

### ADMINISTRATIVE MEMORANDUM NO. 17-420

**DATE:** November 28, 2017

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

**VIA:** David L. Recor, ICMA-CM, Acting Development Services Director

**FROM:** Daniel T. Keester-O'Mills, AICP, Principal Planner

**RE:** Request for a Resolution pursuant to 155.2308 (E) for Oceanside Project  
1 N Ocean Blvd

---

Please prepare a Resolution for the above referenced property. Below you will find an outline of the series of relevant events that has led the applicant to this request.

#### Development Approval and Extensions:

- In 2006, a development order (P&Z: 06-12000032) was issued for a 24 story condominium tower with 77 units, and a 22 story hotel tower with 303 hotel rooms, retail and restaurant spaces included.
  - At that time, the authority granted to the Planning & Zoning Board was authorized to issue development orders for a period of 18 months.
  - In 2007, an amendment was made to the Land Development Code (157.45 (G)) that extended the period of development orders from 18 months to 24 months.
- In 2009, the development orders were extended for a period of two years pursuant to Senate Bill 360. (Zoning Letter: 09-02000107)
- In 2010, the development orders granted by Senate Bill 360 remained valid pursuant to Senate Bill 1752, as Senate Bill 360 was found to be unconstitutional. (Zoning Letter: 10-02000189)
- In 2012, at the March Planning & Zoning Board Meeting the applicant requested to extend the development orders pursuant to Ordinance 2012-22. At the February 2012 City Commission Meeting, the City Commission authorized the Planning & Zoning Board the authority to grant one two-year extension to any site plan development order subject to certain criteria. (P&Z Memo: #12-23)
- Subsequently, there were a series of extensions that were authorized by declared states of emergency by the Governor: Heavy Rainfall, Zika, Hurricane Matthew, & the associated extensions of each emergency. (Zoning Letter: 16-02000194)

#### Current Use of the Property:

- In 2012, the City Commission entered into a lease agreement with JJ Land Realty, LLC via Ordinance 2012-18.

- The initial term of the lease is for a period of 5 years, and may be extended for an additional two (2) years; however, the Lessor (“JJ Land Realty, LLC”) reserves the right to terminate the lease at any time for any reason with 60 days written notice provided to the Lessee (“City”).
- The primary purpose for the lease was to construct a temporary surface parking lot for public parking on the subject property.
- The temporary parking lot was permitted in 2012 (BP: #12-00004321).
- The Ordinance authorizing the lease agreement was approved on second reading of the ordinance on February 14, 2012.

#### 155.2308. Post-Decision Actions and Limitations

- In October 2016, the City Commission approved a text amendment to authorize the City Commission the ability to extend a development order for a period not to exceed five years provided that the property was being used by a “Government Entity for a public purpose as demonstrated by an Interlocal Agreement, Lease, or similar legal document with the lawful owner of the property...”

Given the active development order for the project (P&Z: 06-12000032) on the subject property, the existing lease on the subject property for the public purpose (Ordinance 2012-18), and the section of the zoning code that authorizes the City Commission to extend the development order (155.2308 (E)) the applicant is requesting the City Commission authorize the extension of the development order for a period of 5 years.

Should you have any questions, please let me know. My extension is 5541.

#### **Enclosures:**

- Development Order Tolling Request, from Applicant’s Attorney (Bonnie Miskel, Esq.)
- Planning & Zoning Development Order (P&Z: 06-12000032)
- Zoning Letter (16-02000194)
- Ordinance 2012-18
- Zoning Code Section 155.2308. (Post-Decision Actions And Limitations)



**DUNAY  
MISKEL  
BACKMAN** LLP

Gary Dunay  
Bonnie Miskel  
Scott Backman

Hope Calhoun  
Dwayne Dickerson  
Ele Zachariades

Christina Bilenki  
Heather Jo Allen  
Andrea Keiser

June 6, 2017

VIA ELECTRONIC MAIL

Robin Bird, Development Services Director  
City of Pompano Beach  
100 West Atlantic Boulevard  
Pompano Beach, FL 33060

Re: Development Order Tolling Request  
Oceanside Project-Northeast Corner of Atlantic Blvd. & State Road A1A

Dear Mr. Bird:

I am writing to you to request the tolling of the Development Order expiration pursuant to Section 155.2308 of the City of Pompano Beach Code of Ordinances. My client owns the property generally located on the northeast corner of A1A and Atlantic Boulevard (the "Property") and has an approved Site Plan for a hotel use pursuant to Development Order #06-12000032 ("Site Plan"). The original expiration of the Site Plan was May 2, 2010. On November 2, 2016, you considered multiple requests for extensions pursuant to multiple Executive Orders rendered by the Governor and confirmed that the new expiration date for the Oceanside Project is December 12, 2017. A copy of your letter is attached as Exhibit A.

In October 2016, the City of Pompano Beach ("City") approved a text amendment to the City Code providing as follows:

*"The running of the expiration time period for any development order shall be tolled during use of the property by a Government Entity for a public purpose as demonstrated by an Interlocal Agreement, Lease, or similar legal document with the lawful owner of the property. The tolling period shall commence on the effective date of the Interlocal Agreement, Lease, or similar legal document. The tolling shall terminate upon the expiration of the Interlocal Agreement, Lease, or similar legal document, or the expiration of five years, whichever is sooner. The request for the tolling shall be made at least 45 days prior to the expiration of the Development Order, and shall be subject to approval by resolution of the City Commission." (Ordinance 2017-05)*

Pursuant to Section 155.2308, the following must be demonstrated: 1) the property must be used for a public purpose pursuant to a lease or similar document; and 2) a request for tolling must be made at least 45 days prior to the expiration of the Development Order.

In this case, the owner and the City executed a Lease allowing the City to use the Property for public parking (the Lease is attached as Exhibit B). As a result of the municipal use of the Property, pursuant to Section 155.2308, owner may request the tolling of its Development Order thereby extending the expiration date of the Site Plan for a maximum of five (5) years. Further, as the City's lease period was for five (5) years, with two 2-year extensions available, the owner properly can ask to toll its development for the maximum five (5) years.

As the Development Order does not expire until December 12, 2017, this request to toll the Development Order for five (5) years is more than 45 days from the expiration and also proper under the Code.

As such, this letter shall serve as Property owner's request to toll the expiration date of the Development Order from December 12, 2017, to December 12, 2022.

If you need any additional information, please do not hesitate to call.

Sincerely,



Bonnie Miskel, Esq.

Attachments

cc: Mr. Ari Pearl (by email)

Exhibit A  
(Letter from Robin M. Bird of November 2, 2016)

November 2, 2016

Zoning Letter Number: 16-02000194

Bonnie Miskel, Esq  
Dunay, Miskel, Backman  
14 SE 4<sup>th</sup> Street, Suite 36  
Boca Raton, FL 33432  
Via Email Only: [bmiskel@dmdbblaw.com](mailto:bmiskel@dmdbblaw.com)

**Re: Oceanside Parcel A (BCPA Folio: 484331450010)  
Development Order #06-12000032  
Extension Request per Executive Orders 16-233 (f/k/a 16-29, 16-149, and 16-193) and  
16-230**

Dear Ms. Miskel:

The Development Services Department is in receipt of your letter dated October 27, 2016, which requests an extension to the expiration time period for the above referenced Development Order pursuant to Executive Orders 16-233 (which extended 16-29, 16-149, and 16-193) and 16-230. In response to your request staff has determined the following:

**Development Order #06-12000032**

- The original expiration date for this Development Order was May 2, 2010.
- On November 18, 2009, per Senate Bill 360, the expiration date was extended two years to May 2, 2012.
- On December 10, 2010, the City transferred your previously issued extension per Senate Bill 360 to an extension per Senate Bill 1752, and therefore the expiration date remained at May 2, 2012.
- On April 11, 2012, per Planning and Zoning Board Memo #12-23, the expiration date was extended two years to May 2, 2016.
- On May 5, 2016, per Executive Orders 16-30, 16-43, and 16-64, the expiration date was extended for six months plus 45 days to December 12, 2016.
- Executive Order 16-233 (Emergency Order for Zika Virus) is set to expire on December 16, 2016 unless renewed by the Governor. Until such time that Executive Order 16-233 expires (or is subsequently renewed), the tolled period cannot be accurately determined.
  - Your request for a Six Month extension per Executive Order 16-233 (Emergency Order for Zika Virus) is **Approved**.
  - Your request for the applicable tolled period per Executive Order 16-233 (Emergency Order for Zika Virus) is **Not Approved**. A new request for the tolled period should be submitted within 90 days after the termination of the emergency declaration.

- Executive Order 16-230 (Emergency Management – Hurricane Mathew) is set to expire on December 2, 2016. Until such time that Executive Order 16-230 expires (or is subsequently renewed), the tolled period cannot be accurately determined.
  - Your request for a Six Month extension per Executive Order 16-230 (Emergency Management – Hurricane Mathew) is **Approved**.
  - Your request for the applicable tolled period per Executive Order Executive Order 16-230 (Emergency Management – Hurricane Mathew) is **Not Approved**. *A new request for the tolled period should be submitted within 90 days after the termination of the emergency declaration.*
- **The new expiration date is December 12, 2017.**

Should you need additional assistance in this matter, please contact my office at (954) 786-4634.

Yours truly,

**THE CITY OF POMPANO BEACH**



Robin M. Bird  
Development Services Director

Enc: Extension Request Letter dated October 27, 2016 with attachments

**Exhibit B**  
**(Ground Lease Agreement between JJ Land Realty, LLC**  
**and City of Pompano Beach)**



**ORDINANCE NO. 2012-18\_\_\_\_\_**

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

**AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A GROUND LEASE AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND JJ LAND REALTY, LLC; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, pursuant to law, ten (10) days' notice has been given by publication in a paper of general circulation in the City, notifying the public of this proposed ordinance and of a public hearing in the City Commission Chambers of the City of Pompano Beach; and

**WHEREAS**, a public hearing before the City Commission was held pursuant to the published notice described above, at which hearing the parties in interest and all other citizens so desiring had an opportunity to be and were, in fact, heard; now, therefore,

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

**SECTION 1.** That a Ground Lease Agreement between the City of Pompano Beach and JJ Land Realty, LLC, a copy of which Agreement is attached hereto and incorporated herein by reference as if set forth in full, is hereby approved.

**SECTION 2.** That the proper City officials are hereby authorized to execute said Agreement.

**SECTION 3.** If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of

this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

**SECTION 4.** This Ordinance shall become effective upon passage.

**PASSED FIRST READING** this 24<sup>th</sup> day of January, 2012.

**PASSED SECOND READING** this 14<sup>th</sup> day of February, 2012.

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

**ATTEST:**

  
\_\_\_\_\_  
**MARY L. CHAMBERS, CITY CLERK**

/jrm  
10/6/11  
L:ord/2012-05

**GROUND LEASE AGREEMENT**  
*between*  
**JJ LAND REALTY, LLC**  
*and*  
**CITY OF POMPANO BEACH**

---

**THIS AGREEMENT** made and entered into this 28th day of February, 2012  
by and between:

**JJ LAND REALTY, LLC**, a limited liability company organized and existing under the laws of the State of Florida, having its principal office at 404 Fifth Avenue, 6<sup>th</sup> Floor, New York, New York, referred to herein as "Lessor"

and

**CITY OF POMPANO BEACH**, a municipal corporation organized and existing under the laws of the State of Florida, having its principal office at 100 W. Atlantic Blvd., Pompano Beach, Florida, 33060, referred to here as "Lessee,"

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

**1. DEMISE; DESCRIPTION OF PREMISES.**

Lessor leases to Lessee and Lessee hires from Lessor, for the purpose of providing public parking and for no other purpose, the following described Premises situated in the City of Pompano Beach, County of Broward, State of Florida, and more particularly described in Exhibit "A" attached hereto and made a part hereof. As used in this Lease, the term "Premises" refers to the real property described above and to any improvements located on the property from time to time during the term of this Lease.

**2. TERM.**

a. The initial term of this Lease shall be for five (5) years, commencing on the date of execution of this Lease. As used in this Lease, the expression "term of this Lease" refers to such initial term and to any extension of the initial term as provided in Paragraph 2.b below.

b. Lessee, provided it is not in default of any terms or conditions of this Lease, shall have the right and option (if consented to by Lessor as provided herein), but shall in no way be obligated, to seek two extensions of the term of this Lease for an additional two (2) years for

each extension (each an "Extension Period"), on the terms and conditions as set forth in this Lease. Should Lessee wish to extend this Lease for an Extension Period as referenced herein, Lessee shall provide written notice to that effect to the Lessor, which notice shall be given at least sixty (60) days prior to the last day of the term of the Lease. The rental amount for each of the two extension terms shall be the same as for the initial term of this Lease as provided for in Paragraph 3 below.

c. Lessor shall have the right to terminate this Lease at any time and for any reason with sixty (60) days written notice provided to Lessee subject to the terms set forth below in Paragraph 5.

d. This Agreement shall terminate and Lessee shall not be required to pay any rent whatsoever if Lessee is unable to secure all necessary approvals for the improvements provided for in this Agreement.

### **3. RENT.**

a. Subject to adjustment as provided below in Paragraph 3.b, the base rent for the initial term shall be Ten (\$10.00) Dollars which Lessee shall pay to Lessor at such place or places as may be designated from time to time by Lessor.

b. The rent to be paid by Lessee under this Lease shall be subject to increase adjustment as follows:

Commencing on the day after Lessee's completion of Lessee's parking lot and associated improvements as described in Exhibit "B" attached hereto and made a part hereof, as evidenced by a certificate of completion, Lessee agrees to pay to Lessor forty-five percent (45%) of the total gross fees collected from the Premises. Said payment shall be payable on the fifteenth (15<sup>th</sup>) of each month for the preceding month's collected fees.

c. Upon request, Lessee shall provide Lessor (within seven (7) days of request from Lessor) with documentation necessary to establish the total amount of fees collected for each monthly rental period.

### **4. CONSTRUCTION OF SURFACE PARKING LOT AND USE OF PREMISES.**

a. Lessee shall construct, at Lessee's sole cost and expense, a temporary surface parking facility on the Premises in general conformity with the rendering provided in Exhibit B of this Lease. Upon the completion of the improvements, the Premises shall be used as a public parking facility. Lessee also agrees to provide clean fill for grading and leveling of the Premises as needed prior to the construction of the parking facility. In addition to the construction of the temporary surface parking facility, Lessee shall install required landscaping and provide parking pay-stations on the Premises. All of the above-referenced construction and improvements shall be undertaken at the Lessee's sole cost which shall not exceed \$500,000.00.

b. Prior to commencing construction of the parking facility, Lessor shall be provided with the plan for the parking facility for review and approval. Said approval shall not be unreasonably withheld. Lessee shall proceed with due diligence and continuity to fund and construct the parking facilities on the Premises and timely notify Lessor of all hearings or meetings concerning the Premises so as to permit a representative of the Lessor to attend said hearings or meetings. Additionally, Lessee shall provide Lessor with copies of all official correspondence, notices and submissions regarding the Premises.

c. Lessee agrees to charge at least one dollar (\$1.00) per hour for each parking spot on the Premises. The hours of availability for use of the parking facility shall be from 8 a.m. through 1 a.m. daily. Lessee further agrees that with the exception provided for below in 4.d, the parking facility will be available for use by the public 365 days a year.

d. Lessee shall have the right to close the parking facility either partially or entirely to public use for no more than four (4) days during each year, commencing upon the completion of the improvements, at Lessee's option. Said closure may be undertaken for any reason, including repairs to the Premises and use of the Premises by Lessee for the installation of ticket sales booths or other booths administered by the Lessee in connection with festivals or other beach related activities.

#### **5. PENALTY FOR EARLY TERMINATION.**

In the event that Lessor exercises its right to terminate the Lease before the initial five-year term has expired, as provided for in 2.c above, Lessor shall be required to compensate Lessee for the cost of the improvements made to the Premises by Lessee at the time of the termination amortized on a monthly basis according to the total cost of the improvements divided by 60 months. For example:  $\$500,000.00$  (total maximum cost of improvements)/60 (number of months in the lease) =  $\$8,333.33$  = the (monthly) amortized penalty rate.

#### **6. WARRANTIES OF TITLE AND QUIET POSSESSION.**

Lessor covenants that Lessor is seized of the Leased Premises in fee simple and has full right to make this Lease and that Lessee shall have quiet and peaceable possession of the Leased Premises during the term of this Lease.

#### **7. DELIVERY OF POSSESSION.**

If, for any reason whatsoever, Lessor cannot deliver possession of the Leased Premises to Lessee at the commencement of the Lease term, as specified above, this Lease shall not be void or voidable, nor shall Lessor be liable to Lessee for any loss or damage resulting from the inability to deliver possession; in that event there shall be a proportionate reduction of rent covering the period between the commencement of the Lease term and the time when Lessor can deliver possession. However, in the event that Lessor cannot deliver possession within three (3) months of the execution of this Lease, this Lease shall be voidable by either party.

**8. USES PROHIBITED.**

Lessee shall not use or permit the Leased Premises, or any part thereof, to be used for any purpose other than the purpose for which the Premises are Leased. No use shall be made or permitted to be made of the Premises, or acts done, that will cause a cancellation of any insurance policy covering the Premises; nor shall Lessee sell, or permit to be kept, used, or sold, in or about the Premises, any article prohibited by the standard form of fire insurance policies. Lessee shall, at its sole cost, comply with all requirements, pertaining to the Leased Premises, of any insurance organization or company, necessary for the maintenance of insurance, as provided in this Lease, covering any improvements and appurtenances at any time located on the Leased Premises.

**9. WASTE AND NUISANCE PROHIBITED.**

During the term of this Lease, Lessee shall comply with all applicable laws affecting the Leased Premises, the breach of which might result in any penalty on Lessor or forfeiture of Lessor's title to the Premises. Lessee shall not commit or suffer to be committed any waste or nuisance on the Leased Premises.

**10. ABANDONMENT OF PREMISES.**

Lessee shall not vacate or abandon the Premises at any time during the term of this Lease. If Lessee abandons, vacates, or surrenders the Leased Premises, or is dispossessed by process of law or otherwise, any personal property belonging to Lessee and left on the Premises shall be deemed to be abandoned, at the option of Lessor, except any property that may be encumbered to Lessor.

**11. LESSOR'S RIGHT OF ENTRY.**

Lessee shall permit Lessor and Lessor's agents and employees to enter the Leased Premises at all reasonable times for the purpose of inspecting the Premises, or for the purpose of posting notices of non-responsibility for alterations, additions, or repairs, without any rebate of rent and without any liability to Lessee for any loss of occupation or quiet enjoyment of the Premises. Lessee shall also permit Lessor and its agents and employees, at any time within the last six (6) months prior to the expiration of this Lease, to place on the Premises any usual or ordinary "To Let" or "To Lease" or "For Rent" signs and exhibit the Premises to prospective Lessees at reasonable hours.

**12. SUBLETTING AND ASSIGNMENT.**

Lessee may sublet the Premises in whole or in part without Lessor's consent, but the making of any sublease shall not release Lessee from, or otherwise affect in any manner, any of Lessee's obligations under this Lease. Lessee shall be obligated to deliver to Lessor a copy of any sublease no less than fifteen (15) days prior to the commencement of the sublease. Lessee shall not assign or transfer this Lease, or any interest in it, without Lessor's prior written consent, and consent to an assignment shall not be deemed to be consent to any subsequent assignment. Any assignment without consent shall be void, and shall, at the option of Lessor, terminate this Lease. Neither this Lease nor the Leasehold estate of Lessee nor any interest of Lessee

under this Lease in the Premises or any buildings or improvements on it shall be subject to involuntary assignment, transfer, or sale, or to assignment, transfer, or sale by operation of law in any manner whatsoever, and any attempted involuntary assignment, transfer, or sale shall be void and of no effect and shall, at the option of Lessor, terminate this Lease in which event the Lessor shall be exempt from any penalty provided for in section 5 herein above.

**13. NOTICES.**

All notices, demands, or other writings in this Lease provided to be given or made or sent, or which may be given or made or sent, by either party to this Lease to the other, shall be deemed to have been fully given or made or sent when made in writing and deposited in the United States mail, with postage prepaid, and registered and addressed as follows:

TO LESSOR: Ari Pearl  
The Plaza at Oceanside  
Residence #206  
One North Ocean Blvd.  
Pompano Beach, FL 33062

COPY TO: Ritter Zaretsky & Lieber, LLP  
Att: Oren Lieber, Esq.  
2915 Biscayne Blvd., Suite 300  
Miami, FL 33137

TO LESSEE: Christopher J. Brown  
Co-Executive Director  
Pompano Beach CRA  
100 W. Atlantic Blvd., Suite 276  
Pompano Beach, FL 33062

The address to which any notice, demand, or other writing may be given or made or sent to any party mentioned above may be changed by written notice given by the party mentioned above.

**14. TAXES AND ASSESSMENTS.**

a. Lessor agrees to pay any and all real estate taxes or charges or special assessments by ad valorem which at any time may be levied by any federal, state, county, city or any real estate tax assessment levying body upon the Premises, or any possessory right which Lessor may have in or to the Premises.

b. Notwithstanding the foregoing provision, Lessor shall, after notifying Lessee of its intention to do so, have the right in its own name or behalf, or in the name and behalf of Lessee hereto, to contest in good faith by all appropriate proceedings the amount, applicability or validity of any such tax or assessment, and in good faith by all appropriate proceedings the amount, applicability or validity of any such tax or assessment.

**15. REPAIRS AND DESTRUCTION OF IMPROVEMENTS.**

a. Maintenance of improvements. Throughout the term of this Lease, Lessee shall, at its own cost and without any expense to Lessor, keep and maintain the Premises, including all improvements of every kind that may be a part of the Premises and all appurtenances to the Premises, including sidewalks adjacent to the Premises, in good, sanitary, and neat order, condition and repair. Except as specifically provided in this Lease, during the term of this Lease, Lessee shall restore and rehabilitate any improvements of any kind that may be destroyed or damaged by fire, casualty, or any other cause whatsoever. Lessor shall not be obligated to make any repairs, replacements, or renewals of any kind whatsoever to the Leased Premises or improvements on it. Lessee shall also comply with and abide by all federal, state, county, municipal, and other governmental statutes, ordinances, laws, and regulations affecting the Premises, the improvements on the Premises, or any activity or condition on or in the Premises.

b. Damage to and destruction of improvements. The damage, destruction, or partial destruction of any improvement that is a part of the Premises shall not release Lessee from any obligation under this Lease, except as expressly provided below. In case of damage to or destruction of any improvement, Lessee shall at its own expense promptly repair and restore the improvement to a condition as good as or better than that which existed prior to the damage or destruction. Without limiting the obligations of Lessee, it is agreed that the proceeds of any insurance covering the damage or destruction shall be made available to Lessee for repair or replacement.

c. Damage or destruction occurring toward end of term. Notwithstanding anything to the contrary in the immediately preceding paragraphs of this section, in case of destruction of any improvement on the Premises or damage thereto from any cause so as to make it untenable occurring during the last six (6) months of the term of this Lease, Lessee, if not then in default under this Lease, may elect to terminate this Lease by written notice served on Lessor within thirty (30) days after the occurrence of the damage or destruction. In the event of termination, there shall be no obligation on the part of Lessee to repair or restore the improvements, and only Lessor shall have any right to receive proceeds collected under any insurance policies covering the Premises, building or any part of a building located thereon. On termination, Lessee shall return the Premises to Lessor as provided for below in Paragraph 20. On termination, rent and any other sums payable by Lessee to Lessor under this Lease shall be prorated as of the termination date, and in the event any rent shall have been paid in advance, Lessor shall rebate them for the unexpired period for which payment shall have been made.

d. Election not to terminate. If, in the event of destruction or damage during the last six (6) months of the term of this Lease, Lessee does not elect to terminate this Lease, the proceeds of all insurance covering the damage or destruction shall be made available to Lessee for repair or replacement, and Lessee shall be obligated to repair the Premises as provided above.



**16. UTILITIES.**

Lessee shall fully and promptly pay for all water, gas, heat, light, power, telephone service, and all other public utilities furnished to the Premises throughout the term of this Lease, and all other costs and expenses in connection with the use, operation and maintenance of the Premises and all activities conducted on the Premises. Lessor shall have no responsibility of any kind for any of those costs and expenses.

**17. LIENS.**

a. Lessee's duty to keep Premises free of liens. Lessee shall keep all of the Premises and every part of the improvements at any time located on the Premises free and clear of any mechanics', materialmen's, and other liens arising out of or in connection with work or labor done, services performed, or materials or appliances used or furnished in connection with any operations of Lessee, any alteration, improvement, or repairs or additions which Lessee may make or permit or cause to be made, or any work or construction, by or permitted by Lessee on or about the Premises, or any obligations of any kind incurred by Lessee. Lessee shall at all times promptly and fully pay and discharge all claims on which any lien may or could be based, and Lessee shall indemnify Lessor and all of the Premises and all improvements on the Premises against all liens and claims of liens and suits or other proceedings pertaining to those liens. Lessee shall give Lessor written notice no less than ten (10) days in advance of the commencement of any construction, alteration, addition, improvement, or repair estimated to cost in excess of \$1,000 in order that Lessor may post appropriate notices of Lessor's non-responsibility.

b. Contesting liens. If Lessee desires to contest any lien, Lessee shall notify Lessor of its intention to do so within ten (10) days after the filing of the lien. In such a case, and provided that Lessee shall on demand protect Lessor by a good and sufficient surety bond against any lien and cost, liability, or damage arising out of such contest, Lessee shall not be in default under this Lease until thirty (30) days after the final determination of the validity of the lien, within which time Lessee shall satisfy and discharge the lien to the extent held valid. However, the satisfaction and discharge of any such lien shall not, in any case, be delayed until execution is had on any judgment rendered on it, and any delay shall be a default of Lessee under this Lease. In the event of any such contest, Lessee shall protect and indemnify Lessor against all loss, expense, and damage resulting from the contest.

**18. INDEMNIFICATION OF LESSOR.**

Lessor shall not be liable for any claim, loss, injury, death, or damage to persons or property which at any time may be suffered or sustained by Lessee or by any person who may at any time be using or occupying or visiting the Leased Premises or be in, on, or about the Premises, whether the claim, loss, injury, death or damage shall be caused by or in any way result from or arise out of any act, omission, or negligence of Lessee or of any occupant, sublessee, visitor or user of any portion of the Premises, or shall result from or be caused by any other matter or thing. Lessee shall indemnify Lessor against all claims, liability, loss, or damage whatsoever on account of any such claim, loss, injury, death, or damage. Lessee waives all claims against Lessor for damages to the improvements that are now on or will later be placed or built on the Premises and to the property of Lessee in, on or about the Premises,

and for injuries to persons or property in or about the Premises, from any cause arising at any time. The three preceding sentences shall not apply to loss, injury, death, or damage arising by reason of the negligence or misconduct of Lessor or its agents or employees. The foregoing release paragraph shall be understood to also release each and every of the Lessor's partners, members and its and their officers, directors, shareholders, attorneys, employees and lenders, and all of their respective agents, predecessors, successors and assigns (the "Released Parties").

In the event of an asserted claim, the Lessee shall provide the Lessor reasonably timely written notice of same, and thereafter the Lessee shall at its own expense defend, protect and save harmless the Lessor and the Released Parties against said claim or any loss or liability thereunder. In the further event the Lessee shall fail to so defend and/or indemnify and save harmless, then in such instance the Released Parties shall have full rights to defend, pay or settle said claim on their behalf and with full rights to recourse against the Lessee for all fees, costs, expenses and payments made or agreed to be paid to discharge said claim so long as Lessor provides written notice to Lessee of same at least seven (7) days prior to assuming the defense, payment or settlement of any such claim.

**19. ATTORNEY'S FEES.**

If any action at law or in equity shall be brought to recover any rent under this Lease, or for or on account of any breach of this Lease, or to enforce or interpret any of the covenants, terms, or conditions of this Lease, or for the recovery of the possession of the Leased Premises, the prevailing party shall be entitled to recover from the other party as part of the prevailing party's costs reasonable attorney's fees, the amount of which shall be fixed by the court and shall be made a part of any judgment or decree rendered.

**20. REDELIVERY OF PREMISES.**

a. Upon the expiration or sooner termination of this Lease, Lessee shall surrender the Premises to Lessor in good order and condition subject to the following provisions:

- i. Lessee shall remove all parking pay stations from the Premises;
- ii. Lessee shall remove all lighting fixtures from the Premises;
- iii. Lessee shall remove any other structures or appurtenance from the Premises.

b. In the event that Lessor wishes to have all asphalt improvements removed from the Premises in addition to those improvements identified in Paragraph 20.a above, Lessor shall notify Lessee of the same and Lessee shall have one hundred and twenty (120) days pursuant to said notice, at Lessee's sole cost and expense, to remove all asphalt improvements from the Premises and re-sod the Premises.

c. The Lessor shall have the right but not the obligation to retain – at no cost or expense to Lessor – the improvements made on the Premises following termination except for the following: solar powered assembly and light fixtures; solar powered parking meters; wheelstops; and parking signage. In the event that Lessor wishes to retain any of the structural or other improvements made on the Premises, with the exception of those listed herein, Lessor shall notify Lessee of the same ninety (90) days prior to the end of the Lease term and Lessee shall surrender

the Premises at the end of the Lease term with the improvement identified by Lessor in good order and condition.

**21. REMEDIES CUMULATIVE.**

All remedies conferred on Lessor shall be deemed cumulative and no one exclusive of the other, or of any other remedy conferred by law.

**22. INSURANCE.**

Lessee shall provide insurance for all improvements made to the Premises. Lessee further agrees to maintain a qualified insurance program in the limits specified in Florida Statute 768.28 with Lessor as a named insured. The insurance program shall provide for general and automobile and Workers Compensation and Employers Liability Coverage. Lessee shall provide Lessor with a Certificate of Insurance evidencing Lessee's insurance program. In the event that Lessee's insurance program is modified during the term of this Lease, Lessee shall provide Lessor with at least thirty (30) days prior written notice.

**23. PROHIBITION OF INVOLUNTARY ASSIGNMENT.**

Neither this Lease nor the Leasehold estate of Lessee nor any interest of Lessee under the Lease in the Premises or in the improvements on the Premises shall be subject to involuntary assignment, transfer, or sale, or to assignment, transfer, or sale by operation of law in any manner whatsoever, except through statutory merger, consolidation, devise, or intestate succession. Any such attempt at involuntary assignment, transfer, or sale shall be void and of no effect.

**24. NOTICE OF DEFAULT.**

Lessee shall not be deemed to be in default under this Lease unless Lessor shall first give to Lessee fifteen (15) days written notice of the default and Lessee fails to cure the default within fifteen (15) days except where the actions necessary to cure the default take in excess of fifteen (15) days to complete in which case Lessee shall commence curing of default within the initial fifteen (15) day period and shall continue without interruption. In the event Lessee is unable to cure the default within thirty (30) days, Lessee shall be in default of the Lease and the Lessor may terminate the rights of Lessee hereunder.

**25. DEFAULT.**

a. In the event of any breach of this Lease by Lessee, Lessor, in addition to the other rights or remedies Lessor may have, shall have the immediate right of reentry and may remove all persons and property from the Premises. Any property may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of, Lessee. Should Lessor elect to reenter, as provided in this agreement, or should it take possession pursuant to legal proceedings or pursuant to any notice provided for by law, Lessor may terminate this Lease.

b. No reentry or taking possession of the Leased Premises by Lessor shall be construed as an election on the part of Lessor to terminate this Lease unless a written notice of Lessor's intention to terminate this Lease is given to Lessee or unless the termination of the Lease is decreed by a court of competent jurisdiction.

c. Should Lessor at any time terminate this Lease for any breach, in addition to any other remedy it may have, Lessor may recover from Lessee all damages incurred by reason of the breach, including the cost of recovering the Premises, and including the worth at the time of the termination of the excess, if any, of the amount of rent and charges equivalent to rent reserved in this Lease for the remainder of the stated term over the then reasonable rental value of the Premises for the remainder of the stated term, all of which amounts shall be immediately due and payable from Lessee to Lessor.

## **26. MARKET FOR SALE**

Lessor shall have the absolute right to sell, assign, mortgage, or otherwise encumber or dispose of Lessor's interest in the Premises including, without limitation, erecting any type of for sale or future development sign on or adjacent to the Premises and taking any further action in connection therewith or related thereto. No such action by the Lessor shall be considered to be a disruption of Lessee's quiet enjoyment of the Premises.

## **27. EFFECT OF EMINENT DOMAIN.**

a. Effect of total condemnation. In the event the entire Leased Premises shall be appropriated or taken under the power of eminent domain by any public or quasi-public authority, this Lease shall terminate and expire as of the date of the taking, and Lessee shall then be released from any liability accruing under this Lease after that date.

b. Effect of partial condemnation. In the event a portion of the Leased Premises shall be so appropriated or taken and the remainder of the property shall not be suitable for the use then being made of the property by Lessee, or if the remainder of the property is not one undivided parcel of property, Lessee shall have the right to terminate this Lease as of the date of the taking on giving to Lessor written notice of the termination within thirty (30) days after Lessor has notified Lessee in writing that the property has been appropriated or taken.

In the event of partial taking and Lessee does not terminate this Lease, this Lease shall continue in full force and effect as to the part not taken, and the rent to be paid by Lessee during the remainder of the term shall continue in the manner provided for above in Paragraph 3.

c. Condemnation award. In the event of the termination of this Lease by reason of the total or partial taking of the Premises by eminent domain, then in any condemnation proceedings Lessor and Lessee shall be free to make claim against the condemning or taking authority for the amount of any damage done to them, respectively, as a result of the taking.

In the event of a partial taking of the Premises and this Lease is not terminated, then Lessee shall have the right to make claim against the condemning or taking authority for only the unamortized cost of the improvements placed on the Leased Premises by Lessee and located on the Premises at the time of the taking or appropriation, which improvements shall

be deemed to amortize in equal annual amounts over the period commencing with the date of completion of the improvements and ending upon the termination of the Lease.

**28. SURRENDER OF LEASE.**

The voluntary or other surrender of this Lease by Lessee, or a mutual cancellation of this Lease, shall not work a merger, and shall, at the option of Lessor, terminate all or any existing subleases or subtenancies, or may, at the option of Lessor, operate as an assignment to it of any or all such subleases or subtenancies.

**29. WAIVER.**

The waiver by Lessor of, or the failure of Lessor to take action with respect to any breach of, any term, covenant, or condition contained in this Lease shall not be deemed to be a waiver of that term, covenant, condition, or subsequent breach, or of any other term, covenant, or condition contained in the Lease. The subsequent acceptance of rent under this Lease by Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant, or condition of this Lease, other than the failure of Lessee to pay the particular rental so accepted, regardless of Lessor's knowledge of the preceding breach at the time of acceptance of rent.

**30. EFFECT OF LESSEE'S HOLDING OVER.**

Any holding over after the expiration of the term of this Lease, without the express written consent of Lessor, shall be deemed to be a tenant from month-to-month only, at ten (10%) percent increase of the monthly installment in effect during the last month of the expired Term. Except as aforesaid, such tenancy shall be upon and subject to the terms of this Lease. Either party may terminate such tenancy by giving to the other at least thirty (30) days prior written notice of its intent to terminate.

**31. PARTIES BOUND.**

The covenants and conditions contained in this Lease shall, subject to the provisions as to assignment, transfer, and subletting, apply to and bind the heirs, successors, executors, administrators, and assigns of all of the parties to this Lease. All of the parties to this Lease shall be jointly and severally liable under the Lease.

**32. TIME OF THE ESSENCE.**

Time is of the essence of this Lease and of every covenant, term, condition, and provision of this Lease.

**33. SECTION CAPTIONS.**

The captions appearing under the section number designations of this Lease are for convenience only and are not a part of this Lease and do not in any way limit or amplify the terms and provisions of this Lease.

LESSOR SIGNATURE PAGE

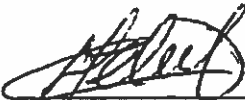
Executed on \_\_\_\_\_.


"LESSOR":

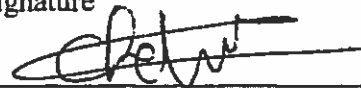
Witnesses:

JJ LAND REALTY, LLC  
a Florida limited liability company

By: CF Land Realty, LLC, a Florida limited  
Liability company, a managing member

  
\_\_\_\_\_  
Signature

By:   
\_\_\_\_\_  
Jacob Chetrit, Manager

  
\_\_\_\_\_  
Signature

STATE OF NEW YORK  
COUNTY OF NASSAU

The foregoing instrument was acknowledged before me this 2<sup>nd</sup> day of February, 2012, by Jacob Chetrit, Manager of CF Land Realty, LLC, as Managing Member of JJ Land Realty, LLC, on behalf of the limited liability company. He is personally known to me or who has produced \_\_\_\_\_ (type of identification) as identification.

NOTARY'S SEAL:

  
\_\_\_\_\_  
NOTARY PUBLIC, STATE OF NEW YORK

\_\_\_\_\_  
(Name of Acknowledger Typed, Printed or Stamped)

\_\_\_\_\_  
Commission Number

LOIS HUTTER SANCHEZ  
Notary Public, State of New York  
No. 01HU5042516  
Qualified in Queens County  
Commission Expires April 24, 2015

LESSEE SIGNATURE PAGE

Executed on February 28, 2012

**"LESSEE":**

Witnesses:

**CITY OF POMPANO BEACH**

*Christine Walker*

By: *Lamar Fisher*

**LAMAR FISHER, MAYOR**

*Shirley R. Bartholomew*

By: *Dennis W. Beach*

**DENNIS W. BEACH, CITY MANAGER**

Attest:

*Mary L. Chambers*  
**MARY L. CHAMBERS**  
**CITY CLERK**

(SEAL)

Approved As To Form:

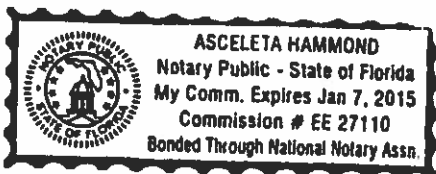
*Gordon B. Linn*  
**GORDON B. LINN**  
**CITY ATTORNEY**

**STATE OF FLORIDA**  
**COUNTY OF BROWARD**

The foregoing instruments were acknowledged before me this 28th day of February, 2012 by **LAMAR FISHER** as Mayor, **DENNIS W. BEACH** as City Manager and **MARY L. CHAMBERS** 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:

*Asceletha Hammond*  
**NOTARY PUBLIC, STATE OF FLORIDA**



Asceletha Hammond

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

GBL/egr  
L:realest/Ground Lease 2 - 2-10-12



November 2, 2016

Zoning Letter Number: 16-02000194

Bonnie Miskel, Esq  
Dunay, Miskel, Backman  
14 SE 4<sup>th</sup> Street, Suite 36  
Boca Raton, FL 33432  
**Via Email Only:** [bmiskel@dmdbblaw.com](mailto:bmiskel@dmdbblaw.com)

**Re: Oceanside Parcel A (BCPA Folio: 484331450010)  
Development Order #06-12000032  
Extension Request per Executive Orders 16-233 (f/k/a 16-29, 16-149, and 16-193) and  
16-230**

Dear Ms. Miskel:

The Development Services Department is in receipt of your letter dated October 27, 2016, which requests an extension to the expiration time period for the above referenced Development Order pursuant to Executive Orders 16-233 (which extended 16-29, 16-149, and 16-193) and 16-230. In response to your request staff has determined the following:

**Development Order #06-12000032**

- The original expiration date for this Development Order was May 2, 2010.
- On November 18, 2009, per Senate Bill 360, the expiration date was extended two years to May 2, 2012.
- On December 10, 2010, the City transferred your previously issued extension per Senate Bill 360 to an extension per Senate Bill 1752, and therefore the expiration date remained at May 2, 2012.
- On April 11, 2012, per Planning and Zoning Board Memo #12-23, the expiration date was extended two years to May 2, 2016.
- On May 5, 2016, per Executive Orders 16-30, 16-43, and 16-64, the expiration date was extended for six months plus 45 days to December 12, 2016.
- Executive Order 16-233 (Emergency Order for Zika Virus) is set to expire on December 16, 2016 unless renewed by the Governor. Until such time that Executive Order 16-233 expires (or is subsequently renewed), the tolled period cannot be accurately determined.
  - Your request for a Six Month extension per Executive Order 16-233 (Emergency Order for Zika Virus) is **Approved**.
  - Your request for the applicable tolled period per Executive Order 16-233 (Emergency Order for Zika Virus) is **Not Approved**. *A new request for the tolled period should be submitted within 90 days after the termination of the emergency declaration.*

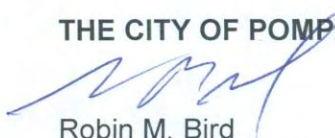


- Executive Order 16-230 (Emergency Management – Hurricane Mathew) is set to expire on December 2, 2016. Until such time that Executive Order 16-230 expires (or is subsequently renewed), the tolled period cannot be accurately determined.
  - Your request for a Six Month extension per Executive Order 16-230 (Emergency Management – Hurricane Mathew) is **Approved**.
  - Your request for the applicable tolled period per Executive Order Executive Order 16-230 (Emergency Management – Hurricane Mathew) is **Not Approved**. *A new request for the tolled period should be submitted within 90 days after the termination of the emergency declaration.*
- **The new expiration date is December 12, 2017.**

Should you need additional assistance in this matter, please contact my office at (954) 786-4634.

Yours truly,

**THE CITY OF POMPANO BEACH**



Robin M. Bird  
Development Services Director

Enc: Extension Request Letter dated October 27, 2016 with attachments





**DUNAY  
MISKEL  
BACKMAN** LLP

Gary Dunay  
Bonnie Miskel  
Scott Backman

Hope Calhoun  
Dwayne Dickerson  
Ele Zachariades

Christina Bilenki  
Heather Jo Allen  
Andrea Keiser

October 27, 2016

Via Electronic Mail

Robin Bird, Development Services Director  
City of Pompano Beach  
100 West Atlantic Boulevard  
Pompano Beach, Florida 33060

**Re: Extension of Development Order #06-12000032 ("Order") issued on June 28, 2006, previously extended to expire on December 17, 2016**

Dear Mr. Bird:

On April 26, 2016, this firm provided the City of Pompano Beach with written notification of extension of the Order to December 17, 2016 pursuant to Executive Order No. 16-30. A copy of the April 26, 2016 notice letter is attached hereto as Exhibit A.

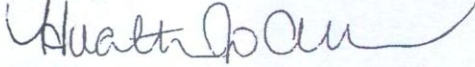
On June 23, 2016, the Governor issued Executive Order No. 16-149, which declared a state of emergency in Broward County related to the Zika Virus. Executive Order No. 16-149 was subsequently extended by Executive Order No. 16-193 and Executive Order No. 16-233, which will expire on December 16, 2016 unless extended. On October 3, 2016, the Governor issued Executive Order No. 16-230, which declared a state of emergency in Broward County due to Hurricane Matthew. Executive Order No. 16-230 will expire on December 1, 2016 unless extended. Copies of the referenced Executive Orders are attached hereto as Exhibit B.

Pursuant to Section 252.363 of the Florida State Statutes, the declaration of a state of emergency by the Governor tolls the period to exercise the rights under a development order for the duration of the emergency declaration plus six (6) months. Because there are currently two states of emergency impacting Broward County, the period to exercise the rights under the Order is extended for twelve (12) months (six months for each Declaration of State of Emergency) plus 177 days (the current duration of the emergencies). In order to qualify for this extension, notice must be provided to the issuing governmental entity within ninety (90) days after termination of the emergency declaration. As mentioned above, the states of emergency in Broward County have not yet terminated. Please consider this letter as the required written notification to extend the Order from December 17, 2016 to June 12, 2018.



Please do not hesitate to contact me at (561) 405-3322 should you have any questions or need additional information. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Jo Allen", with a long, sweeping horizontal stroke at the end.

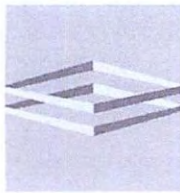
Heather Jo Allen, Esq.

*Dunay, Miskel and Backman, LLP*

cc: Mark Berman, Esq. City Attorney, *City of Pompano Beach*  
Bonnie Miskel, Esq., *Dunay, Miskel and Backman, LLP*  
Mr. Ari Pearl  
James Stansbury, Community Program Manager, *Florida Department of Economic Opportunity*  
Isabel Cosio Carballo, Executive Director, *South Florida Regional Planning Council*

**Exhibit A**





**DUNAY  
MISKEL  
BACKMAN** LLP

Gary S. Dunay  
Bonnie Miskel  
Scott Backman  
Dwayne L. Dickerson  
Hope W. Calhoun  
Christina Bilenki  
Heather Jo Allen

April 26, 2016

Via Electronic Mail

Robin Bird, Development Services Director  
City of Pompano Beach  
100 West Atlantic Boulevard  
Pompano Beach, Florida 33060

**RE: Extension of Development Order #06-12000032 ("Order") issued on June 28, 2006, previously extended to expire on May 2, 2016**

Dear Mr. Bird:

At the Planning and Zoning Board meeting on March 28, 2012, the Board approved an extension of the expiration date of the Order to expire on May 2, 2016. A copy of the approval is attached as Exhibit A.

On February 3, 2016, the Governor issued Executive Order No. 16-30, which declared a state of emergency in Broward County. Executive Order No. 16-30 was subsequently extended by Executive Order No. 16-43 and Executive Order No. 16-64, which expired on March 19, 2016. Copies of the referenced Executive Orders are attached hereto as Exhibit B. Pursuant to Section 252.363 of Florida Statutes, the declaration of the state of emergency by the Governor tolls the period to exercise the rights under a development order for the duration of the emergency declaration plus six (6) months. In order to qualify for this extension, notice must be provided to the issuing governmental entity by June 17, 2016. As such, please consider this letter as the required written notification to extend the Order for six months plus forty-five days to December 17, 2016.

Please do not hesitate to contact me directly at (561) 405-3321 should you have any questions or need additional information. Thank you.

Sincerely,

Bonnie Miskel, Esq.  
BM/rmm  
Attachments  
cc: Mr. Ari Pearl

EXHIBIT A

PLANNING AND ZONING BOARD/ LOCAL PLANNING AGENCY

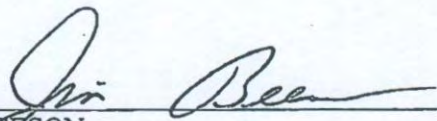
REVISED MEMORANDUM #12-23

DATE: May 9, 2012  
TO: City Commission  
FROM: Planning and Zoning Board/Local Planning Agency  
SUBJECT: Extension of Development Order #06-12000032 (Oceanside Parcel A)

---

At the meeting of the Planning and Zoning Board/Local Planning Agency held on March 28, 2012, the Board considered Department of Development Services Memorandum #12-154, setting forth to extend Development Order #06-12000032 issued on June 28, 2006 to expire on or before May 2, 2016, in accordance with City Commission Ordinance 2012-22. This Development Order was issued for the subject project (see Exhibit "A"), for the construction of a mixed use development consisting of a 24-story, 77-unit condominium tower, and a 22-story, 303 hotel room tower retail/restaurant space on the property known as One North Ocean Boulevard.

It is the unanimous recommendation of the Board that this development order extension be approved as set forth in the above-referenced communication from Staff.

  
\_\_\_\_\_  
JIM BEESON  
Chairman  
Planning and Zoning Board/Local Planning Agency

jmr



**Exhibit "B"**



# STATE OF FLORIDA

## OFFICE OF THE GOVERNOR EXECUTIVE ORDER NUMBER 16-30 (Emergency Management – Heavy Rainfall)

**WHEREAS**, as a direct result of an unusually strong El Niño weather pattern in the Eastern Pacific Ocean, the State of Florida has experienced, and faces an increased risk of, severe weather and heavy rainfall during the winter and spring months of 2015-16; and

**WHEREAS**, during the month of December 2015, back-to-back weather systems brought heavy rainfall to South Florida; and

**WHEREAS**, on January 9, 2016, the weather system that spawned a tornado in Lee County brought additional, heavy rainfall to South Florida; and

**WHEREAS**, on January 15, 2016, the weather system that spawned a tornado in Sarasota County brought even more rainfall to South Florida; and

**WHEREAS**, January 2016 has been the wettest January since record-keeping began in 1932, with up to 16 inches of rain across South Florida and up to six times the normal average in some areas; and

**WHEREAS**, during the middle of South Florida's winter growing season, hundreds of acres of farmland remain underwater; and

**WHEREAS**, it is necessary to expeditiously harvest and transport the remaining crops before they are destroyed; and

**WHEREAS**, the relaxation of the restrictions on the weight, height, length, and width for commercial vehicles transporting agricultural crops harvested in Florida is necessary to protect the economy of the entire State.

**NOW, THEREFORE, I, RICK SCOTT**, as Governor of Florida, by virtue of the authority vested in me by Article IV, Section 1(a) of the Florida Constitution and by the Florida Emergency Management Act, as amended, and all other applicable laws, promulgate the following Executive Order, to take immediate effect:

Section 1. Because of the foregoing conditions, I declare a state of emergency exists in Broward, Collier, Glades, Hendry, Lee, Martin, and Palm Beach Counties due to the effect of heavy rainfall on growing crops that are vulnerable to destruction. I further find that transporting the



vulnerable crops to processing sites without delay is necessary to save them from destruction, and that the relaxation of the restrictions on weight, height, length, and width for commercial vehicles transporting these crops is necessary to protect the agricultural interests of the State.

Section 2. I designate the Director of the Division of Emergency Management as the State Coordinating Officer for the duration of this emergency and direct him to execute the State's Comprehensive Emergency Management Plan and other response, recovery, and mitigation plans necessary to cope with the emergency. Pursuant to section 252.36(1)(a), Florida Statutes, I delegate to the State Coordinating Officer the authority to exercise those powers delineated in sections 252.36(5)-(10), Florida Statutes, which he shall exercise as needed to meet this emergency, subject to the limitations of section 252.33, Florida Statutes. In exercising the powers delegated by this Order, the State Coordinating Office shall confer with the Governor to the fullest extent practicable. The State Coordinating Officer shall also have the authority to:

A. Invoke and administer the Emergency Management Assistance Compact (EMAC) (sections 252.921-933, Florida Statutes) and other compacts and agreements existing between the State of Florida and other states, and the further authority to coordinate the allocation of resources from such other states that are made available to Florida under such compacts and agreements so as best to meet this emergency;

B. Seek direct assistance and enter into agreements with any and all agencies of the United States Government as may be needed to meet the emergency;

C. Direct all state, regional and local governmental agencies, including law enforcement agencies, to identify personnel needed from those agencies to assist in meeting the needs created by this emergency, and to place all such personnel under the direct command and coordination of the State Coordinating Officer to meet this emergency; and

D. Designate Deputy State Coordinating Officers.

Section 3. I authorize the Department of Transportation to take any action as may be necessary to relieve commercial vehicles transporting shipments of harvested crops from the normal restrictions on the weight, height, length and width restrictions for such vehicles. In doing so, the Department shall issue temporary permits and such vehicles shall be subject to such special conditions as the Department may endorse on any such permits. In any event, the weight, height, length, and width for any such commercial vehicle on roadways maintained by the State of Florida shall not exceed the following:



A. The maximum Gross Vehicle Weight for vehicles equipped with five weight-bearing axles with outer bridge spans of not less than 40 feet, but less than 51 feet, shall not exceed 90,000 pounds.

B. The maximum Gross Vehicle Weight for vehicles equipped with five weight-bearing axles with outer bridge spans of not less than 51 feet shall not exceed 95,000 pounds.

C. The maximum Gross Vehicle Weight for vehicles equipped with four weight-bearing axles with outer bridge spans of not less than 43 feet shall not exceed 80,000 pounds.

D. The total length for any vehicle identified above shall not exceed 95 feet.

E. The total width for any vehicle identified above shall not exceed 14, and the total height for any vehicle identified above shall not exceed 14 feet, six inches high.

F. The total maximum Gross Vehicle Weight for straight trucks shall not exceed 80,000 pounds. The total maximum gross weight of any axle shall not exceed 27,500 pounds and the total maximum gross weight of any tandem axle shall not exceed 55,000 pounds and the maximum weight of any tri-axle shall not exceed 70,000 pounds.

Nothing in this Executive Order shall be construed to allow any vehicle to exceed weight limits posted for bridges and like structures, or relieve any vehicle or the carrier, owner, or driver of any vehicle from compliance with any restrictions other than those specified by permit.

Section 4. All state agencies entering emergency final orders or other final actions in response to this emergency shall advise the State Coordinating Officer contemporaneously.

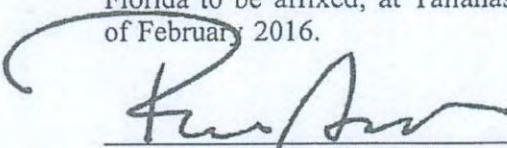
Section 5. All actions taken by the Director of the Division of Emergency Management with respect to this emergency before the issuance of this Executive Order are ratified. This Executive Order shall expire 15 days from this date unless extended within that time.



ATTEST:

  
\_\_\_\_\_  
SECRETARY OF STATE

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed, at Tallahassee, this 3rd day of February 2016.

  
\_\_\_\_\_  
RICK SCOTT, GOVERNOR

FILED  
FEB - 3 PM 5:49  
TALLAHASSEE, FLORIDA  
DEPARTMENT OF STATE

**ORDINANCE NO. 2012-18\_\_\_\_\_**

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

**AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A GROUND LEASE AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND JJ LAND REALTY, LLC; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.**

WHEREAS, pursuant to law, ten (10) days' notice has been given by publication in a paper of general circulation in the City, notifying the public of this proposed ordinance and of a public hearing in the City Commission Chambers of the City of Pompano Beach; and

WHEREAS, a public hearing before the City Commission was held pursuant to the published notice described above, at which hearing the parties in interest and all other citizens so desiring had an opportunity to be and were, in fact, heard; now, therefore,

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

**SECTION 1.** That a Ground Lease Agreement between the City of Pompano Beach and JJ Land Realty, LLC, a copy of which Agreement is attached hereto and incorporated herein by reference as if set forth in full, is hereby approved.

**SECTION 2.** That the proper City officials are hereby authorized to execute said Agreement.

**SECTION 3.** If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of

this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

**SECTION 4.** This Ordinance shall become effective upon passage.

**PASSED FIRST READING** this 24<sup>th</sup> day of January, 2012.

**PASSED SECOND READING** this 14<sup>th</sup> day of February, 2012.

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

**ATTEST:**

  
\_\_\_\_\_  
**MARY L. CHAMBERS, CITY CLERK**

/jrm  
10/6/11  
L:ord/2012-05

07/12

**GROUND LEASE AGREEMENT**  
*between*  
**JJ LAND REALTY, LLC**  
*and*  
**CITY OF POMPANO BEACH**

---

**THIS AGREEMENT** made and entered into this 28th day of February, 2012  
by and between:

**JJ LAND REALTY, LLC**, a limited liability company organized and existing under the laws of the State of Florida, having its principal office at 404 Fifth Avenue, 6<sup>th</sup> Floor, New York, New York, referred to herein as "Lessor"

and

**CITY OF POMPANO BEACH**, a municipal corporation organized and existing under the laws of the State of Florida, having its principal office at 100 W. Atlantic Blvd., Pompano Beach, Florida, 33060, referred to here as "Lessee,"

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

**1. DEMISE; DESCRIPTION OF PREMISES.**

Lessor leases to Lessee and Lessee hires from Lessor, for the purpose of providing public parking and for no other purpose, the following described Premises situated in the City of Pompano Beach, County of Broward, State of Florida, and more particularly described in Exhibit "A" attached hereto and made a part hereof. As used in this Lease, the term "Premises" refers to the real property described above and to any improvements located on the property from time to time during the term of this Lease.

**2. TERM.**

a. The initial term of this Lease shall be for five (5) years, commencing on the date of execution of this Lease. As used in this Lease, the expression "term of this Lease" refers to such initial term and to any extension of the initial term as provided in Paragraph 2.b below.

b. Lessee, provided it is not in default of any terms or conditions of this Lease, shall have the right and option (if consented to by Lessor as provided herein), but shall in no way be obligated, to seek two extensions of the term of this Lease for an additional two (2) years for

each extension (each an "Extension Period"), on the terms and conditions as set forth in this Lease. Should Lessee wish to extend this Lease for an Extension Period as referenced herein, Lessee shall provide written notice to that effect to the Lessor, which notice shall be given at least sixty (60) days prior to the last day of the term of the Lease. The rental amount for each of the two extension terms shall be the same as for the initial term of this Lease as provided for in Paragraph 3 below.

c. Lessor shall have the right to terminate this Lease at any time and for any reason with sixty (60) days written notice provided to Lessee subject to the terms set forth below in Paragraph 5.

d. This Agreement shall terminate and Lessee shall not be required to pay any rent whatsoever if Lessee is unable to secure all necessary approvals for the improvements provided for in this Agreement.

### **3. RENT.**

a. Subject to adjustment as provided below in Paragraph 3.b, the base rent for the initial term shall be Ten (\$10.00) Dollars which Lessee shall pay to Lessor at such place or places as may be designated from time to time by Lessor.

b. The rent to be paid by Lessee under this Lease shall be subject to increase adjustment as follows:

Commencing on the day after Lessee's completion of Lessee's parking lot and associated improvements as described in Exhibit "B" attached hereto and made a part hereof, as evidenced by a certificate of completion, Lessee agrees to pay to Lessor forty-five percent (45%) of the total gross fees collected from the Premises. Said payment shall be payable on the fifteenth (15<sup>th</sup>) of each month for the preceding month's collected fees.

c. Upon request, Lessee shall provide Lessor (within seven (7) days of request from Lessor) with documentation necessary to establish the total amount of fees collected for each monthly rental period.

### **4. CONSTRUCTION OF SURFACE PARKING LOT AND USE OF PREMISES.**

a. Lessee shall construct, at Lessee's sole cost and expense, a temporary surface parking facility on the Premises in general conformity with the rendering provided in Exhibit B of this Lease. Upon the completion of the improvements, the Premises shall be used as a public parking facility. Lessee also agrees to provide clean fill for grading and leveling of the Premises as needed prior to the construction of the parking facility. In addition to the construction of the temporary surface parking facility, Lessee shall install required landscaping and provide parking pay-stations on the Premises. All of the above-referenced construction and improvements shall be undertaken at the Lessee's sole cost which shall not exceed \$500,000.00.

b. Prior to commencing construction of the parking facility, Lessor shall be provided with the plan for the parking facility for review and approval. Said approval shall not be unreasonably withheld. Lessee shall proceed with due diligence and continuity to fund and construct the parking facilities on the Premises and timely notify Lessor of all hearings or meetings concerning the Premises so as to permit a representative of the Lessor to attend said hearings or meetings. Additionally, Lessee shall provide Lessor with copies of all official correspondence, notices and submissions regarding the Premises.

c. Lessee agrees to charge at least one dollar (\$1.00) per hour for each parking spot on the Premises. The hours of availability for use of the parking facility shall be from 8 a.m. through 1 a.m. daily. Lessee further agrees that with the exception provided for below in 4.d, the parking facility will be available for use by the public 365 days a year.

d. Lessee shall have the right to close the parking facility either partially or entirely to public use for no more than four (4) days during each year, commencing upon the completion of the improvements, at Lessee's option. Said closure may be undertaken for any reason, including repairs to the Premises and use of the Premises by Lessee for the installation of ticket sales booths or other booths administered by the Lessee in connection with festivals or other beach related activities.

#### **5. PENALTY FOR EARLY TERMINATION.**

In the event that Lessor exercises its right to terminate the Lease before the initial five-year term has expired, as provided for in 2.c above, Lessor shall be required to compensate Lessee for the cost of the improvements made to the Premises by Lessee at the time of the termination amortized on a monthly basis according to the total cost of the improvements divided by 60 months. For example:  $\$500,000.00$  (total maximum cost of improvements)/60 (number of months in the lease) =  $\$8,333.33$  = the (monthly) amortized penalty rate.

#### **6. WARRANTIES OF TITLE AND QUIET POSSESSION.**

Lessor covenants that Lessor is seized of the Leased Premises in fee simple and has full right to make this Lease and that Lessee shall have quiet and peaceable possession of the Leased Premises during the term of this Lease.

#### **7. DELIVERY OF POSSESSION.**

If, for any reason whatsoever, Lessor cannot deliver possession of the Leased Premises to Lessee at the commencement of the Lease term, as specified above, this Lease shall not be void or voidable, nor shall Lessor be liable to Lessee for any loss or damage resulting from the inability to deliver possession; in that event there shall be a proportionate reduction of rent covering the period between the commencement of the Lease term and the time when Lessor can deliver possession. However, in the event that Lessor cannot deliver possession within three (3) months of the execution of this Lease, this Lease shall be voidable by either party.

**8. USES PROHIBITED.**

Lessee shall not use or permit the Leased Premises, or any part thereof, to be used for any purpose other than the purpose for which the Premises are Leased. No use shall be made or permitted to be made of the Premises, or acts done, that will cause a cancellation of any insurance policy covering the Premises; nor shall Lessee sell, or permit to be kept, used, or sold, in or about the Premises, any article prohibited by the standard form of fire insurance policies. Lessee shall, at its sole cost, comply with all requirements, pertaining to the Leased Premises, of any insurance organization or company, necessary for the maintenance of insurance, as provided in this Lease, covering any improvements and appurtenances at any time located on the Leased Premises.

**9. WASTE AND NUISANCE PROHIBITED.**

During the term of this Lease, Lessee shall comply with all applicable laws affecting the Leased Premises, the breach of which might result in any penalty on Lessor or forfeiture of Lessor's title to the Premises. Lessee shall not commit or suffer to be committed any waste or nuisance on the Leased Premises.

**10. ABANDONMENT OF PREMISES.**

Lessee shall not vacate or abandon the Premises at any time during the term of this Lease. If Lessee abandons, vacates, or surrenders the Leased Premises, or is dispossessed by process of law or otherwise, any personal property belonging to Lessee and left on the Premises shall be deemed to be abandoned, at the option of Lessor, except any property that may be encumbered to Lessor.

**11. LESSOR'S RIGHT OF ENTRY.**

Lessee shall permit Lessor and Lessor's agents and employees to enter the Leased Premises at all reasonable times for the purpose of inspecting the Premises, or for the purpose of posting notices of non-responsibility for alterations, additions, or repairs, without any rebate of rent and without any liability to Lessee for any loss of occupation or quiet enjoyment of the Premises. Lessee shall also permit Lessor and its agents and employees, at any time within the last six (6) months prior to the expiration of this Lease, to place on the Premises any usual or ordinary "To Let" or "To Lease" or "For Rent" signs and exhibit the Premises to prospective Lessees at reasonable hours.

**12. SUBLETTING AND ASSIGNMENT.**

Lessee may sublet the Premises in whole or in part without Lessor's consent, but the making of any sublease shall not release Lessee from, or otherwise affect in any manner, any of Lessee's obligations under this Lease. Lessee shall be obligated to deliver to Lessor a copy of any sublease no less than fifteen (15) days prior to the commencement of the sublease. Lessee shall not assign or transfer this Lease, or any interest in it, without Lessor's prior written consent, and consent to an assignment shall not be deemed to be consent to any subsequent assignment. Any assignment without consent shall be void, and shall, at the option of Lessor, terminate this Lease. Neither this Lease nor the Leasehold estate of Lessee nor any interest of Lessee



under this Lease in the Premises or any buildings or improvements on it shall be subject to involuntary assignment, transfer, or sale, or to assignment, transfer, or sale by operation of law in any manner whatsoever, and any attempted involuntary assignment, transfer, or sale shall be void and of no effect and shall, at the option of Lessor, terminate this Lease in which event the Lessor shall be exempt from any penalty provided for in section 5 herein above.

**13. NOTICES.**

All notices, demands, or other writings in this Lease provided to be given or made or sent, or which may be given or made or sent, by either party to this Lease to the other, shall be deemed to have been fully given or made or sent when made in writing and deposited in the United States mail, with postage prepaid, and registered and addressed as follows:

TO LESSOR: Ari Pearl  
The Plaza at Oceanside  
Residence #206  
One North Ocean Blvd.  
Pompano Beach, FL 33062

COPY TO: Ritter Zaretsky & Lieber, LLP  
Att: Oren Lieber, Esq.  
2915 Biscayne Blvd., Suite 300  
Miami, FL 33137

TO LESSEE: Christopher J. Brown  
Co-Executive Director  
Pompano Beach CRA  
100 W. Atlantic Blvd., Suite 276  
Pompano Beach, FL 33062

The address to which any notice, demand, or other writing may be given or made or sent to any party mentioned above may be changed by written notice given by the party mentioned above.

**14. TAXES AND ASSESSMENTS.**

a. Lessor agrees to pay any and all real estate taxes or charges or special assessments by ad valorem which at any time may be levied by any federal, state, county, city or any real estate tax assessment levying body upon the Premises, or any possessory right which Lessor may have in or to the Premises.

b. Notwithstanding the foregoing provision, Lessor shall, after notifying Lessee of its intention to do so, have the right in its own name or behalf, or in the name and behalf of Lessee hereto, to contest in good faith by all appropriate proceedings the amount, applicability or validity of any such tax or assessment, and in good faith by all appropriate proceedings the amount, applicability or validity of any such tax or assessment.

**15. REPAIRS AND DESTRUCTION OF IMPROVEMENTS.**

a. Maintenance of improvements. Throughout the term of this Lease, Lessee shall, at its own cost and without any expense to Lessor, keep and maintain the Premises, including all improvements of every kind that may be a part of the Premises and all appurtenances to the Premises, including sidewalks adjacent to the Premises, in good, sanitary, and neat order, condition and repair. Except as specifically provided in this Lease, during the term of this Lease, Lessee shall restore and rehabilitate any improvements of any kind that may be destroyed or damaged by fire, casualty, or any other cause whatsoever. Lessor shall not be obligated to make any repairs, replacements, or renewals of any kind whatsoever to the Leased Premises or improvements on it. Lessee shall also comply with and abide by all federal, state, county, municipal, and other governmental statutes, ordinances, laws, and regulations affecting the Premises, the improvements on the Premises, or any activity or condition on or in the Premises.

b. Damage to and destruction of improvements. The damage, destruction, or partial destruction of any improvement that is a part of the Premises shall not release Lessee from any obligation under this Lease, except as expressly provided below. In case of damage to or destruction of any improvement, Lessee shall at its own expense promptly repair and restore the improvement to a condition as good as or better than that which existed prior to the damage or destruction. Without limiting the obligations of Lessee, it is agreed that the proceeds of any insurance covering the damage or destruction shall be made available to Lessee for repair or replacement.

c. Damage or destruction occurring toward end of term. Notwithstanding anything to the contrary in the immediately preceding paragraphs of this section, in case of destruction of any improvement on the Premises or damage thereto from any cause so as to make it untenable occurring during the last six (6) months of the term of this Lease, Lessee, if not then in default under this Lease, may elect to terminate this Lease by written notice served on Lessor within thirty (30) days after the occurrence of the damage or destruction. In the event of termination, there shall be no obligation on the part of Lessee to repair or restore the improvements, and only Lessor shall have any right to receive proceeds collected under any insurance policies covering the Premises, building or any part of a building located thereon. On termination, Lessee shall return the Premises to Lessor as provided for below in Paragraph 20. On termination, rent and any other sums payable by Lessee to Lessor under this Lease shall be prorated as of the termination date, and in the event any rent shall have been paid in advance, Lessor shall rebate them for the unexpired period for which payment shall have been made.

d. Election not to terminate. If, in the event of destruction or damage during the last six (6) months of the term of this Lease, Lessee does not elect to terminate this Lease, the proceeds of all insurance covering the damage or destruction shall be made available to Lessee for repair or replacement, and Lessee shall be obligated to repair the Premises as provided above.

**16. UTILITIES.**

Lessee shall fully and promptly pay for all water, gas, heat, light, power, telephone service, and all other public utilities furnished to the Premises throughout the term of this Lease, and all other costs and expenses in connection with the use, operation and maintenance of the Premises and all activities conducted on the Premises. Lessor shall have no responsibility of any kind for any of those costs and expenses.

**17. LIENS.**

a. Lessee's duty to keep Premises free of liens. Lessee shall keep all of the Premises and every part of the improvements at any time located on the Premises free and clear of any mechanics', materialmen's, and other liens arising out of or in connection with work or labor done, services performed, or materials or appliances used or furnished in connection with any operations of Lessee, any alteration, improvement, or repairs or additions which Lessee may make or permit or cause to be made, or any work or construction, by or permitted by Lessee on or about the Premises, or any obligations of any kind incurred by Lessee. Lessee shall at all times promptly and fully pay and discharge all claims on which any lien may or could be based, and Lessee shall indemnify Lessor and all of the Premises and all improvements on the Premises against all liens and claims of liens and suits or other proceedings pertaining to those liens. Lessee shall give Lessor written notice no less than ten (10) days in advance of the commencement of any construction, alteration, addition, improvement, or repair estimated to cost in excess of \$1,000 in order that Lessor may post appropriate notices of Lessor's non-responsibility.

b. Contesting liens. If Lessee desires to contest any lien, Lessee shall notify Lessor of its intention to do so within ten (10) days after the filing of the lien. In such a case, and provided that Lessee shall on demand protect Lessor by a good and sufficient surety bond against any lien and cost, liability, or damage arising out of such contest, Lessee shall not be in default under this Lease until thirty (30) days after the final determination of the validity of the lien, within which time Lessee shall satisfy and discharge the lien to the extent held valid. However, the satisfaction and discharge of any such lien shall not, in any case, be delayed until execution is had on any judgment rendered on it, and any delay shall be a default of Lessee under this Lease. In the event of any such contest, Lessee shall protect and indemnify Lessor against all loss, expense, and damage resulting from the contest.

**18. INDEMNIFICATION OF LESSOR.**

Lessor shall not be liable for any claim, loss, injury, death, or damage to persons or property which at any time may be suffered or sustained by Lessee or by any person who may at any time be using or occupying or visiting the Leased Premises or be in, on, or about the Premises, whether the claim, loss, injury, death or damage shall be caused by or in any way result from or arise out of any act, omission, or negligence of Lessee or of any occupant, sublessee, visitor or user of any portion of the Premises, or shall result from or be caused by any other matter or thing. Lessee shall indemnify Lessor against all claims, liability, loss, or damage whatsoever on account of any such claim, loss, injury, death, or damage. Lessee waives all claims against Lessor for damages to the improvements that are now on or will later be placed or built on the Premises and to the property of Lessee in, on or about the Premises,

and for injuries to persons or property in or about the Premises, from any cause arising at any time. The three preceding sentences shall not apply to loss, injury, death, or damage arising by reason of the negligence or misconduct of Lessor or its agents or employees. The foregoing release paragraph shall be understood to also release each and every of the Lessor's partners, members and its and their officers, directors, shareholders, attorneys, employees and lenders, and all of their respective agents, predecessors, successors and assigns (the "Released Parties").

In the event of an asserted claim, the Lessee shall provide the Lessor reasonably timely written notice of same, and thereafter the Lessee shall at its own expense defend, protect and save harmless the Lessor and the Released Parties against said claim or any loss or liability thereunder. In the further event the Lessee shall fail to so defend and/or indemnify and save harmless, then in such instance the Released Parties shall have full rights to defend, pay or settle said claim on their behalf and with full rights to recourse against the Lessee for all fees, costs, expenses and payments made or agreed to be paid to discharge said claim so long as Lessor provides written notice to Lessee of same at least seven (7) days prior to assuming the defense, payment or settlement of any such claim.

#### **19. ATTORNEY'S FEES.**

If any action at law or in equity shall be brought to recover any rent under this Lease, or for or on account of any breach of this Lease, or to enforce or interpret any of the covenants, terms, or conditions of this Lease, or for the recovery of the possession of the Leased Premises, the prevailing party shall be entitled to recover from the other party as part of the prevailing party's costs reasonable attorney's fees, the amount of which shall be fixed by the court and shall be made a part of any judgment or decree rendered.

#### **20. REDELIVERY OF PREMISES.**

a. Upon the expiration or sooner termination of this Lease, Lessee shall surrender the Premises to Lessor in good order and condition subject to the following provisions:

- i. Lessee shall remove all parking pay stations from the Premises;
- ii. Lessee shall remove all lighting fixtures from the Premises;
- iii. Lessee shall remove any other structures or appurtenance from the Premises.

b. In the event that Lessor wishes to have all asphalt improvements removed from the Premises in addition to those improvements identified in Paragraph 20.a above, Lessor shall notify Lessee of the same and Lessee shall have one hundred and twenty (120) days pursuant to said notice, at Lessee's sole cost and expense, to remove all asphalt improvements from the Premises and re-sod the Premises.

c. The Lessor shall have the right but not the obligation to retain – at no cost or expense to Lessor – the improvements made on the Premises following termination except for the following: solar powered assembly and light fixtures; solar powered parking meters; wheelstops; and parking signage. In the event that Lessor wishes to retain any of the structural or other improvements made on the Premises, with the exception of those listed herein, Lessor shall notify Lessee of the same ninety (90) days prior to the end of the Lease term and Lessee shall surrender

the Premises at the end of the Lease term with the improvement identified by Lessor in good order and condition.

**21. REMEDIES CUMULATIVE.**

All remedies conferred on Lessor shall be deemed cumulative and no one exclusive of the other, or of any other remedy conferred by law.

**22. INSURANCE.**

Lessee shall provide insurance for all improvements made to the Premises. Lessee further agrees to maintain a qualified insurance program in the limits specified in Florida Statute 768.28 with Lessor as a named insured. The insurance program shall provide for general and automobile and Workers Compensation and Employers Liability Coverage. Lessee shall provide Lessor with a Certificate of Insurance evidencing Lessee's insurance program. In the event that Lessee's insurance program is modified during the term of this Lease, Lessee shall provide Lessor with at least thirty (30) days prior written notice.

**23. PROHIBITION OF INVOLUNTARY ASSIGNMENT.**

Neither this Lease nor the Leasehold estate of Lessee nor any interest of Lessee under the Lease in the Premises or in the improvements on the Premises shall be subject to involuntary assignment, transfer, or sale, or to assignment, transfer, or sale by operation of law in any manner whatsoever, except through statutory merger, consolidation, devise, or intestate succession. Any such attempt at involuntary assignment, transfer, or sale shall be void and of no effect.

**24. NOTICE OF DEFAULT.**

Lessee shall not be deemed to be in default under this Lease unless Lessor shall first give to Lessee fifteen (15) days written notice of the default and Lessee fails to cure the default within fifteen (15) days except where the actions necessary to cure the default take in excess of fifteen (15) days to complete in which case Lessee shall commence curing of default within the initial fifteen (15) day period and shall continue without interruption. In the event Lessee is unable to cure the default within thirty (30) days, Lessee shall be in default of the Lease and the Lessor may terminate the rights of Lessee hereunder.

**25. DEFAULT.**

a. In the event of any breach of this Lease by Lessee, Lessor, in addition to the other rights or remedies Lessor may have, shall have the immediate right of reentry and may remove all persons and property from the Premises. Any property may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of, Lessee. Should Lessor elect to reenter, as provided in this agreement, or should it take possession pursuant to legal proceedings or pursuant to any notice provided for by law, Lessor may terminate this Lease.

b. No reentry or taking possession of the Leased Premises by Lessor shall be construed as an election on the part of Lessor to terminate this Lease unless a written notice of Lessor's intention to terminate this Lease is given to Lessee or unless the termination of the Lease is decreed by a court of competent jurisdiction.

c. Should Lessor at any time terminate this Lease for any breach, in addition to any other remedy it may have, Lessor may recover from Lessee all damages incurred by reason of the breach, including the cost of recovering the Premises, and including the worth at the time of the termination of the excess, if any, of the amount of rent and charges equivalent to rent reserved in this Lease for the remainder of the stated term over the then reasonable rental value of the Premises for the remainder of the stated term, all of which amounts shall be immediately due and payable from Lessee to Lessor.

## **26. MARKET FOR SALE**

Lessor shall have the absolute right to sell, assign, mortgage, or otherwise encumber or dispose of Lessor's interest in the Premises including, without limitation, erecting any type of for sale or future development sign on or adjacent to the Premises and taking any further action in connection therewith or related thereto. No such action by the Lessor shall be considered to be a disruption of Lessee's quiet enjoyment of the Premises.

## **27. EFFECT OF EMINENT DOMAIN.**

a. Effect of total condemnation. In the event the entire Leased Premises shall be appropriated or taken under the power of eminent domain by any public or quasi-public authority, this Lease shall terminate and expire as of the date of the taking, and Lessee shall then be released from any liability accruing under this Lease after that date.

b. Effect of partial condemnation. In the event a portion of the Leased Premises shall be so appropriated or taken and the remainder of the property shall not be suitable for the use then being made of the property by Lessee, or if the remainder of the property is not one undivided parcel of property, Lessee shall have the right to terminate this Lease as of the date of the taking on giving to Lessor written notice of the termination within thirty (30) days after Lessor has notified Lessee in writing that the property has been appropriated or taken.

In the event of partial taking and Lessee does not terminate this Lease, this Lease shall continue in full force and effect as to the part not taken, and the rent to be paid by Lessee during the remainder of the term shall continue in the manner provided for above in Paragraph 3.

c. Condemnation award. In the event of the termination of this Lease by reason of the total or partial taking of the Premises by eminent domain, then in any condemnation proceedings Lessor and Lessee shall be free to make claim against the condemning or taking authority for the amount of any damage done to them, respectively, as a result of the taking.

In the event of a partial taking of the Premises and this Lease is not terminated, then Lessee shall have the right to make claim against the condemning or taking authority for only the unamortized cost of the improvements placed on the Leased Premises by Lessee and located on the Premises at the time of the taking or appropriation, which improvements shall

be deemed to amortize in equal annual amounts over the period commencing with the date of completion of the improvements and ending upon the termination of the Lease.

**28. SURRENDER OF LEASE.**

The voluntary or other surrender of this Lease by Lessee, or a mutual cancellation of this Lease, shall not work a merger, and shall, at the option of Lessor, terminate all or any existing subleases or subtenancies, or may, at the option of Lessor, operate as an assignment to it of any or all such subleases or subtenancies.

**29. WAIVER.**

The waiver by Lessor of, or the failure of Lessor to take action with respect to any breach of, any term, covenant, or condition contained in this Lease shall not be deemed to be a waiver of that term, covenant, condition, or subsequent breach, or of any other term, covenant, or condition contained in the Lease. The subsequent acceptance of rent under this Lease by Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant, or condition of this Lease, other than the failure of Lessee to pay the particular rental so accepted, regardless of Lessor's knowledge of the preceding breach at the time of acceptance of rent.

**30. EFFECT OF LESSEE'S HOLDING OVER.**

Any holding over after the expiration of the term of this Lease, without the express written consent of Lessor, shall be deemed to be a tenant from month-to-month only, at ten (10%) percent increase of the monthly installment in effect during the last month of the expired Term. Except as aforesaid, such tenancy shall be upon and subject to the terms of this Lease. Either party may terminate such tenancy by giving to the other at least thirty (30) days prior written notice of its intent to terminate.

**31. PARTIES BOUND.**

The covenants and conditions contained in this Lease shall, subject to the provisions as to assignment, transfer, and subletting, apply to and bind the heirs, successors, executors, administrators, and assigns of all of the parties to this Lease. All of the parties to this Lease shall be jointly and severally liable under the Lease.

**32. TIME OF THE ESSENCE.**

Time is of the essence of this Lease and of every covenant, term, condition, and provision of this Lease.

**33. SECTION CAPTIONS.**

The captions appearing under the section number designations of this Lease are for convenience only and are not a part of this Lease and do not in any way limit or amplify the terms and provisions of this Lease.

LESSOR SIGNATURE PAGE


Executed on \_\_\_\_\_.


**"LESSOR":**

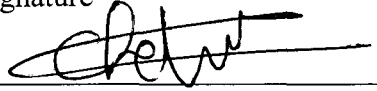
Witnesses:

JJ LAND REALTY, LLC  
a Florida limited liability company

By: CF Land Realty, LLC, a Florida limited  
Liability company, a managing member

  
\_\_\_\_\_  
Signature

By:   
\_\_\_\_\_  
Jacob Chetrit, Manager

  
\_\_\_\_\_  
Signature

STATE OF NEW YORK  
COUNTY OF NASSAU

The foregoing instrument was acknowledged before me this 22nd day of February, 2012, by Jacob Chetrit, Manager of CF Land Realty, LLC, as Managing Member of JJ Land Realty, LLC, on behalf of the limited liability company. He is personally known to me or who has produced \_\_\_\_\_  
(type of identification) as identification.

NOTARY'S SEAL:

  
\_\_\_\_\_  
NOTARY PUBLIC, STATE OF NEW YORK

\_\_\_\_\_  
(Name of Acknowledger Typed, Printed or Stamped)

\_\_\_\_\_  
Commission Number

LOIS HUTTER SANCHEZ  
Notary Public, State of New York  
No. 01HU5042516  
Qualified in Queens County  
Commission Expires April 24, 2015



LESSEE SIGNATURE PAGE

Executed on February 28, 2012

**"LESSEE":**

Witnesses:

**CITY OF POMPANO BEACH**

Christine Wadka

By: [Signature]  
LAMAR FISHER, MAYOR

Shelly R. Bartholomew

By: [Signature]  
DENNIS W. BEACH, CITY MANAGER

Attest:

[Signature]  
MARY L. CHAMBERS  
CITY CLERK

(SEAL)

Approved As To Form:

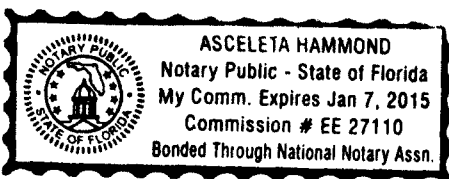
[Signature]  
GORDON B. LINN  
CITY ATTORNEY

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instruments were acknowledged before me this 28th day of February, 2012 by **LAMAR FISHER** as Mayor, **DENNIS W. BEACH** as City Manager and **MARY L. CHAMBERS** 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:

[Signature]  
NOTARY PUBLIC, STATE OF FLORIDA



Asceletha Hammond  
(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

GBL/egr  
L:realest/Ground Lease 2 - 2-10-12



EXHIBIT "B"

LAND DESCRIPTION:

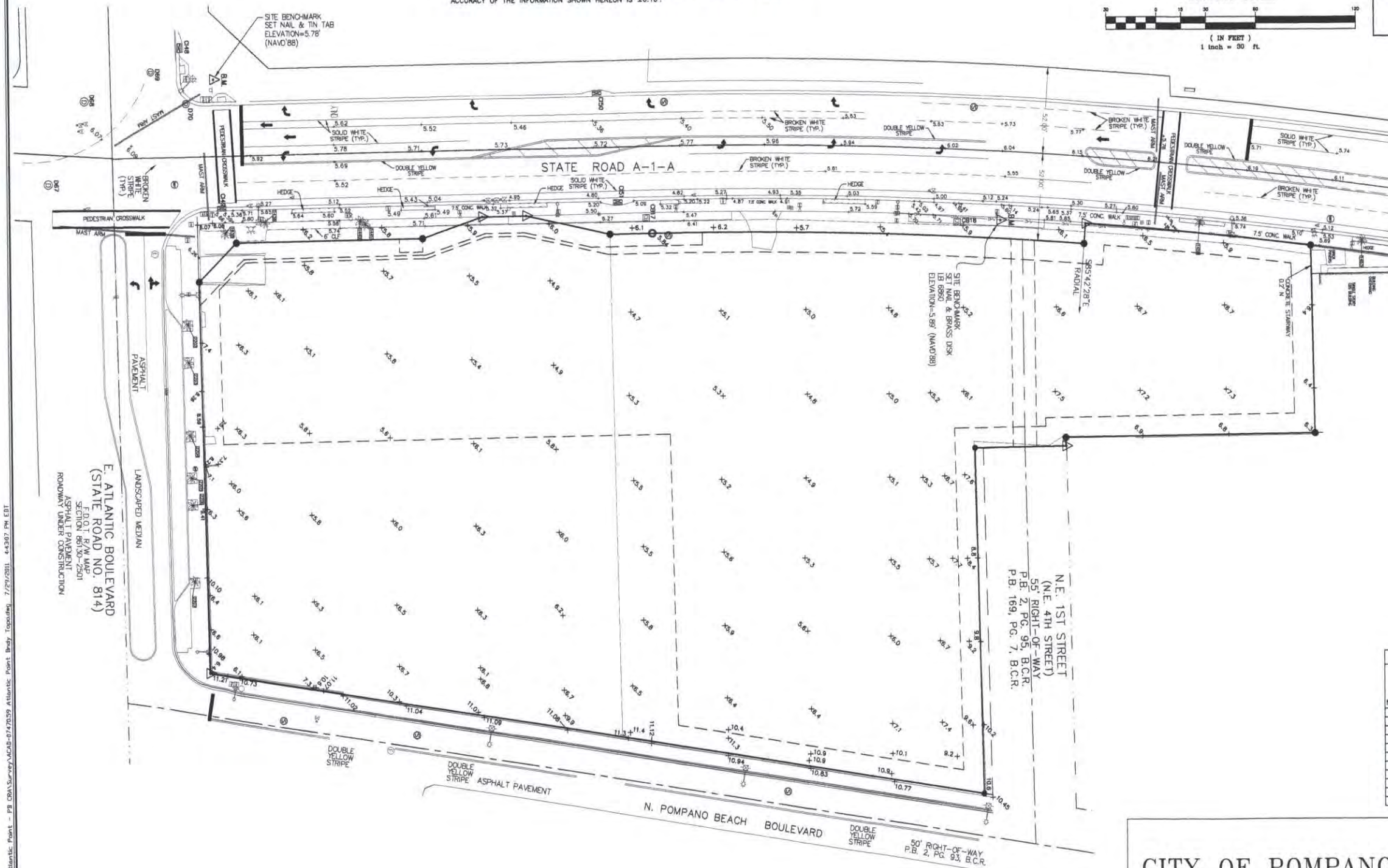
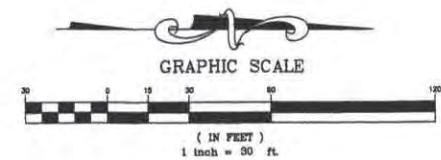
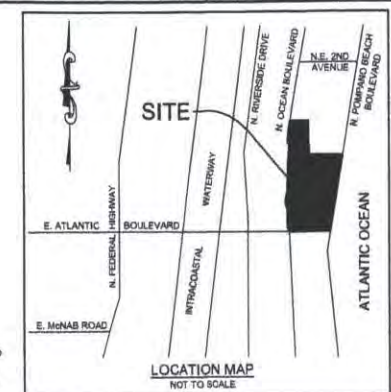
PARCEL 1:  
PARCEL "A", OF ATLANTIC POINT PLAT NO. 1, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 169, PAGE 7, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA.  
TOGETHER WITH  
PARCEL 2:  
LOTS 5, 6, 7 AND 8, BLOCK 13, OF POMPANO BEACH SUBDIVISION, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2, PAGE 93, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA;  
LESS AND EXCEPT THAT PORTION OF LOTS 7 AND 8, BLOCK 13, OF POMPANO BEACH SUBDIVISION, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2, PAGE 93, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA, LYING SOUTH OF A LINE SAID LINE BEING FIFTY (50) FEET NORTH OF (AS MEASURED AT A RIGHT ANGLE) AND PARALLEL TO THE SOUTH BOUNDARY OF SECTION 31, TOWNSHIP 48 SOUTH, RANGE 43 EAST; SAID LANDS SITUATE, LYING AND BEING IN BROWARD COUNTY, FLORIDA.  
ALL OF THE ABOVE DESCRIBED LANDS BEING IN THE CITY OF POMPANO BEACH, BROWARD COUNTY, FLORIDA.  
CONTAINING 163,463 SQUARE FEET OR 3.75 ACRES, MORE OR LESS.

SURVEY NOTES:

1. THIS SURVEY NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
2. IT IS A VIOLATION OF RULE 5J-17 OF THE FLORIDA ADMINISTRATIVE CODE TO ALTER THIS SURVEY WITHOUT THE EXPRESS PRIOR WRITTEN CONSENT OF THE SURVEYOR. ADDITIONS AND/OR DELETIONS MADE TO THE FACE OF THIS SURVEY WILL MAKE THIS SURVEY INVALID.
3. FEATURES AND LINE WORK SHOWN HEREON ARE REFERENCED TO NORTH AMERICAN DATUM OF 1983 WITH THE NATIONAL SPATIAL REFERENCE SYSTEM OF 2007 ADJUSTMENT APPLIED (83/2007), TRANSVERSE MERCATOR, FLORIDA EAST ZONE.
4. SUBSURFACE INVESTIGATION WAS NOT PERFORMED TO DETERMINE IF UNDERGROUND ENCROACHMENTS EXIST. THIS SURVEY DOES NOT IDENTIFY THE LIMITS OR EXTENTS OF POTENTIAL JURISDICTIONAL BOUNDARIES.
5. THE HORIZONTAL FEATURES SHOWN HEREON ARE PLOTTED TO WITHIN 1/30 OF THE MAP SCALE. HORIZONTAL FEATURE LOCATION IS TO THE CENTER OF THE SYMBOL AND MAY BE ENLARGED FOR CLARITY. DISTANCES AND ELEVATIONS SHOWN HEREON ARE U.S. SURVEY FEET UNLESS OTHERWISE NOTED.
6. ELEVATIONS SHOWN HEREON ARE BASED ON THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD 88). SAID ELEVATIONS ARE BASED ON NATIONAL GEODETIC SURVEY BENCHMARK W 311 LOCATED IN POMPANO BEACH, NEAR THE INTERSECTION OF STATE ROAD A-1-A (OCEAN BOULEVARD) AND BARTON ROAD, 22.5 FEET WEST OF THE CENTERLINE OF STATE ROAD A-1-A AND 28 FEET SOUTH OF THE CENTERLINE OF BARTON ROAD, SET ON THE TOP OF THE SOUTHWEST CORNER OF A CATCH BASIN, ELEVATION = 1.77' AND NATIONAL GEODETIC SURVEY BENCHMARK 14.745 LOCATED IN POMPANO BEACH, ON THE TOP OF THE NORTH END OF THE EAST ABUTMENT OF THE EAST ATLANTIC BOULEVARD BRIDGE OVER THE INTRACASTAL WATERWAY, 19.5 FEET NORTH OF THE CENTERLINE OF THE WESTBOUND LANE OF EAST ATLANTIC BOULEVARD, ELEVATION = 13.17'.
7. THE EXPECTED VERTICAL ACCURACY OF THE INFORMATION SHOWN HEREON IS  $\pm 0.03'$  FOR THE HARD SURFACE ELEVATIONS AND  $\pm 0.10'$  FOR THE SOFT SURFACE ELEVATIONS. THE EXPECTED HORIZONTAL ACCURACY OF THE INFORMATION SHOWN HEREON IS  $\pm 0.10'$ .

SURVEY NOTES CONTINUED:

9. LANDS SHOWN HEREON WERE NOT ABSTRACTED FOR RIGHTS-OF-WAY, EASEMENTS, OWNERSHIP, OR OTHER INSTRUMENTS OF RECORD.
10. DRAINAGE STRUCTURE NUMBERS AND TREE NUMBERS SHOWN HEREON REFER TO A TOPOGRAPHIC SURVEY FOR PORTIONS OF STATE ROAD A-1-A (OCEAN BOULEVARD) PREPARED BY KEITH & ASSOCIATES, INC., PROJECT NUMBER 0702055, IN 29 SHEETS, DATED APRIL 5, 2011. SEE RESPECTIVE UTILITY AND TREE TABLES FOR SPECIFIC INFORMATION.
11. MEASURED DISTANCES AND DIRECTIONS AGREE WITH RECORDED DISTANCES AND DIRECTIONS UNLESS OTHERWISE NOTED.
12. BEARINGS SHOWN HEREON ARE BASED ON AN ASSUMED BEARING OF SOUTH 09°06'26" WEST ALONG THE EASTERMOST LINE OF PARCEL "A", ATLANTIC POINT PLAT NO. 1, AS RECORDED IN PLAT BOOK 169, PAGE 7, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA.



ABBREVIATION AND SYMBOL LEGEND:

- B.C.R. BROWARD COUNTY RECORDS
- C.B. CATCH BASIN
- C.A. CENTRAL (DELTA) ANGLE
- C.I. CURB INLET
- C.L. CHAIN LINK FENCE
- C.C. CONCRETE
- C.G. CURB AND GUTTER
- F.D.O.T. FLORIDA DEPARTMENT OF TRANSPORTATION
- F.L. FLORIDA POWER & LIGHT
- I.E. INGRESS/EGRESS EASEMENT
- L.B. LICENSED BUSINESS
- N.A.V.D. 88 NORTH AMERICAN VERTICAL DATUM OF 1988
- O.R.S. OFFICIAL RECORDS BOOK
- P.G. PAGE
- P.B. PLAT BOOK
- R.R. RADIUS
- R.O.W. RIGHT-OF-WAY
- T. TYPICAL
- U. UTILITY
- V. VALLEY GUTTER
- M.D. MEASURED DISTANCE
- P.D. PLAT DISTANCE
- B.S. BELLSOUTH RISER
- T.S. TRAFFIC SIGNAL BOX
- S.M. SANITARY MANHOLE
- C.B. CATCH BASIN
- E.M. ELECTRIC MANHOLE
- F.H. FIRE HYDRANT
- W.G.V. WATER GATE VALVE
- C.U.L.P. CONCRETE UTILITY LIGHT POLE
- E.H.H. ELECTRIC HAND HOLE
- W.M. WATER METER
- G.W.A. GUY WIRE ANCHOR
- C. CENTERLINE
- S.D.M. STORM DRAIN MANHOLE AND STRUCTURE NUMBER (SEE NOTE 15)
- C.I. CURB INLET AND STRUCTURE NUMBER (SEE NOTE 16)
- S.P.S. SINGLE POST SIGN
- O.W. OVERHEAD WIRE
- N.V.A.L. NON-VEHICULAR ACCESS LINE
- D.L.P. DECORATIVE LIGHT POLE
- T.M. TELEPHONE MANHOLE
- N.A.V.D. 88 HARD ELEVATION IN FEET
- N.A.V.D. 88 SOFT ELEVATION IN FEET
- S.B. SITE BENCHMARK
- S.I.R. SET 5/8" IRON ROD AND PLASTIC CAP STAMPED "KEITH & ASSOC. LB 6860"
- S.P.N. SET PARKER KALON NAIL WITH DISK STAMPED "KEITH & ASSOC. LB 6860"
- P.T. PALM TREE

TREE TABLE			
NUMBER	DIAMETER AT BREAST HEIGHT IN INCHES	TYPE	APPROXIMATE CANOPY DIAMETER IN FEET
1438	10	PALM	10
1440	14	PALM	3
1441	16	PALM	14
1458	8	PALM	10
1463	6	PALM	6
2202	12	PALM	12
2203	12	PALM	12
2204	12	PALM	12
2205	12	PALM	12
2206	12	PALM	12
2207	12	PALM	12

CITY OF POMPANO BEACH

Seal:

BOUNDARY AND TOPOGRAPHIC SURVEY

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

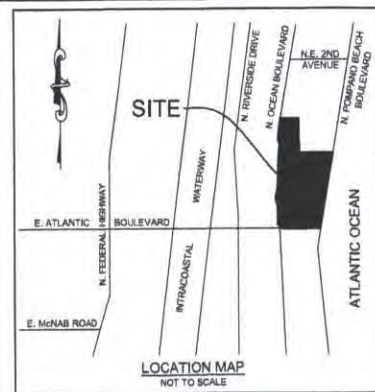
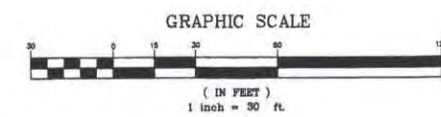
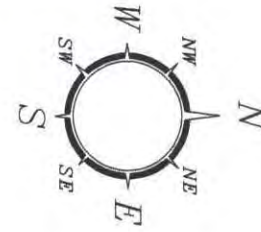
SHEET 2 OF  
PROJECT NUMBER  
07470.59



EXHIBIT "A"

STRUCTURE SCHEDULE													
STRUCTURE NUMBER	RIM ELEVATION	INVERT ELEVATION				FLOOR ELEVATION	STRUCTURE NUMBER	RIM ELEVATION	INVERT ELEVATION				FLOOR ELEVATION
		N	S	E	W				N	S	E	W	
CB-1	9.65	N/A	7.00	N/A	N/A	5.50	CB-5	6.25	2.85	N/A	3.75	N/A	1.25
CB-2	10.20	6.90	6.85	N/A	7.00	5.25	CB-6	5.75	2.65	2.75	N/A	N/A	1.00
CB-3	10.30	6.75	6.65	N/A	N/A	5.00	CB-7	6.00	2.45	2.55	N/A	N/A	0.85
CB-4	10.00	6.55	N/A	N/A	3.85	2.25	CB-8	6.20	1.95	2.35	N/A	N/A	0.35
							BB-9*	4.70	N/A	1.80	N/A	N/A	0.25

NOTES: CATCH BASINS SHALL BE FDOT TYPE "C" 24"x37" DITCH BOTTOM WITH USF FRAME AND GRATE # 6611  
BUBBLE UP STRUCTURE FDOT TYPE "C" 24"x37" DITCH BOTTOM



- ABBREVIATION AND SYMBOL LEGEND:**
- B.C.R. BROWARD COUNTY RECORDS
  - CB CATCH BASIN
  - CE (DELTA) ANGLE
  - CI CURB INLET
  - CL CHAIN LINK FENCE
  - CONC CONCRETE
  - CS CURB AND SUTTER
  - F.D.O.T. FLORIDA DEPARTMENT OF TRANSPORTATION
  - F.P.L. FLORIDA POWER & LIGHT
  - I.E.E. INGRESS/EGRESS CASSEMENT
  - ARC LENGTH
  - LB LICENSED BUSINESS
  - NAVD'88 NORTH AMERICAN VERTICAL DATUM OF 1988
  - O.R.B. OFFICIAL RECORDS BOOK
  - PLAT PLAT BOOK
  - P.B. PLAT BOOK
  - R.S. STATE ROAD
  - R.O.W. RIGHT-OF-WAY
  - TYP. TYPICAL
  - UTILITY UTILITY
  - VALLEY VALLEY
  - MEASURED MEASURED DISTANCE
  - PLAT DISTANCE
  - BELLSOUTH RISER
  - TRAFFIC SIGNAL BOX
  - SANITARY MANHOLE
  - CATCH BASIN
  - ELECTRIC MANHOLE
  - FIRE HYDRANT
  - WATER GATE VALVE
  - CONCRETE UTILITY LIGHT POLE
  - ELECTRIC HAND HOLE
  - WATER METER
  - GUY WIRE ANCHOR
  - CENTERLINE
  - STORM DRAIN MANHOLE AND STRUCTURE NUMBER (SEE NOTE 15)
  - CURB INLET AND STRUCTURE NUMBER (SEE NOTE 15)
  - SINGLE POST SIGN
  - OVERHEAD WIRE
  - NON-VEHICULAR ACCESS LINE
  - DECORATIVE LIGHT POLE
  - TELEPHONE MANHOLE
  - NAVD'88 HARD ELEVATION IN FEET
  - NAVD'88 SOFT ELEVATION IN FEET
  - SITE BENCHMARK
  - SET 5/8" IRON ROD AND PLASTIC CAP STAMPED "KEITH & ASSOC. LB 8860"
  - SET PARKER KALON NAIL WITH DISK STAMPED "KEITH & ASSOC. LB 8860"
  - PALM TREE

DATE	REVISION
</	

DATE	08-17-11
SCALE	1"=30'
FIELD BOOK	
DESIGN BY	HD
CHECKED BY	

**OCEANSIDE PARCEL "A"**  
**PROPOSED PARKING**  
CITY OF POMPANO BEACH, FLORIDA

**PAVING, GRADING AND DRAINAGE PLAN**  
PARCEL "A", ATLANTIC POINT PLAT NO. 1, PLAT BOOK 169, PAGE 7 AND  
LOTS 5-8, BLOCK 13, POMPANO BEACH SUBDIVISION, PLAT BOOK 2, PAGE 93  
SECTION 31, TOWNSHIP 48 SOUTH, RANGE 43 EAST  
CITY OF POMPANO BEACH, FLORIDA  
BROWARD COUNTY

CITY OF POMPANO BEACH

Seal:



Print

## Pompano Beach, Florida Zoning Code

### 155.2308. POST-DECISION ACTIONS AND LIMITATIONS

#### A. Notice of Decision

Within ten calendar days after a final decision on an application, the Development Services Director shall provide the applicant written notice of the decision and make a copy of the decision available to the public at the Development Services Department, during normal business hours.

#### B. Expiration of Development Order

##### 1. General

Development orders granted in accordance with this Code shall expire as provided in Part 4 (Application-Specific Review Procedures and Standards) of this article for the particular type of development order. If no expiration period is provided in Part 4 for a particular type of development order, the development order shall expire if a Zoning Compliance Permit is not obtained within two years. A change in ownership of the land shall not affect the established expiration time period.

##### 2. Extension of Expiration Time Period

a. Except as otherwise provided in subsections b and c below, the expiration period of a development order may be extended provided the applicant or owner of land subject to the development order submits a written request for an extension to the Development Services Director at least 45 days before the expiration date and the request sets forth the basis and reason for the extension. The burden of demonstrating sufficient grounds for an extension rests on the requestor. Extensions may be granted in accordance with the following:

i. For all development orders, the Development Services Director may grant one or more extensions for up to a cumulative total of 90 days.

ii. For development orders for a Variance or Special Exception, the ZBA may, subsequent to any extension(s) granted by the Development Services Director, grant up to two extensions for up to a cumulative total of two years per extension (including extensions granted by the Development Services Director). Under no circumstances shall a Development Order for a Variance or Special Exception be extended for more than four years.

iii. For development orders for an Interim Use Permit, the ZBA may, subsequent to any extension(s) granted by the Development Services Director, grant up to two extensions for up to a cumulative total of two years per extension (including extensions granted by the Development Services Director). Under no circumstances shall a Development Order for an Interim Use Permit be extended for more than four years. The aforementioned required written basis and reason for extension must demonstrate:

(A) The use continues to be an interim use requiring an Interim Use Permit in accordance with Section 155.2415.B, Applicability;

(B) The Interim Use Permit holder has made a good faith effort to obtain all government approvals and permits; and

(C) Operation of the Interim Use has not created an unreasonable nuisance or risk, including:

(1) Damage to public or private property, beyond normal wear and tear;

(2) Injury to persons;

(3) Public or private disturbances or nuisances;

(4) Unsafe impediments or distractions to, or congestion of, vehicular or pedestrian travel;

(5) Additional and impractical or unduly burdensome police, fire, trash removal, maintenance, or other public services demands; or

(6) Other adverse effects upon the public health, safety, or welfare.

iv. For development orders for a Site Plan, except for development orders subject to or governed by an enforceable Development Agreement the P&Z may, subsequent to any extension(s) granted by the Development Services Director, grant up to one extension for up to two years (including extensions granted by the Development Services Director). Under no circumstances shall a Development Order for a Site Plan be extended for more than two years. The aforementioned required written basis and reason for extension must provide competent and substantial evidence demonstrating compliance with one or more of the following criteria:

(A) Reasonable efforts were made to apply for a Building Permit and reasonable steps were taken to secure any other development approvals that may be needed from other permitting authorities to allow for the submittal of an application for a Building Permit; or

(B) Since the date of the development order, substantial expenditures have been made or substantial obligations have been incurred in reliance on the approval and in furthering and proceeding with the development; or

(C) The delay in proceeding with the commencement of development resulted from a "force majeure" or "Act of God" or extreme economic conditions of the market, and not acts of omission by the applicant or owner.

v. For all other development orders, the authority that approved the development order may, subsequent to any extension(s) granted by the Development Services Director, grant a single extension for up to a cumulative total of two years (including extensions granted by the Development Services Director).

b. The expiration period for a development order for a Major Temporary Use Permit, Minor Temporary Use Permit, and Zoning Use Certificates may not be extended.

c. Any development order which has been extended pursuant to state law, executive order, or by other legal means not set forth in this section, may not subsequently be extended pursuant to the provisions of subsection 2.a. above unless otherwise provided by law.

### **C. Modification or Amendment of Development Order**

Except as otherwise provided in Part 4 (Application-Specific Review Procedures and Standards) of this article for the particular type of application for a development permit, any modifications of approved plans or conditions of approval shall require a new application that is submitted and reviewed in accordance with the full procedural and fee requirements applicable to the particular type of application for a development permit.

### **D. Limitation on Subsequent Similar Applications**

#### **1. Prior Application Denial**

a. If an application requiring a public hearing is denied, no application proposing the same or similar development on all or part of the same land shall be submitted within one year after the date of denial unless the decision-making body waives this time limit in accordance with subsection b below.

b. The owner of the subject land, or the owner's authorized agent, may submit a written request for waiver of the time limit, along with a fee to defray the cost of processing the request, to the Development Services Director, who shall transmit the request to the decision-making body. The decision-making body may grant a waiver of the time limit on finding that the owner of the subject land has demonstrated that:

i. There is a substantial change in circumstances relevant to the issues or facts considered during review of the prior application that might reasonably affect the decision-making body's application of the relevant review standards to the development proposed in the new application; or

ii. New or additional information is available that was not available at the time of review of the prior application and that might reasonably affect the decision-making body's application of the relevant review standards to the development proposed in the new application; or

iii. The new application proposed to be submitted is materially different from the prior application; or

iv. The final decision on the prior application was based on a material mistake of fact.

#### **2. Prior Application Withdrawal**

If an application requiring a public hearing is withdrawn after required notice of the public hearing is provided, no application proposing the same or similar development on all or part of the same land shall be submitted within six months after the date of withdrawal.

### **E. Tolling of Expiration Time Period During Use by Government Entity for Public Purpose**

The running of the expiration time period for any development order shall be tolled during use of the property by a government entity for a public purpose as demonstrated by an interlocal agreement, lease, or similar legal document with the lawful owner of the property. The tolling period shall commence on the effective date of the interlocal agreement, lease, or similar legal document. The tolling shall terminate upon the expiration of the interlocal agreement, lease, or similar legal document, or the expiration of five years, whichever is sooner. The request for the tolling shall be made at least 45 days prior to the expiration of the development order, and shall be subject to approval by resolution of the City Commission.

(Ord. 2012-64, passed 9-11-12; Am. Ord. [2017-05](#), passed 10-25-16)