BE LOCATED ON THE NORTHWEST CORNER OF NORTH FEDERAL HIGHWAY AND NE 2ND STREET; PROVIDING AN EFFECTIVE DATE.

WHEREAS, 225 North Federal Highway, LLC (“Applicant”) requests an allocation of a maximum of one hundred forty five (145) flex units in order to construct a mixed use redevelopment project on property known as 225 N. Federal Highway, legally described in Exhibit “A”; and

WHEREAS, the City’s Comprehensive Plan provides for the utilization of flexibility units (“Flex Units”) to facilitate proposed mixed use developments in urban infill areas provided that the proposed developments are compatible with the community character; and

WHEREAS, the City’s Comprehensive Plan further provides that the City shall use Flex Units to increase residential densities within flex receiving areas when consistent with the community character and adjacent land uses; and

WHEREAS, the applicant has demonstrated support for a Land Use Plan amendment for the subject property as well as adjacent property; and

WHEREAS, pursuant to Section 154.61(C)(3) the Development Services Department has obtained a recommendation of approval from the Planning and Zoning Board on July 22, 2015; and

WHEREAS, the City is willing to transfer a maximum of 145 Flex Units to Applicant pursuant to the terms of this Resolution; now, therefore,

BE IT RESOLVED BY THE CITY COMMISSION OF CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That the City Commission of the City of Pompano Beach finds that the requirements in Section 154.61(D) have been met and hereby allocates a maximum of 145 flex units, all of which will come from the unified flex zone for the proposed mixed use project to be constructed on the property which is legally described in Exhibit "A."

SECTION 2. The number of flex units in the unified flex zone shall be reduced by however many units are necessary for the project, not to exceed 145 units.

SECTION 3. Failure of the applicant to submit proof that the Voluntary Declaration of Restrictive Covenants which restricts the redevelopment of the first floor of the existing Evert University to retail, office, and similar uses as shown in Exhibit "B" has been recorded with the Broward County Records Division within two (2) months of the date of this resolution shall render the allocation of the flex units null and void.

SECTION 4. The proposed project must be built in substantial conformity with the attached conceptual site plan and drawings which demonstrate the location of the parking area trellis, pedestrian paths, and street entrances fronting NE 20th Avenue, and the qualitative principles as shown in Exhibit "C," a copy of which is attached hereto and made a part hereof.

SECTION 5. Failure of the applicant to obtain apply for a Major Site Plan for the proposed building and related site features as shown in Exhibit "C" within twelve (12) months of the date of this resolution shall render the allocation of the flex units null and void.

SECTION 6. Failure of the applicant to obtain a principal building permit for the proposed building and related site features as shown in Exhibit “C” within twenty four (24) months of the date of this resolution shall render the allocation of the flex units null and void.

SECTION 7. Failure of the applicant to obtain a principal building permit for the proposed building and related site features as shown in Exhibit “C” within twenty four (24) months of the date of this resolution shall render the allocation of the flex units null and void.

SECTION 8. Failure of the Applicant to provide an executed and recorded unity of title document prior to commencement of construction on the residential building shall render the allocation of flex units null and void.

SECTION 9. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of _____, 2015.

LAMAR FISHER, MAYOR

ATTEST:

ASCELETA HAMMOND, CITY CLERK

CLS/jrm
11/2/15
l:reso/2016-39

Exhibit A

LEGAL DESCRIPTION:

Parcel 1:

Lots 13, 16 and 17, all LESS the East 10 feet thereof for road right-of-way; and Lots 18, 19, 20, 21, 22 and 23, LESS the East 10 feet of Lot 23 for road right-of-way, all in Block 6, of PINEHURST, according to the plat thereof, as recorded in Plat Book 5, Page 13, of the Public Records of Broward County, Florida;

Together with Lots 8, 9 and 12, LESS the East 10 feet thereof, and Lots 2, 3, 6, 7, 10, 11, 14 and 15, all in Block 6, of PINEHURST, according to the plat thereof, as recorded in Plat Book 5, Page 13, of the Public Records of Broward County, Florida.

Exhibit B

*This instrument prepared by,
and when recorded return to:*

George A. Pincus, Esq.
STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
New River Center, Suite 2100
200 East Las Olas Boulevard
Ft. Lauderdale, FL 33301

-----[SPACE ABOVE THIS LINE FOR RECORDING INFORMATION]-----

**AMENDED AND RESTATED DECLARATION OF EASEMENTS, COVENANTS AND
RESTRICTIONS**

FOR

225 NORTH FEDERAL HIGHWAY

FORT LAUDERDALE, FLORIDA

Dated: _____, 2015

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EXHIBITS

- Exhibit A – The Entire Property
- Exhibit B – Office Parcel
- Exhibit B-1 – Office Ingress/Egress Area
- Exhibit C – Residential Parcel
- Exhibit C-1 – Residential Ingress/Egress Area
- Exhibit D – Bank Parcel
- Exhibit D-1 – Bank Ingress/Egress Area
- Exhibit E – The Current Site Plan
- Exhibit F – Parking Garage

AMENDED AND RESTATED DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS

THIS AMENDED AND RESTATED DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS (this "Declaration") is made this ___ day of _____, 2015 (the "Effective Date"), by **225 NORTH FEDERAL HIGHWAY, LLC**, a Florida limited liability company ("Declarant") which declares that the real property hereinafter described is, and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes collectively hereinafter referred to as "Covenants and Restrictions") hereinafter set forth. This Declaration amends, restates and supersedes in its entirety that certain Declaration Of Easements, Covenants And Restrictions , dated August 11, 2004 (the "Original Declaration"), which was recorded August 13, 2004, in Official Records Book 38018, Page 1307 of the Public Records of Broward County, Florida. From and after the Effective Date of this Declaration the Covenants and Restrictions set forth in the Original Declaration shall be null, void and of no further force or effect and the Covenants and Restrictions set forth in this Declaration shall control with respect to the Entire Property.

RECITALS:

A. Declarant is the owner of fee simple title to certain real property, and the improvements thereon, located in Broward County, Florida, legally described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Entire Property").

B. The Entire Property made up of three (3) different purposes as follows: (i) the "Office Parcel" legally described in Exhibit "B" attached hereto and incorporated herein by this reference; (ii) the "Residential Parcel", legally described on Exhibit "C" attached hereto and made a part hereof and (iii) the "Bank Parcel", more legally described on Exhibit "D" attached hereto. Each of the Office Parcel, the Residential Parcel and the Bank Parcel are sometimes collectively and generically referred to as the "Parcels" and individually and generically as a "Parcel".

C. At some time in the future, Declarant may transfer fees simple title of one (1) or more of the Parcels to other owners and, from and after the transfer of any Parcel, such owner shall be referred to as the "Office Owner", the "Residential Owner" and the "Bank Owner" as applicable to such party's ownership of its respective Parcel. Each of the Office Owner, the Residential Owner and the Bank Owner are sometimes collectively and generically referred to as the "Owners" and individually and generically as an "Owner".

D. A site plan of the Entire Property, depicting the Parcels and either the existing or proposed improvements on each Parcel (the "Current Site Plan") is attached to this Declaration as Exhibit "E".

E. In connection with the future development of the Residential Parcel by Residential Owner and the harmonious operation of each of all of the Parcels, Declarant is

recording this Declaration in order to put of record the Covenants and Restrictions in order provide for the harmonious development and operation of the Entire Property among the various Owners.

NOW, THEREFORE, Declaration, for itself and its grantees, successors and assigns, hereby declares as follows with respect to the Entire Property.

1. Recitals. The foregoing Recitals are incorporated herein by reference.
2. Definitions. As used herein, the following terms shall have the following meanings:

“Bank Ingress/Egress Area” shall have the meaning ascribed to said term in Section 4 (c).

“Drainage System” shall have the meaning ascribed to said term in Section 5 (b).

“Legal Requirements” shall mean any federal, state or local law, common law, statute, ordinance, executive order, rule, regulation, order, judgment, administrative order, decree, directive, administrative or judicial decision and any other executive, legislative, regulatory or administrative proclamation applicable to the Parcels.

“Maintenance Costs” shall collectively mean and include any and all costs and expenses incurred by any Owner in maintaining any portions or components of any shared Drainage System or Utility Facilities pursuant to this Declaration, and including, without limitation, management fees to the Office Owner, costs for routine maintenance and repair, as well as such capital improvements and related improvements as may be reasonably necessary from time to time, in order to maintain such areas and improvements in the condition required hereby, utility charges directly serving, and insurance costs directly allocable to each of the subject areas and improvements. The Owners acknowledge and agree that the Maintenance Costs may be based on an allocation of the costs and expenses incurred with respect to the maintenance of a Parcel and/or building as a whole, which allocation shall be done on a fair and reasonable basis. The Maintenance Costs shall specifically exclude any and all costs in connection with the Parking Garage (defined below).

“Office Ingress/Egress Area” shall have the meaning ascribed to such term in Section 4 (a).

“Office Owner” shall have the meaning ascribed to such term in the preamble to this Agreement.

“Parcel Parties” are collectively, the Bank Parties, the Office Parties and the Residential Parties.

“Parking Garage” shall mean that certain parking garage depicted on Exhibit “F” for the exclusive use of the Office Parcel and the Residential Parcel. The Bank Owner and its employees, agents, business invitees and other visitors (collectively, the “Bank Parties”) shall have no right to use the Parking Garage as the Bank Parties shall have the exclusive right to use the parking lot located on the Bank Parcel.

"Parking Garage Pro Rata Share" As of the Effective Date, the number of parking spaces located in the Parking Garage is allocated as follows (i) the Office Owner, its employees, agents, tenants, subtenants, licensees, business invitees and other visitors (collectively, the "Office Parties") are entitled to the use of two hundred thirty-one (231) parking spaces (the "Office Parking Spaces"); and (ii) the Residential Owner, its employees, agents, condominium owners, business invitees and other visitors (collectively, the "Residential Parties") are entitled to the use of two hundred thirty-one (231) parking spaces ("Residential Parking Spaces"). The Office Parking Spaces and the Residential Parking Spaces shall each be for the exclusive use and benefit of the Office Parcel and the Residential Parcel, as applicable, and depicted on Exhibit "F" attached hereto. Notwithstanding the foregoing, six (6) of the Residential Parking Spaces and six (6) of the Office Parking Spaces shall each be located on the first (1st) floor of the Parking Garage for each Parties' respective visitors and guests. Additionally, Office Owner and Residential Owner shall be responsible, pursuant to Legal Requirements, for allocating a portion of the Residential Parking Spaces and the Office Parking Spaces, respectively, for handicapped use.

"Parking Garage Costs" shall collectively mean and include any and all actual, verifiable, out-of-pocket costs and expenses incurred by Office Owner in maintaining the Parking Garage or any portions or thereof, and including, without limitation, costs for routine maintenance and repair, as well as such capital improvements and related improvements as may be reasonably necessary from time to time, in order to maintain the Parking Garage in the condition required hereby.

"Pro Rata Share of Garage Costs" shall mean a fraction, expressed as a percentage, the numerator of which shall be the square footage of the Residential Parcel and the Office Parcel, respectively, and the denominator of which shall be the total square footage of the Entire Property. As of the Effective Date, the Pro Rata Share of Garage Costs for: (i) the Residential Parcel is _____%; and (ii) the Office Building is _____%.

"Pro Rata Share of Maintenance Costs" shall mean a fraction, expressed as a percentage, the numerator of which shall be the square footage of each Parcel and the denominator of which shall be the total square footage of the Entire Property. As of the Effective Date, the Pro Rata Share of Maintenance Costs for: (i) the Residential Parcel is _____%; (ii) the Office Building is _____%; and (iii) the Bank Parcel is _____%

"Reciprocal Drainage Easement" shall have the meaning ascribed to such term in Section 5 (b).

"Reciprocal Encroachment Easement" shall have the meaning ascribed to such term in Section 5 (d).

"Reciprocal Support Easement" shall have the meaning ascribed to such term in Section 5 (e).

"Reciprocal Utility Easement" shall have the meaning ascribed to such term in Section 5 (a).

"Residential Ingress/Egress Area" shall have the meaning ascribed to such term in Section 4 (b).

"Utility Facilities" shall have the meaning ascribed to said term in Section 5 (a).

3. Development of the Residential Parcel.

(a) Subsequent Amendments to this Declaration and/or the Covenant and Restrictions. Each Owner agrees and acknowledges that due to the proposed future development of the Residential Parcel there may need to be subsequent amendments to this Declaration and/or the Covenants and Restrictions to modify and amend (i) the descriptions of the real property encumbered by this Declaration and/or the Covenant and Restrictions, (ii) the nature and location of certain of the easements created under this Declaration and/or the Covenant and Restrictions, (iii) the various obligations for maintaining the improvements which exist within particular easement areas, (iv) the actual use of, and improvements to the Residential Parcel, (v) the establishment of a condominium, or other shared ownership regime in connection with the Residential Parcel, and (vi) various other matters and third party requirements both contemplated and currently not contemplated by this Declaration and/or the Covenant and Restrictions. Each Owner agrees that it shall work reasonably and in good faith with the other Owners to negotiate and enter into such subsequent amendments to this Declaration and/or the Covenant and Restrictions as may be reasonable and necessary to accomplish the foregoing on a timely and reasonable basis. The foregoing covenant of good faith is a specific inducement to each of Owner entering into this Declaration and the Covenant and Restrictions. No Owner shall be voluntarily required to enter into any amendment of this Declaration and/or the Covenant and Restrictions if such amendment would have a material adverse effect on the Owner or its Parcel or if such amendment materially and adversely interferes with or affects the development or maintenance of such Owner's Parcel or the operation of business(es) being conducted at such Parcel. Further, to the extent then required by applicable Legal Requirements any such amendments shall be subject to the written approval of applicable governmental agencies. Alternatively, if any such amendment of this Declaration or of the Covenant and Restrictions is reasonably required by an Owner, and such amendment does not have a material adverse effect on an Owner or its Parcel, or on the development or maintenance of such Owner, or on the operation of the business(es) conducted on such Parcel, and to the extent required by applicable Legal Requirements, the amendment has been approved by the applicable governmental agencies, the other Owners shall not unreasonably withhold, condition or delay their consent to and execution of the requested amendment.

(b) To the extent that an amendment to this Declaration and/or the Covenant and Restrictions is subsequently requested by an Owner, the requesting Owner shall provide a copy of such proposed amendment of this Declaration or of the Covenant and Restrictions to the other Owners. If so notified, the other Owners of whom the request is made must notify the requesting Owner in writing within ten (10) calendar days whether such Owner has any objections thereto. The reviewing Owners shall have a period of ten (10) consecutive business days to review the proposed amendment of this Declaration or of the Covenant and Restrictions and either (i) provide written approval of same or (ii) provide written objections, specifying why the reviewing Owner cannot approve the proposed amendment of this Declaration or of the Covenant and Restrictions, and to the extent practicable, any and all suggested revisions that

would, upon completion of such revisions, cause the proposed amendment of this Declaration or of the Covenant and Restrictions to be approved by the reviewing Owner.

4. Access Easements.

(a) The Office Access Easement. Office Owner does hereby grant for the benefit of the other Owners and appurtenant to the other Parcels, for the use and benefit of the other Owners, and all Parcel Parties a perpetual and non-exclusive access easement on, over, under, through and across any driveways, walkways, access ways, curb cuts, entrance magazines and parking areas (for access purposes only and not for parking of vehicles) within that portion of the Office Parcel, as described in Exhibit "B-1" attached hereto and made a part hereof (collectively, the "Office Ingress/Egress Area") for the purpose of: (i) adequate and unobstructed pedestrian and vehicular traffic as appropriate, (ii) pedestrian and vehicular access and ingress and egress to and from the other Parcels to publicly dedicated rights-of-way contiguous to and serving the other Parcels and the Office Parcel, and (iii) similar uses for which any such driveways, walkways, access ways, curb cuts, and entrance magazines from time to time existing on the Office Parcel are (or may be) intended by Office Owner (the "Office Access Easement"). Office Owner agrees and acknowledges that it shall use its good faith, reasonable efforts and due diligence to keep the Office Ingress/Egress Area free from obstructions at all times, and to the extent a condition exists within the Office Ingress/Egress Area that prevents normal use of the Office Access Easement, Office Owner shall promptly take reasonable and necessary actions to remedy such situation.

(b) The Residential Access Easement. Residential Owner does hereby grant for the benefit of the other Owners and appurtenant to the other Parcels, for the use and benefit of the other Owners, and all Parcel Parties a perpetual and non-exclusive access easement on, over, under, through and across any driveways, walkways, access ways, curb cuts, entrance magazines and parking areas (for access purposes only and not for parking of vehicles) within that portion of the Residential Parcel, as described in Exhibit "C-1" attached hereto and made a part hereof (collectively, the "Residential Ingress/Egress Area") for the purpose of: (i) adequate and unobstructed pedestrian and vehicular traffic as appropriate, (ii) pedestrian and vehicular access and ingress and egress to and from the other Parcels to publicly dedicated rights-of-way contiguous to and serving the other Parcels and the Residential Parcel, and (iii) similar uses for which any such driveways, walkways, access ways, curb cuts, and entrance magazines from time to time existing on the Residential Parcel are (or may be) intended by Residential Owner (the "Residential Access Easement"). Residential Owner agrees and acknowledges that it shall use its good faith, reasonable efforts and due diligence to keep the Residential Ingress/Egress Area free from obstructions at all times, and to the extent a condition exists within the Residential Ingress/Egress Area that prevents normal use of the Residential Access Easement, Residential Owner shall promptly take reasonable and necessary actions to remedy such situation.

(c) The Bank Access Easement. Bank Owner does hereby grant for the benefit of other Owners and appurtenant to the other Parcels, for the use and benefit of other Owners, and Parcel Parties a perpetual and non-exclusive access easement on, over, under, through and across any driveways, walkways, access ways, curb cuts, entrance magazines and parking areas (for access purposes only and not for parking of vehicles) within that portion of the Bank Parcel, as described in Exhibit "D-1" attached hereto and made a part hereof (collectively, the "Bank Ingress/Egress Area") for the purpose of: (i) adequate and unobstructed pedestrian and

vehicular traffic as appropriate, (ii) pedestrian and vehicular access and ingress and egress to and from the other Parcels to publically dedicated rights-of-way contiguous to and serving the other Parcels and the Bank Parcel, and (iii) similar uses for which any such driveways, walkways, access ways, curb cuts, and entrance magazines from time to time existing on the Bank Parcel are (or may be) intended by the Bank Owner (the "Bank Access Easement"). Bank Owner agrees and acknowledges that it shall use its good faith, reasonable efforts and due diligence to keep the Bank Ingress/Egress Area free from obstructions at all times, and to the extent a condition exists within the Bank Ingress/Egress Area that prevents normal use of the Bank Access Easement, Bank Owner shall promptly take reasonable and necessary actions to remedy such situation.

(d) Reciprocal Maintenance Easements. Bank Owner, Office Owner and Residential Owner hereby each grant to the other, over each of the Bank Parcel, the Residential Parcel and the Office Parcel, as applicable, a non-exclusive reciprocal easement appurtenant to and for the benefit of the Bank Parcel, the Office Parcel and the Residential Parcel, to the extent reasonably necessary to perform ordinary maintenance and repair of their respective Parcels and improvements thereon, or their respective obligations under this Agreement; provided such Owner (i) uses good faith, best efforts and due diligence to ensure that any such activities do not block vehicular or pedestrian traffic on or to the other Owner's Parcel or block or interfere with any of the easements established in or pursuant to this Agreement, (ii) provide reasonable advance written notice of the proposed maintenance to the other Owners, the intended use of the other Owner's parcel or improvements, and the timing thereof, (iii) comply with all applicable Legal Requirements in the performance of such maintenance, and (iv) indemnify and hold harmless the other Owner(s) for any and all loss, cost, damage, expense, claim, charge or other liability to the other Owner(s) or its tenants proximately caused by the maintaining Owner's use of the foregoing easement, use and occupancy of the other Owner's Parcel, or the maintenance or repair performed.

5. Reciprocal Easements. Bank Owner, Office Owner and Residential Owner hereby each grant to the other, over each of the Bank Parcel, Residential Parcel and the Office Parcel, as applicable, the following reciprocal easements appurtenant to and for the benefit of and appurtenant to the Bank Parcel, Office Parcel and the Residential Parcel, all for use by Bank Owner, Office Owner and Residential Owner, as applicable, and the Parcel Parties (all of the following being collectively referred to as the "Reciprocal Easements"):

(a) Reciprocal Utility Easement. A non-exclusive reciprocal utility easement (the "Reciprocal Utility Easement") on, over, under, through and across each of the Bank Parcel, Residential Parcel and the Office Parcel where there is not or will not be a building footprint (whether built or planned) on such area (which Bank Owner, Office Owner and Residential Owner agree shall be evolving in nature and may be amended and relocated and other portions of Parcels may be affected by, all on the terms and conditions set forth in this Declaration or subsequently mutually agreed upon or designated), for the purpose of installation, use, operation, maintenance, repair, replacement, relocation, and removal of utility facilities, lines, conduit, pipes and equipment and other utility facilities which are appropriate and necessary to service and otherwise benefit each of the Bank Parcel, Residential Parcel and the Office Parcel (collectively, "Utility Facilities"). All such Utility Facilities shall be installed and maintained below the ground level or surface of such easements except for ground mounted electrical

transformers, water or gas meters and such other facilities as are reasonably required to be above ground by the utility providing such service (including temporary service required during the construction, maintenance, repair, replacement, alteration or expansion of any buildings or improvements located at the Parcels). The installation, operation, maintenance, repair and replacement of such Utility Facilities shall not unreasonably interfere with the use, maintenance and normal business operations at any of the Parcels, and the location of any above ground Utility Facilities shall not materially adversely affect or detract from the aesthetics of the improvements on or proposed for the Parcels. Prior to the installation of any Utility Facilities in any easement area, the Owner undertaking such work shall provide plans and specifications of such work to each Owner whose Parcel is affected by the installation of such Utility Facilities for such Owner's review and approval, which approval shall not be unreasonably withheld, conditioned or delayed. Any such plans and specifications shall include detailed descriptions of the work being performed, location sketches showing the location of the easement area and the location of the subject Utility Facilities in the subject easement area and shall otherwise be in format reasonably expected to be approved by the governmental authority having jurisdiction over the Bank Parcel, the Office Parcel and/or Residential Parcel (as applicable) for issuance of a building permit. The reviewing Owner shall have a period of ten (10) consecutive business days to review the submitted plans and specifications and either (i) provide written approval of same or (ii) provide written objections, specifying why the reviewing Owner cannot approve the subject plans and specifications, and to the extent practicable, any and all suggested revisions that would, upon completion of such revisions, cause the plans and specifications to be approved by the reviewing Owner. The Owner of the Parcel to be benefitted by any such easement shall (i) bear all costs necessary for the installation, operation, maintenance, repair and replacement of such Utility Facilities, (ii) repair to the condition immediately preceding the time of the damage, any damage to the subject Parcel resulting from such use and (iii) provide as-built plans for all such Utility Facilities to the Owner of the other Parcel upon which such utility lines and facilities are located within thirty (30) days after the date of completion of construction of same. Notwithstanding any provision of this Declaration to the contrary, no Owner shall take any action that would interrupt, diminish or in any way adversely affect utility services to the other Parcels by damaging, or otherwise adversely affecting any Utility Facilities. Any such interruption of services shall be immediately remedied by the Owner causing same and failure to promptly remedy such event shall be a Non-Monetary Default as provided in this Agreement, provided that the thirty (30) day notice and opportunity to cure period shall be reduced to a period of forty-eight (48) hours within which to commence any and all necessary repairs, and a period of not more than five (5) business days within which to complete such repairs.

(b) Reciprocal Drainage Easement. A non-exclusive easement on, over, through and across the Bank Office Ingress/Egress Area, the Office Ingress/Egress Area and the Residential Ingress/Egress Area for the purposes of (i) permitting storm water run-off over and across each of the Bank Office Ingress/Egress Area, the Office Ingress/Egress Area and the Residential Ingress/Egress Area from the Bank Parcel, the Office Parcel and or the Residential Parcel, as applicable to [**WHERE IS IT RUNNING OFF TO?**], as applicable (the drainage system benefitting each Parcel shall be referred to herein as the respective Parcel's "Drainage System") including without limitation, the right to install, use, operate, maintain, repair, replace, relocate and remove all infiltration trenches, exfiltration pipes, conduits, catch basins, sloughs, injection wells, and similar components of the respective Drainage Systems, or any components thereof (the "Reciprocal Drainage Easement"). If the Bank Parcel Drainage System or the Office

Parcel Drainage System currently affects any portion of the Residential Parcel other than the Residential Ingress/Egress Area, the Bank Owner or the Office Owner, as applicable, shall relocate all components of such system not located within the Residential Ingress/Egress Area and replace such components within the Residential Ingress/Egress Area at such Owner's sole cost and expenses and within a reasonable period time after the date requested by Residential Owner to complete such relocation so as not to unreasonably interfere with the construction of improvements on the Residential Parcel. Each Owner shall work in good faith to determine which party shall complete the required work for such drainage equipment and, if it is determined that it is more practical for Residential Owner to do such work as part of its construction, then the Owners shall agree upon the cost thereof, whereupon Residential Owner shall undertake the subject work as part of construction. Bank Owner or Office Owner, as applicable, shall reimburse Residential Owner for the agreed upon costs of such work within ten (10) business days of receipt of an invoice and reasonable backup for such costs.

(c) Relocation of Reciprocal Drainage Easement and Reciprocal Utility Easement. Each Owner, at such Owner's sole cost and expense, may elect to relocate any portion of the Drainage System and/or Utility Facilities located on such Owner's Parcel to any other location on such Owner's Parcel or, with the prior written consent of other Owners (which consent may be withheld in such Owner's reasonable discretion), to any other location within other Owner's Parcel, provided that (a) such new location shall not unreasonably interfere with the construction, use or maintenance of the affected Owner's Parcel, specifically including (without limitation) the location or intended location of improvements on the affected portion of the subject Parcel; and (b) the new location complies with all Legal Requirements. Notwithstanding the above, any portion of an Owner's Drainage System located on the other Owner's Parcel can only be relocated to either the Owner's own Parcel or within that portion of the Bank Ingress/Egress Area, the Office Ingress/Egress Area and/or the Residential Ingress/Egress Area located on the such Owner's Parcel.

(d) Reciprocal Encroachment Easements. A non-exclusive reciprocal encroachment easement (the "Reciprocal Encroachment Easement") for any existing building overhangs, other overhangs, any existing or future building footers, foundations, and similar underground structures, and projections or parts of existing improvements, light poles, parking monuments and/or parking lines that now encroach upon any of the Parcels from the other Parcels, but only if and to the extent that any such building or other overhangs, building footers and foundations, and projections and parts of existing or future improvements and other items specified above do not unreasonably, materially and adversely affect construction, use and maintenance of the Parcel which is subject to the encroachment.

(e) Reciprocal Support Easement. A non-exclusive perpetual reciprocal easement of support (the "Reciprocal Support Easement") such that each Owner shall maintain its respective Parcel in such a manner as to provide lateral support of the ground along the contiguous borders of the Parcel(s) in order to provide reasonable support to the ground on the opposite side of such border. To that end, each Owner agrees that it shall not permanently excavate, grade or otherwise modify the ground along such contiguous border in a manner that would materially and adversely affect the ground on the opposite side of such border and not provide reasonable support for such ground and any improvements thereon. Any damage sustained by a Owner due to the other Owner excavating, grading or otherwise modifying the

ground support on its Parcel so as to breach the covenants of this Section shall be a Non-Monetary Default under this Agreement, provided that the thirty (30) day notice and opportunity to cure period shall be reduced to a period of forty-eight (48) hours to commence any necessary repairs and a period of ten (10) business days within which to complete curative actions.

6. Reservations for Future Utility or Access Easements; Covenant Against Obstruction.

(a) Reservations for Future Utility Easements. It is the express intention of this Declaration to reserve to each Owner the right to (i) grant easements to utility companies providing utilities necessary for the benefit and enjoyment of each of the Parcels and (ii) make and/or grant road right-of-way and curb-cut dedications and/or easements to the appropriate governmental authority, so as to benefit their respective Parcels and otherwise comply with applicable governmental requirements. Each of Bank Owner, Office Owner and Residential Owner shall use their respective good faith, commercially reasonable efforts and reasonable diligence to cooperate and enter into any necessary utility, roadway or right-of-way and curb cut easements and/or dedications that are required by a governmental authority having jurisdiction or are otherwise necessary to benefit any of the Parcels in the future. Prior to the installation of any improvements, Utility Facilities or other installations in any easement area that would materially and adversely affect the other Parcel, the Owner initiating such installations shall provide plans and specifications of such work to the other Owners for such Owners review and approval, such approval not to be unreasonably withheld, delayed or conditioned.

(b) Covenant Against Obstruction. Each of Bank Owner, Office Owner and Residential Owner agrees and covenants that it shall not construct any improvement or modify any existing improvement once constructed, or otherwise use its Parcel in any manner which would obstruct or otherwise materially and adversely interfere with any of the easements granted in this Agreement, or which may be granted or dedicated in the future pursuant to the terms of this Agreement. In the event of any such interference or obstruction of any of the easements, such interference or obstruction shall be a Non-Monetary Default and the affected Owner shall be entitled to exercise the remedies provided for in Section 12 below.

7. Parking Controls. Office Owner (as to the Parking Garage) and Bank Owner (as to the parking lot located on the Bank Parcel) shall use reasonable parking control systems to provide access to their respective parking facilities, such as access cards, bar code scanners and similar devices used to track and control access. Office Owner and Bank Owner shall each promulgate reasonable rules and regulations for use of their respective parking areas which shall be provided to the other Owners for distribution to their respective Owner Parties. To the extent that any Owner Party uses a parking facility in violation of this Declaration or any of the rules and regulations promulgated by an Owner and/or Bank Owner, such Owner Party shall be subject to having its car towed from such parking facility.

8. Maintenance of Certain Shared Facilities.

(a) Ingress/Egress Areas. Each of Bank Owner, Office Owner and Residential Owner shall maintain the Bank Ingress/Egress Area, Office Ingress/Egress Area, and the Residential Ingress/Egress Area, and any Drainage Systems, located on their respective Parcels at their respective sole cost and expense (subject to reimbursement, if any, as set forth

below), and otherwise in compliance with all Legal Requirements and all applicable land use, building, zoning, life safety and environmental laws applicable to such property, and shall not move, relocate or block the subject Ingress/Egress Area, as applicable (except if required to do so under any applicable Legal Requirements or in the case of emergencies or temporarily during repair, maintenance and reconstruction or as otherwise provided herein).

(b) Timing for Payment of Maintenance Costs. Each of Bank Owner, Office Owner and Residential Owner agree that Maintenance Costs and Parking Garage Costs, to the extent applicable, shall be paid pursuant to the then the procedure for sharing of Maintenance Costs and Parking Garage Costs, to the extent applicable, as provided for in Section 9(c) and 9(d) below shall apply.

(c) Bank, Owner, Office Owner and Residential Owner's Pro Rata Share. Commencing on the Effective Date, and thereafter, each Owner shall reimburse (a "Reimbursing Party") the Office Owner (the "Maintaining Party") for the Reimbursing Party's Pro Rata Share of any Maintenance Costs incurred by the Maintaining Party. The Pro Rata Share of Maintenance Costs may be collected in either of the following manners, or any combination thereof, at the Maintaining Party's election:

(i) prior to the beginning of each calendar year during the term of this Agreement, advise Reimbursing Party in writing of Maintaining Party's reasonable estimate of the Maintenance Costs for such calendar year (each, a "Budget"), in which event (A) Reimbursing Party shall pay to Maintaining Party, on the first (1st) day of each calendar month, one-twelfth (1/12th) of the estimated Pro Rata Share of the Maintenance Costs, and (B) within ninety (90) days after the close of each calendar year, Maintaining Party shall deliver to Reimbursing Party an itemized statement prepared by Maintaining Party's property management company or chief operating officer showing in reasonable detail the (1) actual or allocated Maintenance Costs for the previous year; (2) Reimbursing Party's Pro Rata Share of such amounts; (3) the amount paid by Reimbursing Party during the prior year towards Maintenance Costs; and (4) either the amount Reimbursing Party owes to Maintaining Party, or the amount of the refund Maintaining Party owes to Reimbursing Party on account of any underpayment or overpayment by Reimbursing Party. Any such amount due from Reimbursing Party to Maintaining Party shall be paid within thirty (30) days after receipt of the most recent statement. Any such refund due from Maintaining Party to Reimbursing Party shall be credited against each upcoming payment of the estimated of Pro Rata Share of the Maintenance Costs until the amount of the overpayment has been reduced to zero (\$0.00) or, at Maintaining Party's election, refunded to Reimbursing Party within ten (10) days.

(ii) From time to time during each calendar year, Maintaining Party shall provide Reimbursing Party with a monthly or quarterly statement of the Maintenance Costs incurred (and allocated, if applicable) by Maintaining Party in the immediately preceding calendar month or quarter, together with reasonable supporting information and documentation relating to said statement. Reimbursing Party shall pay its Pro Rata Share of the Maintenance Costs described in such statement within thirty (30) days after receipt of the monthly or quarterly statement.

(iii) A Reimbursing Party shall have the right, upon reasonable advance notice and from time to time, to review a Maintaining Party's books and records relating to the Maintenance Costs at the Reimbursing Party's cost and expense.

(d) Parking Garage Costs. Commencing on the Effective Date and thereafter for so long as the Parking Garage exists Residential Owner shall reimburse Office Owner for Residential Owner's Pro Rata Share of any Parking Garage Costs incurred by Office Owner. The Pro Rata Share of Parking Garage Costs may be collected in either of the following manners, or any combination thereof, at the Office's Owner's election:

(i) prior to the beginning of each calendar year during the term of this Agreement, advise Residential Owner in writing of Office Owner 's reasonable estimate of the Parking Garage Costs for such calendar year (each, a "Parking Garage Budget"), in which event (A) Residential Owner shall pay to Office Owner, on the first (1st) day of each calendar month, one-twelfth (1/12th) of the estimated Pro Rata Share of the Parking Garage Costs, and (B) within ninety (90) days after the close of each calendar year, Office Owner shall deliver to Residential Owner an itemized statement prepared by Office Owner's property management company or chief operating officer showing in reasonable detail the (1) actual or allocated Parking Garage Costs for the previous year; (2) Residential Owner's Pro Rata Share of such amounts; (3) the amount paid by Residential Owner during the prior year towards Parking Garage Costs; and (4) either the amount Residential Owner owes to Office Owner, or the amount of the refund Office Owner owes to Residential Owner on account of any underpayment or overpayment by Residential Owner. Any such amount due from Residential Owner to Office Owner shall be paid within thirty (30) days after receipt of the most recent statement. Any such refund due from Office Owner to Residential Owner shall be credited against each upcoming payment of the estimated of Pro Rata Share of the Parking Garage Costs until the amount of the overpayment has been reduced to zero (\$0.00) or, at Office Owner's election, refunded to Residential Owner within ten (10) days.

(ii) From time to time during each calendar year, Office Owner shall provide Residential Owner with a monthly or quarterly statement of the Parking Garage Costs incurred (and allocated, if applicable) by Office Party in the immediately preceding calendar month or quarter, together with reasonable supporting information and documentation relating to said statement. Residential Owner shall pay its Pro Rata Share of the Parking Garage Costs described in such statement within thirty (30) days after receipt of the monthly or quarterly statement.

(iii) Residential Owner shall have the right, upon reasonable advance notice and from time to time, to review a Office Owner's books and records relating to the Parking Garage Costs at the Residential Owner cost and expense.

(e) Drainage System and Utility Facilities. Each Owner shall be responsible, at its sole cost and expense, without contribution from the other Owners, to maintain those portions and components of the Drainage System and Utilities Facilities which exclusively serve or benefit its Parcel and improvements thereon, regardless of where the same are located, in good repair, free from defects and in a manner that does not adversely affect other portions or components of the Drainage System or Utility Facilities. To the extent that any portions and components of the Drainage System and/or Utilities Facilities benefit or serve all the Parcels,

then each Owner shall be responsible, at its sole cost and expense (subject to reimbursement as a Maintenance Cost pursuant to Article 8 above), to maintain those portions and components of the Drainage System and Utilities Facilities located on such Owner's Parcel in good repair, free from defects and in a manner that does not adversely affect other portions or components of the Drainage System or Utility Facilities. Any Owner's failure to maintain those portions and components of the Drainage System or Utility Facilities as required by this Section shall be a Non-Monetary Default and the affected Owner shall be entitled to exercise the remedies provided for in Section 12 below.

(f) Each Parcel. Each of Bank Owner, Office Owner and Residential Owner, at their individual respective cost and expense, shall maintain their respective Parcels in a clean and sightly condition, with reasonable landscaping and otherwise in compliance with all applicable building, zoning, land use and life safety laws imposed by governmental authorities having jurisdiction over the Parcels and all other Legal Requirements.

9. Insurance and Indemnity.

(a) Insurance Requirements.

(i) Commercial General Liability Insurance. Each Owner shall, commencing on the Effective Date of this Agreement, carry commercial general liability insurance against claims for bodily injury, death or property damage occurring upon, in or about the easement areas, with limits of Three Million Dollars (\$3,000,000) per occurrence and Five Million Dollars (\$5,000,000) in the aggregate, which may be arranged through a combination of primary and excess policies. Such insurance shall be primary and non-contributory, shall be written on an occurrence form (*i.e.*, not a claims-made form). Each liability policy shall (i) be obtained from insurers of recognized responsibility, rated at least Class "A" – with a financial class of VIII by the A. M. Best Company, Inc. or an equivalent rating by another national rating organization, authorized to do business in the State of Florida; (ii) provide that the insurers will endeavor to provide at least thirty (30) days' prior written notice to the other Owners named as additional insureds on such policy prior to canceling such policies; and (iii) name as additional insureds the other Owners as may be actually known to the insuring Owner. At least ten (10) business days before utilizing the easements granted herein, each Owner shall deliver to all of the other Owners to this Declaration of which the insuring Owner has actual knowledge a copy of each and every insurance policy required hereunder, or certificates thereof, with evidence of the payment of the premiums therefor. At least ten (10) days prior to expiration of any such policy or policies, each Owner shall deliver to the other Owners evidence of the renewal or replacement thereof, which evidence may include certification by the insuring Owner that such insurance will be in place as of the expiration date, including the names of the possible insurers. Endorsements to such commercial general liability insurance policies naming each Owner as an additional insured shall be delivered to the other Owners each time such policy is renewed. The Owners agree to review the amount of commercial liability coverage carried by both parties on the fifth (5th) anniversary of the Effective Date and on the anniversary date of the Effective Date every five (5) years thereafter to determine whether the type and amount of such commercial liability coverage is reasonable and appropriate given the types and amounts of coverages then carried on other comparably developed properties in the general geographic area and to jointly increase such coverages as reasonably necessary to be consistent with that carried on such other comparable properties.

(ii) Builder's Risk Insurance; General Contractor's Commercial General Liability Insurance. At all times where Residential Owner is using either of the Construction Easements, Residential Owner shall obtain and maintain such policies of builder's risk insurance which are reasonably required by any construction lender providing financing for the construction of the Residential Building. Residential Owner shall, to the extent permitted under such policies of builder's risk insurance, cause Bank Owner and Office Owner to be named as an additional insured thereunder. Further, any commercial general liability insurance policies maintained by the general contractor for the Residential Building under which Residential Owner is named as an additional insured shall also name Bank Owner and Office Owner as an additional insured. An endorsement to such policy of builder's risk insurance, naming Bank Owner Office Owner as an additional insured shall be provide to Bank Owner and Office Owner prior to the commencement of any use of the Construction Easements.

(b) Reciprocal Indemnity. To the extent not covered by insurance, each Owner (for the purposes of this Section 9(b) an "Indemnitor") hereby covenants and agrees to protect, defend, indemnify and hold harmless each Owner to this Agreement, and such entity's respective officers, directors, shareholders, managers, members, agents, representatives, employees, successors and assigns (for the purposes of this Section 9(b) all of the foregoing being the "Indemnified Parties"), and each will defend and hold the Indemnified Parties harmless (except for loss or damage resulting from the grossly negligent or willful acts or omissions of an Indemnified Party, its tenants, subtenants, licensees, invitees, agents, contractors or employees) from and against any and all liability, claim, damage, cost or expense (including reasonable attorneys' fees and costs) in connection with any loss of life, personal injury and/or damage to property arising from or out of any occurrence in or upon such Indemnifying Party's Parcel, or proximately caused by any negligent act or omission by such Indemnitor, its tenants, subtenants, licensees, invitees, agents, contractors or employees, successors or assigns.

10. Construction Liens. In the event any construction lien is filed against (i) any Parcel as a result of services performed or materials furnished to an Owner which is not the owner or a lessee of the Parcel encumbered by the construction lien (that is the construction lien is caused by a Owner that does not own the affected Parcel) or (ii) a Parcel where any of the easements granted under this Declaration are located, which construction lien is a result of services performed or materials furnished to the Owner which is the owner or lessee of the Parcel affected by the construction lien, then the Owner against whom such construction lien is claimed shall cause such construction lien to be discharged of record by payment, bonding or otherwise within ten (10) days after the later of: (i) the recording of such claim of lien or (ii) the receipt of notice of the recording of such claim of lien by the party against whom it is claimed, and further agrees to indemnify, defend, and hold harmless all of the other Owners to this Declaration against any loss, cost, damage, expense, claim, charge or liability (including reasonable attorneys' fees and costs) on account of such construction lien.

11. Default; Remedies. If any Owner (a "Defaulting Party") shall default in the performance of any of its obligations under this Declaration and such default shall continue for a period of ten (10) days in the case of a failure or refusal to pay any sum or amount of money as and when required hereunder (a "Monetary Default") and thirty (30) days in the case of a non-monetary default (provided, however, if such default is of the nature that it cannot reasonably be cured within such thirty (30) day period after the exercise of commercially reasonable efforts,

then if the Defaulting Party fails to commence such cure within such thirty (30) day period or thereafter fails to complete such cure within an additional sixty (60) days following such thirty (30) day period) (a “Non-Monetary Default”) after receipt of written notice of either a Monetary Default or a Non-Monetary Default, from any Owner who is not then in default (the “Non-Defaulting Party(s)”), then any Non-Defaulting Party(s) shall have the following remedies:

(a) Monetary Default. In the event of a Monetary Default, after providing written notice of such default and payment not being made within the ten (10) day period provided for in this Section 11 for the cure of a Monetary Default, then the Non-Defaulting Party shall be entitled to file a claim of lien against the Defaulting Party’s Parcel for any amounts due as a result of the Monetary Default and thereafter, to foreclose such lien pursuant to applicable Florida law and collect attorneys’ fees and costs for such enforcement and foreclosure. Any claim of lien filed pursuant to this Section 11(a) shall contain, at a minimum, the following information: (1) an itemized statement of all amounts due and payable, (2) a description sufficient to identify the Parcel affected by the lien, (3) the name of the owner of the Property, and (4) the name and address of the Owner filing the claim of lien. The Owners agree that any such claim of lien shall automatically be subordinate to any lien of an institutional mortgagee that holds a mortgage on the affected Parcel.

(b) Non-Monetary Default. In the event of a Non-Monetary Default, and after the expiration of the thirty (30) day period provided for in this Section 11(b) for the cure of a Non-Monetary Default, then any Non-Defaulting Party shall be entitled to obtain injunctive relief, either specifically enforcing the performance of such obligation or enjoining any action that gave rise to the Non-Monetary Default. The Owners each acknowledge (i) the inadequacy of legal and other equitable remedies besides specific performance or injunctive relief and (ii) the irreparable harm which would be caused by any such breach.

12. Casualty to or Condemnation of Existing Improvements. Subject to the prior rights of any mortgagees on any of the Parcels, in the event of (i) a casualty to any improvements on any of the Parcels or (ii) condemnation by a governmental authority having jurisdiction over such Parcels which casualty or condemnation renders such improvement untenable and/or would require the razing of such improvement and the construction of a new replacement improvement, each Owner agrees that it shall use its best efforts to tear down the untenable improvement incapable of repair or restoration and, if reconstruction is not commenced within a reasonable time, pave over such affected portions of the subject Parcel so as to maintain such Parcel in a safe, debris and dust free condition, all in accordance with all Legal Requirements. Further, each Owner shall promptly take any and all actions as commercially reasonable and necessary to ensure that any portion of a Parcel which is encumbered by any of the easements established by or pursuant to this Declaration shall promptly be restored to a reasonable condition so that the affected easement will be usable for its intended purpose by the other Owners to this Agreement.

13. Third Party Beneficiary Rights. This Declaration is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not a party hereto unless otherwise expressly provided herein.

14. Covenant to Run with the Land; Binding Effect; Term. It is the express intention of all of the Owners that this Declaration be a covenant to run with the land, encumbering each

of the Parcel and it shall bind and inure to the benefit of all of the Owners, their respective successors, assigns, and/or grantees as their interests may appear, for a term of ninety-nine (99) years from the Effective Date and shall thereafter automatically extend for successive periods of ten (10) years each, unless terminated, in writing, by all of the Owners. Any Owner transferring all or any part of its interest in any Parcel shall give notice to all other Owners of such transfer and shall include therein at least the name and address of the successor in interest to the transferring Owner. Any transfer of fee simple title to any Parcel or portion thereof shall be subject to and at all times bound by the terms, conditions and covenants of this Agreement.

15. Bankruptcy. Each of the Owners acknowledges that the covenants and agreements set forth in this Declaration are “executed” rather than “executory.” The Owners agree that in the event of a bankruptcy filing by any Owner (a “Bankruptcy Filing”), it is the express intention of the Parties not to have this Agreement, or any individual provision hereof treated as an executory Declaration which would be potentially subject to a rejection in a Bankruptcy Filing. Rather, the Owners agree and acknowledge that as this Declaration is a covenant running with the land, as provided for in Section 14 above, the covenants and agreements hereunder are ongoing and executed obligations, and this Declaration shall not be affected by any Bankruptcy Filing.

16. Development of Residential Parcel. The Owners acknowledge and agree that as of the Effective Date, the Owners anticipate that the Residential Parcel will be used and developed for residential purposes. The Owners also acknowledge and agree that this Declaration does not create or establish any obligation on the Residential Parcel Owner to develop the Residential Parcel for residential purposes or to develop the Residential Parcel at all if any such development is, in Residential Owner's sole discretion, not feasible for any reason or not the highest and best use of the Residential Parcel at any point in time. In the event that the Residential Owner shall determine to develop the Residential Parcel for non-residential purposes, all provisions applicable to the Residential Owner, Residential Building and Residential Parcel shall continue to apply to such development, parcel and owner, and this Declaration shall be amended to reflect the nature of the actual improvements on such Parcel.

17. Office Parcel Use Restriction. In the event that the existing lease by and between Office Owner, as landlord, and Zenith Education Group, Inc., as tenant, expires or is otherwise terminated, and said tenant vacates the building located on the Office Parcel, then Office Owner acknowledges and agrees that the first (1st) floor of the building located on the Office Parcel shall be renovated so that such first floor will be used for an office building lobby and retail use, as applicable, as required by Legal Requirements.

18. Miscellaneous.

(a) Representation and Warranties. Each Owner represents and warrants to the other (i) that the execution and delivery of this Declaration has been fully authorized by all necessary corporate or limited liability company action, as applicable, (ii) that the persons signing this Declaration have the requisite authority to do so and the authority and power to bind the entity on whose behalf they have signed, and (iii) that to the best of their knowledge and belief, this document is valid, binding and legally enforceable in accordance with its terms.

(b) Notices. Any notices required to be given pursuant to this Declaration shall be deemed received upon delivery and/or delivery and refusal, if hand delivered, or if sent by (i) United States Registered Mail, (ii) United States Certified Mail, or (iii) a nationally recognized courier service (such as FedEx or UPS), to the Parties at the following addresses or at such other addresses as any of the Parties may hereafter specify in the same manner:

If to Office Owner: 225 North Federal Highway, LLC
c/o Brenner Real Estate Group
1500 West Cypress Creek Road
Suite 409
Ft. Lauderdale, FL 33309
Attention: Scott Brenner, Manager

with copies to: Stearns Weaver Miller Weissler
Alhadeff & Sitterson, P.A.
New River Centre, Suite 2100
200 East Las Olas Boulevard
Fort Lauderdale, FL 33301
Attention: George A. Pincus, Esq.

If to Residential Owner: []

with a copy to: []

If to Bank Owner: 225 North Federal Highway, LLC
c/o Brenner Real Estate Group
1500 West Cypress Creek Road
Suite 409
Ft. Lauderdale, FL 33309
Attention: Scott Brenner, Manager

with a copy to: []

(c) Waiver; Subsequent Modification. Except as expressly provided herein, no waiver by any party or any failure or refusal of the other party to comply with its obligations under this Declaration shall be deemed a waiver of any other or subsequent failure or refusal to so comply by such other party. No waiver or modification of the terms hereof shall be valid unless in writing and signed by the party to be charged, and then only to the extent therein set forth.

(d) Recording. An original of this Agreement, and all subsequent modifications or amendments hereto, shall be recorded in the Public Records of Broward County, Florida.

(e) Mortgage Loans. This Declaration shall not restrict any Owner's right to grant a mortgage or security interest in, or to assign or convey its interest in, its Parcel or any rights, benefits, privileges, easements or entitlements thereto, as security for a loan secured by its respective Parcel and such appurtenances. However, any and all such mortgage liens encumbering any Parcel shall be subordinate and subject in all respects to this Agreement, except with respect to any liens filed pursuant to Section 12(b) or any other provisions hereof, and any lender foreclosing on any such mortgage lien, or acquiring title by reason of a deed-in-lieu of foreclosure, shall acquire title to the subject Parcel subject to all of the terms, conditions and covenants of this Agreement, with the exception of any claims of lien as aforesaid.

(f) Estoppel Certificate. At any time, and from time to time within thirty (30) days after notice or request by (i) the holder of any actual or proposed mortgage affecting or intending to affect any Parcel, (ii) a proposed assignee of a ground lease of any Parcel or (iii) a proposed subtenant subject to any ground lease of any Parcel, the other Owners to this Declaration shall execute and deliver to such mortgagee, assignee or subtenant, a statement certifying (i) that this Declaration is unmodified and in full force and effect or if there have been modifications, that it is in full force and effect as modified in the manner specified in the statement, (ii) that to the knowledge of such Owner there exists no default under this Declaration or circumstances which with the passage of time would result in the existence of such a default, other than specified in such statement and (iii) that all payments then currently required to be paid by the owner or ground lessee of such Parcel have been paid, or if not, what amount is due and payable.

(g) Severability. If any term or provision of this Declaration or application thereof to any person or circumstance shall, to any extent, be found by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term or provision of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

(h) Requests for Approval. Where this Declaration provides for the approval of any Owner or consent to any matter (or if any matter is required to be satisfactory or acceptable to any Owner, or any words or phrases of similar meaning) (collectively, a "Consent"), unless otherwise expressly indicated: (i) in order to be effective and binding upon the granting Owner, such Consent must be in writing, and must provide to the Owner from whom a request is made a written notice requesting such Consent which contains the following in bold: **YOUR FAILURE TO RESPOND TO THIS LETTER BY THAT DATE THAT IS [insert applicable time period set forth in this Agreement] AFTER THE DATE OF THIS LETTER SHALL BE DEEMED YOUR CONFIRMATION OF THE REQUESTS SET FORTH IN THIS LETTER;** (ii) such Consent may not be unreasonably withheld, delayed or conditioned; and (iii) shall be deemed to be given (or such matter shall be deemed to be acceptable or satisfactory) if not so given or rejected within ten (10) days (unless this Declaration expressly provides for a different time period) of the subject Owner's receipt of such request.

(i) Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of any Parcel to the general public or for the general public or for any public purpose whatsoever, it being the intention of the parties that this Declaration shall be strictly limited to and for the purposes herein expressed.

(j) Breach Shall Not Permit Termination. It is expressly agreed that no breach of this Declaration shall entitle any Owner hereto to cancel, rescind or otherwise terminate this Agreement, but such limitation shall not affect in any manner any other rights or remedies which any Owner may have hereunder by reason of any breach of this Agreement. Any breach of this Declaration shall not defeat or render invalid the lien of any mortgage made in good faith for value, but this Declaration shall be binding upon and be effective against any Owner whose title is acquired by foreclosure, deed-in-lieu of foreclosure or otherwise.

(k) Governing Law; Venue. This Declaration shall be governed by and construed in accordance with the internal laws of the State of Florida. Venue for any action arising out of, or in any way connected with this Agreement, shall be Miami-Dade County, Florida.

(l) Cumulative Remedies. Unless otherwise expressly provided herein, the remedies of the parties provided for herein shall be cumulative and concurrent, and may be pursued singularly, successively or together, at the sole discretion of the party for whose benefit such remedy is provided, and may be exercised as often as occasion therefor shall arise. Each Owner waives all rights to consequential damages, punitive damages, or special damages of any kind against the other.

(m) Attorneys' Fees, Costs and Expenses. In any action or proceeding arising out of this Agreement, the prevailing party in such action or proceeding, shall be entitled to recover from the other party thereto, the reasonable attorneys' fees and costs actually incurred, including one or more appeals, court costs, filing fees, publication costs and other expenses, as well as any fees, costs or expenses incurred and bankruptcy or insolvency provisions.

(n) Parties Not Partners. Nothing contained in this Agreement, or any of the documents or actions to be executed or undertaken pursuant hereto, shall operate to make any Owner to this Agreement, or any of its successors, administrators or assigns, a partner(s) with, agent(s) for, or principal(s) of any of the other Parties to this Declaration and vice-versa.

(o) Joint Preparation. The preparation of this Declaration has been a joint effort of the parties and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

(p) Captions. The title of this Declaration and the headings of the various articles, sections and subsections have been inserted only for the purpose of convenience, are not part of this Declaration and shall not be deemed in any manner to modify, explain, expand or restrict any of the provisions of this Agreement.

(q) Entire Agreement. Except as otherwise expressly provided herein, this Declaration constitutes the entire Declaration of the Owners hereto with respect to the matters addressed herein and supersedes all prior or contemporaneous contracts, promises, representations, warranties and statements, whether written or oral, with respect to such matters.

[SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF, the Parties have caused this Declaration to be signed by its authorized signatory as of the day and year first set forth above.

WITNESSES:

OFFICE OWNER:

By: _____
Printed Name: _____

[_____],

By: _____
Printed Name: _____

By: _____
Name: _____
Title: _____
Date: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2015, by _____, as _____, { _____ }, a Delaware limited liability company, on behalf of the limited liability company. He / She is (check one) is personally known to me or has produced _____ as identification.

Signature of Notary Public
(SEAL)

Printed Name of Notary Public

State of _____
My Commission No.: _____
My Commission Expires: _____

EXHIBIT A
(THE ENTIRE PROPERTY)

EXHIBIT B
(OFFICE PARCEL)

EXHIBIT B-1
(OFFICE INGRESS/EGRESS AREA)

EXHIBIT C
(RESIDENTIAL PARCEL)

EXHIBITC-1
(RESIDENTIAL INGRESS/EGRESS AREA)

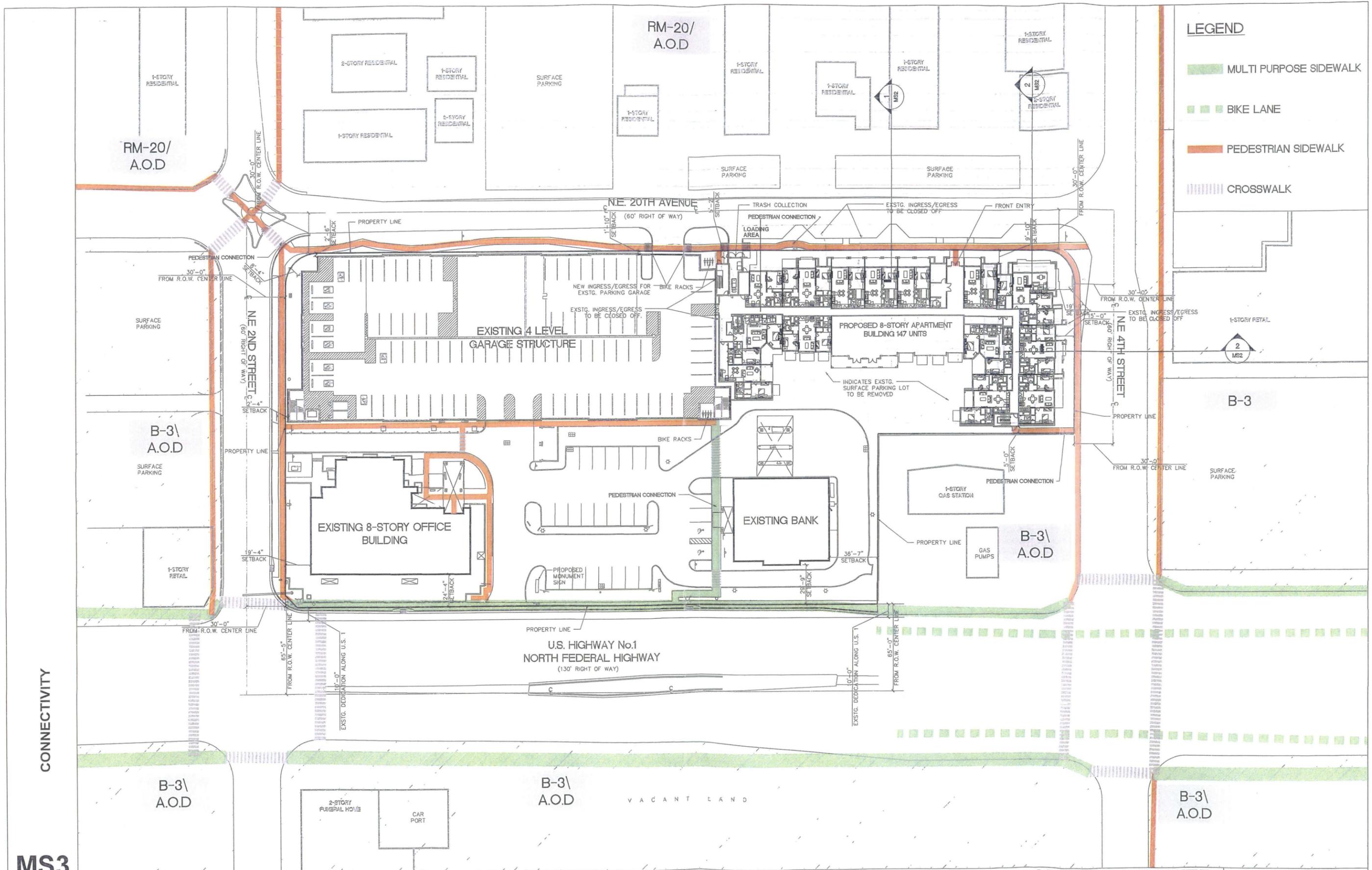
EXHIBIT D
(BANK PARCEL)

EXHIBIT D-1
(BANK INGRESS/EGRESS AREA)

EXHIBIT E
(THE CURRENT SITE PLAN)

EXHIBIT F
(PARKING GARAGE)

Exhibit C



- LEGEND**
- MULTI PURPOSE SIDEWALK
 - BIKE LANE
 - PEDESTRIAN SIDEWALK
 - CROSSWALK

MS3

ATLANTIC TOWER
POMPANO BEACH, FLORIDA



06.30.15

RLC Architects
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1 NORTH ELEVATION

A3.11 SCALE: 3/32"=1'-0"

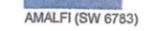
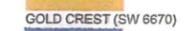
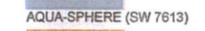
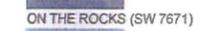
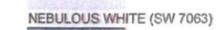


2 WEST ELEVATION

A3.11 SCALE: 3/32"=1'-0"

LEGEND

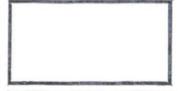
- 001 PAINTED STUCCO A
- 002 FRETREATED WOOD TRELLIS
- 003 ALUMINUM LOUVERED PANEL
- 004 METAL RAILING
- 005 STUCCO WINDOW SILL
- 006 EYEBROW
- 007 STANDING SEAM METAL ROOF
- 008 STUCCO SCORE JOINT
- 009 BLUE TINTED GLASS
- 010 BLUE TINTED STOREFRONT



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 Tel: 561.363.6555 Fax: 561.363.0007
 Web: www.rlcarchitects.com

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JUAN C. CAYCEDO, A.I.A.



ATLANTIC TOWER
 POMPANO BEACH, FLORIDA

BRENNER REALTY

REVISIONS

Juan Caycedo

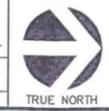
Digitally signed by Juan Caycedo
 DN: cn=Juan Caycedo, o=RLC Architects PA, ou, email=juan@rlcarchitects.com, c=US
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Drawing Title
EXTERIOR ELEVATIONS

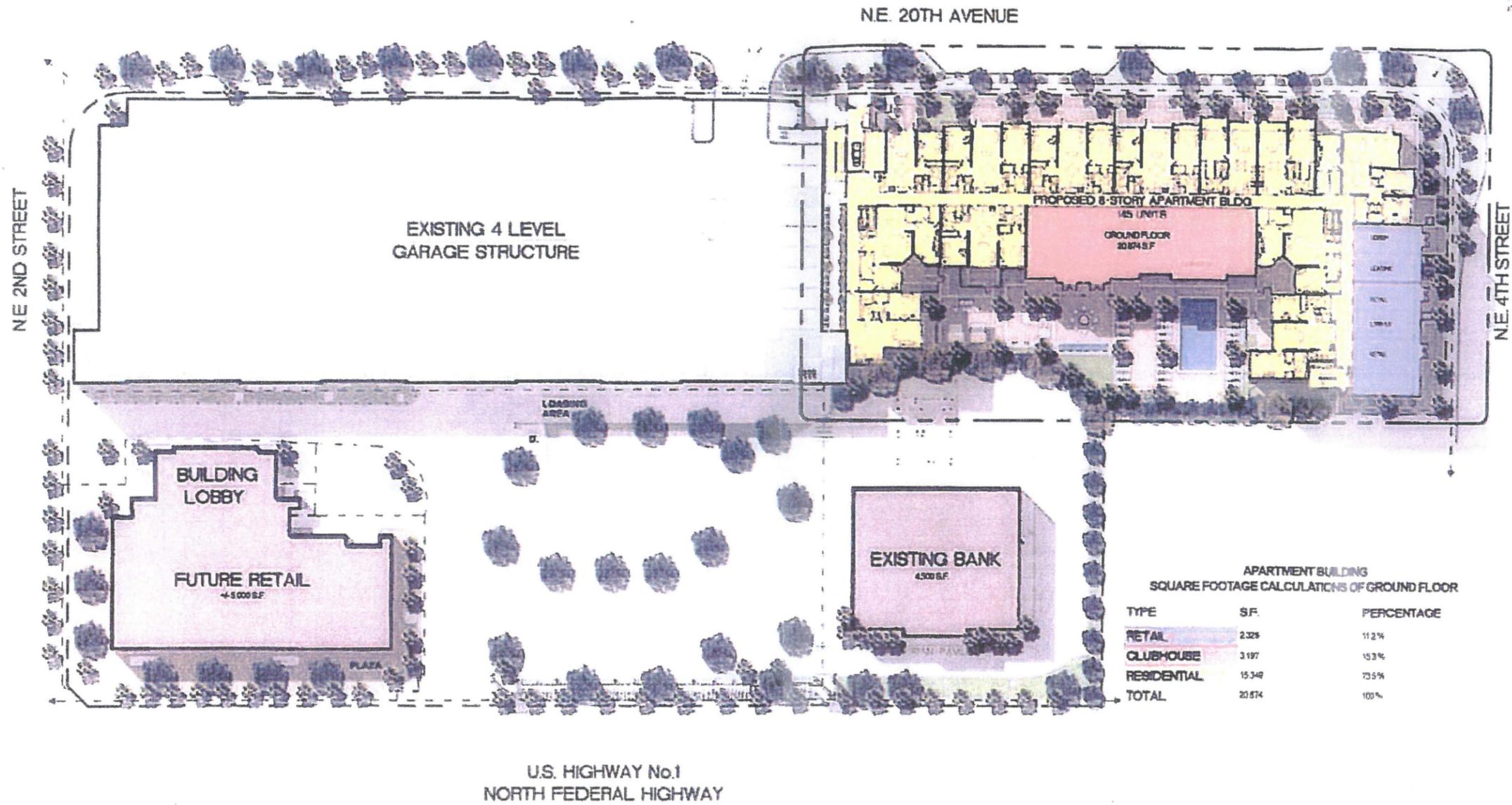
Scale AS NOTED
 Project No. 14078.00
 Date

Principal: JCC
 Project Director: JCC
 Project Manager: JCC
 Drafted by: SMN
 Checked by:

Sheet No.
A3.11



D.R.C.
 RE-SUBMITTAL
 10/13/2015



APARTMENT BUILDING
SQUARE FOOTAGE CALCULATIONS OF GROUND FLOOR

TYPE	S.F.	PERCENTAGE
RETAIL	2,325	11.2%
CLUBHOUSE	3,197	15.3%
RESIDENTIAL	15,349	73.5%
TOTAL	20,874	100%

ATLANTIC TOWER QUALITATIVE ELEMENTS

4.1.1 Relationship of buildings to site and surroundings. The project should be designed in consideration of a three dimensional context that includes surrounding private properties and public realm. The effects of the proposed building scales and form on adjacent streets, neighboring properties, and the overall development of the area in which the project is located shall be assessed to ensure any possible negative impacts are minimized.

The proposed development is to include 147 dwelling units on the 1st through 8th floors along with leasing office, commercial and clubhouse uses on the 1st floor ("Proposed Development"). The residential units will be comprised of one, two and three bedroom units.

The Proposed Development provides for addition residential uses on the same scale as the existing office building on the Property so as to be compatible with the existing character of development in the area. The existing office building on the Property is 8 stories, the same as the proposed building.

The Property has an underlying land use plan designation of Commercial which allows for free standing residential and mixed-use residential development. The zoning on the Property is B-3 zoning with the AOD overlay. Properties to the north, south and east have the same land use and zoning designations as this Property. The land use plan and zoning pattern in the area provides for residential and commercial uses in an urban, pedestrian friendly environment. The proposed residential use will provide patrons to support existing and proposed commercial uses in an area of the City that provides a grid pattern of streets which helps to create a pedestrian friendly environment. Proposed Development and existing and proposed commercial uses are mutually beneficial and compatible in this urban environment.

The Proposed Development provides for a residential use adjacent to properties to the west that are also designated for residential use. The City established a land use buffer to the west of the Property to protect the Old Pompano Neighborhood from the redevelopment potential in the AOD and ensure compatibility. The maximum height allowed on the Property and all others in the AOD is 105 feet. Although the allowable height in the block to the west of the Property is 105 feet because it is in the AOD, the allowable density is stepped down moving from Federal Highway west to the existing single family portions of Old Pompano which will be a limiting factor in the actual height of future buildings. The 2.5 blocks west of the Property are designated Medium Residential with a density of 10-16 dwelling units per acre and the blocks further west are designated Low Residential with a maximum density of 1-5 dwelling units per acre in Old Pompano. This stepped down residential density provides for a transition from higher densities along Federal Highway to the lower densities in the Old Pompano

Neighborhood to ensure compatibility of future development with the existing neighborhoods.

The existing residential uses on the two blocks west of the Property are predominately duplex and multi-family units. The majority of those two blocks are also in the AOD which signifies that these areas are in need of redevelopment in order to promote the urban character that the City desires. The addition of new residential units will help to highlight the redevelopment potential in the area and stimulate redevelopment that the City desires.

4.1.2 Circulation and traffic flow. The project should promote pedestrian circulation by providing attractive, safe and comfortable paths of travel. Vehicular circulation should be efficient and limit impacts to pedestrian movement around and through the site. Vehicular circulation should not detract from the active uses occurring on-site or on adjacent sites.

The Proposed Development will create an integrated mixed-use development which is adjacent to or in close proximity to major traffic corridors. The Property is adjacent to Federal Highway and is one block from Atlantic Boulevard. The proposed site plan is designed to not encroach on the existing right of way. Access to these major traffic corridors will provide easy vehicular access from the mixed-use development to the regional roadway network. This location will also provide easy access to transit. Broward County transit routes run along both Federal Highway and Atlantic Boulevard. The proposed site plan is also designed with proper vehicular access to the adjacent roadway network. Pedestrian connections to the existing uses on the Property and to the adjacent sidewalks and transit routes will be provided.

The Proposed Development will provide for additional residential units in a compact urban form with access to transit and pedestrian connections to the parks, beaches and commercial uses in the area. Development of this Property will discourage urban sprawl by allowing redevelopment on a property in the eastern portion of the City where all public facilities currently exist. The Proposed Development will promote the use of mass transit by increasing residential density adjacent to or in close proximity to transit routes on Atlantic Boulevard and Federal Highway. Pedestrian paths on the Property provide for connections from the Property to the existing sidewalks on Federal Highway and the other adjacent roadways will provide easy access to these transit routes. The Proposed Development will promote the use of bicycles, transit and walking as means of transportation within the City which will reduce vehicular traffic, increase energy efficiency, reduce greenhouse gas emissions and increase the health and well-being of the residents.

There are existing sidewalks adjacent to the Property. The Applicant will maintain these sidewalks and also provide pedestrian connections between the Existing Development and Proposed Development on the Property to ensure easy access to the uses in the

surrounding area. Street trees will be provided as required to improve the pedestrian experience adjacent to the Property.

4.1.3 Building design. While architectural style should not be restricted, the project will be evaluated based upon the quality and execution of the design, as well as its relationship to surrounding buildings. The architectural elements chosen should be consistent across the entire development. Consistency will be determined based upon mass, bulk, proportion, fenestration, and rhythm of building elements, both reviewed together and as separate elements.

The Proposed Development is a quality design that creates a vibrant new development, and accommodates and encourages high levels of pedestrian circulation. The Proposed Development represents a compact, mixed-use, and pedestrian-oriented development that improves walkability, provides a critical mass of housing and creates the sense of a vibrant and active urban center.

The Proposed Development is located on a Property with existing development and is designed to be compatible with the existing development. The height of the Proposed Development is comparable with that of the existing office building to ensure that the mass, bulk and proportion of the existing and proposed buildings are consistent. The existing parking structure on the Property will be modified with finishes and architectural elements that tie it to the architectural design of the Proposed Development. The streetscape along NE 20th in front of the proposed building will be enhanced with landscape treatments that will be continued along the existing parking garage to the extent possible where sufficient area is available for landscape plantings.

The architectural design of the proposed building provides fenestration and a variety of building elements to create architectural rhythm and to break up the mass of the building. In this way, the building mass will read as smaller building components from the street view.

4.1.4 Public realm. The project should enhance the quality of the public realm. Enhancement may be determined based upon the provision of open space, public amenities, landscaping or a building design with features which contribute to the viability and attractiveness of the public realm. The public realm space should be integrated with the building site plan in a way that not only fully incorporates surrounding pedestrian circulation at the ground level, but also allows visual interaction with the floors above the ground level.

The Proposed Development is designed to be integrated with and enhance the public realm. The Proposed development provides for a pedestrian-oriented development that improves walkability within the district, provides a critical mass of housing within walking

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distance of the commercial core, and provides convenient access to transit routes and facilities.

The Proposed Development will utilize the existing driveways on the Property. Limiting the number of driveways enhances the pedestrian experience on the perimeter sidewalks by limiting potential conflicts between pedestrians and vehicles.

The AOD encourages the use of on-street parking on all streets except Atlantic Boulevard and Federal Highway. Although it is not required, the proposed site plan provides for on-street parking on both NE 20th Avenue and NE 4th Street. The provision of on-street parking provides public parking that will be available for existing and future commercial developments in the area and visitors of the Proposed Development. The on-street parking creates a pedestrian-friendly streetscape by providing a buffer between pedestrians and moving vehicles to improve the pedestrian experience.

The Proposed Development provides for direct access from residential units and commercial spaces to the adjacent sidewalks. Stoops are provided along the street façade and will be accessible from the adjacent sidewalk via a clear, direct path. The stoop platforms are partially covered overhead at the entrance door. Balconies are provided above the ground floor. Those units with direct access to the street or balconies provide for a street-facing building facade and natural surveillance of the public realm to ensure safety and activity along public streets and create the sense of a vibrant and active urban center.

**PLANNING AND ZONING BOARD/ LOCAL PLANNING AGENCY
MEMORANDUM #15-051**

DATE: August 6, 2015
TO: City Commission
FROM: Planning and Zoning Board/ Local Planning Agency
SUBJECT: FLEX UNIT REQUEST
225 N FEDERAL HY
P & Z #15-05000004 225 N FEDERAL HY LLC / Atlantic Tower

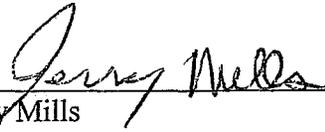
At the meeting of the Planning and Zoning Board/ Local Planning Agency held on July 22, 2015, the Board considered the request by **225 N Federal HY LLC** requesting 145 FLEX UNITS on the above referenced property that has a Commercial Land Use.

As it is consistent with Section 154.61(D)(3) of the Code and the goals, objectives, and policies of the Comprehensive Plan stated in Administrative Report 15-389, the Board recommends the approval of the flex allocation subject to the following ten (10) conditions of staff:

1. Prior to placement on the City Commission Agenda, the applicant will provide a letter stating that the applicant will be supportive of any future Land Use Plan Amendment that the City may initiate for a Local Activity Center
2. Prior to placement on the City Commission Agenda, the applicant will revise the conceptual plan to reflect the 2000 sq. ft. of retail in the residential building along NE 4th St.
3. A future site plan must substantially conform to the conceptual site plan that is included as Attachment I
4. Applicant must obtain a principle building permit within 24 months of the Resolution approval
5. Prior to Commission review, the applicant must submit a revised site plan identifies pedestrian-oriented features to activate the space including, but not limited to:
 - a. The future site plan must include two pavilion features on the east side of the Property that frame the existing parking area with a trellis connecting the two pavilions;
 - b. The future site plan must create a pedestrian path between the parking structure and the proposed residential building that connects to Federal Highway;
6. Prior to Commission review, the applicant will provide for qualitative principles to include, but not limited to a conceptual rendering and incorporate on-street policy

7. Applicant must include in building plans approximately 2,000 sq. ft. of retail space in the residential building along NE 4th St.
8. Applicant must include in building plans street entrances to some of the units that front NE 20th substantially conforming to the conceptual plan
9. At such time that Everest College vacates the first floor space in the existing office building, applicant must submit construction plans for renovation and reconfiguration of the first floor of the existing office building to incorporate retail space and an office lobby
10. Applicant must provide an executed and recorded unity of title document prior to commencement of construction on the residential building

The vote was six (6) to one (1), with Dwight Evans casting the dissenting vote.



Jerry Mills
Vice Chairman
Planning and Zoning Board/ Local Planning Agency



September 8, 2015

Maggie Barszewski
Development Services Dept.
City of Pompano Beach
100 West Atlantic Boulevard
Pompano Beach, FL 33060

RE: Atlantic Tower – Proposed Local Activity Center Land Use Plan Amendment

Dear Maggie,

During the review of the Atlantic Tower project, it has come to my attention that the City is considering a land use plan amendment that would change lands in and around the City's eastern CRA to Local Activity Center. I believe that this proposed land use plan amendment would benefit the City and I am in support of your efforts.

A handwritten signature in black ink, appearing to read "S Brenner", is written over a light blue horizontal line.

Scott Brenner, Esq., CCIM, SIOR, RPA, CAM
President/CEO
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MEMORANDUM

Development Services

MEMORANDUM NO. 15-628

DATE: December 2, 2015

TO: Dennis W. Beach, City Manager

VIA: Robin M. Bird, Development Services Director *RB*

FROM: Karen Friedman, AICP, Principal Planner *KBF*

SUBJECT: Flex Unit Allocation Request / 225 N. Federal Highway Standards for Review

The proposed Resolution seeking an allocation of a maximum of 145 flex units is subject to the current review standards recently reiterated in Ord. 2016-12. They are as follows:

§ 154.61 RESERVE AND FLEXIBILITY UNITS.

(D) Application Review Standards. An application shall only be approved on a finding that there is competent substantial evidence in the record that all of the following standards are met:

- (1) Consistency with applicable goals, objectives and policies of the City's Comprehensive Plan and this chapter.
- (2) The use of the reserve and flexibility units will produce a reasonable development pattern. The criteria for reasonableness shall include compatibility of adjacent land uses and suitability of the parcel for various development patterns.

A copy of applicable goals, objectives and policies are shown on the following page.

Per direction from the City Commission at the November 12, 2015 workshop, Staff is preparing revisions to the Application Review Standards and will present them to the City Commission in February 2016. Applications for allocation of Flex Units received after that time will be reviewed under the revised standards.

Should you have any questions or comments, please contact me at extension 7792.

The following goals, objectives and policies of the City's Comprehensive Plan have been identified as pertinent to this flex application:

Goal

01.00.00 The attainment of a living environment which provides the maximum physical, economic and social well-being for the City and its residents through the thoughtful and planned use and control of the natural and man-made environments that discourages urban sprawl, is energy efficient and reduces greenhouse gas emissions.

Policies

- 01.04.01 The Planning Department shall support and promote the intermix of residential and commercial uses along major traffic corridors, where mass transit is available, through the allocation of flex and reserve units and approval of land use plan map amendments allowing for residential developments.
- 01.07.00 Encourage the adoption of innovative land development regulations. Adopt new land use designations for Residential, Mixed Use, Transportation Oriented Districts, Transportation Oriented Corridors and amend the land development regulations, including the creation of new zoning districts for these land use designations.
- 01.07.11 Through ongoing updates to the land development regulations develop new zoning districts that encourage redevelopment, including mixed uses along major highway corridors.

Objective Urban Infill Criteria

- 01.12.00 Establish criteria which encourage development of urban infill and community redevelopment areas to promote economic development, increase housing opportunities and maximize the use of existing public facilities and services.

Policies

- 01.12.02 Continue to support the allowance of mixed use land at strategic locations within Urban Infill, Urban Redevelopment and Downtown Revitalization Areas.
- 01.12.03 Utilize the existing flexibility provisions to facilitate proposed mixed use developments in urban infill areas provided that the proposed developments are compatible with the community character.
- 01.16.02 The City will encourage and implement the use of compact building design principles which preserve more open space, contain mixed use, support multi-modal transportation options, make public transportation viable, reduce infrastructure costs and take advantage of recycled building materials.

PLANNING AND ZONING BOARD/ LOCAL PLANNING AGENCY
MEMORANDUM #15-051

DATE: August 6, 2015
TO: City Commission
FROM: Planning and Zoning Board/ Local Planning Agency
SUBJECT: FLEX UNIT REQUEST
225 N FEDERAL HY
P & Z #15-05000004 225 N FEDERAL HY LLC / Atlantic Tower

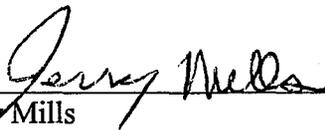
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As it is consistent with Section 154.61(D)(3) of the Code and the goals, objectives, and policies of the Comprehensive Plan stated in Administrative Report 15-389, the Board recommends the approval of the flex allocation subject to the following ten (10) conditions of staff:

1. Prior to placement on the City Commission Agenda, the applicant will provide a letter stating that the applicant will be supportive of any future Land Use Plan Amendment that the City may initiate for a Local Activity Center
2. Prior to placement on the City Commission Agenda, the applicant will revise the conceptual plan to reflect the 2000 sq. ft. of retail in the residential building along NE 4th St.
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The vote was six (6) to one (1), with Dwight Evans casting the dissenting vote.



Jerry Mills
Vice Chairman
Planning and Zoning Board/ Local Planning Agency

MEMORANDUM

Development Services

ADMINISTRATIVE MEMORANDUM NO. 15-389

DATE: July 17, 2015

TO: Planning and Zoning Board

VIA: Robin M. Bird, Development Services Director *RB*

FROM: Maggie Barszewski, AICP, Planner *MB*

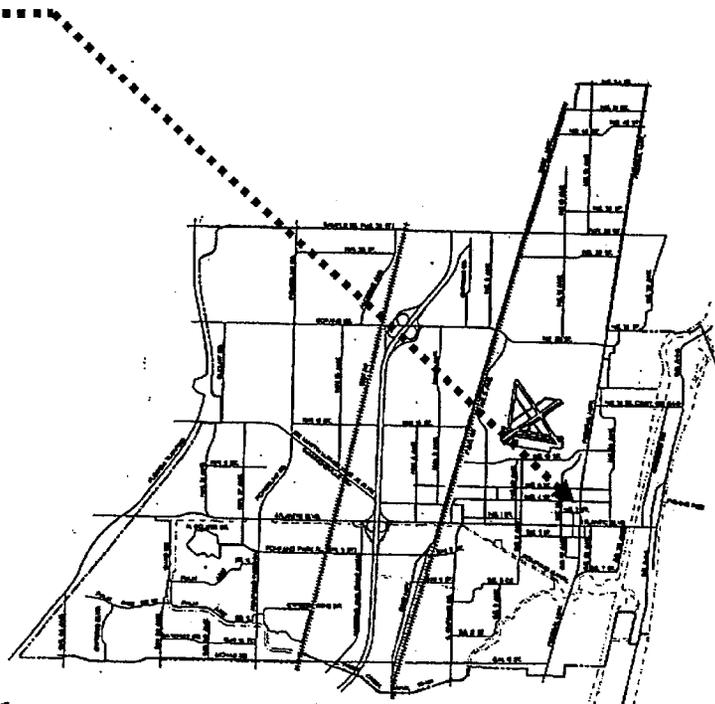
RE: Atlantic Tower Flex Allocation Request
July 22, 2015 meeting

P&Z # 15-0500004

Request

This Flex Allocation request is for a 3.2 acre subject property located on the northwest corner of N Federal Highway and NE 2nd street, including 225 N. Federal Hwy. The request is for 145 Flex units to be located on property that has a Commercial (C) Land Use and is zoned General Business/Atlantic Overlay District (B-3/AOD). The site is owned by 225 North Federal Highway, LLC. The purpose for the flex unit allocation request is to allow for a mixed-use project encompassing most of the block which includes 225 N. Federal Hwy. The developer wants to construct an eight-story residential building where a surface parking lot currently exists and provide pedestrian connectivity with an existing eight-story office building, parking garage and one-story bank building on the site. The project will include: approximately 2,000 square feet of commercial which may include restaurants and retail; approximately 51,000 of office (existing); 145 units of multifamily residential; and approximately 139,000 square feet existing parking garage and additional surface parking. The height of the proposed new residential building is 78 feet 2 inches. The applicant has submitted a conceptual site plan (see Attachment I) showing the layout of the units on the subject property. The subject property is located in an area that was included in the 2013 Federal Highway Corridor Study. The objective of that study is to elevate the visibility of the three major corridors in the City by providing strategies to ensure the corridors remain economically viable into the future and help them achieve full potential. The subject property is included in what is referred to as a "key activity site" where mixed-use redevelopment is recommended. The subject property includes an office building that is the current site of Everest University (as a tenant).

225 N. Federal Hwy.

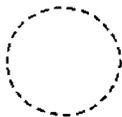


LEGEND

FOR LAND USE PLAN

<u>Symbol</u>	<u>Classification</u>	<u>Units/ Acre</u>
	Gross Residential Density	
	Residential	
E	Estate	
L	Low	
>*	LM	Low- Medium
M	Medium	
MH	Medium-High	
H	High	
* C	Commercial	
CR	Commercial Recreation	
I	Industrial	
T	Transportation	
U	Utilities	
CF	Community Facilities	
OR	Recreation & Open Space	
W	Water	
RAC	Regional Activity Center	
	Boundaries	
	City of Pompano Beach	

13 Number



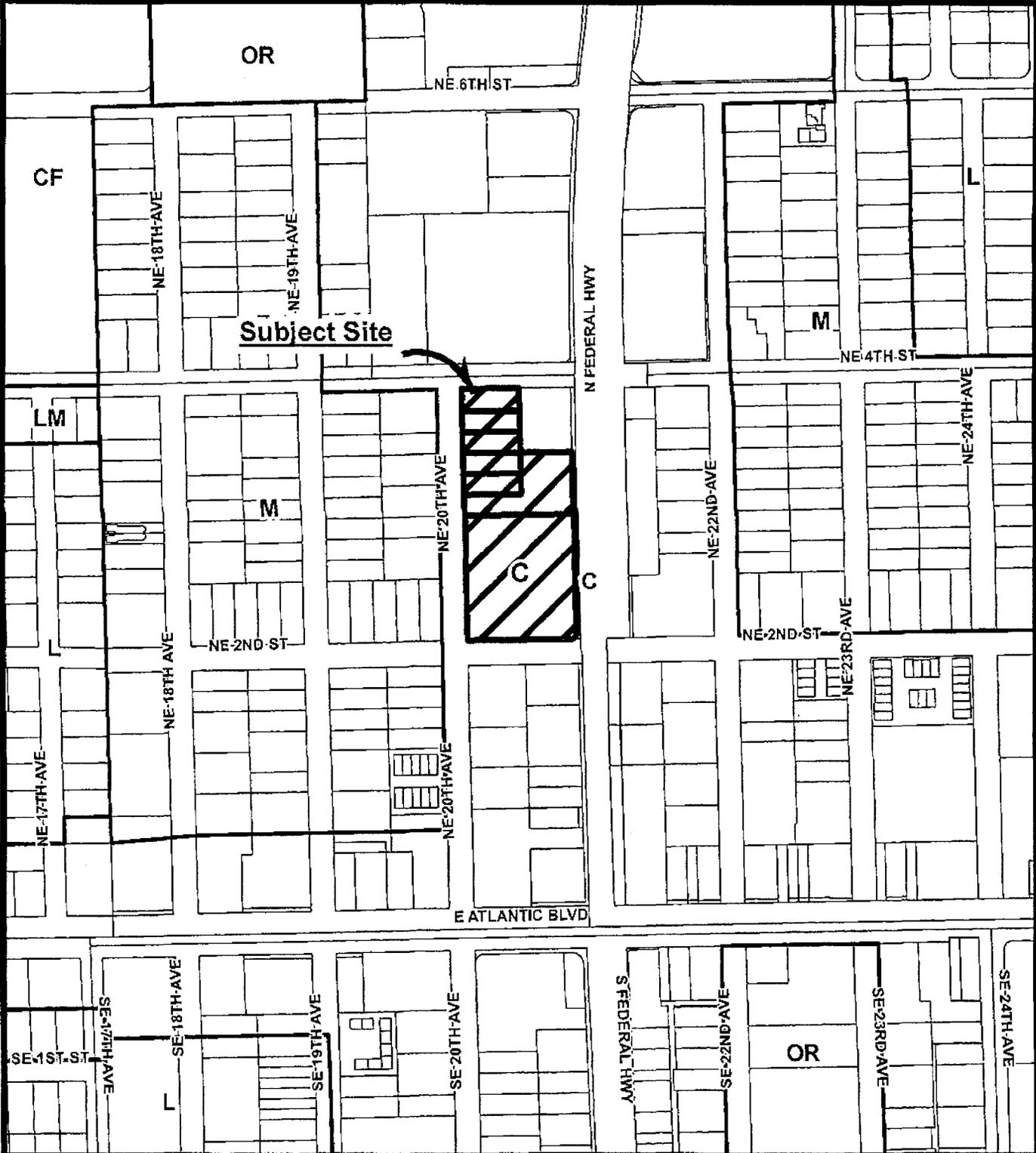
Reflects the maximum total number of units permitted within the dashed line of Palm Aire & Cypress Bend being 9,724 and 1,998

*	Existing
>	Proposed

FOR ZONING MAP

<u>Symbol</u>	<u>District</u>
RS-1	One-Family Residence
RS-2	One-Family Residence
RS-3	One-Family Residence
RS-4	One-Family Residence
RD-1	Two- Family Residence
RM-12	Multi-Family Residence
RM-20	Multi-Family Residence
RM-30	Multi-Family Residence
RM-45	Multi-Family Residence
RM-45/HR	Overlay
* RPUD	Residential Planned Unit Dev.
AOD	Atlantic Boulevard Overlay District
MH-12	Mobile Home Park
B-1	Limited Business
B-2	Neighborhood Business
* B-3	General Business
B-4	Heavy Business
RO	Residence Office
M-1	Marina Business
M-2	Marina Industrial
I-1	General Industrial
I-1X	Special Industrial
O-IP	Office Industrial Park
BP	Business Parking
BSC	Planned Shopping Center
PCI	Planned Commercial / Industrial Overlay
PR	Parks & Recreation
CR	Commerical Recreation
CF	Community Facilities
T	Transportation
PU	Public Utility

CITY OF POMPANO BEACH OFFICIAL LAND USE MAP

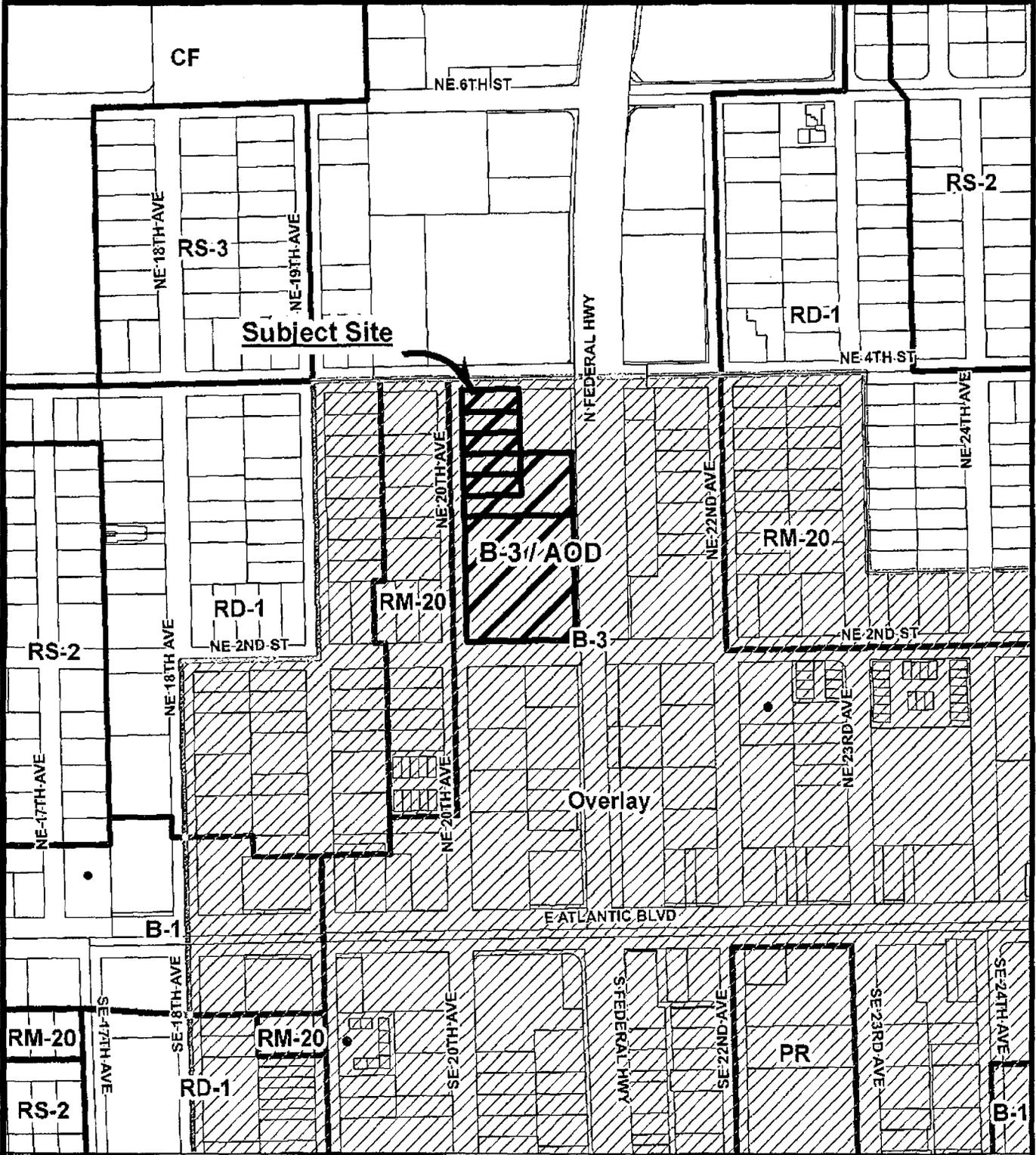


1 in = 333 ft

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PREPARED BY:
DEPARTMENT OF
DEVELOPMENT SERVICES

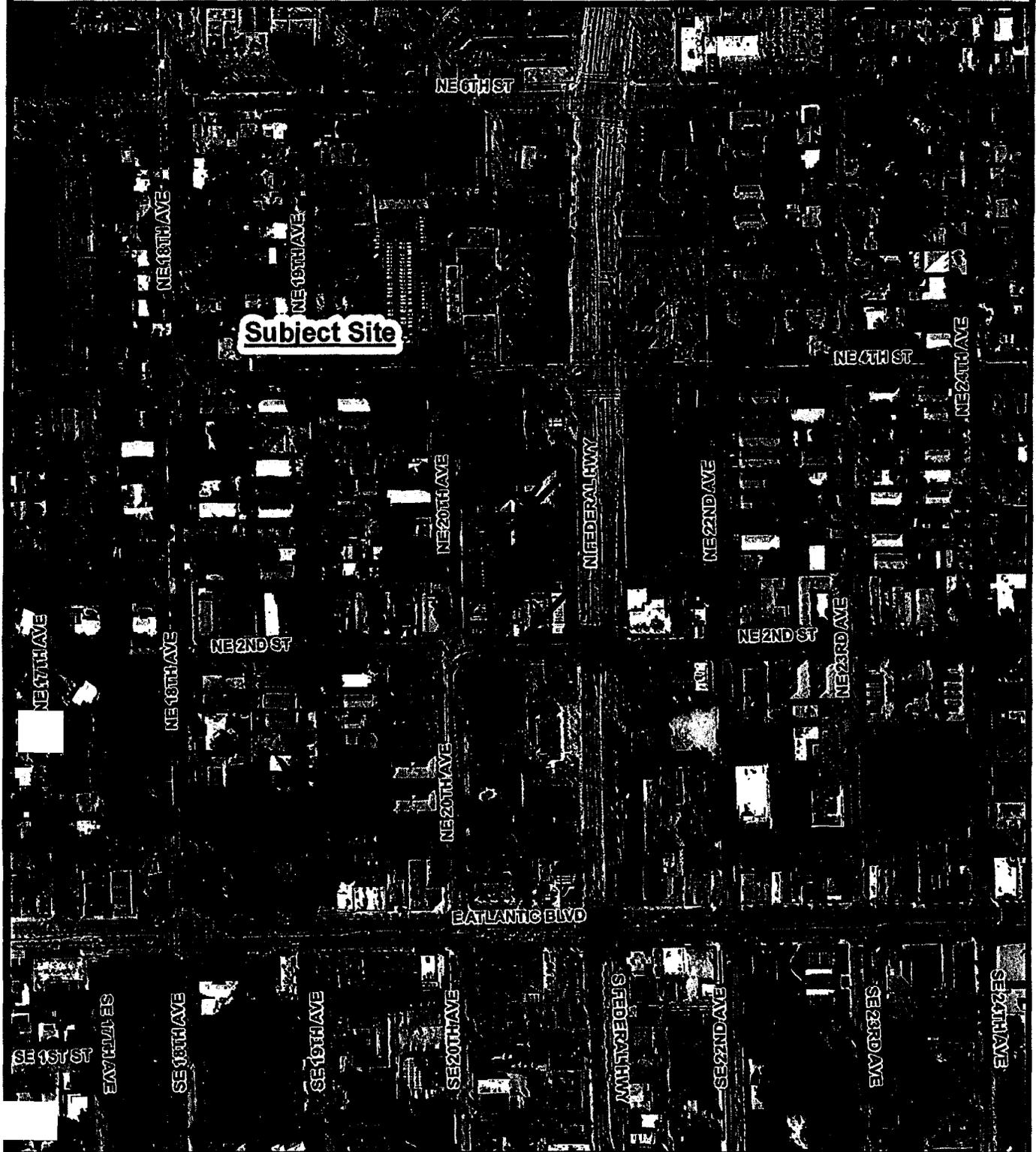
CITY OF POMPANO BEACH OFFICIAL ZONING MAP



1 in = 333 ft

PREPARED BY:
DEPARTMENT OF
DEVELOPMENT SERVICES

CITY OF POMPANO BEACH AERIAL MAP



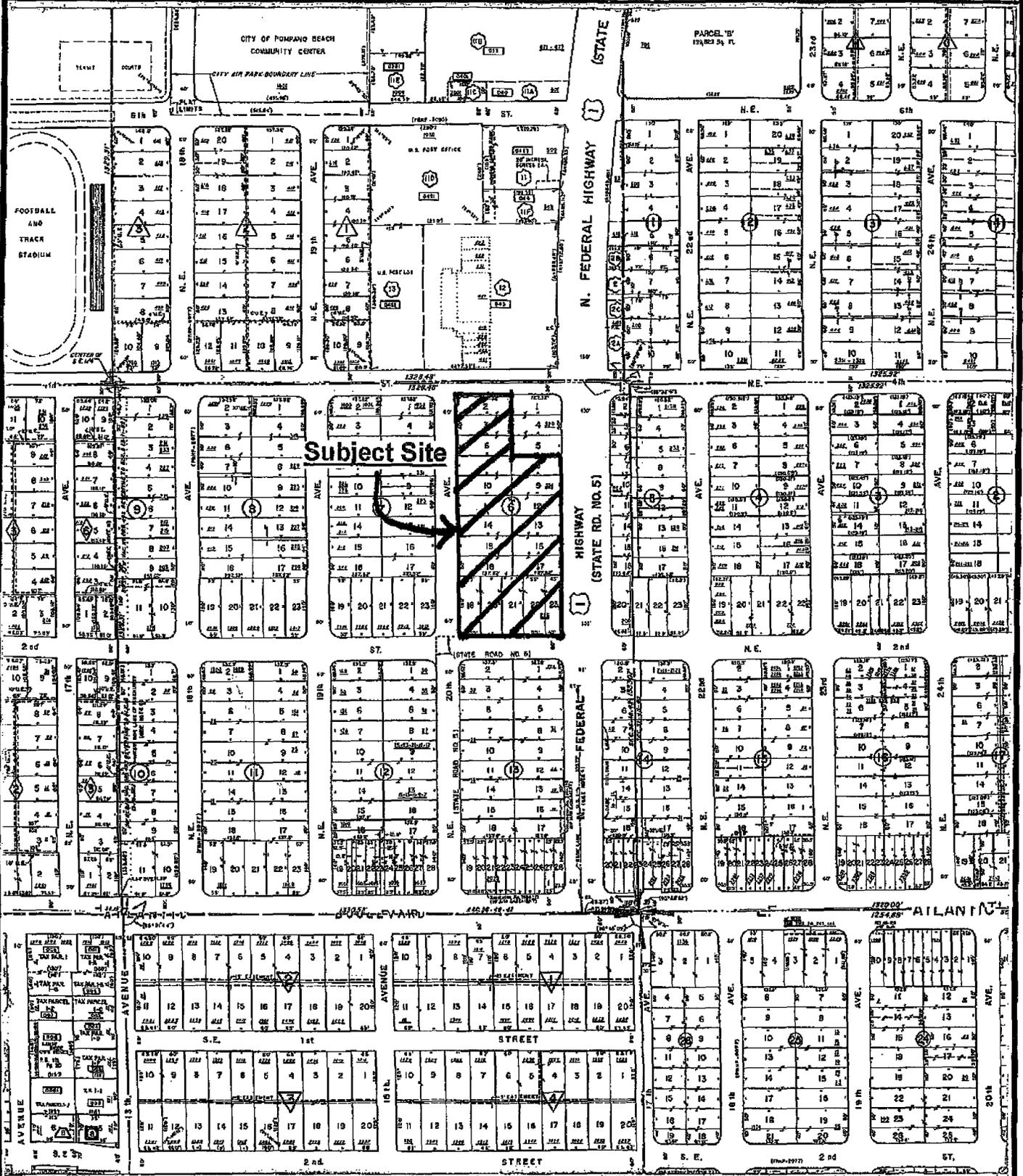
Subject Site

1 in = 333 ft

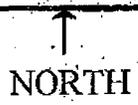
5

PREPARED BY:
DEPARTMENT OF
DEVELOPMENT SERVICES

EXCERPT FROM THE CITY OF POMPANO BEACH PLAT MAP



SCALE: **NTS**



REVIEW & SUMMARY

- A. Development Services Department staff submits the following factual information which is relevant to this rezoning request:**
1. The property is located on the N. Federal Highway and NE 2nd Street.
 2. The area included in this flex application is 3.2 acres (approximately 139,392 square feet).
 3. The Zoning and uses of adjacent properties are:
North – B-3 (General Business) – retail buildings
South – B-3/AOD (General Business/Atlantic Overlay District) – surface parking lot and commercial buildings
East – B-3/AOD (General Business/Atlantic Overlay District) – vacant lot and commercial buildings
West – RM-20 (Multifamily Residential) – Residential Units (mix of single family & duplex), plus surface parking
 4. The site will be accessed from N. Federal Hwy. and NE 20th Ave.
 5. The Land Use Designation is Commercial and the zoning would remain General Business/Atlantic Overlay District (B-3/AOD).
 6. The subject property is included in the Flex Receiving Area.
 7. The B-3 zoning allows 46 units per acre. The maximum density on this lot is 147 units, however the applicant is proposing 145 units.
 8. The review criteria is Section 154.61(c)(2) and states the following:
Approval by the City Commission for the requested number of reserve and flexibility units, or such lesser number, upon applicant establishing by competent and substantial evidence, the following:
(a) Consistency with applicable goals, objectives and policies of the City's Comprehensive Plan and this chapter.
(b) The use of the reserve and flexibility units will produce a reasonable development pattern. The criteria for reasonableness shall include compatibility of adjacent land uses and suitability of the parcel for various development patterns.
 9. Section 155.3703C.3.a.iv – Zoning Code section exempts properties in AOD from the affordable housing requirement in 154.61(D)(3).

B. The following goals, objectives and policies of the City's Comprehensive Plan have been identified as pertinent to this flex application:

Goal

01.00.00 The attainment of a living environment which provides the maximum physical, economic and social well-being for the City and its residents through the thoughtful and planned use and control of the natural and man-made environments that discourages urban sprawl, is energy efficient and reduces greenhouse gas emissions.

Policies

01.04.01 The Planning Department shall support and promote the internix of residential and commercial uses along major traffic corridors, where mass transit is available, through the allocation of flex and reserve units and approval of land use plan map amendments allowing for residential developments.

01.07.00 Encourage the adoption of innovative land development regulations. Adopt new land use designations for Residential, Mixed Use, Transportation Oriented Districts, Transportation Oriented Corridors and amend the land development regulations, including the creation of new zoning districts for these land use designations.

01.07.11 Through ongoing updates to the land development regulations develop new zoning districts that encourage redevelopment, including mixed uses along major highway corridors.

Objective Urban Infill Criteria

01.12.00 Establish criteria which encourage development of urban infill and community redevelopment areas to promote economic development, increase housing opportunities and maximize the use of existing public facilities and services.

Policies

01.12.02 Continue to support the allowance of mixed use land at strategic locations within Urban Infill, Urban Redevelopment and Downtown Revitalization Areas.

01.12.03 Utilize the existing flexibility provisions to facilitate proposed mixed use developments in urban infill areas provided that the proposed developments are compatible with the community character.

01.16.02 The City will encourage and implement the use of compact building design principles which preserve more open space, contain mixed use, support multi-modal transportation options, make public transportation viable, reduce infrastructure costs and take advantage of recycled building materials.

C. Recommendation:

Given the information provided to the Board, as the findings of fact, staff provides the following recommendation and alternative motions, which may be revised or modified at the Board's discretion.

Alternative Motion I

Recommend approval of the Flex allocation with the following conditions:

- 1) Prior to placement on the City Commission Agenda, the applicant will provide a letter stating that the applicant will be supportive of any future Land Use Plan Amendment that the City may initiate for a Local Activity Center;
- 2) Prior to placement on the City Commission Agenda, the applicant will revise the conceptual plan to reflect the 2000 sq. ft. of retail in the residential building along NE 4th St.;
- 3) A future site plan must substantially conform to the conceptual site plan that is included as Attachment I;
- 4) Applicant must obtain a principle building permit within 24 months of the Resolution approval;
- 5) Prior to Commission review, the applicant must submit a revised site plan identifies pedestrian-oriented features to activate the space including, but not limited to:
 - a) The future site plan must include two pavilion features on the east side of the Property that frame the existing parking area with a trellis connecting the two pavilions;
 - b) The future site plan must create a pedestrian path between the parking structure and the proposed residential building that connects to Federal Highway;
- 6) Prior to Commission review, the applicant will provide for qualitative principles to include, but not limited to a conceptual rendering and incorporate on-street policy;
- 7) Applicant must include in building plans approximately 2,000 sq. ft. of retail space in the residential building along NE 4th St.;
- 8) Applicant must include in building plans street entrances to some of the units that front NE 20th substantially conforming to the conceptual plan;
- 9) At such time that Everest College vacates the first floor space in the existing office building, applicant must submit construction plans for renovation and reconfiguration of the first floor of the existing office building to incorporate retail space and an office lobby;
- 10) Applicant must provide an executed and recorded unity of title document prior to commencement of construction on the residential building; and

This approval is recommended since the request is consistent with the following goals, objectives and policies of the Comprehensive Plan and with Section 154.61(D)(3) of the Code, specifically:

Goal

01.00.00 The attainment of a living environment which provides the maximum physical, economic and social well-being for the City and its residents through the thoughtful and planned use and control of the natural and man-made environments that discourages urban sprawl, is energy efficient and reduces greenhouse gas emissions.

Policies

01.04.01 The Planning Department shall support and promote the intermix of residential and commercial uses along major traffic corridors, where mass transit is available, through the allocation of flex and reserve units and approval of land use plan map amendments allowing for residential developments.

01.07.00 Encourage the adoption of innovative land development regulations. Adopt new land use designations for Residential, Mixed Use, Transportation Oriented Districts, Transportation Oriented Corridors and amend the land development regulations, including the creation of new zoning districts for these land use designations.

01.07.11 Through ongoing updates to the land development regulations develop new zoning districts that encourage redevelopment, including mixed uses along major highway corridors.

Objective Urban Infill Criteria

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Policies

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01.12.03 Utilize the existing flexibility provisions to facilitate proposed mixed use developments in urban infill areas provided that the proposed developments are compatible with the community character.

01.16.02 The City will encourage and implement the use of compact building design principles which preserve more open space, contain mixed use, support multi-modal transportation options, make public transportation viable, reduce infrastructure costs and take advantage of recycled building materials.

Alternative Motion II

Table this application for additional information as requested by the Board.

Alternative Motion III

Recommend denial as the Board finds that the use of the reserve and flexibility units will not produce a reasonable development pattern, including failure to demonstrate compatibility of adjacent land uses and suitability of the parcel for various development patterns.

Further, the Flex request is not consistent with the goals, objectives and policies of the Comprehensive Plan, specifically:

Goal

01.00.00 The attainment of a living environment which provides the maximum physical, economic and social well-being for the City and its residents through the thoughtful and planned use and control of the natural and man-made environments that discourages urban sprawl, is energy efficient and reduces greenhouse gas emissions.

Policies

01.04.01 The Planning Department shall support and promote the intermix of residential and commercial uses along major traffic corridors, where mass transit is available, through the allocation of flex and reserve units and approval of land use plan map amendments allowing for residential developments.

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Objective Urban Infill Criteria

01.12.00 Establish criteria which encourage development of urban infill and community redevelopment areas to promote economic development, increase housing opportunities and maximize the use of existing public facilities and services.

Policies

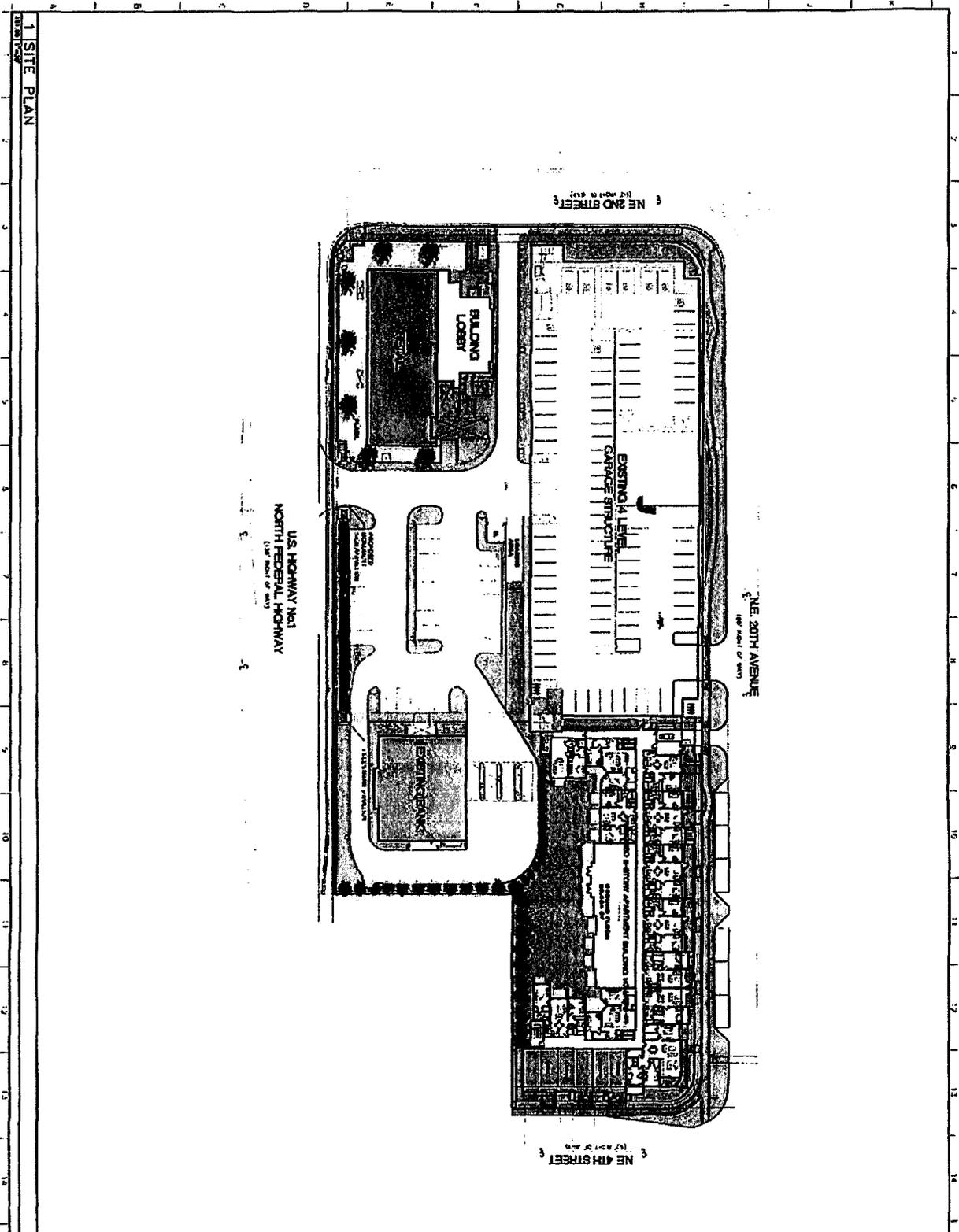
01.12.02 Continue to support the allowance of mixed use land at strategic locations within Urban Infill, Urban Redevelopment and Downtown Revitalization Areas.

01.12.03 Utilize the existing flexibility provisions to facilitate proposed mixed use developments in urban infill areas provided that the proposed developments are compatible with the community character.

01.16.02 The City will encourage and implement the use of compact building design principles which preserve more open space, contain mixed use, support multi-modal transportation options, make public transportation viable, reduce infrastructure costs and take advantage of recycled building materials.

STAFF RECOMMENDS ALTERNATIVE MOTION I

Attachment I
Conceptual Plan



1 SITE PLAN
DATE PLOTTED

DAC
RE-SUBMITTAL
 05/25/2005

PROJECT NAME
PROJECT NO.
DATE
SCALE
DESIGNED BY
CHECKED BY

ATLANTIC TOWER
POMPANO BEACH, FLORIDA

BRENNER REALTY

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