

for an outdoor seating area to be associated with a future restaurant tenant occupying a portion of Parcel A (“Project”); and

WHEREAS, DUC Pompano has submitted permit application BP23-00005886 for development of Parcel B as an outdoor setting area for use by its restaurant tenant and sought zoning approval for such use, but learned that there is a title defect for the portion of land lying north of Parcel A that is not owned by DUC Pompano; thus, making zoning approval and compliance with certain lease obligations difficult; and

WHEREAS, the City, based upon the Broward County Property Appraiser (BCPA) Office’s designation of such land as part of the City’s Right-Of-Way, has exercised easement rights over the 10-foot parcel lying north of Parcel A, illustrated in Exhibit C, attached and incorporated in this Declaration, and legally described as follows:

the North 10’ of East 33’ of Lot 10 of the Re-Subdivision of Lot 15 of the Subdivision of Section 35, Township 48 South, Range 42 East, according to the Plat thereof as recorded in Plat Book “B”, Page 76 of the public records of Miami-Dade County, Florida (“Alleyway Parcel”); and

WHEREAS, the Parties have recently learned, following a title search, that the title to the Alleyway Parcel is clouded because the former owner failed to convey the Alleyway Parcel in its 1953 conveyance, and there is no available documentation to clear the title defect nor available corporate representatives to issue a corrective deed; and

WHEREAS, the City believes its interest in the Alleyway Parcel, consistent with the BCPA’s designation of Right-of-Way, is adverse to the former owner and any person claiming ownership through that former owner, and now desires to accomplish the Project consistent with the Vacant Parcel Lease;

NOW, THEREFORE, in consideration of the mutual promises and understandings, and pursuant to the applicable ordinances of the City of Pompano Beach, Florida pertaining to the issuance of building permits, zoning, and regulating building construction, the Parties agree as follows:

1. Recitations. The recitals set forth above are true and correct and are incorporated into this Declaration by this reference.

2. Covenants. The Parties declares that Parcels A, B and Alleyway shall be held, maintained, transferred, sold, conveyed, and owned subject to the following designations and restrictive covenants:

a. Parcel A contains a two-story commercial building, which is currently being renovated on the 1st floor for occupancy by a restaurant tenant. The City leased Parcel B to DUC Pompano, and DUC Pompano leased Parcel B from the City, to permit the restaurant tenant to use Parcel B as an outdoor seating area and has submitted permit applications consistent with such use.

b. The terms and conditions of the Vacant Parcel Lease between the City and DUC Pompano and with Section 155.4303(v), City Zoning Code address the use of Parcel B as an accessory use to an eating or drinking establishment and not as a principal use.

c. The 2nd floor use of Parcel A will remain undisturbed by this Declaration and is not the subject of the Vacant Parcel Lease.

d. Unity of Use. The 1st floor of Parcel A, the Alleyway Parcel and Parcel B shall be regarded as a unified building site for the aforementioned use described in subparagraph a, subject to defined vehicular and pedestrian ingress and egress beneficial to DUC Pompano and the City, as defined below. The outdoor seating area proposed on Parcel B is therefore an accessory use to the principal use of a restaurant established in Parcel A.

3. This Declaration shall constitute a covenant running with the land, as provided by law, and shall be binding upon the undersigned, their successors and assigns, and all parties claiming thereunder until such time as the same may be released in writing under the order of the Development Services Director of the City of Pompano Beach or upon termination of the Vacant Parcel Lease. Notwithstanding, should a court of competent jurisdiction otherwise determine the ownership of the Alleyway Parcel, resulting in ownership by a third party, and the third party refuses to join this Declaration, the Declaration and accessory outdoor seating use shall terminate.

4. Upon termination of the Vacant Parcel Lease, this Declaration and accessory outdoor seating use shall terminate. DUC Pompano must obtain any and all governmental approvals required, as a result of the termination.

5. The Parties acknowledge, understand and agree that the Parties, their successors and assigns, have a perpetual non-exclusive access easement in the Alleyway Parcel, for the benefit of the general public, for the purposes of public pedestrian ingress and egress over, through, and across the Alleyway Parcel. The intent and purpose of the dedication granted to the general public on the Alleyway Parcel is to provide perpetual unrestricted and year-round pedestrian access to the Alleyway Parcel. Further, the Parties acknowledge, understand and agree that the Parties, their successors and assigns, have a perpetual non-exclusive vehicular access easement in the Alleyway Parcel, for the benefit of the surrounding properties to permit vehicles to enter into and travel on, over and across the Alleyway Parcel, during specified hours, as determined by the City, for the purpose of short-term loading and unloading of vehicles. No parking is permitted. The City shall have the right to temporarily close or restrict use and access to the Alleyway Parcel; provided, the City provides advance reasonable notice of such closure (and in the event of emergency situations requiring immediate closure, no notice by the City shall be required).

6. Improvements; Maintenance and Repair.

a. DUC Pompano, during the term of the Vacant Parcel Lease, shall construct and install, at its sole cost and expense, certain improvements on or in Parcel B and the Alleyway Parcel, in accordance with the building permit and related drawings approved by the City as part of the development of the Property and applicable ordinances pertaining to the issuance of building permits, zoning and regulating building construction. DUC Pompano agrees, prior to the installation of any improvements to Parcels A, B and Alleyway, to submit all proposed



improvements to the City and, to the extent possible, incorporate revisions to the proposed improvements as proposed by the City, as determined the City, in its sole discretion.

b. DUC Pompano shall maintain and repair Parcels B and Alleyway and related Improvements, at its sole cost and expense, in safe and good working condition and such that pedestrian and vehicular access, as described in this Declaration, is not impaired or obstructed. DUC Pompano shall keep Parcels B and Alleyway clear and free of trash, debris and rubbish and free of obstructions of every nature, and shall provide adequate lighting. No walls, fences, barriers, building, structure or any other sort of temporary or permanent obstruction shall be constructed or erected on or over Parcels B and Alleyway that would impede, impair, block or obstruct any portion of Parcels B and Alleyway or prevent or limit the reasonable movement of pedestrians and vehicles, as described in this Declaration, on Parcels B and Alleyway.

7. **Indemnification.** DUC Pompano shall indemnify, defend, save and hold harmless the City, its officers, management, employees, from and against any suits, demands, claims, liability, losses, penalties, damages, judgment, order, decrees, and cost and expenses (including attorney's fees and all costs of litigation) for property damage, liability, or death which may result from any willful misconduct or negligent act, error, or omission of DUC Pompano which occurred or is alleged to have occurred with respect to its maintenance or repair of any Improvements or arising out of this Declaration.

8. **Amendments.** Except as otherwise provided in Declaration, this Declaration shall not be modified, amended or released as to any portion of the Property except by written instrument, executed by the then owner or owners of the portion of the Property affected by such modification, amendment, or release and approved in writing by the City. The appropriate governmental authority of 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, at the then owner's sole expense.

9. **Recordation and Effective Date.**

a. This Declaration shall become effective ("Effective Date") upon recordation in the Public Records of Broward County, Florida.

b. Once recorded, this Declaration shall run with Parcels A, B and Alleyway for the sole benefit of the Parties, and shall bind all successors and assigns to the title of the Property.

10. **Severability.** 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.

11. **Captions, Headings and Titles.** Articles and paragraph captions, headings and titles inserted throughout this Declaration are intended as a matter of convenience only and in no way shall such captions, headings or titles define, limit or in any way affect the subject matter or any of the terms and provisions of this Declaration.

12. Context. Whenever the context requires or admits, any pronoun used in this Declaration may be deemed to mean the corresponding masculine, feminine or neuter form, and the singular form of any nouns or pronouns may be deemed to mean the corresponding plural form and vice versa.

13. Term, Release and Termination. The restrictions, covenants, rights and privileges granted, made and conveyed in this Declaration shall be valid for the duration of the Vacant Parcel Lease, commencing upon the Project completion date and issuance of a Certificate of Occupancy, as defined in the Development Approval ("Term"), unless sooner terminated pursuant to the terms of this Declaration; thereafter the Declaration shall be of no further force and effect and shall automatically terminate without the consent of the City, or the necessity to record any instrument in the Public Records of Broward County, Florida.

14. Remedies for Violation. In the event DUC Pompano, its successors or assigns, violate any of the covenants and restrictions contained in this Declaration, DUC Pompano acknowledges and agrees that the City may withhold further permits and approvals with respect to the Project or the underlying property; provided the City first provides DUC Pompano with written notice and a thirty (30) day opportunity to cure the violation. The City's option to withhold further permits and approvals with respect to the Property shall not be exercised if, within the thirty (30) day notice period (i) the violation is cured by DUC Pompano; or (ii) the violation cannot reasonably be cured within that time period but the DUC Pompano begins to cure such violation within such time period and thereafter diligently pursues such cure to completion.

15. The City is a beneficiary of these covenants and restrictions, and as such, the City may enforce these covenants and restrictions by action at law or in equity, including, without limitation, a decree of specific performance or mandatory or prohibitory injunction, against any person or persons, entity or entities, violating or attempting to violate the terms of these covenants and restrictions, and obtain recovery for all attorneys' fees and costs associated with the enforcement of this Agreement, whether at trial or on appeal.

16. Waiver. Any failure of the City to enforce these restrictive covenants shall not be deemed a waiver of the right to do so.

17. This Agreement must be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement will be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit will be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida.

[SIGNATURES ON FOLLOWING PAGE]



IN WITNESS WHEREOF, the Parties have made and executed this Declaration and accept and acknowledge all of its terms, conditions and representations, on the date first written above.

"CITY":

CITY OF POMPANO BEACH

Witnesses:

(Signature)

(Print Name)

Street Address

City/State/Zip Code

(Signature)

(Print Name)

Street Address

City/State/Zip Code

By: _____
Rex Hardin, Mayor

By: _____
Gregory P. Harrison, City Manager

Attest:

Kervin Alfred, City Clerk

(SEAL)

Approved As To Form:

Mark E. Berman, City Attorney

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instruments were acknowledged before me, by means of physical presence or online notarization, this _____ day of _____, 20____, by **REX HARDIN** as Mayor, **GREGORY P. HARRISON** as City Manager and **KERVIN ALFRED** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

"DUC POMPANO":

Witnesses:

DUC POMPANO, LLC

Witness #1 Signature

[Handwritten Signature]

Print Name

Fred Staker

Street Address

601 NE 5th St

City/State/Zip Code

Pompano Beach, FL, 33066

Witness #2 Signature

Martha E Lawson

Print Name

Martha E. Lawson

Street Address

6816 NW 28 Ter

City/State/Zip Code

Fort Laud, FL, 33309

By:

[Handwritten Signature]

Ghulam H. Usman, Manager

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me, by means of physical presence or online notarization, this 14th day of March, 2024, by Ghulam H. Usman, Manager of DUC POMPANO, LLC, a Florida limited liability company on behalf of the company. He is personally known to me or who has produced DL (type of identification) as identification.

NOTARY'S SEAL:



LAUREN M. GRATZER
Commission # HH 194195
Expires February 7, 2026
Bonded Thru Budget Notary Services

NOTARY PUBLIC, STATE OF FLORIDA

[Handwritten Signature]

Lauren Gratzler

(Name of Acknowledger Typed, Printed or Stamped)

HH 194195

Commission Number

JES:jrm/mcm

3/13/24

L:agr/dev-srvc/2024-416

EXHIBIT A

LEGAL DESCRIPTION:

The East 33 feet of Lot 10, LESS the North 10 feet thereof, of the resubdivision of Lot 15, of the subdivision of Section 35, Township 48 South, Range 42 East, according to the plat thereof, re3corded in Plat Book "B", Page 76, of the Public Records of Dade County, Florida; said lands situate, lying and being in Broward County, Florida; TOGETHER WITH; The West 68 feet of the East 101 feet of Lot 10, LESS the North 10 feet thereof, of the Town of Pompano, being a resubdivision of Lot 15, of the Subdivision of Section 35, Township 48 South, Range 42 East, according to the plat thereof, recorded in Plat Book "B", Page 76, of the Public Records of Dade County, Florida; said lands situate, lying and being in Broward County, Florida.

PROPERTY ADDRESS:

61 NE 1ST STREET
POMPAÑO BEACH, FL 33060

INVOICE NUMBER: 78570-SE
DATE OF FIELD WORK: 12/20/2016

CERTIFIED TO
TAMMY GRIFFIN

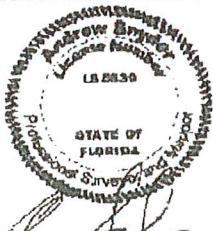
FLOOD ZONE: X
FLOOD MAP: 12011C
PANEL: 0376
SUFFIX: H
PANEL DATE: 08/18/2014

BASE FLOOD ELEVATION OR DEPTH: NAVD 1988
COMMUNITY NUMBER: 120055

General Notes:

1. THIS SURVEY IS BASED UPON RECORD INFORMATION PROVIDED BY CLIENT. NO SPECIFIC SEARCH OF THE PUBLIC RECORD HAS BEEN MADE BY THIS OFFICE UNLESS OTHERWISE NOTED.
2. IF THIS SURVEY HAS BEEN PREPARED FOR THE PURPOSES OF A MORTGAGE TRANSACTION, ITS SCOPE IS LIMITED TO THE DETERMINATION OF TITLE DEFICIENCIES. NO FUTURE CONSTRUCTION SHALL BE BASED UPON THIS SURVEY WITHOUT FIRST OBTAINING APPROVAL AND/OR UPDATES FROM LANDTEC SURVEYING. LANDTEC SURVEYING ASSUMES NO RESPONSIBILITY FOR ERRORS RESULTING FROM FAILURE TO ADHERE TO THIS CLAUSE.
3. ANY FENCES SHOWN HEREON ARE ILLUSTRATIVE OF THEIR GENERAL POSITION ONLY. FENCE TIES SHOWN ARE TO GENERAL CENTERLINE OF FENCE. THIS OFFICE WILL NOT BE RESPONSIBLE FOR DAMAGES RESULTING FROM THE REMOVAL OF, OR CHANGES MADE TO, ANY FENCES UNLESS WE HAVE PROVIDED A SURVEY SPECIFICALLY LOCATING SAID FENCES FOR SUCH PURPOSES. DETERMINATION OF FENCE POSITIONS SHOULD BE BASED SOLELY ON THEIR PHYSICAL RELATIONSHIP TO THE MONUMENTED BOUNDARY LINES.
4. GRAPHIC REPRESENTATIONS MAY HAVE BEEN EXAGGERATED TO MORE CLEARLY ILLUSTRATE MEASURED RELATIONSHIPS - DIMENSIONS SHALL HAVE PRECEDENCE OVER SCALED POSITIONS.
5. UNDERGROUND IMPROVEMENTS HAVE NOT BEEN LOCATED EXCEPT AS SPECIFICALLY SHOWN.
6. ELEVATIONS ARE BASED UPON NATIONAL GEODETIC VERTICAL DATUM (N.G.V.D. 1929) OR NORTH AMERICAN VERTICAL DATUM (N.A.V.D. 1988) AS SHOWN ABOVE.
7. ALL BOUNDARY AND CONTROL DIMENSIONS SHOWN ARE FIELD MEASURED AND CORRESPOND TO RECORD INFORMATION UNLESS SPECIFICALLY NOTED OTHERWISE.
8. CORNERS SHOWN AS "SET" ARE IDENTIFIED WITH A CAP MARKED LB (LICENSED BUSINESS) # 6799.

I HEREBY CERTIFY THAT THIS BOUNDARY SURVEY MEETS THE MINIMUM TECHNICAL STANDARDS FOR SURVEYS, AS SET FORTH BY THE FLORIDA BOARD OF SURVEYORS AND MAPPERS IN CHAPTER 5J-17.051 & 5J-17.052 OF THE FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES, AND THAT THE ELECTRONIC SIGNATURE AND SEAL HEREON MEETS PROCEDURES AS SET FORTH IN CHAPTER 5J-17.082, PURSUANT TO SECTION 472.025, FLORIDA STATUTES.



Digitally signed by
Andrew Snyder, P.S.M.
DN: cn=Andrew Snyder,
P.S.M., o=Landtech
Surveying, ou,
email=asnyder@landtechs
urvey.com, c=US
Date: 2016.12.20 17:07:00
DATE

ANDREW SNYDER - PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA REGISTRATION No. 5639 (NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OR ELECTRONIC SEAL OF THE FLORIDA LICENSED SURVEYOR AND MAPPER SHOWN ABOVE)

Legend/Abbreviations:

A = Arc Length
CA = Central Angle
C/L = Centerline
CF = Computed from Field Measure
CR = Computed from Record data
CATV = Cable TV Riser
DE = Drainage Easement
Ease = Easement

EOW = Edge of Water
FF = Finished Floor
FIP = Found Iron Pipe
FIR = Found Iron Rod
FN = Found Nail
L = Per Legal Description
M = Measured
OHC = Overhead Cable
ORB = Official Records Book

P = Per Plat
P/L = Property Line
PC = Point of Curvature
PCC = Point of Compound Curvature
PK = Parker Kalon Nail
POB = Point of Beginning
POC = Point of Commencement
PRC = Point of Reverse Curvature

RW = Right-of-Way
TR = Telephone Riser
UE = Utility Easement
WM = Water Meter
UP = Utility Pole
CATV = Cable TV Riser
DE = Drainage Easement
Ease = Easement



LANDTEC
SURVEYING

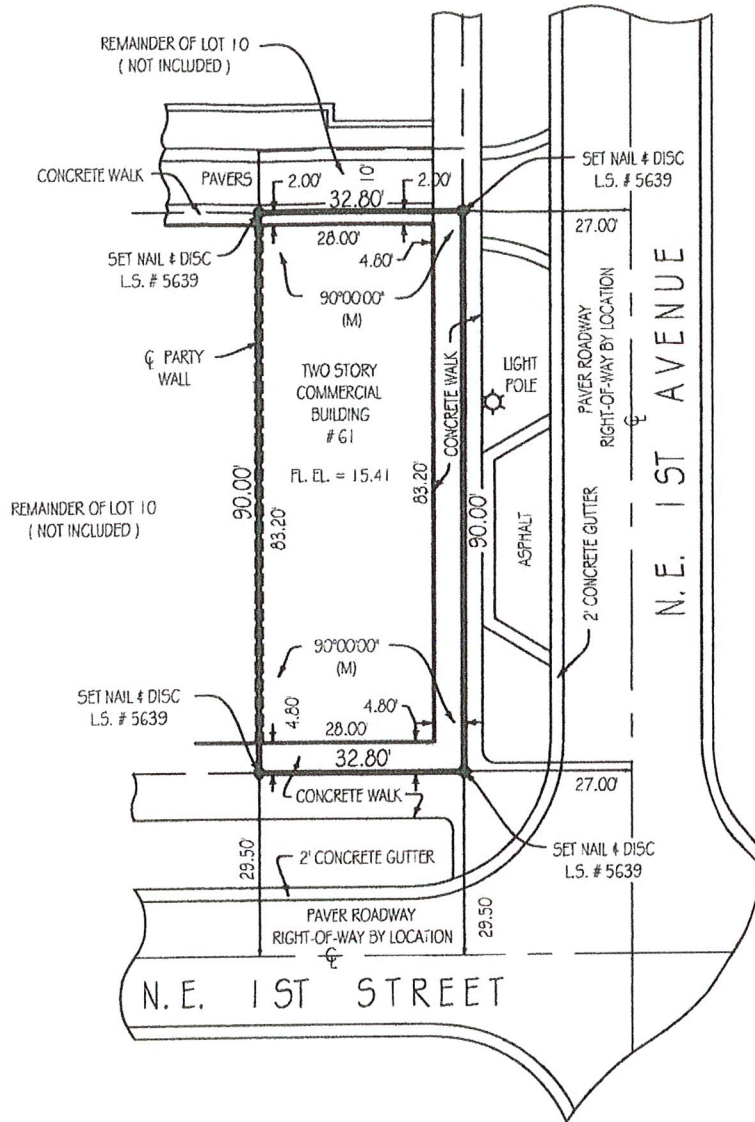
Proudly Serving Florida's Land Title & Real Estate Industries

... measurably better!

Handwritten initials/signature



SCALE: 1"=30'



BEARING REFERENCE: NONE. RECORD INFORMATION LACKS ANGULAR DATA.
ALL ANGULAR DATA SHOWN BASED UPON FIELD OBSERVATION ON-Y.

FOR CONSTRUCTION PURPOSES

BENCHMARK: BROWARD COUNTY BENCHMARK # 0666
ELEVATION = 16.31 N.A.V.D. 1988

PLEASE NOTE:
SUBJECT PROPERTY IS SERVICED BY PUBLIC UTILITIES.
THIS SURVEY IS APPROVED FOR CONSTRUCTION BY LANDTEC SURVEYING.

Adverse Conditions - Please note the following:

Landtec Surveying offers services throughout the State of Florida. Please refer to our website at www.LandtecSurvey.com for up to date information about our locations and coverage area. This survey has been issued by the following Landtec Surveying office:

600 Fairway Drive - Ste. 101
Deerfield Beach, FL. 33441
Office: (561) 367-3587 Fax: (561) 465-3145
www.LandtecSurvey.com

Invoice Number: 78570-SE
Drawn By: B.ZAB
Date of Field Work: 12/20/2016
Revision:
Revision:
Revision:



Proudly Serving Florida's Land Title & Real Estate Industries
... measurably better!

EXHIBIT B

EXHIBIT C



SH