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THOMAS TORTO
MEMBER N.Y. AND FLA. BAR

JASON LEVINE

December 17, 2024

**email: scott.reale@copbfl.com,
zoning@copbfl.com**

Scott Reale, AICP
Principal Planner
City of Pompano Beach, Planning and Zoning
100 West Atlantic Boulevard
Pompano Beach, Florida 33060

Re: 505 N. Ocean Boulevard
Proposed 3-Unit Condominium
Variance P&Z number 24-11000013
Opposition to Variance Application

Dear Mr. Reale:

I am the attorney for Dr. Fortunato S. DiFranco and Irma DiFranco, husband and wife, who own Unit 523 in the Silver Thatch Atlantic Plaza Condominium located at 525 North Ocean Boulevard in Pompano Beach.

On behalf of my clients, I respectfully submit this letter in opposition to the application by 505 N Ocean LLC (the "Developer") for four variances related to the proposed construction of a 3-unit condominium on the property located at 505 North Ocean Boulevard.

I. Background

Pursuant to deed dated July 1, 2022 (Exhibit "A"), the DiFranco's acquired title to Unit 523 for the sum of \$575,000. Unit 523 is on the fifth floor in the Silver Thatch Condominium and faces south. As depicted in the photographs annexed hereto as Exhibit "B", the balcony and bedrooms each have unobstructed views of the ocean that are unique, special and irreplaceable. Indeed, the unobstructed ocean views were the deciding factor which led my clients to purchase Unit 523 for the sum of \$575,000 as well as to subsequently invest tens of thousands of dollars to

Scott Reale, AICP
December 17, 2024
-2-

improve the Unit.

As part of their due diligence, the DiFranco's determined in good faith that the views of the ocean from Unit 523 would remain unobstructed. As shown by the photographs collectively annexed hereto as Exhibit "C", the structure on 505 N. Ocean Boulevard, to the immediate south, is a one story, single family home which does not obstruct the ocean views from Unit 523. The Developer acknowledges that the Property is "currently developed with a single-family dwelling" (Scott Letter dated November 19, 2024, at 1).

II. The Developer's Application for Variances

Pursuant to a deed dated March 12, 2024 (Exhibit "D"), the Developer acquired title to 505 North Ocean Boulevard. The deed specifically provides that it is "SUBJECT TO land use designation, zoning restrictions prohibitions and other requirements imposed by governmental authority . . .".

The Developer requests four variances in order to erect a 3-unit condominium project on 505 North Ocean Boulevard. The Developer proposes to demolish the existing single-family dwelling at 505 North Ocean Boulevard and replace it with a three unit, four-story condominium 50'6" in height (64' to the top of the elevator shaft). The requested variances include relief from the zoning district's side yard and rear yard setback and step back standards, a reduction in the required landscape buffer, and a reduction in the required drive aisle width in one section of the property (Scott Letter, at 2).

III. The DiFranco's Have a Right Under Florida Law to an Unobstructed View of the Ocean

An upland owner has the general right to an unobstructed view of the waterway. See, Hayes v. Bowman, 91 So.2d 795, 801 (Fla. 1957). A viable claim of obstructing a waterfront view is established where the obstruction of the upland owner's view of the waterway is substantial and material. See, Lee County v. Kiesel, 705 So. 2d 1013, 1015-16 (Fla. 2d DCA 1998). In Kiesel, the local government built a bridge that significantly blocked the Kiesel property's view of the water. The court found that the right to an unobstructed view is unique to Florida, and that the bridge's construction deprived the property owner of that right.

Here, the DiFranco's have a common-law right, protected under Florida law, to an unobstructed view of the ocean from Unit 523. If the ZBA grants the Developer the requested variances to erect a four-story building that will be 64' to the top of the elevator shaft, then the DiFranco's right to an unobstructed view of the ocean from Unit 523 will be totally destroyed.

Additionally, loss of the ocean view will result in a substantial decrease in value of Unit 523 by tens of thousands of dollars.

III. The Developer's Hardship is Self-Created

Variations are sparingly granted in rare instances under exceptional circumstances to relieve undue and unique hardships to the landowner. The rationale behind a variance is that literal application of the zoning code would create a "hardship" that would not allow any use of the property whatsoever.

However, where, as here, the owner affirmatively creates the hardship, such as by knowingly purchasing a substandard size lot, then the hardship is self-created and will preclude relief. As succinctly explained in Elwyn v. City of Miami, 113 So. 2d 849 (Fla. Dist. Ct. App. 1959):

. . . the hardship claimed was self-created and self-imposed. One who purchases property while it is in a certain known zoning classification, ordinarily will not be heard to claim as a hardship a factor or factors which existed at the time he acquired the property. . . . A self-imposed or self-acquired hardship (such as by purchasing property under existing zoning and then applying for a variance) is not the kind of hardship for which variance should be granted. See Kazlow v. Peters, Fla. 1951, 53 So.2d 321; Josephson v. Autrey, Fla. 1957, 96 So.2d 784; Green v. City of Miami, Fla. App. 1958, 107 So.2d 390; City of Miami Beach v. Greater Miami Hebrew Academy, Fla. App. 1958, 108 So.2d 50.

Here, the Developer's purported hardship is self-imposed because it knowingly purchased 505 N. Ocean Boulevard subject to existing zoning restrictions as expressly set forth in its deed (Exhibit "D"). Thus, the Developer's assertion - that the conditions of the property are not the result of the actions of the landowner - is unfounded.

Additionally, the Developer failed to meet its burden of showing hardship, such as the character of the neighborhood has changed, the property is not directly accessible to Ocean Boulevard or the property is no longer usable for a single family residence. The Developer's mere assertion (Scott Letter, at 2) - that "the Property has one of the few remaining single-family dwellings along this portion of Ocean Boulevard and thus is prime for redevelopment" - does not establish unique and undue hardship. The Developer has presented no justification whatsoever for seeking to erect a four/five story building that will be in violation of the Zoning Code. The Developer's assertion (Scott Letter, at 1) - that the variances should be granted because the

Scott Reale, AICP
December 17, 2024
-4-

Property is “a legal nonconforming lot lacking in sufficient depth or width which frustrates Applicant’s ability to develop a 3-unit project in a zoning district which explicitly calls for multifamily and townhouse developments” - is conclusory and devoid of supporting facts.

Nor has the Developer shown extraordinary and exceptional conditions (such as topographic conditions, narrowness, shallowness, or the shape of the parcel of land) pertaining to the particular land or structure for which the Variance is sought, that do not generally apply to other lands or structures in the vicinity. The Developer has failed to show that the absence of the requested variances “would effectively prohibit or unreasonably restrict the utilization of the land or structure and result in unnecessary and undue hardship”. The property can freely be used a single family home.

The requested variances would also result in injury and depreciation in value of the DiFranco’s Unit 523 and significantly destroy the use and enjoyment thereof as well as increase motor vehicle traffic in the surrounding environs.

Irma DiFranco will appear before the ZBA to oppose the Developer’s application for variances and to answer any questions the ZBA may have.

For the foregoing reasons, the Developer’s request for variances should be denied.

Respectfully,



THOMAS TORTO
Florida Bar No. 0289401

TT:dm
Attachments

cc: Matthew Scott, Esq. (matthew.scott@gmlaw.com)
Dr. Fortunato S. DiFranco
Irma DiFranco

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THIS INSTRUMENT PREPARED BY AND RETURN TO:
JIM SANTIAGO
INDEPENDENT TITLE OF FORT LAUDERDALE, INC.
2929 E. Commercial Blvd., Suite 605
FT. LAUDERDALE, FL 33308
Our File No.: **222-238**
Property Appraisers Parcel Identification (Folio) Number: **484331-CA-2050**

SPACE ABOVE THIS LINE FOR RECORDING DATA

WARRANTY DEED

THIS WARRANTY DEED, made the **1st** day of **July, 2022** by **Marcos Griebler Oliveira, a Married Man, joined by his spouse Rachel Braga E Vieira Machado**, whose post office address is 301 EAST ATLANTIC BLVD, POMPANO BEACH, FL 33060 herein called the Grantor, to **Fortunato S. DiFranco and Irma DiFranco, husband and wife** whose post office address is 3042 LEE PLACE, BELLMORE, NY 11710, hereinafter called the Grantees: *(Wherever used herein the terms "Grantor" and "Grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations)*

W I T N E S S E T H: That the Grantor, for and in consideration of the sum of TEN AND 00/100'S (\$10.00) Dollars and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the Grantee all that certain land situate in BROWARD County, State of Florida, viz.:

Unit 523 of Silver Thatch Atlantic Plaza Condominium, a Condominium according to the Declaration of Condominium thereof, recorded in Official Records Book 7000, Page(s) 771, of the Public Records of Broward County, Florida, and any amendments thereto, together with its undivided share in the common elements.

Subject to easements, restrictions and reservations of record and taxes for the year 2022 and thereafter.

TOGETHER, with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining. **TO HAVE AND TO HOLD**, the same in fee simple forever.

AND, the Grantor hereby covenants with said Grantees that the Grantor is lawfully seized of said land in fee simple; that the Grantor has good right and lawful authority to sell and convey said land, and hereby warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except taxes accruing subsequent to December 31, 2021.

IN WITNESS WHEREOF, the said Grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in the presence of:

Witness #1 Signature [Signature]
 Witness #1 Printed Name James Santiago
 Witness #2 Signature [Signature]
 Witness #2 Printed Name Rad Santiago

[Signature]
Marcos Griebler Oliveira

STATE OF FLORIDA
 COUNTY OF Broward

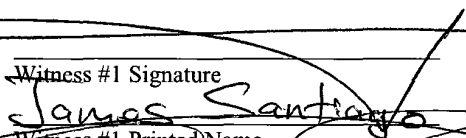

The foregoing instrument was acknowledged before me by means of () physical presence or () online notarization, this 1 day of July, 2022, by Marcos Griebler Oliveira who is personally known to me or has produced FLDL as identification.

SEAL

[Signature]
 Notary Public
 Printed Notary Name

My commission expires: JAMES SINCLAIR SANTIAGO
 Notary Public - State of Florida
 Commission # HH 064948
 My Comm. Expires Nov 18, 2024
 Bonded through National Notary Assn.

Signed, sealed and delivered in the presence of:

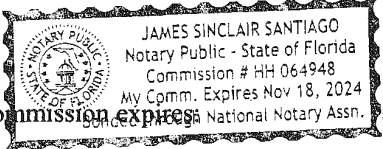

 Witness #1 Signature
James Santiago
 Witness #1 Printed Name

 Witness #2 Signature
Paul Santiago
 Witness #2 Printed Name

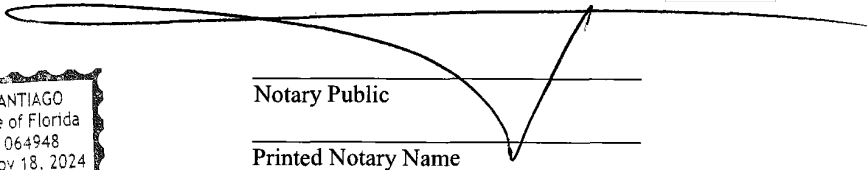

Rachel Braga E Vieira Machado

STATE OF FLORIDA
COUNTY OF Broward

The foregoing instrument was acknowledged before me by means of () physical presence or () online notarization, this 30th day of June, 2022, by Rachel Braga E Vieira Machado who is personally known to me or has produced FL DL as identification.

SEAL


 My commission expires Nov 18, 2024



 Notary Public

 Printed Notary Name



Silver Thatch Atlantic Plaza Condominium Association

531 and 525 North Ocean Boulevard, Pompano Beach, FL 33062

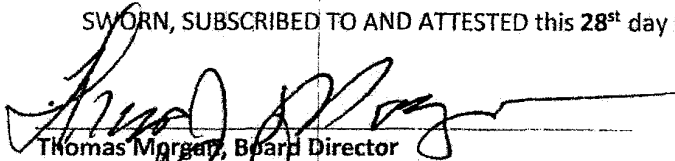
Administration Office Phone: (954) 781-0974 Fax: (954) 781-8484

CERTIFICATE OF APPROVAL – PURCHASE

I, the undersigned, do hereby certify that:

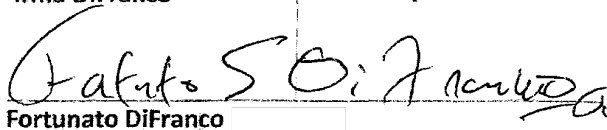
1. I, Thomas Morgan, Director of the Board, respectfully, of Silver Thatch Atlantic Plaza Condominium, Inc., a corporation not-for-profit, organized and existing, under the Laws of the State of Florida (hereinafter referred to "STAP") for the purpose of operating Silver Thatch Atlantic Plaza Condominium, Inc., a condominium, according to the Declaration of Condominium thereof, recorded in Official Records Book 7000, Pages 771 through 870, of the Public records of Broward County, Florida.
2. The Board of Directors of STAP does hereby give its approval to **Fortunato & Irma DiFranco** to purchase Unit **523 of Phase II** located at **525 North Ocean Boulevard, Pompano Beach, FL 33062**. STAP, according to the Declaration of Condominium. Recorded in Official Records Book 7000, Pages 771 -870, and public records of Broward County State of Florida.
3. Said approval is based upon the information submitted by the applicant, and the above captioned Property Manager assumes the accuracy and truthfulness of same.
4. This certificate of approval is in record able form in accordance with provisions of the Declaration of Condominium of STAP.

SWORN, SUBSCRIBED TO AND ATTESTED this 28th day of June, 2022 by:


 Thomas Morgan, Board Director


 Harvey Rosenberg, Property Manager


 Irma DiFranco


 Fortunato DiFranco

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Photos

Save Home

Share



Sold: \$373,000 (2 beds, 2 baths, 1,050 Square Feet)

Photos

Save Home

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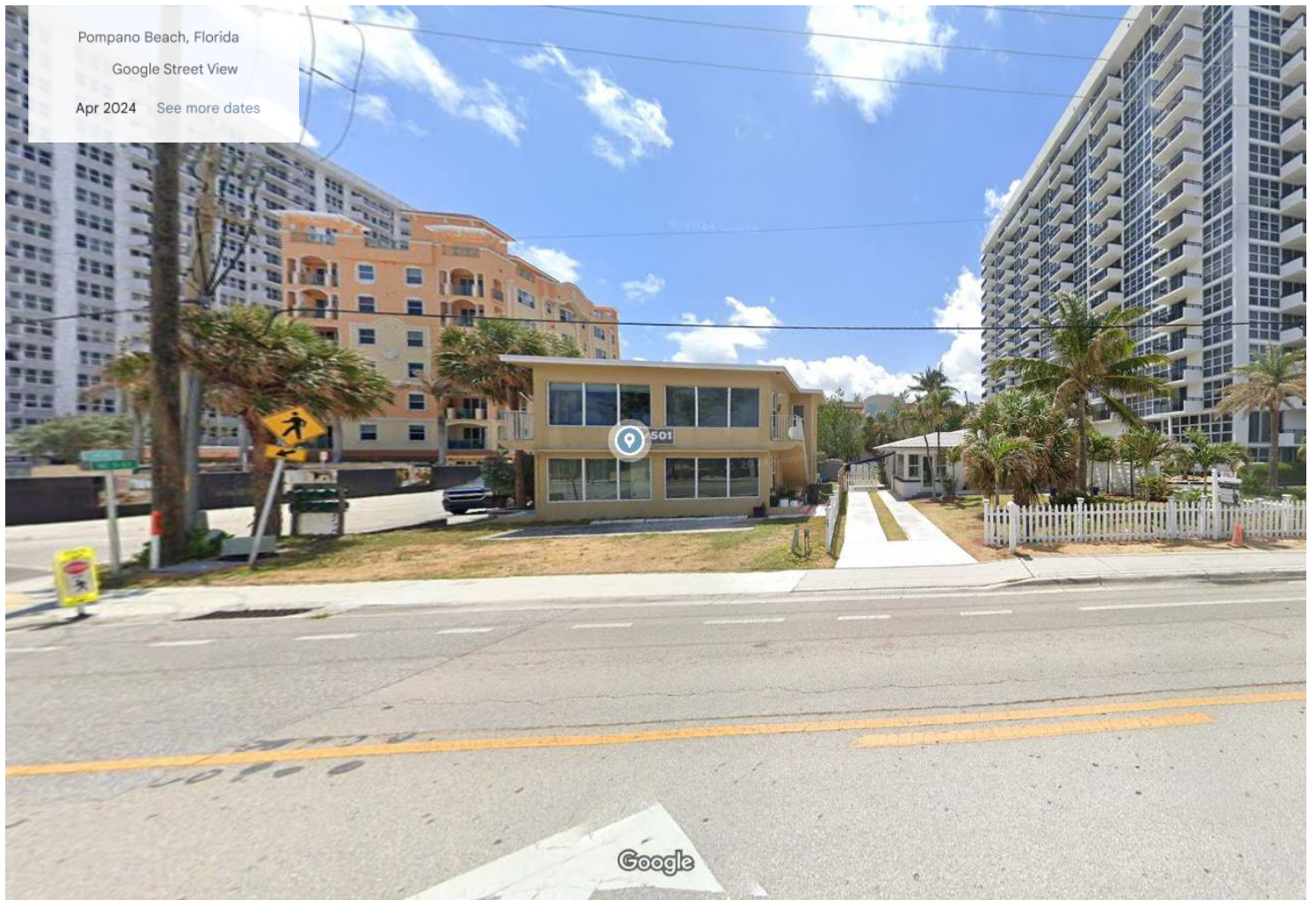


Sold: \$575,000 (2 beds, 2 baths, 1,050 Square Feet)

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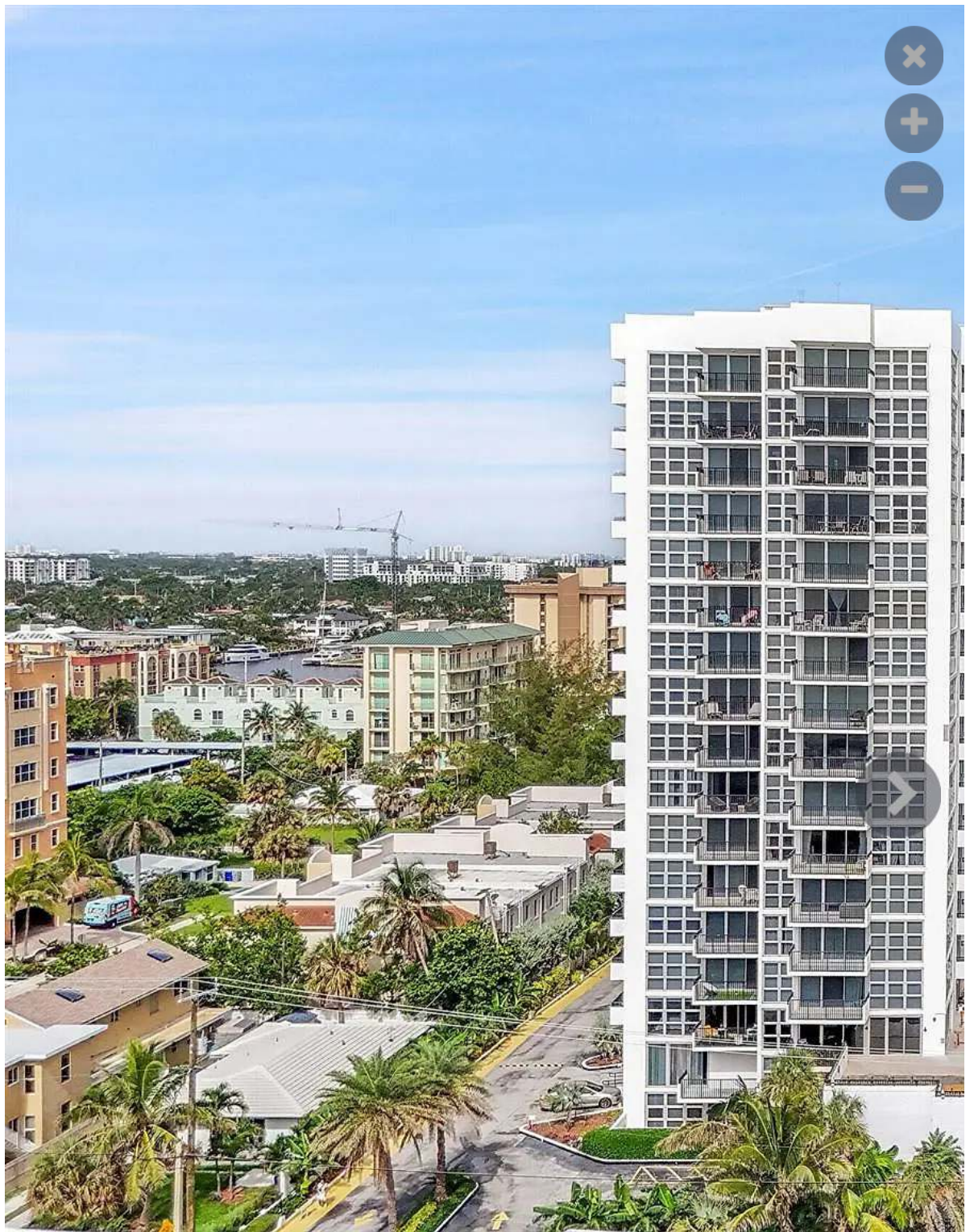
504 A1A Jimmy Buffett Mem Hwy



Pompano Beach, Florida
Google Street View
Apr 2024 See more dates

Image capture: Apr 2024 © 2024 Google





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Prepared by and return to:

Evette Arguinzoni
Balocco & Abril, PLLC
4332 East Trade Winds Avenue
Lauderdale-by-the-Sea, FL 33308
(954) 530-4731
File No 2024-1597-1597

Parcel Identification No 48-43-31-08-0040

[Space Above This Line For Recording Data]

WARRANTY DEED

(STATUTORY FORM – SECTION 689.02, F.S.)

THIS INDENTURE made the 12th day of March, 2024 between **Joseph Triangolo, a single man**, whose post office address is **2760 SE 2nd Street, Pompano Beach, FL 33062**, of the County of Broward, State of Florida, Grantor, to **505 N. OCEAN, LLC, a Florida Limited Liability Company**, whose post office address is **2102 Bay Drive, Pompano Beach, FL 33062**, of the County of Broward, State of Florida, Grantee:

WITNESSETH, that said Grantor, for and in consideration of the sum of TEN DOLLARS (U.S.\$10.00) and other good and valuable considerations to said Grantor in hand paid by said Grantee, the receipt whereof is hereby acknowledged, has granted, bargained, and sold to the said Grantee, and Grantee's heirs and assigns forever, the following described land, situate, lying and being in Broward, Florida, to-wit:

Lot 5, SILVER BEACH, according to the Plat thereof, as recorded in Plat Book 22, Page 32, of the Public Records of Broward County, Florida.

TOGETHER WITH all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.


SUBJECT TO land use designation, zoning restrictions, prohibitions and other requirements imposed by governmental authority, none of which are hereby reimposed; restrictions, easements and matters appearing on the Plat or otherwise common to the subdivision, none of which are hereby reimposed; and taxes for the year of closing and subsequent years.

TO HAVE AND TO HOLD the same in fee simple forever.

And Grantors hereby covenant with the Grantee that the Grantors are lawfully seized of said land in fee simple, that Grantors have good right and lawful authority to sell and convey said land and that the Grantors hereby fully warrant the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except taxes accruing subsequent to **December 31, 2023**.

IN WITNESS WHEREOF, Grantor has hereunto set Grantor's hand and seal the day and year first above written.

Signed, sealed and delivered in our presence:



Joseph Triangolo

WITNESS
PRINT NAME: Joe Balocco

4332 E Tradewinds Ave
LBTS, FL 33308
WITNESS 1 ADDRESS




WITNESS
PRINT NAME: Evette Arguinzone

4332 E Tradewinds Ave
LBTS, FL 33308
WITNESS 2 ADDRESS

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this 7th day of March, 2024, by Joseph Triangolo.



Signature of Notary Public
Print, Type/Stamp Name of Notary



Personally Known: _____ OR Produced Identification: _____
Type of Identification
Produced: FCDL