

**POMPANO BEACH
COMMUNITY REDEVELOPMENT AGENCY**

Meeting Date: February 17, 2015

Agenda Item 13

REQUESTED CRA BOARD ACTION:

Resolution(s) Consideration Approval Other

SHORT TITLE OR MOTION:	A RESOLUTION OF THE POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY, APPROVING AND AUTHORIZING THE PROPER OFFICIALS TO EXECUTE A LEASE AGREEMENT BETWEEN THE POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY AND EDISON WHEELER, RELATING TO PROPERTY LOCATED AT 204 FLAGLER AVENUE; PROVIDING AN EFFECTIVE DATE.
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Summary of Purpose and Why: Tabled - January 20, 2015

CRA Staff is seeking CRA Board approval of a Resolution to execute a lease agreement with Mr. Edison Wheeler for property located at 204 Flagler Avenue. This site is planned to be used as a parking facility in support of the CRA's plans in Old Town and to alleviate local merchants' parking concerns. The CRA's plan will improve the overflow parking capacity in the area. The parking lot will provide parking accommodations to existing retail stores including but not limited to Dr. Pettis' dental practice, Marshall's Restaurant, Richard's Barber Shop, and Cal's Hair, to name a few. The plan will allow the construction of a parking facility with capacity for as many as 25 regular parking spaces including two (2) handicap accessible spaces. Potentially, the site may house as many as 30+ total spaces including spaces reserved for tandem parking. The CRA is expected to pay \$550.00 per year in rent with increases of 3% per year. The agreement is for five (5) years with three (3) additional renewal terms of five (5) years each. Staff recommends approval of this Resolution.

QUESTIONS TO BE ANSWERED BY ORIGINATING DEPARTMENT:

- (1) Origin of request for this action: Staff
- (2) Primary staff contact: Horacio Danovich Ext. 7834
- (3) Expiration of contract, if applicable: _____
- (4) Fiscal impact and source of funding: \$550.00 per year from account No. 150-1910-539-44-10 (Rentals and leases)

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	AUTHORIZED SIGNATURE OR ATTACHED MEMO NUMBER
City Attorney	<u>1-9-2015</u>		<u>CAO-Memo #441</u>

CRA Executive Director

Finance Director

ACTION PREVIOUSLY TAKEN BY CRA BOARD: No previous action

<u>Resolution</u>	<u>Consideration</u>	<u>Other:</u>
<u>Results:</u>	<u>Results:</u>	<u>Results:</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____



MEMORANDUM

January 12, 2015 (Updated February 12, 2015)

TO: CRA Board

THRU: Kim Briesemeister, CRA Executive Director
Chris Brown, CRA Executive Director
Dennis Beach, City Manager

FROM: Horacio Danovich, CRA Engineer

A handwritten signature in black ink is written over the "THRU" and "FROM" lines of the memorandum.

Issue

The Community Redevelopment Agency (“CRA”) is seeking CRA Board approval of a Resolution to execute a lease agreement with Mr. Edison Wheeler (“Owner”) related to property located at 204 Flagler Avenue (See Exhibit “A”).

Recommendation

The CRA Staff recommends Approval of the Resolution.

Background

The CRA is seeking CRA Board authorization to execute a Resolution to enter into a lease agreement with the property Owner for land located at 204 Flagler Avenue. The area being leased is located in the rear of the property as depicted in Exhibit “B” (survey). This area is directly adjacent to land the CRA has leased from Mr. Tom McMahon. In effect, the contract was compiled with identical clauses to those included in a similar agreement with Mr. Mahon. The annual rent will be \$550.00 with annual increases of 3%. The initial term is for five (5) years and includes three (3) additional renewal terms of five (5) years each.

This resolution will allow the CRA to construct a parking facility in support of the CRA’s plans in Old Town (See Exhibit “C” for proposed parking plans). The CRA’s plan will help improve the overflow parking capacity in the area. The parking lot is expected to provide parking accommodations in support of existing retail stores including but not limited to Dr. Pettis’ dental practice, Marshall’s Restaurant, Richard’s Barber Shop, and Cal’s Hair, to name a few. These businesses will benefit from parking facilities in proximity to their stores. The parking lot is expected to be used to provide accommodations for store owners and employees during regular business hours. After business hours, the parking lot is planned to be used as overflow parking in support of future restaurants and new businesses. It is the CRA’s plan to engage a valet parking operator to manage and operate the facility. This activity is expected to occur upon observing reasonable demand for such services.



As proposed, the parking lot is expected to house as many as 25 regular parking spaces including two (2) handicap accessible spaces at both ends (subject to engineering approval), and potentially as many as 30+ total spaces including those reserved for tandem parking. This parking array is expected to attenuate the parking demand along Flagler Avenue and provide easy access for patrons and personnel to local businesses. The CRA will fund the necessary improvements to make this facility a functional operation. Proposed improvements will include grading and earthwork, landscape, irrigation, and new lighting, etc.

This item was previously tabled subject to securing the necessary signatures. Since, Staff made one change to the lease agreement modifying Item 4.2 – Rent Payments, to effectively make rent payments once per calendar year, as opposed to monthly installments. In addition, TEMP, Inc. (Mr. Tom McMahon, owner) requested the addition of a “Waiver and Release of Access or Easement Rights” form to be signed by Mr. Wheeler. This form acknowledges the CRA’s agreement between the CRA and Mr. Wheeler and the purpose of the agreement, but serves to clarify that Mr. Wheeler’s access to TEPM’s property will be terminated upon the CRA’s lease agreement(s) with Mr. Wheeler and/or TEPM being terminated.

Staff recommends Approval of the Resolution.



City Attorney's Communication #2015-441

January 9, 2015

TO: Horacio Danovich, Pompano Beach CRA Engineer

FROM: Gordon B. Linn, City Attorney

RE: Lease Agreement – Edison Wheeler

The above-referenced Agreement has been prepared and is attached at this time along with the appropriate Resolution captioned as follows:

A RESOLUTION OF THE POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY, APPROVING AND AUTHORIZING THE PROPER OFFICIALS TO EXECUTE A LEASE AGREEMENT BETWEEN THE POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY AND EDISON WHEELER, RELATING TO PROPERTY LOCATED AT 204 FLAGLER AVENUE; PROVIDING AN EFFECTIVE DATE.

Please fill in all blanks in the lease prior to submitting the documentation to the CRA Board.

GORDON B. LINN

/jrm
l:cor/cra/2015-441

Attachments

RESOLUTION NO. _____

POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY

A RESOLUTION OF THE POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY, APPROVING AND AUTHORIZING THE PROPER OFFICIALS TO EXECUTE A LEASE AGREEMENT BETWEEN THE POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY AND EDISON WHEELER, RELATING TO PROPERTY LOCATED AT 204 FLAGLER AVENUE; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY:

SECTION 1. That a Lease Agreement between the Pompano Beach Community Redevelopment Agency and Edison Wheeler relating to property located at 204 Flagler Avenue, a copy of which Agreement is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

SECTION 2. That the proper officials are hereby authorized to execute said Agreement between the Pompano Beach Community Redevelopment Agency and Edison Wheeler.

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of _____, 2015.

LAMAR FISHER, CHAIRPERSON

ATTEST:

MARGARET GALLAGHER, SECRETARY

LEASE AGREEMENT

This Lease Agreement ("Lease") is made between the **POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY**, a public body corporate and politic created pursuant to Part III of Chapter 163, Florida Statutes, whose address for purposes of notice under this lease is 100 West Atlantic Blvd., Room 276, Pompano Beach, Florida 33060, (hereinafter referred to as "CRA") and **EDISON WHEELER**, whose address is P. O. Box 120321, Fort Lauderdale, Florida 33312, (hereinafter referred to as "LESSOR").

Recitals

WHEREAS, LESSOR owns certain unimproved real property described in Exhibit "A" attached, (hereinafter the "Premises"), and

WHEREAS, LESSOR is willing to lease the Premises for the purpose of constructing a public parking facility for use by merchants and the public at large and for related uses; and

WHEREAS, CRA is desirous of leasing the said Premises from LESSOR.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Lease, the CRA and LESSOR agree as follows:

1. The above recitals are true and correct and are incorporated herein.
2. **Lease of Property.** The LESSOR does hereby lease to CRA the Premises located at 204 Flagler Avenue and as described in Exhibit "A", Pompano Beach, Florida 33060.
3. **Lease Term.** The initial term ("Initial Term") of this Lease shall be a period commencing on _____, 2015 at 12:01 a.m., and ending at midnight on _____.
4. **Rent.** The annual rental for the Premises ("Rent") shall be \$550.00 payable in equal monthly installments commencing on _____, 2015 ("Rental Commencement Date").
 - 4.1. **Annual Rent Increase.**
 - 4.1.1. Beginning with the rental payment due on _____, 2015, the annual Rent for the Premises will increase annually by Three Percent (3%) of the base rental amount for the prior year.
 - 4.2. **Rent Payments.** Beginning on the renewal of the first month of the First Renewal Term, CRA shall make Rent payments in one (1) annual installment, which will be due on the first day of _____.
 - 4.3. **Security Deposit.** No security deposit shall be required under this Lease.
 - 4.4. **Invoices.** LESSOR agrees to provide an invoice for Rent to CRA at least ten (10) days prior to the date Rent is due.
5. **Option to Renew.** CRA shall have the right to renew this Lease for up to three (3) additional terms ("Renewal Terms") of five (5) years each, on the terms and conditions of

this Lease, by delivering to LESSOR a written notice of its intention to renew the Lease no later than 120 days prior to the end of the Term then in effect.

5.1. **Renewal Term Rent for Premises.** The Rent for the Premises in the Renewal Terms shall be as follows:

5.1.1. **First Renewal Term.** The annual Rent for the first Renewal Term will escalate by 20% to be \$660.00, and will commence on _____. Rent will increase by 3% each year for the remainder of the First Renewal Term.

5.1.2. **Second Renewal Term.** The annual Rent for the second Renewal Term will escalate by 20% to be \$792.00 and will commence on _____. Rent will increase by 3% each year for the remainder of the Second Renewal Term.

5.1.3. **Third Renewal Term.** The annual Rent for the third Renewal Term will escalate by 20% to be \$950.40 and will commence on _____. Rent will increase by 3% each year for the remainder of the Third Renewal Term.

6. **Taxes and Assessments.** CRA shall not be responsible for any municipal, county and state taxes and assessments, which may be assessed against the Premises during the Term of this Lease. CRA will be responsible for any taxes levied against the personal property and trade fixtures of CRA located in and about the Premises.

CRA furthermore agrees to pay the LESSOR back each year the difference between the Ad Valorem taxes of a particular year and the current taxes as of 2015 on a pro-rata basis. LESSOR will present a copy of the 2015 taxes upon receipt of the same.

7. **Utilities.** CRA will be responsible for paying the cost of all utilities (water, sewer, electric, gas, telephone, cable, etc.) serving the Premises during the Term.

8. **Use of Premises.** CRA shall use the Premises for the operation of a public parking facility and to provide valet parking services to restaurant patrons as well as other similar and related uses. No other use of the Premises is permitted under this Lease. CRA will not commit or permit any waste or damage to the Premises and will not carry on any activity that constitutes a nuisance or violates any Applicable Laws.

9. **Parking.** N/A _____

10. **Improvements.** CRA has the right to improve the Premises (“Improvements”) with the LESSOR’s prior written consent, which shall not be unreasonably withheld. All such changes, alterations and additions must be undertaken in a good and workmanlike manner and comply with all Applicable Laws. All Improvements made by CRA that are permanently attached to the Premises will become the property of the LESSOR and shall remain on the Premises at the end of the Lease Term.

10.1. **The LESSOR’s Cooperation in Applications.** The LESSOR agrees to coordinate with the CRA and join in the execution of any permit applications, site plans,

building permits, consents or other documents required in connection with the construction or installation of any Improvements

- 10.2. **Signage.** CRA has the right to install signs, awnings, marquees or other structures on the exterior of the Premises with the LESSOR's prior written consent, which shall not be unreasonably withheld. Any and all such signs or structures must comply with Applicable sign codes/law.
11. **The LESSOR's Right to Inspect Premises.** The LESSOR will have the right to enter upon and inspect the Premises at reasonable times and after notice to CRA.
12. **Ownership; Peaceful Enjoyment; Surrender of Premises.** The LESSOR represents and warrants that it has full ownership interest in the Premises. The LESSOR will warrant and defend CRA's right to the peaceful possession and enjoyment of the Premises during the Term of this Lease. At the end of the Term, CRA will surrender the Premises in clean condition and good repair, normal wear and tear excepted. No surrender of the Premises by CRA prior to the end of the Term of this Lease will be valid unless accepted by the LESSOR in writing.
13. **Insurance.** The LESSOR shall carry General Commercial Liability Insurance and casualty insurance for the Premises.
14. **Indemnification.** To the extent permitted by Applicable Laws, CRA will indemnify and hold harmless the LESSOR from all costs, losses, damages, liabilities, expenses, penalties and fines whatsoever ("Claims") that may arise from or be claimed against the LESSOR or the Premises by any person for any injury to person or property or damage of whatever kind or character arising out of or in connection with any of the following: (a) the use or occupancy of the Premises by CRA or its employees, agents, guests, and invitees; or (b) any failure by CRA or its employees, agents, guests and invitees to comply with all Applicable Laws.
 - 14.1. **Lawsuits.** If any lawsuit or proceeding is brought against the LESSOR or the Premises on account of any alleged violations of, or failure to comply with, Applicable Laws, or on account of any damage, omission, neglect, or use of the premises by CRA, its agents, employees, guests and invitees, CRA agrees that CRA will defend the LESSOR in such lawsuit or proceeding, and pay whatever judgments may be recovered against the LESSOR or the Premises, and pay for all attorneys' fees in connection with such lawsuit or proceeding, including attorneys' fees on appeal.
 - 14.2. **Limitation.** Nothing in this Lease Agreement shall be deemed as a waiver of the monetary limits set forth in Section 768.28(5), of the Florida Statutes, which monetary limits shall be applicable regardless of whether said limitations would apply in the absence of this provision.
15. **Defaults.**
 - 15.1. **CRA's Failure to Pay Rent.** If any Rent due under this Lease is not paid within fifteen days after CRA's receipt of the invoice for the payment due date, the LESSOR will have the right to resume possession of the Premises and rent the Premises for the remainder of the Term for the account of CRA and recover from

CRA at the end of the Term the difference between the Rent specified in this Lease and the Rent received on the re-leasing or renting.

- 15.2. **Other Defaults.** If either the CRA or LESSOR fails to perform or breaches any covenant in this Lease other than the CRA's covenant to pay rent, and the failure or breach continues for a period of sixty (60) days after the defaulting party receives written notice specifying the breach or failure to perform, (a) the party giving notice may institute an action in a court of competent jurisdiction to either terminate this Lease or to seek specific performance of the Lease; or (b) the CRA or LESSOR (as applicable) may, after sixty (60) days written notice to the non-performing party, correct any such breach, and any costs incurred in correcting the breach shall be due and payable by the non-performing party on demand.
- 15.3. **Bankruptcy.** If CRA is declared insolvent or adjudicated a bankrupt; if CRA makes an assignment for the benefit of creditors; if CRA's leasehold interest in the Premises is sold under execution or by a trustee in bankruptcy; or if a receiver is appointed for CRA, the LESSOR, without prejudice to its rights hereunder and at its option, may terminate this Lease and retake possession of the Premises immediately and without notice to CRA or any assignee, transferee, trustee, or any other person or persons, using force if necessary.
16. **No Waiver of the LESSOR's Rights.** The exercise by the LESSOR of any right or remedy to collect Rent or enforce its rights under this Lease will not be a waiver of or preclude the exercise of any other right or remedy afforded the LESSOR by this Lease or by Applicable Law. The failure of the LESSOR in one or more instances to insist on strict performance or observation of one or more of the covenants or conditions of this Lease or to exercise any remedy, privilege, or option conferred by this Lease on or reserved to the LESSOR shall not operate or be construed as a relinquishment or future waiver of the covenant or condition or the right to enforce it or to exercise that remedy, privilege, or option; that right shall continue in full force and effect. The receipt by the LESSOR of Rent or any other payment or partial payment required to be made by the CRA shall not act to waive any additional Rent or other payment then due. Even with the LESSOR's knowledge of the breach of any covenant or condition of this Lease, receipt of Rent will not operate as or be considered to be a waiver of this breach, and no waiver by the LESSOR of any of the provisions of this Lease, or of any of the LESSOR's rights, remedies, privileges, or options under this Lease, will be considered to have been made unless made by the LESSOR in writing.
17. **Assignment and Subletting.** This Lease may not be assigned, sublet or subleased.
18. **Addresses for Payments and Notices.**
 - 18.1. **Notices to the CRA.** Rent payments and notices to the CRA shall be mailed or delivered to the address set forth on the first page of this Lease, unless the CRA changes the address by written notice to LESSOR.
 - 18.2. **Notices to LESSOR.** Notices to LESSOR shall be mailed or delivered to LESSOR's address set forth on the first page of the Lease.
 - 18.3. **Mailing of Notice.** All notices required under this Lease shall be sent either by (a) certified or registered mail, return receipt requested; (b) hand-delivery with a receipt

evidencing delivery, or (c) Federal Express or other nationally recognized overnight mail service.

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

20. **Miscellaneous Provisions.**

20.1. **Captions.** The captions appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of the sections or articles of this Lease or affect this Lease in any way.

20.2. **Governing Law.** This Lease will be governed by the laws of the state of Florida, as to both interpretations and performance.

20.3. **Entire Agreement.** This Lease sets forth all of the promises, agreements, conditions, and understandings between the CRA and LESSOR relative to the Premises. There are no other promises, agreements, conditions, or understandings, either oral or written, between them. No amendment, change or addition to this Lease will be binding on the CRA or LESSOR unless in writing and signed by both of them.

20.4. **Successors and Assigns.** The terms of this Lease will be binding on the respective successors, representatives and assigns of the parties.

IN WITNESS WHEREOF, the CRA and LESSOR have duly executed this Lease Agreement on _____, 2015.

"CRA":

Signed, Sealed and Witnessed
In the Presence of:

**POMPANO BEACH COMMUNITY
REDEVELOPMENT AGENCY**

By: _____
Lamar Fisher, Chairman

Print Name: _____

ATTEST:

Print Name: _____

Margaret Gallagher, Secretary

EXECUTIVE DIRECTOR:

Redevelopment Management Associates, LLC
a Florida limited liability company

Print Name: _____

Print Name: _____

By: MetroStrategies, Inc., a Florida corporation
a managing member

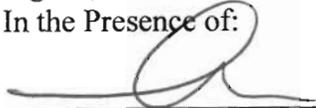
By: _____
Kim Briesemeister, President

and

By: _____
Christopher J. Brown, a managing member

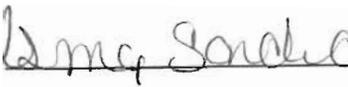
"LESSOR":

Signed, Sealed and Witnessed
In the Presence of:



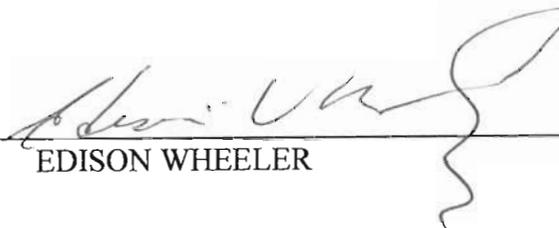
Angekata Carter

Print Name



Isma Sandoza

Print Name

By: 

EDISON WHEELER

GBL/jrm
1/6/15
L:agr/cra/2015-416

Prepared by:
Paul J. Lane, Esq.
7880 N. University Dr. Suite 200
Tamarac, Fl. 33321

**WAIVER AND RELEASE OF
ACCESS OR EASEMENT RIGHTS**

KNOW ALL MEN BY THESE PRESENTS: that EDISON WHEELER, whose address is PO BOX 120321 FORT LAUDERDALE FL 33312, as owner of that certain parcel of land with an address of 204-212 N Flagler Avenue, Pompano Beach, Fl. (the "Wheeler Property") hereby acknowledges, consents and agrees that he is entering into a Lease Agreement with the POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY (the "CRA") to lease the Wheeler Property for the purpose of use for parking spaces.

EDISON WHEELER further acknowledges that CRA is leasing adjoining property owned by TEPM Inc. with an address of 201 NE 1st Ave. (a/k/a 201 NE 2nd St.) Pompano Beach, Fl. 33060 for use as a parking lot (the "TEPM Property").

It is understood that CRA may be using the TEPM Property for vehicles to have access to the Wheeler Property for parking.

IT IS AGREED that regardless of any use of the TEPM Property for access to the Wheeler Property, that the Wheeler Property in no way is being given or granted any rights of access, or easement over the TEPM Property, and any such potential rights are waived and released, and that upon termination of either the CRA lease with EDISON WHEELER, or the CRA lease with TEPM, Inc., any use of the TEPM Property to access the Wheeler Property will also terminate.

The legal descriptions of the properties are attached hereto as Exhibit "A".

Dated: 2-12-15
By: Edison Wheeler
EDISON WHEELER

STATE OF FLORIDA)
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this 12 day of February, 2015, by EDISON WHEELER [] who is personally known to me [] or who has produced his _____ as identification.

Sign: _____ (seal)
Notary Public
My commission expires:

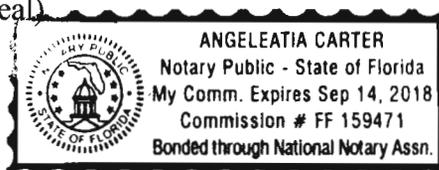


EXHIBIT "A"



MLK Blvd

NE 3 Street

NE 2 Street

Proposed Parking Lot Location

Dixie Highway

Flagler Avenue

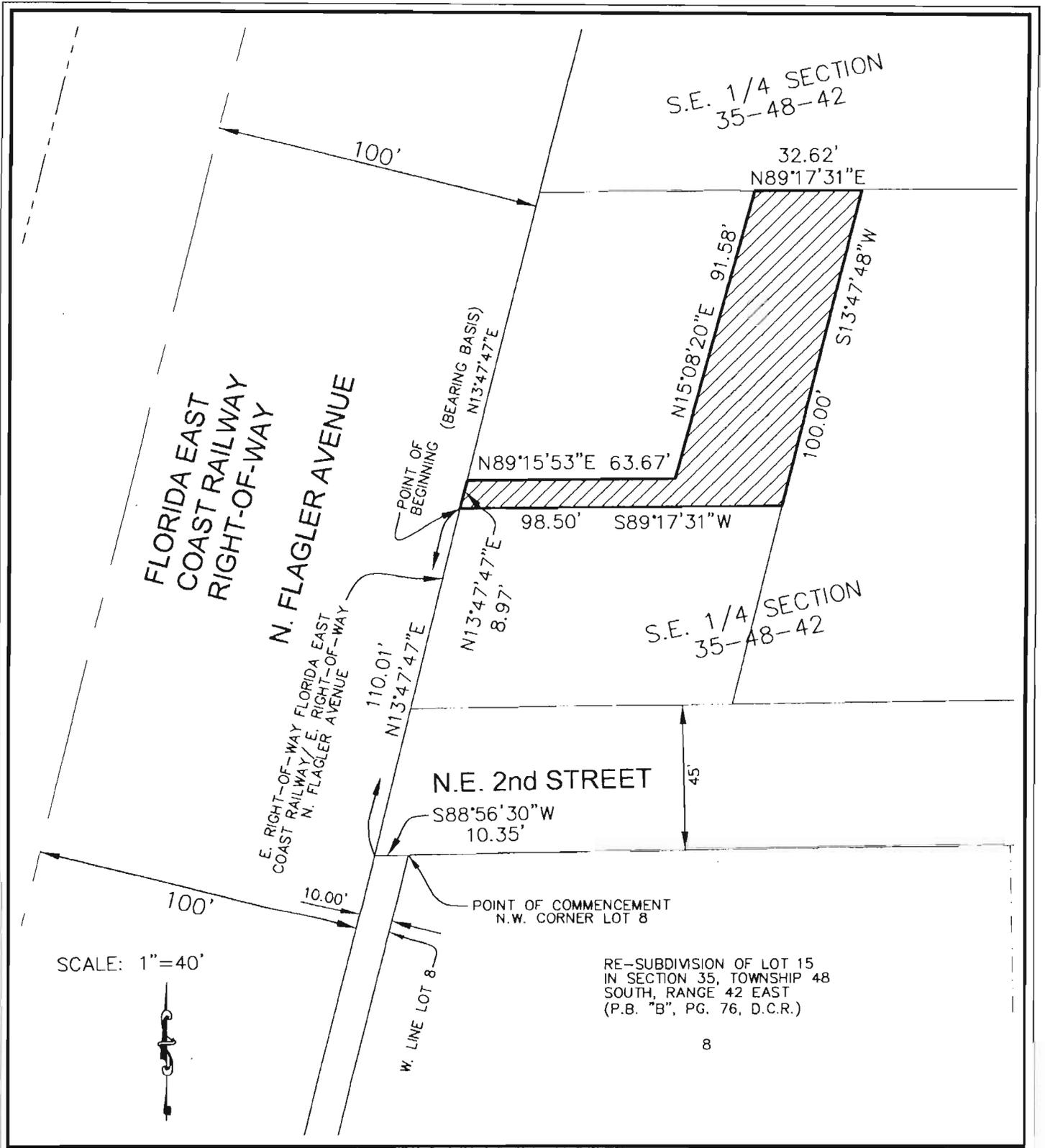
NE 1 Avenue

811

Google earth

Google earth





SKETCH AND DESCRIPTION

A PORTION OF THE S.E. 1/4 OF SECTION 35, TOWNSHIP 48 SOUTH, RANGE 42 EAST

CITY OF POMPANO BEACH
BROWARD COUNTY FLORIDA

KEITH ASSOCIATES INC.

consulting engineers
301 EAST ATLANTIC BOULEVARD
POMPANO BEACH, FLORIDA 33060-6643
(954) 788-3400 FAX (954) 788-3500
EMAIL: mail@keith-associates.com LB NO. 6860

SHEET 2 OF 2

DRAWING NO. 07470.06 SKETCH AND DESC.

DATE 01/10/15

SCALE 1"=40'

FIELD BK. N/A

DWNG. BY MMM

CHK. BY MMM

DATE	REVISIONS

Exhibit "C"

