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November 15, 2021

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Chairman
Zoning Board of Appeals
City of Pompano Beach
100 W. Atlantic Blvd.
Pompano Beach, FL 33060

Re: Application for Major Temporary Use Permit
1661 North Dixie Highway
Upper Pompano Properties and Investments, LLC
Dixie Properties and Investments, LLC

Dear Chairman & Board Members:

On behalf of this owner, enclosed is a complete application for a Major Temporary Use Permit.

The previous permits were put to good use, since it allowed an initial year and a half process of going through the site plan approval process, and thereafter the acquisition of the necessary building permits for this property.

Immediately thereafter as construction started and the improvements commenced, Covid-19 struck and this Board graciously permitted and approved the order of October 25, 2021. This application contains additional uses now allowed since the September 2021 rezoning to B-4 has been approved by the City Commission.

For reasons stated in the update attached to the rationale for the original application, and the last application, counsel respectfully submits and hopes the Board will agree that good and sufficient grounds that the ravages of Covid-19 and more lately the "Delta" variant mutation coupled with the fact that the City remained closed until June 15, 2021, and coupled with the malaise in the building industry, lack of labor and lack of resources, provided the perfect storm which prevented this applicant from fulfilling all of its goals and obligations under the currently existing permits now held by them and issued by the City.

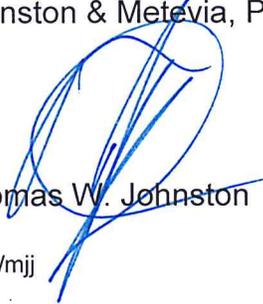
These permits are still valid and active and Applicant, after having invested close to \$2 million in this site, will continue to invest hundreds of thousands of dollars which it has at hand, to complete this operation.

Applicant would like nothing more than to have the time to complete the site plan and building permit requirements and finish this project, and appreciates the Board's

consideration and time in reviewing the attached application for a further Major Temporary Use Permit.

Very truly yours,

Johnston & Metevia, P.A.



Thomas W. Johnston

TWJ/mjj

File No. 14-08

cc: William Murphy on behalf Upper Pompano Properties and Investments, LLC, Dixie Properties and Investments, LLC
Gina Yehuda, Berger Commercial

Enclosures: Major Temporary Use Permit application
Check
Thumb drive

**DIXIE PROPERTIES & INVESTMENTS, LLC
UPPER POMPANO PROPERTIES & INVESTMENTS, LLC
MAJOR TEMPORARY PERMIT**

Attached to this letter please find the following as part of the application of all three owners concerning their request that Zoning Board of Appeals grant them a Major Temporary Use Permit.

As we know these permits are not extendible, so if an applicant needs more time under the law, the applicant will have to file a new application, so please consider this a second application.

Since the Board's order Appeal #17-15000008 dated July 20, 2017, and filed on August 17, 2017, much progress has been made under the original permit and order.

As the requirements of the above order have been complied with, and the Applicants through their various agents and professionals, have invested in improvements, \$164,525.41 in expenses. This includes almost \$75,000 in landscaping plus \$15,000 in irrigation, plus over \$18,000 in site and lighting work, and over \$10,000 in paint and supplies.

To arrive at this point, the Applicants have spent over \$46,000 in architectural and planning services, and almost \$25,000 in consulting and legal fees. This is a substantial investment in a good faith effort to comply with the requirements contained in the above order.

Applicants need additional time according to the attached email from Principal Planner Daniel Keester (Exhibit A) to myself and the Applicants, dated August 2, 2018. The Applicants obtained Building Permit #17-8386 and completed same, having installed a Type B buffer along the northern and western property lines.

The Applicants have submitted a Minor Site Plan and Major Building Design application under #17-120000057 and completed that exercise successfully.

The Applicants have submitted applications for a building permit to make certain adjustments, alterations and additions to the existing structures, and that is currently pending approval.

It is the Applicants' desire to continue to use the site during this "compliance process" under the initial order as its long term tenant Avis Budget is onsite and conducting its business of rental vehicles. The Applicants' intention is to obtain all necessary governmental permits and approvals, prior to the commencement of any construction (has already submitted) and as soon as permits are issued for this purpose by the City's Building Dept., the Applicants will make further investments of tens of thousands of dollars and finish the upgrade of this site in accordance with its plans and projections, and in accordance with the previous order issued by the Board.

Simply stated, Applicants desire a second Major Temporary Use Permit, lastly one year, to complete the last and final steps of these major improvements in upgrading this old site. It may take a number of months to complete these improvements and to obtain the necessary inspections, but the Applicants have purchased this property, shown good faith in acquiring a tenant, shown good faith in completing a major portion of the requirements of the first Major Temporary Use Permit, and are well into the process of completing their remaining balance of those requirements and objectives.

Applicants respectfully request a second Major Temporary Use Permit and have paid the fee and filed its application as required by ordinance.

Please find the following exhibits: Exhibit A – email from Mr. Keester; Exhibit B – the Board’s last order effective through October 28, 2021; and Exhibit C – Appeal 95-21.

HISTORY OF SITE

The applicant Krome Mining Partners, is a Florida partnership owned and operated by long time Florida business interests. The property in question is an old, established site, located at 1661 North Dixie Highway, formerly known as the Driscoll Family wrecker and recovery yard.

During the ownership period by the Driscoll family, they used this site for the holding and parking area for up to 14 large and extra-large wrecker and flatbed recovery vehicles, and populated the site with wrecked vehicles from all over north Broward County, as they had for many years the contract for the City of Pompano Beach wreckers and recovery service. Driscoll’s served the Florida Highway Patrol, Broward Sheriff’s Office and other municipalities. From time to time, the property would be covered from one end to the other with damaged or wrecked vehicles, awaiting collection and disposition by owners and/or insurance carriers.

During Driscoll’s ownership, the site was covered by a variance under Appeal #95-21. Relief #1 in the ZBA order allowed Driscoll’s Towing Service to expand the towing operation onto an abutting property as requested, #2 provide 14 parking spaces as requested, and #3 increase an existing parking area by 20% or more without full compliance with the landscape code as requested. A copy of the Board’s order is attached as an exhibit, and the variance is still in full force and effect as it runs with the land (see Exhibit C).

A few years ago, Driscoll’s ceased operation on the site, and the current owners purchased the property from the bank which held the mortgage. During that period of time, the new owners have searched for an appropriate tenant for either all or part of the site. The Driscoll’s use was heavy, intense, and they operated from this site 24 hours a day, since in addition to the towing and wrecker service, they provided a response service for the City of Pompano Beach and other municipalities for emergency canal and waterway rescues. Driscoll’s housed in the warehouses which are located on the parent

tract, on the south side, in the CBS garages for evidence purposes, vehicles involved in collisions and/or criminal activity on hold for law enforcement (see Exhibit C).

CURRENT OWNERS' PROPOSAL

The current owners have a tenant, Avis Budget Rental, who would like to establish on this property a car and truck rental facility. This property sits almost directly to the east from the Goodyear Blimp base and the City's equestrian stables, on the west side of Dixie Highway. This site has remained empty for a number of years and is ripe for development and commercial B-3 business.

CITY'S NEWEST TRANSPORTATION CORRIDOR

The City of Pompano Beach within the last two years has acquired the planning services of Renaissance Planning Group, Florida International University, the Metropolitan Center, and Kimley-Horn and Associates to prepare the Pompano Beach Transportation Corridor Study. Of the three corridor studies, the first one to be implemented is the Dixie Highway Corridor.

Request: Applicant is seeking a Major Temporary Use Permit for commercial use pursuant to §155.2412 Major Temporary *Commercial Use* of the City zoning code.

A Major Temporary Use Permit for one (1) year (or longer) shall be approved only on the finding that the Temporary Use, as proposed is:

a. *Is on its face temporary in nature;*

ANSWER: Applicant is seeking this permit so the business can become active and established immediately on this site. This site is ideal for this purpose as it formerly housed a commercial towing wrecker and automobile storage service. The nature of this permit is for one year, to allow the Applicant to apply for and receive site plan approval for the entire site, including all the vicissitudes of the site plan requirements of the Code as set forth in §155.4212 (major temporary use for one year) and its subsets.

b. *Is in harmony with the spirit and intent of the Code;*

ANSWER: The spirit and intent of the Code is to encourage the development of commercial sites such as the present one, and is specifically approved and allowed and provided for in B-3 zoning districts such as this one, pursuant to §155.3304 *General Business* and §155.4219 M *Automotive and Light Truck Rental*, 1. *Districts Where Permitted*, showing permitted in B-3 zoning which this property is zoned (see attached p.459-460). This property is an exact fit for this category and classification.

c. *Is not detrimental to property or improvements in the surrounding area, or to the public health, safety or general welfare;*

ANSWER: A rental car and truck agency is in great demand along the Dixie Highway corridor. From the south city limits at McNab Road (SW 15th Street) north to the northern city limits at Sample Road (NW 36th Street) there are no car rental facilities whatsoever;

to the immediate west area of this site in Districts 4 and 5, there are no car rental facilities whatsoever. There is a great need and demand for this service. A car rental agency also renting light trucks, fronting Dixie Highway, in front of the FEC railroad tracks, also in front of the blimp base, is no way detrimental to property in the surrounding area to public health, safety or the general welfare; this site has been abandoned for a number of years, and by having a substantial international corporation such as Avis Budget at this site, will help stabilize this site, and also act as a stabilizing influence to the surrounding neighbors to the west, and this property is surrounded on the south, west and north by a block wall.

d. *Does not have substantial adverse effects or noise impacts on any adjoining permanent uses or nearby residential neighborhoods;*

ANSWER: As stated in c above, this is a commercial transportation district and has been designated so by the City in their aforementioned corridor study. The property to the east is a four-lane, divided Dixie Highway, FEC railroad tracks, and Air Park; to the south is a commercial area and to the west and north are single-family houses, buffered by a 6' concrete wall. Applicant will be required to specifically comply with all City safeguards and setbacks, including landscaping interior to that wall. There will not be adverse impacts or noise impacts on adjoining permanent uses on the nearby residential neighborhood.

e. *Is compatible with any principal uses on this site;*

ANSWER: As mentioned in the first paragraph, this property's history has been one of automobile and truck use, with Driscoll's Towing Service and storage yard first used for several decades, and there are presently no other uses on this site. This property is compatible with the Dixie Highway Corridor Study for transportation uses.

f. *Is located on a site containing sufficient land area to allow the temporary use and associated structures, and accommodate any associated parking and traffic movement without disturbing environmentally sensitive lands;*

ANSWER: To the knowledge of the Applicant, there are no adjoining environmentally sensitive lands. The lands and neighborhood are as described in this application, and in the Dixie Highway Corridor Study. There is sufficient land area to allow this Temporary Use, and the associated structures, driveway and parking will allow efficient use, and ingress and egress to this site. This site faces Dixie Highway and surrounded by a combination of buildings and a 6' concrete wall buffering the neighbors. There is a paint and body shop on an adjacent and neighboring parcel to the north which business is far more intense than the business of renting cars and trucks. The purpose of this application is to allow this business to be established while it is going through the site plan process for approval.

g. *Complies with all applicable use-specific standards in §155.4403;*

ANSWER: This property complies with all of the requirements for a Temporary Use Permit as found and required in §155.4403 and for certain use specific standards set forth

in Part 4. This property is consistent with the Comprehensive Plan as it has commercial land use and zoning.

CONCLUSION

Nothing could be better for this neighborhood than to have a clean, first-class Avis Budget rental car agency on this site. Rental car agencies of this national mark, are constructed and used with the highest standards to promote cleanliness, safety and quiet and efficient operation. The mere fact that rental cars and trucks will be close to and convenient to the immediate and expanded neighborhood will be a benefit to everyone who lives in the surrounding area. This is an indoor and outdoor use specifically allowed and permitted in the zoning district as a community use, rental car and truck businesses specifically targeted to serve the communities they are in. They are geographically oriented and have the greatest beneficial impact on those neighborhoods and communities that directly surround them. They also provide employment opportunities.

This is a request for a Temporary Use Permit in §155.2412 for the purpose of allowing this internationally known and respected rental car agency of Avis Budget to rent automobiles and trucks at this location for one year, without a site plan approval (including approved parking, parking surface, driveways, and use of structures) while the final site and landscape plans are submitted, approved and implemented. The vehicles will be brand new and parked in specified areas on the site, and new parking and driveways and other considerations will be provided, conceptual landscape plan. The final site plan will comply with all of the requirements a specifications of the City's Zoning Code for this district.

UPDATE **September 15, 2020**

This update is attached to and made part of the previous application for a Major Temporary Permit application. Since the Board's order of November 27, 2019, this project and society in whole, has been on HOLD due to the recent and current pandemic, and due to the orders issued by the US President, the Florida Governor, and the Broward County Mayor, restricting the population to a "quarantine state" for a number of months, which included in that population, the owners, professional staff, outside professionals, construction and development staff, engineers and advisors employed by the owner. Very little has happened to this site, since the Board's Order of 11/27/2019.

Applicant is required, due to the fact it has several functioning and operating tenants, including the rental companies Avis and Budget, operating on the site, as paying tenants for a large portion of the property needs further use protection under the Major Temporary Use permit process of the City.

All of the maintenance issues concerning this site have been complied with (3 acre parcel) including the freshly painted walls on all four sides of the property, the driveway entrances, the major portion of the landscaping and certain other facility improvements. Not all of the project is complete, due to the pandemic restrictions which have been a

supreme burden on the owners, but thankfully not causing this project to economically fail. Owner still wishes to invest the additional hundreds of thousands of dollars pursuant to their approved City site plan into this project, and will be as soon as "Stage 2" restrictions are lifted on the owners and owners' agents, finishing this project. In good faith, the owners need and require an additional Major Temporary Permit and this is their request to the Zoning Board of Appeals to grant a further year from November 27, 2019 through November 27, 2021.

Owners anticipate this should be sufficient time unless there are other major local and international interventions, for adequate time to finish all of the details on this project including the fulfillment of the site plan.

Owners through counsel thank the Board for its understanding and patience in granting the requested Major Temporary Permit for one year, and the owners will comply with all of the requirements of the site plan and all codes and laws of the City, County and State in completing this project See Exhibit B).

FURTHER UPDATE September 15, 2021

This update is attached and made a part of the previous application for Major Temporary Use Permit. Since this Board's order of October 28, 2020, this project and society as a whole have continued to be on hold. Although in the last few months, the Federal, State and County restrictions and quarantine status have been lifted, this ugly disease and pandemic has once again raised its head. Several months ago the "Delta" variant has caused a further "upset" in our society. Certain governmental agencies are requiring masks to be worn again and local government has not closed (it reopened in June 2021) it was closed for more than a year. During the time period of the last order, and the Building Department continued to function, it made, coupled with the labor shortage, and shortage of general contractors, materials and necessary supplies, almost impossible for the orderly, timely and continued development of this site.

The primary tenant Avis Budget, who rent trucks and cars out of this site, sustained a substantial reduction until recently, in demand for their rental cars and trucks. They are the largest paying tenant.

All of the issues concerning this site have been completed on the three acres, and the freshly painted walls have been maintained, and all of the greenery included the dozens of trees have continued to be irrigated and grow. The owners have embarked on a request from the City to rezone this property from B-3 Commercial to modified B-4 Commercial. The underlying land use remains commercial. The owners feel that by the approval of this rezoning application, they will have a better product to offer the public in the way of "rental uses" and it will be more attractive to new tenants bringing their businesses to this site. Keep in mind this site is surrounded on the east by a 10' wall and on the south by a 12' wall, and on the north and west by a 6' wall, with a sea of trees as an interior buffer. This site is not viewable from Dixie Highway unless you drive in one of

the two entrances which are gated and secured at night. Although the Covid-19 Stage 2 uses were lifted this spring, and the City reopened in June 2021, the general contractor, engineers and service providers will need at least one more year to complete their assignments of continuing to build the infrastructure and beautification of this site.

This Board's previous order was entered on October 28, 2020, it granted a Major Temporary Use Permit running through October 2021 (the decision was rendered on October 15, 2020).

The owners, in good faith, submit respectively that they would have had this project completed had it not been for the continued Covid-19 pandemic including the most recent and troubling Delta variant mutation.

Last week, it appeared the peak of the Delta variant has been reached and things started to get better, but it is still extremely difficult to marshal materials, resources and manpower and finish the project within the time allotted. The owners pushed in good faith to accomplish this, but it just became physically and strategically impossible to complete the improvements on this site, and therefore in good faith, the owners respectfully request an additional one-year issuance of a Major Temporary Use Permit based upon this application.

The owners, through counsel, thank the Board for its understanding and patience in granting the previous Major Temporary Use Permits and for consideration of this request, and the owners still have active building permits and active approved site plan with the City, and still maintain they will abide by all of the laws, rules and regulations of the City of Pompano Beach, Broward County, and the State of Florida in completing this project.

Lastly, on September 14, the City Commission voted 6-0 in favor of the Applicant's rezoning from B-3 to B-4. The second vote is scheduled for September 28, 2021.

**FURTHER UPDATE
November 15, 2021**

This update is in addition to and cumulative with page 1-7 including the last update of September 15, 2021.

As announced at the last meeting on October 21, 2021, the Board approved the pending application for Major Temporary Use Permit but at that time it only involved one use: *automotive and light truck rental and display without complying with applicable development standards as required by code.*

Announced at that meeting was the fact the property at the end of September 2021, had its zoning changed from B-3 *General Business* to B-4 *Heavy Business*. This allowed a wide range of uses to be utilized by future tenants and by the owners.

The owners have vigorously and energetically sought tenants for the 14 units located on site which are located on the south half of the site, in addition to the Avis/Budget truck and vehicle rental use which has been located on the north half of the site for a few years.

Attached is the Board's Order 21-15000006 (Exhibit D) of October 25, 2021 approving for this site the Avis/Budget occupation and use for the ensuing year to October 25, 2022. Since the October meeting, the client has acquired a number of new tenants, and they are listed on Exhibit E showing the uses of the 14 units, their square footage, and their identities. As with Order 21-15000006, the owners are now before the Board to request a Major Temporary Use Permit for the ensuing year, based upon the same grounds as the previous application, with just a change in the tenant identification and the uses for the south side of the property.

All of the uses are consistent with the City's Comprehensive Plan (underlying land use) and the zoning as the zoning for this property now entails and includes all of the uses in B-1, B-2, B-3 and now B-4. It is now perfectly lawful to have the *All Tires on the Go and More*, which received an earlier Special Exception in B-3, but does not need that now since the zoning has changed; in addition to them are tenants: *The Lab Guys*, *All Hung Up Hangers, LLC*, *The Boat Godz*, *Hi-Tec Floor Removal Services*, *SM Corporation*, *Legends Embalming Studio*, *MCW Supply Company, Inc.*, and *Climbing Steps, Inc.* Their uses are listed specifically on Exhibit E.

Keeping in mind that the criteria for this request is contained on pages 1-7, giving the history of this project, and due to the fact that the owners are rushing to complete and fulfill the requirements of the approved site plan, and requirements of the Board's Order for Avis/Budget dated October 25, 2021, the owners feel the requirements of the application for review standards are squarely met.

This request is:

a. *Is on its face temporary in nature;*

ANSWER: Temporary in nature requesting only one year or less.

b. *Is in harmony with the spirit and intent of the Code;*

ANSWER: Underlying land use and zoning are compatible, and these uses are all lawful.

c. *Is not detrimental to property or improvements in the surrounding area, or to the public health, safety or general welfare;*

ANSWER: All uses will be indoors and this property is surrounded by 1) a high concrete block wall, 2) a very well done landscape buffer according to the approved landscape plan which is part of the approved site plan.

d. *Does not have substantial adverse effects or noise impacts on any adjoining permanent uses or nearby residential neighborhoods;*

ANSWER: As earlier presented under this point in the first part of this application, there will be no substantial adverse effects or noise impacts on any adjoining permanent uses or nearby residential neighborhoods. All of the activities conducted for these uses will be indoors and behind closed doors. The property is surrounded by a 6' concrete block wall or higher, with a code compliant landscape buffer on the inside of the property to protect surrounding properties.

e. *Is compatible with any principal uses on this site;*

ANSWER: This property has, on the north side, the Avis/Budget rental vehicle facility, and these new uses will be on the south half of the property, clearly separated in an enclosed facility, from the Avis/Budget facility. They will all be compatible with the Avis/Budget use, and they are all permitted by the applicable zoning now that it is B-4 for this site.

f. *Is located on a site containing sufficient land area to allow the temporary use and associated structures, and accommodate any associated parking and traffic movement without disturbing environmentally sensitive lands;*

ANSWER: Parking is shown on the site plan, and if the site plan needs to be amended or changed, it will be in keeping with the uses described during the ensuing year, if this application is approved.

g. *Complies with all applicable use-specific standards in §155.4403;*

ANSWER: It complies with the City's zoning code and code of ordinances, and when complete, with any additional requirements from staff, it will comply with all of the goals, objectives and policies of the City's code of ordinances.

This application has been discussed prior to filing with Principal Planner Daniel Keester-O'Mills, and like the previous application, the owners are looking forward to the recommendation by the Development Services Department.

As earlier stated, the developers have at this point, invested northward of \$2 million in this site, and will be investing several hundred thousand dollars more, to complete necessary steps with the proper building permits for the implementation and satisfaction of the approved site plan obligation or any change thereto.

Applicant appreciates the ZBA Board's attention and consideration of its request, and Applicant and its counsel look forward to the December 16th hearing, and will be present to answer any and all inquiries made by the Board or the public. All of the attached uses as stated above will be performed indoors in CBS buildings with appropriate doors, and

it is surrounded by the exterior wall of this property, and will be in compliance with all of the other codes, rules and requirements of the City, County and State and any other entity.