





**City Attorney's Communication #2016-694**

March 29, 2016

**TO:** Karen Friedman, AICP, Principal Planner

**FROM:** Mark E. Berman, City Attorney

**RE:** Resolution Amending Resolution No. 2016-72 – Flex Unit Allocation Request  
225 N. Federal Highway

As requested in your memorandum of March 24, 2016, Department of Development Services Memorandum #16-137, 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, AMENDING CITY RESOLUTION NO. 2016-72, WHICH ALLOCATED 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 2<sup>ND</sup> STREET; PROVIDING AN EFFECTIVE DATE.**

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

  
MARK E. BERMAN

/jrm  
l:cot/dev-srv/2016-694

Attachment

**CITY OF POMPANO BEACH**  
**Broward County, Florida**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, AMENDING CITY RESOLUTION NO. 2016-72, WHICH ALLOCATED 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 2<sup>ND</sup> STREET; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, 225 North Federal Highway, LLC (“Applicant”) requested an allocation of 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 2<sup>nd</sup> Street, legally described in Exhibit “A”; and

**WHEREAS**, the City of Pompano Beach has passed City Resolution No. 2016-72, which granted that application for the requested flex units with conditions; and

**WHEREAS**, the City desires to modify Section 8 of Resolution No. 2016-72 to delete the requirement for unity of title and require Applicant to provide a Declaration of Restrictive Covenants; now, therefore,

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

**SECTION 1.** That City Resolution No. 2016-72 is hereby amended as follows:

**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.~~ Failure

of the Applicant to execute and record the attached Declaration of Restrictive Covenants (Exhibit "D") prior to Building Permit approval, and failure to comply with any of the conditions contained therein at any time, shall render the allocation of the flex units null and void.

**SECTION 2.** This Resolution shall become effective upon passage.

**PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

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**LAMAR FISHER, MAYOR**

**ATTEST:**

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**ASCELETA HAMMOND, CITY CLERK**

/jrm  
4/13/16  
L:reso/2016-183

# Exhibit D

Return recorded copy to:  
Greenspoon Marder, PA  
200 E. Broward Blvd. Suite 1800  
Fort Lauderdale, Florida 33301

Document prepared by:  
Mark J. Lynn, Esq.  
Greenspoon Marder, PA  
200 E. Broward Blvd. Suite 1800  
Fort Lauderdale, Florida 33301

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**DECLARATION OF RESTRICTIVE COVENANTS**

THIS DECLARATION OF RESTRICTIVE COVENANTS ("Declaration") dated this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by **225 NORTH FEDERAL HIGHWAY LLC, a Delaware limited liability company** ("Owner").

**W I T N E S S E T H:**

WHEREAS, the Owner is the owner of certain property on the northwest corner of North Federal Highway and NE 2<sup>nd</sup> Street as more particularly described **Exhibit "A"** attached hereto and made a part hereof (the "Property");, which Property is located in the City of Pompano Beach ("City") in Broward County, Florida;

WHEREAS, the Property is currently designated Commercial on the City's Future Land Use Plan Map and is zoned B-3/AOD;

WHEREAS, the B-3/AOD zoning district allows residential units of up to 46 dwelling units per acre;

WHEREAS, for the purposes of calculating allowable density, Article 9, Part 4, Section 155.9401 A. of the City's Zoning Code (the "Code") requires that the lot area excludes all area

within existing or proposed public street right-of-way or private street easements which is commonly referred to as net acreage;

WHEREAS, the Property consists of 3.2 net acres and the maximum allowable density on the Property, based on the net acreage without an amendment to the City's Future Land Use Plan Map and the current zoning, is 147 dwelling units;

WHEREAS, Owner has submitted certain applications to the City for (i) a development permit for the allocation of 145 flex units in order to construct a mixed use redevelopment project known as 225 N. Federal Highway (the "Flex Approval") and (ii) site plan approval for the Property;

WHEREAS, the site plan attached to hereto as **Exhibit "B"** and made a part hereof (the "Site Plan"), has been approved by City pursuant to Development Order Planning and Zoning No. 15-12000014;

WHEREAS, in accordance with the City Commission's action in Resolution No. 2016-72, the Flex Approval limited the Property to 145 flex units, which flex units shall be constructed solely on that portion of the Property described in **Exhibit "C"** attached hereto and made a part hereof (the "Residential Parcel");

WHEREAS, no more than 145 dwelling units can be constructed on the Property without further action by the City Commission;

WHEREAS, Pursuant to Article 2, Part 4, Section 155.2401 C. of the Code, when City deems it necessary for compliance with standards in the Code, the owner of adjacent parcels can be required to execute and record a document whereby such parcels are considered an undivided parcel for zoning purposes;

WHEREAS, City has requested that Owner submit this Declaration for the purpose of acknowledgment by Owner, for itself and its successors and assigns, that it is required to abide by all applicable Code provisions with respect to the development of the Property in conformance with both the Flex Approval and Site Plan; and

WHEREAS, Owner, its successor and assigns, intent to accede to the City's request.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

1. The foregoing recitations are true and correct and are incorporated herein by this reference.

2. Owner hereby acknowledges, agrees and covenants as follows:

(i) Owner, its successor and assigns, shall abide by all applicable provisions of the Site Plan approved by the City and Flex Approval in connection with the development of the Property;

(ii) the Property shall not be developed in any other way except in substantial accord with the Site Plan and the Flex Approval;

(iii) Owner, its designees, successors and assigns shall (a) maintain all common Site Plan elements as depicted on the approved Site Plan, such as access drives, cross access easements, parking, landscaping, irrigation, lighting, shared drainage facilities, utilities, and any other elements deemed reasonably necessary by the City to be so maintained in (collectively, the "Elements"), and (b) provide sufficient access to the Elements, such maintenance and access to be sufficient for the Elements to be reasonably available for all uses developed on the Property;

(iv) all future owners of the Property, their successor and assigns, shall be required to sign any applications submitted to the City for amendment to the approved Site Plan and any development approvals or demolition permits that would modify or change the Elements in the approved Site Plan, as defined herein, regardless of whether such approvals trigger a formal amendment to the Site Plan; and

(v) no more than 145 dwelling units shall be constructed on the Property and such dwelling units shall be constructed only within the Residential Parcel.

3. This Declaration is created for the sole purpose of confirming that the Property shall be developed in conformance with the restrictions set forth in Section 2 above. Nothing herein shall restrict, prohibit or limit the right of Owner, its successors and/or assigns to sell and/or convey all or any portion of the Property to third party grantees in any manner and under terms and conditions that are acceptable to Owner, its successors and/or assigns, in their sole discretion, provided that such grantees and their successors and assigns shall be bound by the provisions of this Declaration.

4. This Declaration shall not be modified, amended, or released as to any portion of the Property except by written instrument, executed by the Owner or the then owner(s) of the portion of the Property affected by such modification, amendment, or release and approved in writing by the City. The City shall execute a written instrument effectuating and acknowledging such modification, amendment or release. Any amendment, modification or release of this Declaration shall be recorded in the Public Records of Broward County, Florida.

5. If any court of competent jurisdiction shall declare any section, paragraph or part of this Declaration invalid or unenforceable, then such judgment or decree shall have no effect on the

enforcement or validity of any other section, paragraph or part hereof, and the same shall remain in full force and effect.

6. This Declaration shall be governed by and construed in accordance with the laws of the State of Florida and venue for any litigation arising hereunder shall be Broward County, Florida.

7. This Declaration shall be a restriction which runs with the land and shall bind the Owner, its heirs, successors and assigns.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Acknowledgment as of the day and year set forth below their respective signatures.

Signed, sealed and delivered

**225 NORTH FEDERAL HIGHWAY LLC, a Delaware limited liability company**

**By: ATLANTIC TOWER REALTY HOLDINGS, LLC, a Delaware limited liability company, its Manager**

Printed Name: \_\_\_\_\_

By: \_\_\_\_\_  
Scott F. Brenner, Manager

Print Name: \_\_\_\_\_

Dated: \_\_\_\_\_

STATE OF FLORIDA            )  
                                          ) SS:  
COUNTY OF BROWARD        )

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by Scott F. Brenner, as Manager of **ATLANTIC TOWER REALTY HOLDINGS, LLC, a Delaware limited liability company**, as Manager of **225 NORTH FEDERAL HIGHWAY LLC, a Florida limited liability company, on behalf of such companies**. He is personally known to me or has produced \_\_\_\_\_ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Typed, printed or stamped name of Notary Public

My Commission Expires:

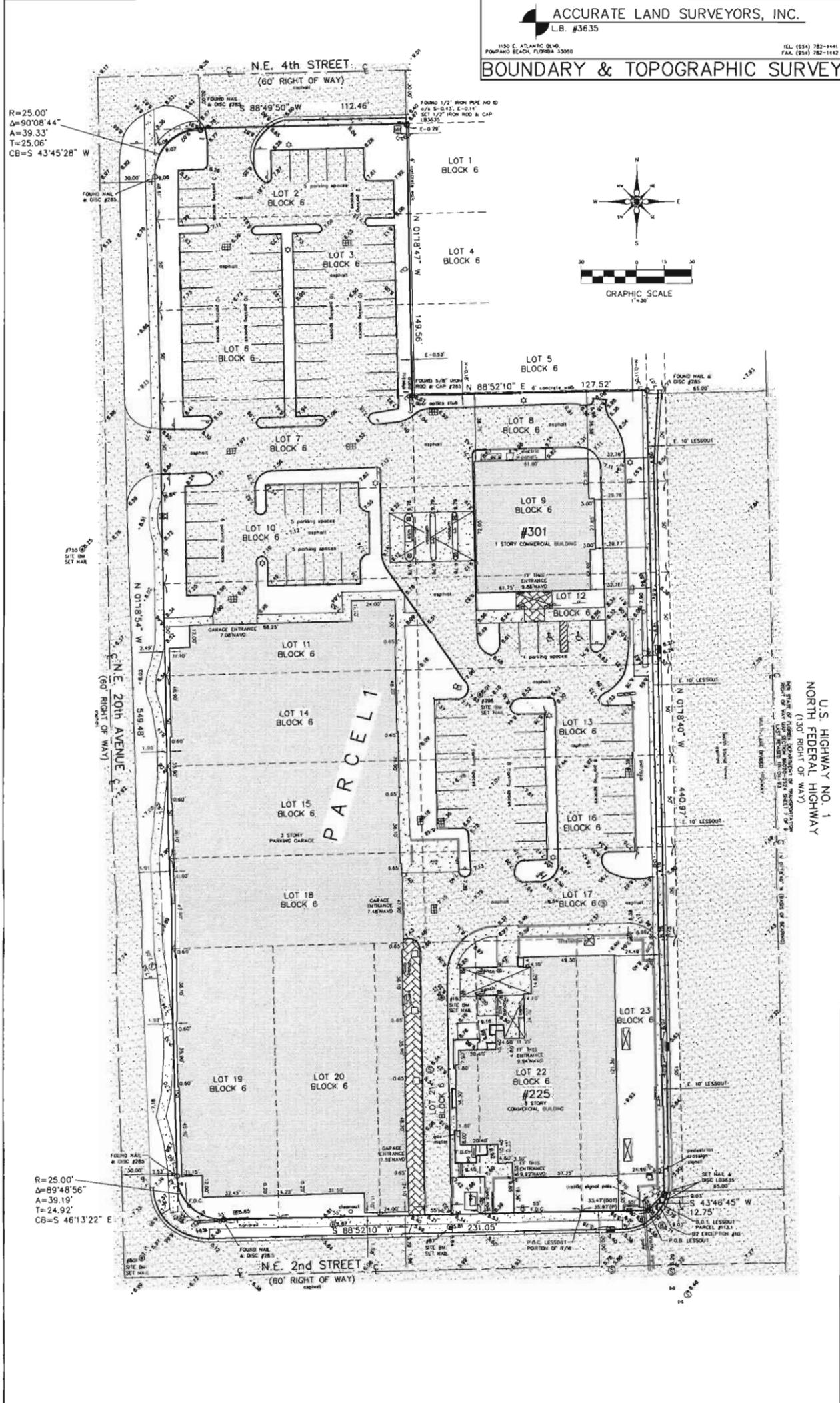
**ACCURATE LAND SURVEYORS, INC.**  
 L.B. #3635  
 1150 E. ATLANTIC BLVD.  
 POMPANO BEACH, FLORIDA 33069  
 TEL. (954) 782-1441  
 FAX. (954) 782-1442

**BOUNDARY & TOPOGRAPHIC SURVEY**

LEGEND OF ABBREVIATIONS:	
A	= CENTRAL ANGLE
AL	= ARC LENGTH
CB	= CHORD BEARING
R	= RADIUS
RAW	= RIGHT OF WAY
P.C.	= POINT OF CURVATURE
P.T.	= POINT OF TANGENCY
WM	= WATER METER
OH	= OVERHANG
N	= NORTH
S	= SOUTH
E	= EAST
W	= WEST
CONC.	= CONCRETE
D.B.	= DEED BOOK
CLF	= CHAIN LINK FENCE
BLVD	= BOULEVARD
ENCH.	= ENCH.
I.P.	= IRON PIPE
P.R.M.	= PERMANENT REFERENCE MONUMENT
N.A.V.D.	= NORTH AMERICAN VERTICAL DATUM
B.M.	= BENCHMARK
sq. ft.	= SQUARE FEET
P.C.P.	= PERMANENT CONTROL POINT
P.B.C.R.	= PALM BEACH COUNTY RECORDS
P	= PLAT
N&D	= NAIL & DISC
P.O.C.	= POINT OF COMMENCEMENT
P.O.B.	= POINT OF BEGINNING
AC	= AIR CONDITIONER
FND	= FOUND
CHATT	= CHATTahoochee
F.P.L.	= FLORIDA POWER & LIGHT
N.T.S.	= NOT TO SCALE
B.C.R.	= BROWARD COUNTY RECORDS
D.C.R.	= DADE COUNTY RECORDS
P.B.	= PLAT BOOK
O.F.B.	= OFFICIAL RECORDS BOOK
F.F.	= FINISHED FLOOR
GAR.	= GARAGE
CA	= CENTERLINE
MH	= MANHOLE
(M)	= MEASURED
LP	= LIGHT POLE

- SCHEDULE B2 EXCEPTIONS:**
1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date but prior to the date the proposed insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment. (This item is not a matter of survey)
  2. Any rights, interests, or claims of parties in possession of the land not shown by the public records. (This item is not certifiable.)
  3. Any encroachment, encumbrance, violation, variation or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the land. (After upon review of survey to be determined by title examiner.)
  4. Any lien, for services, labor, or materials in connection with improvements, repairs or renovations provided before, on, or after Date of Policy, not shown by the public records. (This item is not a matter of survey.)
  5. Any dispute as to the boundaries caused by a change in the location of any water body within or adjacent to the land prior to Date of Policy, and any adverse claim to all or part of the land that is, at Date of Policy, or was previously under water. (As of date of survey the subject property was not submerged.)
  6. Taxes or special assessments not shown as liens in the public records or in the records of the local tax collecting authority, at Date of Policy. (This item is not a matter of survey.)
  7. Any minerals or mineral rights leased, granted or retained by current or prior owners. (This item is not a matter of survey.)
  8. Taxes and assessments for the year 2015 and subsequent years, which are not yet due and payable. (This item is not a matter of survey.)
  9. Restrictions, dedications, conditions, reservations, easements and other matters shown on the plat of PINEHURST, as recorded in Plat Book 5, Page(s) 13, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c). (No platted easements.)
  10. Right-of-Way Easement granted to Southern Bell Telephone and Telegraph Company recorded in Book 10191, Page 149. (This item affects the subject property and is shown hereon.)
  11. Parking Easement granted to 225 North Federal Highway, LLC, a Delaware limited liability company recorded in Book 37071, Page 385. (Offsite parking easement is in benefit of the subject property.)
  12. Declaration of Easements, Covenants, and Restrictions for 225 North Federal Highway, recorded in Book 38018, Page 1307, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c). (Blanket easements affect the subject property but are not a plottable matter of survey.)
  13. Terms and provisions set forth and contained in that certain Lease between 225 North Federal Highway, LLC, Lessor, and SouthTrust Bank, Lessee, predecessor-in-interest to Wachovia Bank, N.A., a Memorandum of which is recorded in Book 37844, Page 1382; as modified by that certain Subordination, Non-Disturbance and Adornment Agreement recorded in Book 39002, Page 101. (This item is not a matter of survey.)
  14. Terms and provisions set forth and contained in that certain Lease between Home Savings of America, Lessor, and Sprint Spectrum, L.P., Lessee, a Memorandum of which is recorded in Book 25734, Page 569; as affected by that Memorandum of Second Amendment to PCS Site Agreement recorded in Book 44972, Page 418. (This item is not a matter of survey.)
  15. Terms and provisions set forth and contained in that certain Lease between SouthTrust Bank, N.A., Lessor, and AT&T Wireless Services of Florida, Inc., d/b/a AT&T Wireless Services, Lessee, a Memorandum of which is recorded in Book 32154, Page 1173. (This item is not a matter of survey.)
  16. Terms and provisions set forth and contained in that certain Lease between 225 North Federal Highway, LLC, Lessor, and MetroPCS California/Florida, Inc., Lessee, a Memorandum of which is recorded in Book 31876, Page 77, as modified by that certain Subordination, Non-Disturbance and Adornment Agreement recorded Book 39002, Page 110. (This item is not a matter of survey.)
  17. Terms and provisions set forth and contained in that certain Lease by and between 225 North Federal Highway, LLC, a Delaware limited liability company ("Owner"), and T-Mobile South, LLC, a Delaware limited liability company, as successor in interest to Omnipoint Holdings, Inc. ("Tenant") recorded in Book 47299, Page 116; as affected by the Lease Assignment Agreement recorded in Book 47299, Page 120; as further affected by that certain Site Lease Amendment recorded in Book 47299, Page 126. (This item is not a matter of survey.)
  18. Terms and conditions of that certain Occupancy Agreement (Record Copy) recorded in Book 48191, Page 177. (This item is not a matter of survey.)
  19. Terms and conditions of any existing unrecorded lease(s), and all rights of lessee(s) and any parties claiming through the lessee(s) under the lease(s). (This item is not a matter of survey.)
  20. Matters as shown on that certain survey prepared by McLaughlin Engineering Company dated January 4, 2005, as revised January 7, 2005, under Job Order No. T-0441, T-3056, T-3689, T-7468, T-8620, T-8579, U-300, which discloses, among other matters, the following: (This item was not furnished for review.)

DATE OF FIELD SURVEY: 02-10-15		DRAWN BY: MLW	
FIELD BOOK: ALS-SU-15-0254		CHECKED BY: MLW	
REVISIONS	DATE	BY	
<b>CERTIFICATION:</b>			
I, the undersigned, being a duly licensed and sworn Professional Surveyor in the State of Florida, do hereby certify that I have personally surveyed the property described in the foregoing plat and have set or found the corners, monuments, and boundaries thereon, and that the same are correctly shown on the foregoing plat, and that I have not been furnished with any false or incorrect information by any person in connection with this survey, and that I have not been furnished with any false or incorrect information by any person in connection with this survey, and that I have not been furnished with any false or incorrect information by any person in connection with this survey.			
ROBERT L. THOMPSON (PRESIDENT) PROFESSIONAL SURVEYOR LICENSE NUMBER 14388 - STATE OF FLORIDA			
SHEET 1 OF 1	SCALE 1"=30'	SKETCH NUMBER SU-15-0254	



**STREET ADDRESS:**  
 225 & 301 North Federal Highway Pompano Beach Florida 33062

**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.

Parcel 2:  
 This parcel was not included in this survey.

Parcel 3:  
 This parcel was not included in this survey.

Parcel 4:  
 Easement as created by "Declaration of Easements, Covenants and Restrictions" dated August 11, 2004 and recorded August 13, 2004 in Official Records Book 38018, Page 1307, of the Public Records of Broward County, Florida. (See Item No. 13 in Schedule B2 exceptions.)

**NOTES:**

1. Unless otherwise noted field measurements are in agreement with record measurements.
2. Bearings shown hereon are based on a bearing of North 01°18'40" West along the centerline of North Federal Highway per State of Florida Department of Transportation right of way map section 86020-2524 sheet 7 of 9, last revised 10-04-93.
3. The lands shown hereon were not abstracted for ownership, rights of way, easements, or other matters of records by Accurate Land Surveyors, Inc.
4. Ownership of fences and walls if any are not determined.
5. This survey is the property of Accurate Land Surveyors, Inc. and shall not be used or reproduced in whole or in part without written authorization.
6. This survey is made for the exclusive use of the certified hereon, to be valid one year from the date of survey as shown hereon.
7. This survey reflects all legible, obtainable, plottable, recorded matters of survey per Schedule B2 of First American Title Insurance Company Commitment Customer Reference Number: 05862.0015 First American File number: 1062-3259825, Effective Date: February 12, 2015 @ 8:00 A.M.

**FLOOD INFORMATION:**  
 Community name and number: Pompano Beach 120055  
 Map and panel number: 12011C0376H  
 Panel date: 08-18-14  
 Index date: 08-18-14  
 Flood zone: "AH"  
 Base flood elevation: 8'NAVD

**BENCHMARK INFORMATION:**  
 City of Pompano Beach Benchmark 0017/2011  
 Elevation = 6.621'NAVD1988

**CERTIFY TO:**  
 225 North Federal Highway LLC  
 Stearns Weaver Miller Weissler Alhadeff & Silterson, P.A.  
 First American Title Insurance Company  
 BankUnited, N.A., its successors and assigns.



# Exhibit "C"

ACCURATE LAND SURVEYORS, INC.  
L.B. #3635

1150 E. ATLANTIC BLVD.  
POMPAHO BEACH, FLORIDA 33060

TEL. (954) 782-1441  
FAX. (954) 782-1442

## BOUNDARY & TOPOGRAPHIC SURVEY

### LEGEND OF ABBREVIATIONS:

Δ	=	CENTRAL ANGLE	± 1.00'	=	ELEVATIONS BASED ON N.A.V.D.
A	=	ARC LENGTH	SQ. FT.	=	SQUARE FEET
CB	=	CHORD BEARING	P.C.P.	=	PERMANENT CONTROL POINT
R	=	RADIUS	P.B.C.R.	=	PALM BEACH COUNTY RECORDS
RAW	=	RIGHT OF WAY	P	=	PLAT
P.C.	=	POINT OF CURVATURE	N&D	=	NAIL & DISC
P.T.	=	POINT OF TANGENCY	P.O.C.	=	POINT OF COMMENCEMENT
WM	=	WATER METER	P.O.B.	=	POINT OF BEGINNING
OH	=	OVERHANG	A/C	=	AIR CONDITIONER
N	=	NORTH	FND	=	FOUND
S	=	SOUTH	CHATT.	=	CHATTAHOOCHEE
E	=	EAST	F.P.L.	=	FLORIDA POWER & LIGHT
W	=	WEST	N.T.S.	=	NOT TO SCALE
CONC.	=	CONCRETE	B.C.R.	=	BROWARD COUNTY RECORDS
D.B.	=	DEED BOOK	D.C.R.	=	DADE COUNTY RECORDS
CLF	=	CHAIN LINK FENCE	P.B.	=	PLAT BOOK
BLVD.	=	BOULEVARD	O.R.B.	=	OFFICIAL RECORDS BOOK
ENCH.	=	ENCH.	F.F.	=	FINISHED FLOOR
I.P.	=	IRON PIPE	GAR.	=	GARAGE
I.R.	=	IRON ROD	CL	=	CENTERLINE
P.R.M.	=	PERMANENT REFERENCE MONUMENT	MH	=	MANHOLE
N.A.V.D.	=	NORTH AMERICAN VERTICAL DATUM	MEAS.	=	MEASURED
U.E.	=	UTILITY EASEMENT	LP	=	LIGHT POLE
D.E.	=	DRAINAGE EASEMENT	— X — X — X —	=	CHAIN LINK FENCE
A.E.	=	ANCHOR EASEMENT	— / — / — / — / —	=	WOOD FENCE
MAINT.	=	MAINTENANCE	— — — — —	=	METAL FENCE
ESMT.	=	EASEMENT	— ○ — ○ —	=	PVC FENCE
ELEV.	=	ELEVATION	—    —    —    —	=	CONCRETE FENCE
B.M.	=	BENCHMARK	— — — — —	=	CONCRETE WALL
			— — — — —	=	WIRE FENCE

### LEGAL DESCRIPTION:

A portion of Lots 2, 3, 6, 7, 10 and 11, 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, being more particularly described as follows;

Beginning at the Northeast corner of the aforementioned Lot 2, thence South 88°49'50" West (basis of bearing) along the North line of the aforementioned Lot 2, a distance of 112.46 feet to the Point of Curvature of a 25.00 foot radius curve to the left concave Southeasterly, thence along the arc of said curve through a central angle of 90°08'44", for an arc distance of 39.33 feet to the Point of Tangency; thence South 01°18'54" East along the West line of the aforementioned Block 6, a distance of 247.56 feet; thence North 88°40'35" East, along the Westerly projection of and the North face of an existing building, a distance of 101.84 feet; thence North 01°19'25" West along the West face of building, a distance of 11.10 feet; thence North 88°40'35" East, along the North face on an existing building, a distance of 24.00 feet to the Northeast corner on the aforementioned building; thence North 01°18'47" West, a distance of 10.85 feet to a point on the face of an existing curb; thence North 34°43'11" West along the aforementioned face of curb, a distance of 8.24 feet to the Point of Curvature of a 12.00 foot radius curve to the right concave Northeasterly; thence along the arc of said curve through a central angle of 33°19'20", for an arc distance of 6.98 feet to the Point of Tangency; thence North 01°23'51" West, a distance of 71.91 feet to a point on the face of an existing curb; thence North 83°56'19" East along the face of the aforementioned curb, a distance of 10.60 feet to the Point of Curvature of a 16.00 foot radius curve to the left concave Northwesterly; thence along the arc of said curve through a central angle of 29°45'36", for an arc distance of 8.31 feet; thence North 01°18'47" West, along the East line of the aforementioned Lots 3 and 6, a distance of 161.29 feet to the Point of Beginning. Said described parcel of land containing 35,264 square feet, or 0.8096 acres, more or less.



LOCATION SKETCH NOT TO SCALE

### STREET ADDRESS:

Vacant property on N.E. 20th Avenue Pompano Beach, Florida 33062

### NOTES:

1. Unless otherwise noted field measurements are in agreement with record measurements.
2. Bearings shown hereon are based on a bearing of South 88°49'50" West along the North line of Lot 2, Block 6, Plat Book 5, Page 13, of the Public Records of Broward County, Florida.
3. The lands shown hereon were not abstracted for ownership, rights of way, easements, or other matters of records by Accurate Land Surveyors, Inc.
4. Ownership of fences and walls if any are not determined.
5. This survey is the property of Accurate Land Surveyors, Inc. and shall not be used or reproduced in whole or in part without written authorization.
6. This survey is made for the exclusive use of the certified hereon, to be valid one year from the date of survey as shown hereon.

### FLOOD INFORMATION:

Community name and number: Pompano Beach 120055  
Map and panel number: 12011C0376H  
Panel date: 08-18-14  
Index date: 08-18-14  
Flood zone: "AH"  
Base flood elevation: 8'NAVD

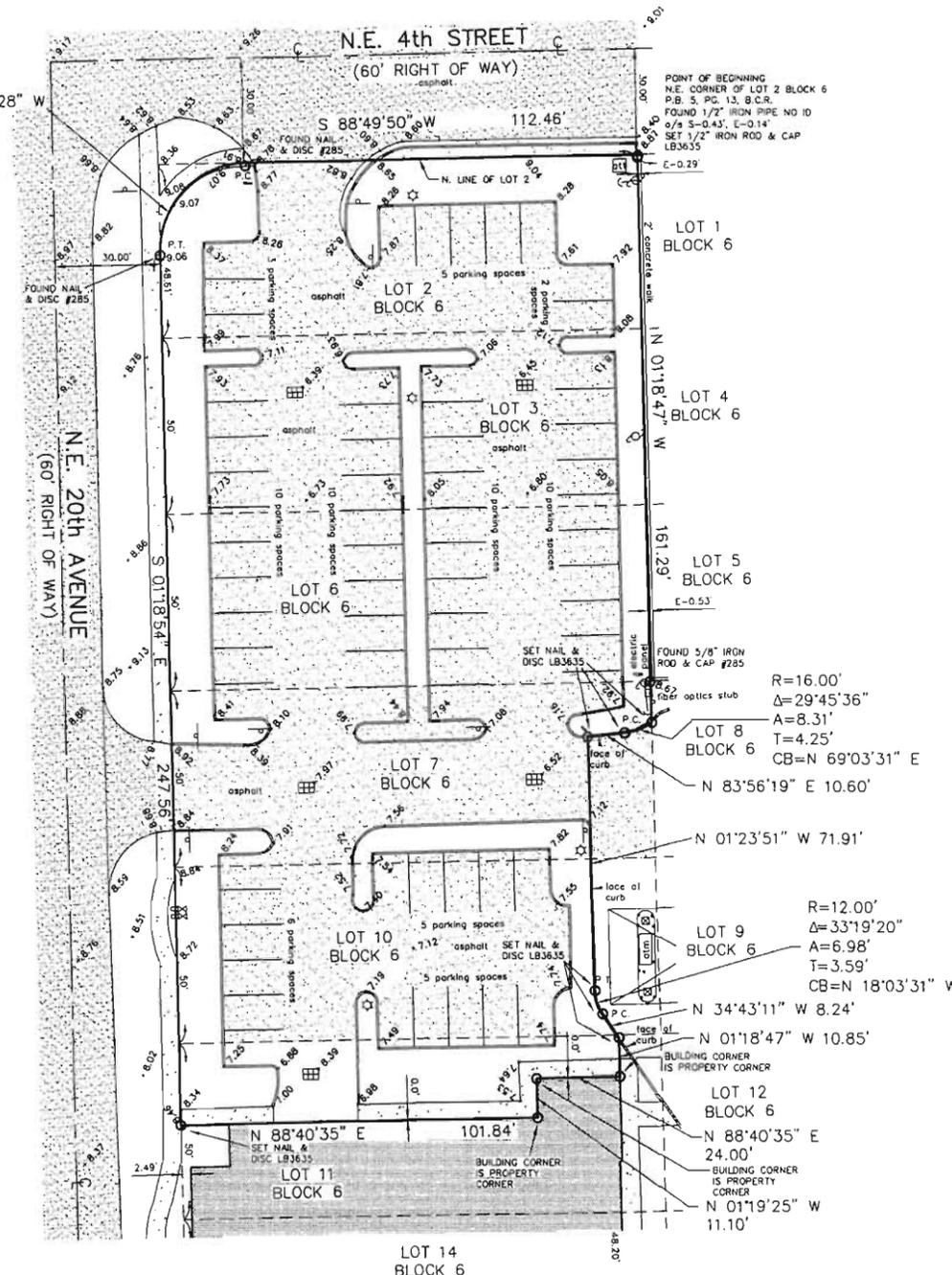
### BENCHMARK INFORMATION:

City of Pompano Beach Benchmark 0017/2011  
Elevation = 6.621'NAVD1988

### CERTIFY TO:

Scott Brenner, Esq.

R=25.00'  
Δ=90°08'44"  
A=39.33'  
T=25.06'  
CB=S 43°45'28" W



R=16.00'  
Δ=29°45'36"  
A=8.31'  
T=4.25'  
CB=N 69°03'31" E

R=12.00'  
Δ=33°19'20"  
A=6.98'  
T=3.59'  
CB=N 18°03'31" W

DATE OF FIELD SURVEY: 11-02-15	DRAWN BY: MLW	
FIELD BOOK: ALS-SU-15-4006	CHECKED BY: MLW	
REVISIONS	DATE	BY
REVISE LOCATION SKETCH	12-15-15	MLW
SEE 15-0254 FOR ORIGINAL COMBINED SURVEY.		

**CERTIFICATION:**  
This is to certify that I have recently surveyed the property described in the foregoing title caption and have set or found monuments as indicated on this sketch and that said above ground survey and sketch are accurate and correct to the best of my knowledge and belief. I further certify that this survey meets Minimum Technical Standards under Rule 5J-17.052 adopted by the Florida Board of Land Surveyors, January 11, 2010.

12-15-15  
ROBERT L. THOMPSON (PRESIDENT)  
PROFESSIONAL SURVEYOR AND MAPPER No. 3868 - STATE OF FLORIDA

Not valid without the signature and the original raised seal of a Florida Licensed Surveyor and Mapper.



# MEMORANDUM

## Development Services

MEMORANDUM NO. 16-137

DATE: March 24, 2016

TO: Mark E. Berman, City Attorney

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

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

SUBJECT: Request for Resolution, Amend Resolution 2016-72  
Flex Unit Allocation Request / 225 N. Federal Highway  
City Commission Hearing April 26, 2016

Resolution 2016-72 allocated 145 flexible to 225 North Federal Highway, LLC. The applicant has advised that they are not able to comply with Section 8's specific requirement for a Unity of Title. Rather, in lieu of a Unity of Title, the applicant has prepared a Declaration of Restrictive Covenants which addresses the unified development and control of the site. The Development Services Department has reviewed the Declaration of Restrictive Covenants and has determined they are satisfactory.

Therefore Staff is requesting your office prepare a resolution to amend Section 8 of Resolution 2016-72 as follows:

**Section 8.** *Failure of the Applicant to execute and record the attached Declaration of Restrictive Covenants (Exhibit A) prior to Building Permit approval shall render the allocation of the flex units null and void.*

However, Staff is further requesting that the effective date of the flex unit allocation continue to be associated with the effective date of Resolution 2016-72 (December 8, 2015) and therefore that this newly requested resolution not reallocate the flex units.

Therefore staff is also seeking a determination from your office if the new Resolution must be noticed per Code of Ordinances §154.61(C)(4)a.

Staff is requesting this resolution be prepared for the April 26, 2016 City Commission hearing.

**Reso 2016-72**

**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 2<sup>ND</sup> 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 20<sup>th</sup> Avenue, and the qualitative principles as shown in Exhibit “C,” a copy of which is attached hereto and made a part hereof. Any approved Site Plan must include provisions to limit the vehicular traffic exiting the parking areas to right-turns only, in order to ensure traffic heads north on NE 20<sup>th</sup> Avenue and east on NE 4<sup>th</sup> Street.

**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.

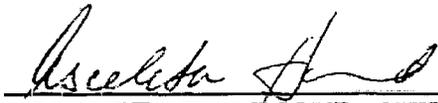
**SECTION 8.** Failure of the Applicant to provide an executed and recorded unity of title document prior to commencement of construction on the residential building shall render the allocation of flex units null and void.

**SECTION 9.** This Resolution shall become effective upon passage.

**PASSED AND ADOPTED** this 8th day of December, 2015.

  
\_\_\_\_\_  
**LAMAR FISHER, MAYOR**

**ATTEST:**

  
\_\_\_\_\_  
**ASCELETA HAMMOND, CITY CLERK**

CLS/jrm  
12/11/15  
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 DELCARATION 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 (1<sup>st</sup>) 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 will 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 (1<sup>st</sup>) day of each calendar month, one-twelfth (1/12<sup>th</sup>) 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 (1<sup>st</sup>) day of each calendar month, one-twelfth (1/12<sup>th</sup>) 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 (5<sup>th</sup>) 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 (1<sup>st</sup>) 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]***



**WITNESSES:**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

**RESIDENTIAL OWNER:**

[ \_\_\_\_\_ ],

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.  
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)**

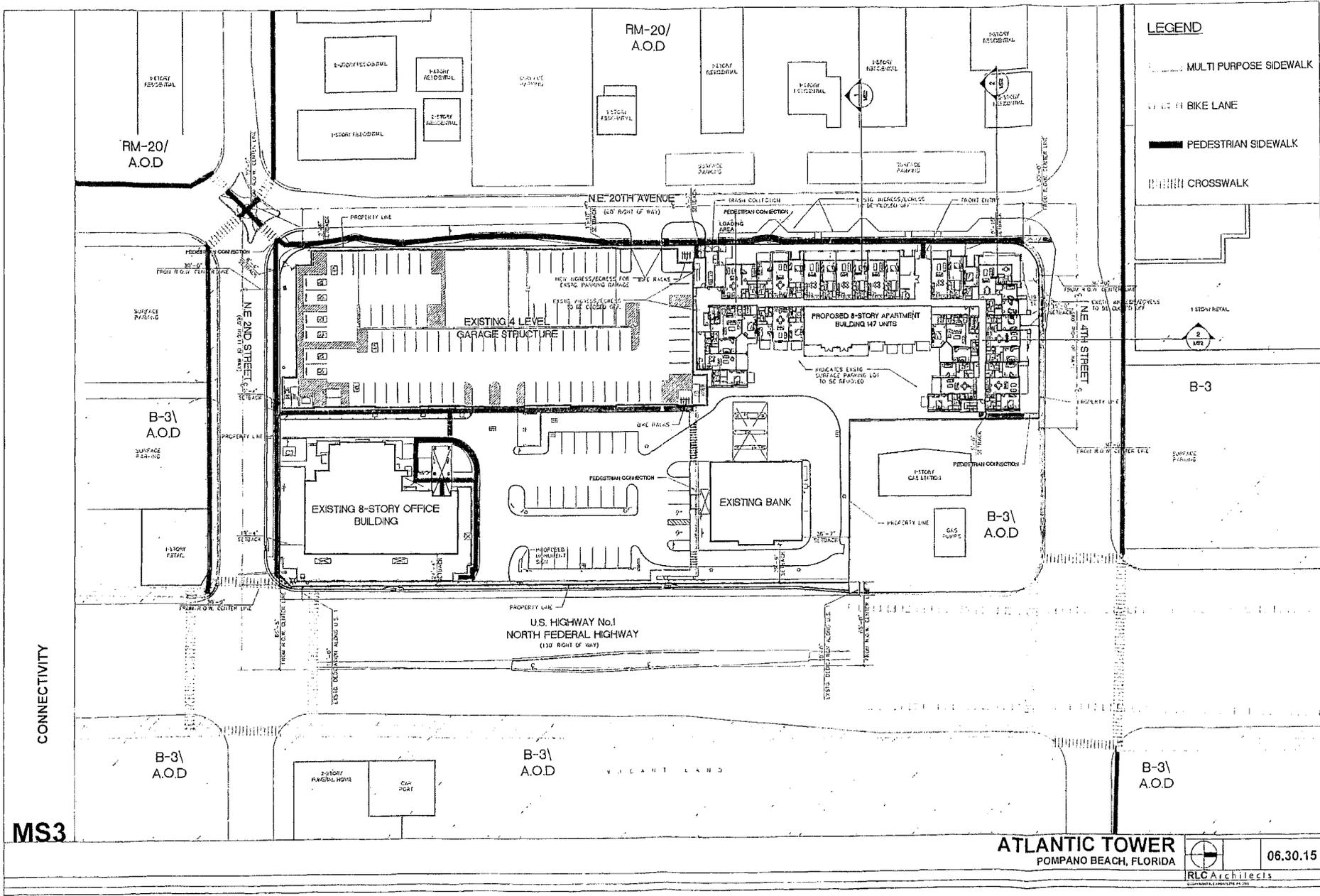
**EXHIBIT D**  
**(BANK PARCEL)**

**EXHIBIT D-1**  
**(BANK INGRESS/EGRESS AREA)**

**EXHIBIT E**  
**(THE CURRENT SITE PLAN)**

**EXHIBIT F**  
**(PARKING GARAGE)**

## Exhibit C



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

CONNECTIVITY

**MS3**

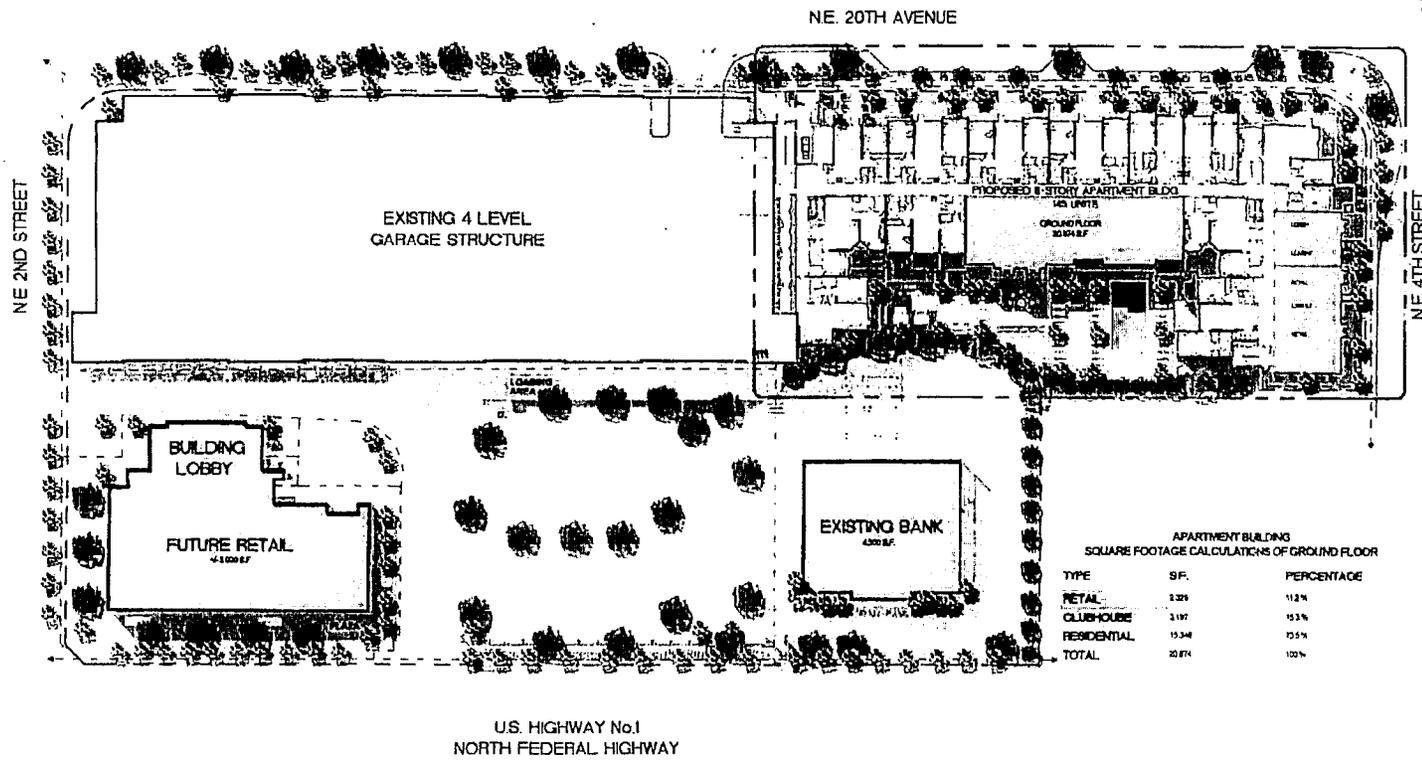
**ATLANTIC TOWER**  
POMPANO BEACH, FLORIDA

06.30.15

**RLC Architects**  
ARCHITECTS







APARTMENT BUILDING  
SQUARE FOOTAGE CALCULATIONS OF GROUND FLOOR

TYPE	S.F.	PERCENTAGE
RETAIL	3,200	11%
CLUB-HOUSE	1,100	4%
RESIDENTIAL	15,700	53%
TOTAL	30,000	100%

**ATLANTIC TOWER** FORT PINE BEACH, FLORIDA

RLC

## 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 1<sup>st</sup> through 8<sup>th</sup> floors along with leasing office, commercial and clubhouse uses on the 1<sup>st</sup> 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 20<sup>th</sup> 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 20<sup>th</sup> Avenue and NE 4<sup>th</sup> 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.*