

DEVELOPMENT AGREEMENT

BETWEEN

CITY OF DELRAY BEACH, FLORIDA

CDS DELRAY REDEVELOPMENT, LLC

and

CDR ATLANTIC PLAZA, LTD.

This is not a contract
THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into this 28th day of July, 2011 (the "Execution Date"), by and among **CDS DELRAY REDEVELOPMENT, LLC**, a Florida limited liability company, with an address of 645 East Atlantic Avenue, Delray Beach, Florida ("CDS Delray"); **CDR ATLANTIC PLAZA, LTD.**, a Florida limited liability partnership ("Plaza") and its undersigned affiliates (collectively the "Developer Parties"), and the **CITY OF DELRAY BEACH**, a municipal corporation and a political subdivision of the State of Florida, with an address of 100 NW 1st Avenue, Delray Beach, Florida 33444 ("City").

WITNESSETH:

WHEREAS, the City wishes to encourage redevelopment of the properties currently surrounding and including the existing development referred to as "Atlantic Plaza", generally located at 777 E. Atlantic Avenue (collectively the "Properties"); and

WHEREAS, Developer Parties hold the fee simple title to the Properties as more fully legally described within **Exhibit "A"** as attached hereto and incorporated herein; and

WHEREAS, the City approved a site plan and various entitlements for a mixed-use project (the "Project") on the Properties, as identified within **Exhibit "B"** (collectively the "Approvals"); and

WHEREAS, assurance to a developer that it may proceed in accordance with existing laws and policies, subject to the conditions of a development agreement, strengthens the public planning process, encourages sound capital improvement planning and financing, assists in assuring there are adequate capital facilities for the development, encourages private participation in comprehensive planning, and reduces the economic costs of development; and

WHEREAS, the Properties are designated Commercial Core in the Comprehensive Plan, and zoned as Central Business District in the Existing Zoning (as that term is defined hereinafter); and

WHEREAS, the Developer Parties and the City mutually desire that the Properties be developed as permitted in the Existing Zoning, the Comprehensive Plan and this Agreement; and

WHEREAS, Section 2.4.11 of the City's Land Development Regulations authorizes the City to enter into this Agreement, consistent with Chapter 163, Fla. Stat.; and

WHEREAS, Florida Statutes Chapter 163 specifically provide for and authorize local governments to enter into Development Agreements; and

WHEREAS, the City has conducted two public hearings prior to entering into this Agreement, on July 5, 2011 and on July 19, 2011, both of which were properly noticed by publication in a newspaper of general circulation and by mailed notice to the affected property owners, in accordance with Section 163.3225, Fla. Stat. (2011) (the "Adoption Hearings").

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, the parties mutually agree and bind themselves as set forth herein:

Section 1. The parties hereby agree that the consideration and obligations recited and provided for under this Agreement constitute substantial benefits to both parties and thus adequate consideration for this Agreement. This covenant shall be binding upon, and inure to, the benefit of the parties, their successors, assigns, heirs, legal representatives, and personal representatives.

Section 2. Rules of Legal Construction.

For all purposes of the Agreement, unless otherwise expressly provided:

- (a) A defined term has the meaning assigned to it;
- (b) Words in the singular include the plural, and words in plural include the singular;
- (c) A pronoun in one gender includes and applies to other genders as well;
- (d) The terms "hereunder", "herein", "hereof", "hereto" and such similar terms shall refer to the instant Agreement in its entirety and not to individual sections or articles;
- (e) The Parties hereto agree that this Agreement shall not be more strictly construed against either the City or any Developer Party as all parties are drafters of this Agreement; and
- (f) The recitals are true and correct and are incorporated into and made a part of this Agreement. The attached exhibits shall be deemed adopted and incorporated into the Agreement; provided however, that this Agreement shall be deemed to control in the event of a conflict between the attachments and this Agreement.

Section 3. Definitions. All terms shall have the same definition as set forth in Section 163.3221, Fla. Stat. (2011) unless a different definition is used herein.

"Agreement" means this Agreement between the City and Developer Parties.

"City" means the City of Delray Beach, a municipal corporation and a political subdivision of the State of Florida, and all departments, agencies and instrumentalities subject to the jurisdiction thereof.

"Comprehensive Plan" means the comprehensive plan adopted by the City pursuant to Chapter 163, Florida Statutes, which plan was in effect as of April 21, 2009.

"Concurrency Requirements" and "Concurrency" mean all those requirements imposed by Section 163.3180, Fla. Stat., in conjunction with the applicable City Laws as of April 21, 2009, but only to the extent that they relate to the City requirements, and they expressly exclude requirements which may be imposed by any other governmental entities or political subdivisions of the State of Florida, or the School District of Palm Beach County, Florida.

"County" means Palm Beach County, a political subdivision of the State of Florida.

"Development" means the carrying out of any building activity, the making of any material change in the use or appearance of any structure or land, or the dividing of land into three or more parcels and such other activities described in Section 163.3221(4), Fla., Stat. (2011). The Development is intended to be consistent with the certified site plan, attached hereto as Exhibit "B".

"Effective Date" is the date after this instrument has been approved by the City Commission and recorded in the public records of Palm Beach County, Florida, pursuant to Section 163.3239, Florida Statutes (2011).

"Existing Zoning" is (a) the City's Future Land Use Map designation of "Commercial Core" for the Properties as of April 21, 2009; (b) the City's zoning map designation for the Properties of "Central Business District" as of April, 21 2009; (c) the associated City Comprehensive Plan Goals, Policies and Objectives, Land Development Regulations, and other City Ordinances in effect as of April, 21 2009; (d) and all Approvals for the Project as set forth within Exhibit "B".

"Land" means the earth, water, and air, above, below, or on the surface and includes any improvements or structures customarily regarded as land.

"Laws" means all ordinances, resolutions, regulations, comprehensive plans, land development regulations, and rules adopted by a local government affecting the development of land.

"Property Interest" means any fee simple interest or rights in the Properties. In addition, a Community Development District and/or a master property owners' association with appropriate authority relating to one or more of the Properties shall be deemed to hold a Property Interest.

"Public Facilities" means major capital improvements, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational, streets, parking and health systems and facilities.

"Site Plan" means the certified site plan approved as of the execution of this Agreement and as set forth in Exhibit "B". The term "site plan" shall also include any site plan certified and/or amended with the approval of the City subsequent to the execution and recordation of this Agreement.

"Universal Approval Expiration Date" means that date by which all Approvals shall collectively expire, unless further extended, notwithstanding another earlier expiration date set forth in any specific Approval.

Section 4. Purpose. The purpose of this Development Agreement is to establish certain conditions which will result in the Developer Parties making certain significant infrastructure investments of sufficient magnitude in the City to make the Project both physically and financially feasible and to freeze, as of the Effective Date, the land development regulations which will govern development of the Project. This Agreement will provide both parties with additional certainty during the development process.

Section 5. Intent. The Developer Parties and the City intend for this Agreement to be construed and implemented so as to effectuate the purpose of this Development Agreement and the purpose and intent of the Florida Local Government Development Agreement Act, Section 163.3220 - 163.3243, Florida Statutes (2011).

Section 6. Applicability; Legal Description. This Agreement applies only to the land located within the boundaries of the legal description as set forth and incorporated herein as Exhibit "A".

Section 7. Duration and Effective Date. This Agreement shall have an initial term of ten (10) years ("Term" as such Term may be extended pursuant to this Agreement), starting from the Effective Date, and shall be recorded in the public records of Palm Beach County and filed with the City Clerk. This Agreement shall become effective on the Effective Date and shall, at that point, constitute a covenant running with the land. Pursuant to Section 163.3229, Fla. Stat., the Term of this Agreement may be further extended beyond the initial Term by mutual consent of the City and the Developer Parties, subject to a public hearing in accordance with Section 163.3225, Fla. Stat. (2011).

Section 8. Permitted Development Uses and Building Intensities.

- (a) Approvals; Site Plan. The approved site plan and entitlements for the Project (collectively the "Approvals") are set forth within the attached Exhibit "B".
- (b) Central Business District Zoning. The Properties fall within the City's Central Business District ("CBD") zoning designation. In approving the Project, the City has determined that the uses, intensities and densities of development permitted comply with the Existing Zoning. The City hereby agrees to maintain and

preserve a true and accurate record of the Existing Zoning with the City Clerk and/or other custodian, which regulations are hereby incorporated herein and made a part hereof.

(c) Density, Intensity, Uses and Building Heights.

- (1) The applicable intensity, uses, and building heights are stated in the Approvals which are set forth in Exhibit "B".
- (2) Downzoning shall be prohibited except as set forth in Section 12(c).

Section 9. Public Facilities; Concurrency.

- (a) Public Facilities. As of the Effective Date, the following public facilities are able to service the Project (to be provided by the City and/or other outside agencies, as applicable): water and sewer; streets and traffic; drainage; parks and recreation; open space; solid waste; and schools.
- (b) Concurrency. The City acknowledges and agrees that during the Term of this Agreement, the Project shall be deemed to have satisfied the Concurrency Requirements.
- (c) Public Rights-of-Way. The City acknowledges that the Developer Parties intend to apply for approvals to make improvements to SE 6th Avenue (northbound Federal Highway/U.S. Highway No. 1) from Atlantic Avenue north to NE 1st Street, and to Atlantic Avenue from SE 6th Avenue east to the Intracoastal bridge, such as lane width repaving, parallel parking, landscape buffers, street lighting, and sidewalk improvements.
- (d) Utilities. The Developer Parties will construct the utilities (water, sewer, power, telephone, gas, cable, drainage devices) (hereinafter "Utilities") which serve the Project consistent with the approved Composite Utility Plan required by Section 2.4.3.F of the City's Land Development Regulations.
- (e) Parking Facilities.
 - (1) In accordance with the Approvals, the Developer Parties will construct certain temporary and permanent parking facilities, a portion of which may be automated (collectively the "Parking Facilities").
 - (2) The Parking Facilities shall be controlled by the Developer Parties and owned and operated by the Developer Parties. Notwithstanding that the Developer Parties may otherwise sell, transfer, convey, lease or license the Parking Facilities to third parties, nothing herein shall be construed to release the Developer Parties from the obligation to meet the minimum off-street parking requirements of the Existing Zoning.

(3) Construction, ownership, maintenance, operation and repair of the Parking Facilities shall be the sole obligation of the Developer Parties. It is the responsibility of the Developer Parties to obtain building permits from the City for the Parking Facilities.

(4) The City hereby agrees to not charge for parking within all roads internal to the Project, including Atlantic Court and 7th Avenue.

(5) Sidewalk Cafés. The City agrees areas marked on Exhibit "C" are eligible to receive Sidewalk Café Permits as set forth in the Existing Zoning. Should the Developer Parties desire to provide Sidewalk Cafés in the Project, the Developer Parties agree to submit such required application(s) to the City which application(s) shall be reviewed pursuant to the Existing Zoning, subject to the provisions of Section 21 of this Agreement.

(6) Valet Parking.

a. The City agrees the Developer Parties may request at least two (2) valet parking stations within the Project. Approval of the locations and design of the valet parking stations shall be obtained from the City's Site Plan and Architectural Review Board ("SPRAB") before implementation into the Project.

b. The control and operation of the valet parking stations shall in no way conflict with the terms set forth in that "Agreement for the Abandonment and Relocation of NE 7th Avenue" previously entered into between the Developer Parties and the City on February 17, 2009.

Section 10. Intentionally Omitted.

Section 11. Local Development Permits. A description of all local development permits approved for the development of the Project as of the Effective Date of this Agreement is set forth and incorporated herein as Exhibit "B". These Approvals, the Existing Zoning, and this Agreement establish the criteria upon which the Properties shall be developed during the term of this Agreement, except as provided in Section 21.

Section 12. Project Approvals.

(a) Universal Approval Expiration Date. It is the intent of the parties to provide for certainty in the Project's development process to avoid waste of economic and land resources, to encourage sound capital improvement planning and financing, to de-escalate the cost of housing and development, and to encourage commitment to comprehensive planning. As such, the parties hereby agree that all of the Approvals for the Project, as listed herein as Exhibit "B", as amended, shall have a Universal Approval Expiration Date concurrent with the expiration of this Agreement. The Universal Approval Expiration Date shall be confirmed by

the recordation of a Certificate of Universal Approval Expiration Date in the form attached hereto as **Exhibit "D"**.

- (b) **Vesting.** The City hereby acknowledges and agrees that the Developer Parties have committed to make certain infrastructure investments of such significant magnitude so as to make the Project both physically and financially feasible. Pursuant to LDR Section 2.4.4(D) of the Existing Zoning, all Approvals shall be considered forever established and the Project vested when improvements set forth within **Exhibit "E"** have been constructed and received a certificate of occupancy or equivalent final approval.

- (c) **Prohibition on Downzoning.**

- (1) The Approvals, Existing Zoning and this Agreement shall govern development of the Properties for the Term of the Agreement. The City may apply subsequently adopted laws and policies to the Project only if the City holds a public hearing and the standards set forth in Section 163.3233(2), Fla. Stat. (2011) have been met.

- (2) Pursuant to Section 163.3233(3), Fla. Stat. (2011), this prohibition does not abrogate any rights that may vest pursuant to common law.

Section 13. Intentionally Omitted.

Section 14. **Construction Bond.** No construction bond or bonds shall be required in an amount greater than that required for any given phase of the Project currently under construction. When such bonded improvements are completed for any such phase, the bond or bonds shall be returned to the Developer Parties, and post-construction/maintenance bonds provided, consistent with the Existing Zoning and as otherwise modified by Section 21 of this Agreement. As a new phase is to be constructed, arrangements shall be made with respect to the posting of a new bond or bonds for the improvements associated with such phase.

Section 15. **Workforce Housing.**

- (a) Section 4.7 of the City's Land Development Regulations provides regulations governing the inclusion of "workforce housing" into developments, as the term is defined therein.
- (b) Section 4.7(1) of the City's Land Development Regulations further recognizes the City Commission's desire to establish additional incentives to encourage workforce housing including, but not limited to, requirements to provide additional workforce housing for developments that request increases in height and/or density pursuant to Section 4.3.4(J)(4)(b) and 4.4.13(I).
- (c) The City has authorized an optional increase in height for the Project based upon the Developer Parties' inclusion of workforce housing, as set forth in the Approvals (the "Height Incentive").

- (d) Section 4.7.2.b of the City's Land Development Regulations authorizes the Developer Parties to meet the workforce housing requirement by: (i) providing units onsite; (ii) by providing a monetary contribution; (iii) through delivery of offsite units; or (iv) a combination thereof.
- (e) Section 4.7.2.b of the City's Land Development Regulations further provides that the Developer Parties may meet the workforce housing requirement in whole or in part by providing a monetary contribution, payable to the City of Delray Beach Housing Trust Fund (or its successors and assigns), in the amount of ONE HUNDRED SIXTY THOUSAND and NO/100 DOLLARS (\$160,000.00) for each required workforce housing unit in lieu of providing the workforce housing unit within the Project, which monetary contribution shall be due prior to issuance of a building permit for such phase that utilizes the Height Incentive.
- (f) Nothing herein shall require the Developer Parties to provide workforce housing units in the Project should the Developer Parties not elect to utilize the Height Incentive or otherwise require the Developer Parties to include workforce housing in any particular phase of the Project.

Section 16. Consistency with Comprehensive Plan and Land Development Regulations. The City hereby finds that development of the approved Project, once the conditions associated with the Approvals have been met, is consistent with the City's Comprehensive Plan and land development regulations as of the Effective Date of this Agreement. The City further hereby affirms that its Comprehensive Plan and any plan amendments implementing or related to this Agreement have been found to be in compliance by the state land planning agency as required by Section 163.3229, Fla. Stat. (2011).

Section 17. Necessity of Complying with Local Regulations Relative to Development Permits. The Developer Parties and the City agree that the failure of this Agreement to address a particular permit, condition, fee, term, license, or restriction in effect on the Effective Date shall not relieve the Developer Parties of the necessity of complying with the regulation governing said permitting requirements, conditions, fees, terms, licenses, or restrictions.

Section 18. Reservation of Development Rights.

- (a) For the term of this Agreement, the City hereby agrees that it shall permit the development of the Properties in accordance with the Existing Zoning and this Agreement.
- (b) Nothing herein shall prohibit an increase in the density or intensity of development permitted on the Properties consistent with Section 21 herein.
- (c) The execution of this Agreement shall not be considered a waiver of, or limitation upon, the rights of the Developer, or its successors or assigns, which may vest pursuant to common law.

Section 19. Annual Review.

- (a) The City shall review the development that is subject to this Agreement every 12 months, commencing 12 months after the Effective Date. The City shall begin the review process by giving notice to the Developer Parties, a minimum of 30 days prior to the anniversary date of the Agreement, of its intention to undertake the annual review of this Agreement. The Developer agrees to pay any reasonable costs incurred by the City for the annual reviews in an amount not to exceed Five Hundred Dollars (\$500.00) per year.
- (b) Any information required of the Developer Parties during an annual review shall be limited to that necessary to determine the extent to which the Developer is proceeding in good faith to comply with the terms of this Agreement.
- (c) If the City finds on the basis of competent substantial evidence that there has been a failure to comply substantially with the terms of the Agreement, the City may terminate or amend this Agreement after providing 30 days written notice to the Developer Parties and at a public hearing. The Developer Parties shall be provided a reasonable time to cure any failure before the City may terminate or amend this Agreement consistent with Section 29.

Section 20. Notices.

- (a) All notices, demands and requests which may or are required to be given hereunder shall, except as otherwise expressly provided, be in writing and delivered by personal service or sent by telex, telecopy, telegram, United States Registered or Certified Mail, return receipt requested, postage prepaid, or by overnight express delivery, such as Federal Express, to the parties at the addresses and telecopy numbers listed below. Any notice given pursuant to this Agreement shall be deemed given when received. Any actions required to be taken hereunder which fall on Saturday, Sunday, or United States legal holidays shall be deemed to be performed timely when taken on the succeeding day thereafter which shall not be a Saturday, Sunday or legal holiday.

To the City:
City Manager
City of Delray Beach
100 NW 1st Avenue
Delray Beach, FL 33444

With a copy to:
City Attorney
City of Delray Beach
200 NW 1st Avenue
Delray Beach, FL 33444

To the Developer Parties:
CDS Delray Redevelopment, LLC

c/o William H. Milmoie
CDS International Holdings, Inc.
Fax: (561) 278-6930

With copies to:
Proskauer Rose LLP
2255 Glades Road, Suite 340W
Boca Raton, FL 33431
Attn: Stuart Kapp, Esq.

With copies to:
Weiner & Lynne, P.A.
10 SE 1st Avenue
Delray Beach, FL 33444
Attn: Jeffrey C. Lynne, Esq.

- (b) Any Party to this Agreement may change its notification address(es) by providing written notification to the remaining parties pursuant to the terms and conditions of this section.

Section 21. Requests to Amend Approvals. Nothing herein shall be deemed to prohibit the Developer Parties from requesting either existing or subsequently enacted laws, rules or regulations to be applied to the Project ("Amended Approvals"), upon proper application by the Developer Parties to the City and subject to the procedures governing the requested Amended Approvals at the time of the application, provided the effect of any Amended Approval granted does not conflict with the laws, rules and regulations applicable to the Project at the time the application for the Amended Approvals is made. Any requested amendment to the Site Plan which the City classifies as a Class I or Class II site plan modification, or any requested amendment which does not change the approved uses, densities, intensities or height for the Project, shall not be deemed an "amendment" of this Agreement such as would otherwise require compliance with the public notice and hearing procedure set forth in Section 163.3225, Fla. Stat. (2011).

Section 22. Exclusive Venue, Choice of Law, Specific Performance. It is mutually understood and agreed by the parties hereto, that this Agreement shall be governed by the laws of the State of Florida, and any applicable federal law, both as to interpretation and performance, and that any action at law, suit in equity or judicial proceedings for the enforcement of this Agreement or any provision hereof shall be instituted only in the courts of the State of Florida or federal courts and venue for any such actions shall lie exclusively in a court of competent jurisdiction in the County. In addition to any other legal rights, the City and the Developer Parties shall each have the right to specific performance of this Agreement in court. Each party waives any defense, whether asserted by motion or pleading, that the aforementioned courts are an improper or inconvenient venue.

Section 23. No Oral Change or Termination. This Agreement and the exhibits and appendices appended hereto and incorporated herein by reference, if any, constitute the entire Agreement between the parties with respect to the subject matter hereof. This Agreement

supersedes any prior agreements or understandings between the parties with respect to the subject matter hereof, and no change, modification or discharge hereof in whole or in part shall be effective unless such change, modification or discharge is in writing and signed by the party against whom enforcement of the change, modification or discharge is sought. This Agreement cannot be changed or terminated orally.

Section 24. Compliance with Applicable Law and Subsequently Adopted Laws.

Subject to the terms and conditions of this Agreement, throughout the Term of this Agreement, the Developer Parties and City shall comply with all applicable federal, state or local laws, rules, regulations, codes, ordinances, resolutions, administrative orders, permits, policies and procedures and orders that govern or relate to the respective Parties' obligations and performance under this Agreement, or as they may be amended from time to time. If state or federal laws are enacted after the execution of this Agreement which are applicable to and preclude the parties' compliance with the terms hereof, this Agreement shall be modified or revoked as is necessary to comply with the relevant state or federal laws. Notwithstanding anything to the contrary contained in this Agreement, the City may apply subsequently adopted laws and policies to the Project in accordance with F.S. Sec. 163.3233(2) (2011).

Section 25. Representations. Each party represents to the others that this Agreement has been duly authorized, delivered and executed by such party and constitutes the legal, valid and binding obligation of such party, enforceable in accordance with its terms.

Section 26. Presumptions Inapplicable. This Agreement shall be deemed to have been drafted by both the Developer Parties and the City equally and any presumptions existing in interpretation hereof against the drafter shall be inapplicable.

Section 27. No Exclusive Remedies. No remedy or election given by any provision in this Agreement shall be deemed exclusive unless expressly so indicated. Wherever possible, the remedies granted hereunder upon a default of the other party shall be cumulative and in addition to all other remedies at law or equity arising from such event of default, except where otherwise expressly provided.

Section 28. Failure to Exercise Rights not a Waiver: Waiver Provisions. The failure by either party to promptly exercise any right arising hereunder shall not constitute a waiver of such right unless otherwise expressly provided herein. No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

Section 29. Events of Default.

- (a) A Developer Party shall be in default under this Agreement if any of the following events occur and continue beyond the applicable grace period: a Developer Party fails to perform or breaches any term, covenant, or condition of this Agreement which is not cured within thirty (30) days after receipt of written notice from the City specifying the nature of such breach; provided, however, that if such breach cannot reasonably be cured within thirty (30) days, then a

Developer Party shall not be in default if it commences to cure such breach within said thirty (30) day period and diligently prosecutes such cure to completion. The City retains the exclusive right to determine, in its sole discretion, whether the Developer Party is employing good faith and diligent effort to cure such breach to completion.

- (b) The City shall be in default under this Agreement if the City fails to perform or breaches any term, covenant, or condition of this Agreement and such failure is not cured within thirty (30) days after receipt of written notice from a Developer Party specifying the nature of such breach; provided, however, that if such breach cannot reasonably be cured within thirty (30) days, the City shall not be in default if it commences to cure such breach within said thirty (30) day period and diligently prosecutes such cure to completion.
- (c) It shall not be a default under this Agreement if either party is declared bankrupt by a court of competent jurisdiction. All rights and obligations in this Agreement shall survive such bankruptcy of either party. The parties hereby forfeit any right to terminate this Agreement upon the bankruptcy of the other party.
- (d) The default of any Developer Party or successor or assignee of any portion of a Developer Party's rights hereunder shall not be deemed a breach by any other Developer Party or any other successor or assignee of any portion of the rights of a Developer Party hereunder or any other successor or assignee.

Section 30. Remedies Upon Default.

- (a) Neither party may terminate this Agreement upon the default of the other party until the expiration of the applicable notice and cure period set forth in this Agreement and in the event of such termination, such termination shall only apply to the particular party in default (i.e., specific assignee in default only). Notwithstanding the foregoing, and in accordance with Section 163.3235, Fla. Stat., if the City finds during the periodic review set forth in Section 19 that there has been a failure to comply with the terms of this Agreement, this Agreement may be revoked or modified by the City. In order to revoke or modify the Agreement based upon Section 19 of this Agreement, the City's findings must be based upon substantial competent evidence.
- (b) Upon the occurrence of a default by a party to this Agreement not cured within the applicable grace period, the Developer Parties and the City agree that any party may seek specific performance of this Agreement, and that seeking specific performance shall not waive any right of such party to also seek monetary damages or any other relief other than termination of this Agreement.

Section 31. Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, hereafter be determined to be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held

invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

Section 32. Assignment and Transfer of Development Rights.

- (a) In accordance with Section 163.3239, Fla. Stat. (2011), the burdens of this Agreement shall be binding upon, and the benefits of the Agreement shall inure to, all successors in interest to the Parties hereto.
- (b) A Developer Party (or any Permitted Assignee as defined herein) may, without the City's consent or approval, assign, in whole or in part, this Agreement or any of its rights and obligations hereunder, or may extend the benefits of this Agreement to the following persons and/or entities:
- (1) To any holder of a Property Interest in which the initial Developer Parties (or any of them) hold, directly or indirectly, no less than a twenty percent (20%) beneficial interest;
 - (2) To a master association, or any sub-association formed for the purpose of being a property owners' association of property within the Project;
 - (3) To a lender as collateral in connection with any financing of the development of the Project;
- (collectively, a "Permitted Assignee").
- (c) Any assignment of any part of this Agreement to any person or entity who does not qualify as a Permitted Assignee shall first require the prior written consent or formal approval of the City, which approval will not be unreasonably withheld, conditioned or delayed. Any assignment in violation of this section shall be deemed void and ineffective as it pertains to that assignee.
- (d) All assignees shall assume, in writing, all applicable rights and obligations under this Agreement, and deliver a copy of such assignment to the City upon its execution, as a condition of assignment.
- (e) Upon assignment of all or a part of this Agreement, the Developer Parties (or Permitted Assignees, as applicable) shall be released from future obligations under this Agreement with respect to the part so assigned except for liability which accrued prior to the assignment. Nothing herein shall be deemed to release any liability of any Permitted Assignee for so long as such Permitted Assignee shall be bound hereby.
- (f) Notwithstanding anything to the contrary in this Section, in the event there is one or more assignments of a part or parts of this Agreement, a default by any party to this Agreement with respect to the part of the Agreement then held by such party, shall only constitute a default of the Agreement as it pertains to the defaulting assignee.

Section 33. Intentionally Omitted.

Section 34. Lack of Agency Relationship. Nothing contained herein shall be construed as establishing an agency relationship between the City and any Developer Party and neither any Developer Party nor its employees, agents, contractors, subsidiaries, divisions, or affiliates shall be deemed agents, instrumentalities, employees, or contractors of the City for any purpose hereunder, and the City, its contractors, agents, and employees shall not be deemed contractors, agents, or employees of any Developer Party or its subsidiaries, divisions or affiliates.

Section 35. Intentionally Omitted.

Section 36. Enforcement.

- (a) In the event that a Developer Party, its successors and/or assigns fails to act in accordance with the terms of the Existing Zoning, the City may seek any relief or remedy to which it may be entitled.
- (b) Enforcement of this Agreement shall be by action against any parties or person violating, or attempting to violate, any covenants set forth in this Agreement.
- (c) This enforcement provision shall be in addition to any other remedies available at law, in equity or both.

Section 37. Amendment or Termination by Mutual Consent. This Agreement may not be amended or terminated during its term except by mutual agreement of the Developer Parties and the City and as otherwise consistent with applicable law.

Section 38. Intentionally Omitted.

Section 39. No Third-Party Beneficiary. No persons or entities other than the Developer Parties and the City, their heirs, permitted successors and assigns, shall have any rights whatsoever under this Agreement.

Section 40. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same agreement.

Section 41. Governmental Functions.

- (a) Even though the City has certain contractual obligations under this Agreement, such obligations shall not relieve any person subject to this Agreement from complying with all applicable governmental regulations, rules, laws, and ordinances.
- (b) To the extent future approval or permission must be obtained from the City, such approval or permission shall be granted or denied in accordance with applicable governmental regulations, rules, laws, and ordinances, and no person shall have any vested rights with respect to such future approval requests.

(c) The City has not waived its sovereign immunity and the limits of tort liability set forth in Section 768.28(5), Fla. Stat. (2011) of \$100,000.00 per person and \$200,000.00 per occurrence shall apply.

(d) Any future action by City shall be without prejudice to, and shall not constitute a limit or impairment or waiver of, or otherwise affect City's right to exercise its discretion in connection with its governmental or quasi-governmental functions.

Section 42. Intentionally Omitted.

IN WITNESS WHEREOF, the City and the Developer Parties have caused this Agreement to be duly executed as of the day and year first above written.

WITNESSES:

DEVELOPER:

CDS DELRAY REDEVELOPMENT, L.L.C.,
a Florida limited liability company

Printed Name: Juan Zaldarriaga

By: CDS Group Holdings, LLC,
a Florida limited liability company

Printed Name: M. Beritez

By: William H. Milmo

William H. Milmo, President

WITNESSES:

CDR ATLANTIC PLAZA, LTD.,
a Florida limited partnership

Printed Name: Juan Zaldarriaga

By: Delray Historic, Inc.,
a Florida Corporation, its sole general partner

Printed Name: M. Beritez

By: William H. Milmo

William H. Milmo, President

WITNESSES:

CITY:

Catherine Ingrose
Printed Name: Catherine Ingrose

CITY OF DELRAY BEACH,
a Florida Municipal Corporation

Printed Name: Joanna Weaver

By: Nelson S. McDuffie

Nelson S. McDuffie, Mayor

Approved as to form and
legal sufficiency:

Attest:

By: Donald D. Nibbel

City Clerk

List of Exhibits

- Exhibit "A" - Legal Description of Properties**
- Exhibit "B" - Description of All Local Development Permits Approved for the Project (the "Approvals")**
- Exhibit "C" - Approved Sidewalk Café Locations**
- Exhibit "D" - Certificate of Universal Approval Expiration Date**
- Exhibit "E" - Improvements Required for Vesting**

EXHIBIT "A"

This is not a certified copy

ALL OF BLOCK 116, TOWN OF LINTON (NOW DELRAY BEACH), ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 1, PAGE 3, LESS THE SOUTH 7.0 FEET THEREOF AND LESS THAT PORTION FOR ADDITIONAL ROAD RIGHT OF WAY FOR N.E. 6TH AVENUE (U.S. HIGHWAY NO. 1) AS RECORDED IN ROAD PLAT BOOK 1, PAGE 210, ALL BEING RECORDED IN THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

TOGETHER WITH:

THAT PORTION OF N.E. 7TH AVENUE ROAD RIGHT OF WAY LYING EAST OF AND ADJACENT TO BLOCK 116, TOWN OF LINTON (NOW DELRAY BEACH), ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 1, PAGE 3, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

AND:

ALL OF THE PLAT OF ATLANTIC PLAZA, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 50, PAGE 129, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

CONTAINING 377,004 SQUARE FEET OR 8.65 ACRES MORE OR LESS.

EXHIBIT "B"

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Exhibit "B"

Description of All Local Development Permits Approved for the Project
(the "Approvals")

Site Plan

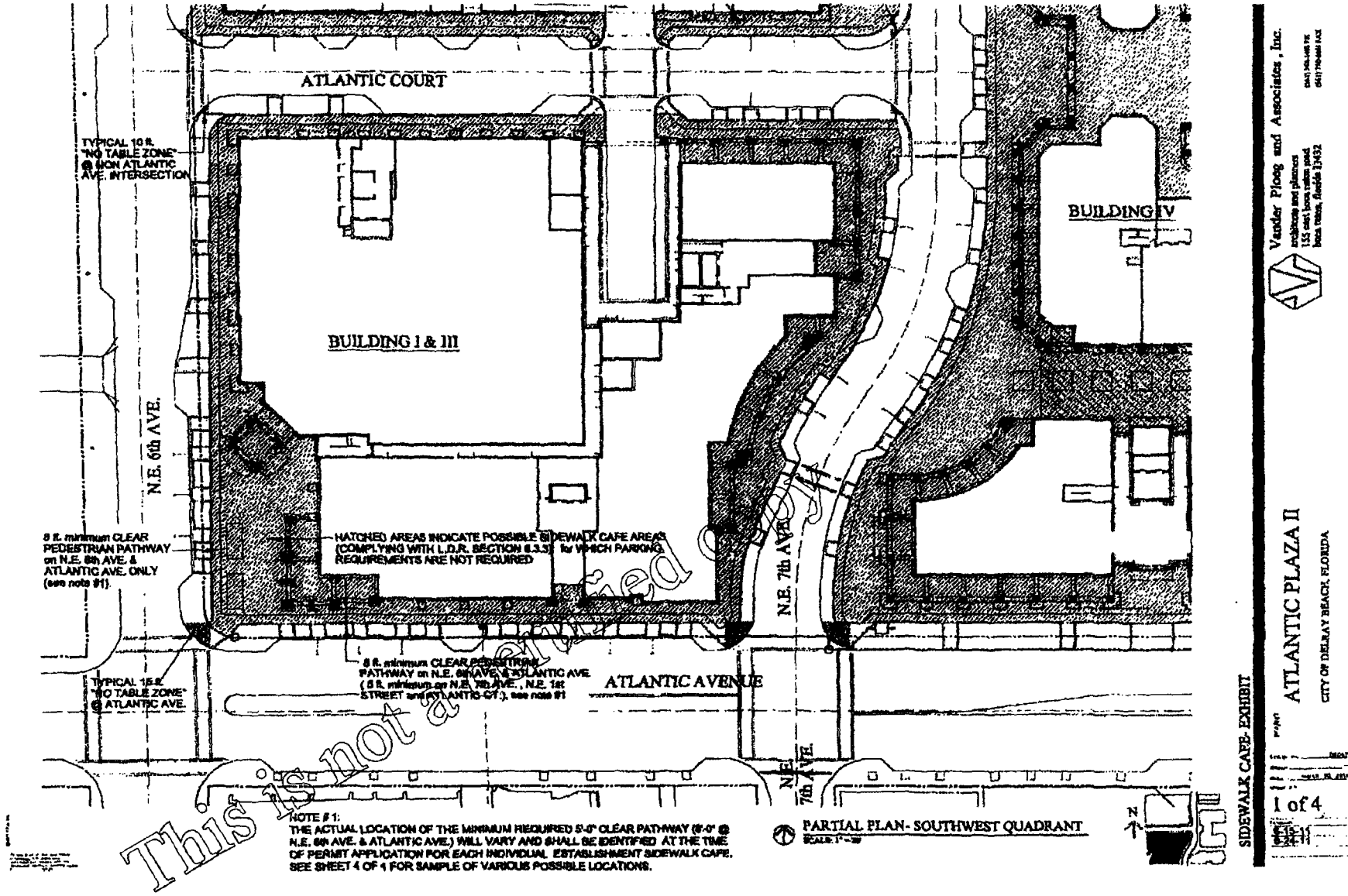
- Certified Site Plan - Approved _____.
- Conditional Use for Height - Approved 12/9/08 by the City Commission
- Abandonment and Offset Waiver - Approved 2/17/09 by the City Commission
- Site Plan and Waivers – Approved 3/11/09 by SPRAB; 4/7/09 by City Commission

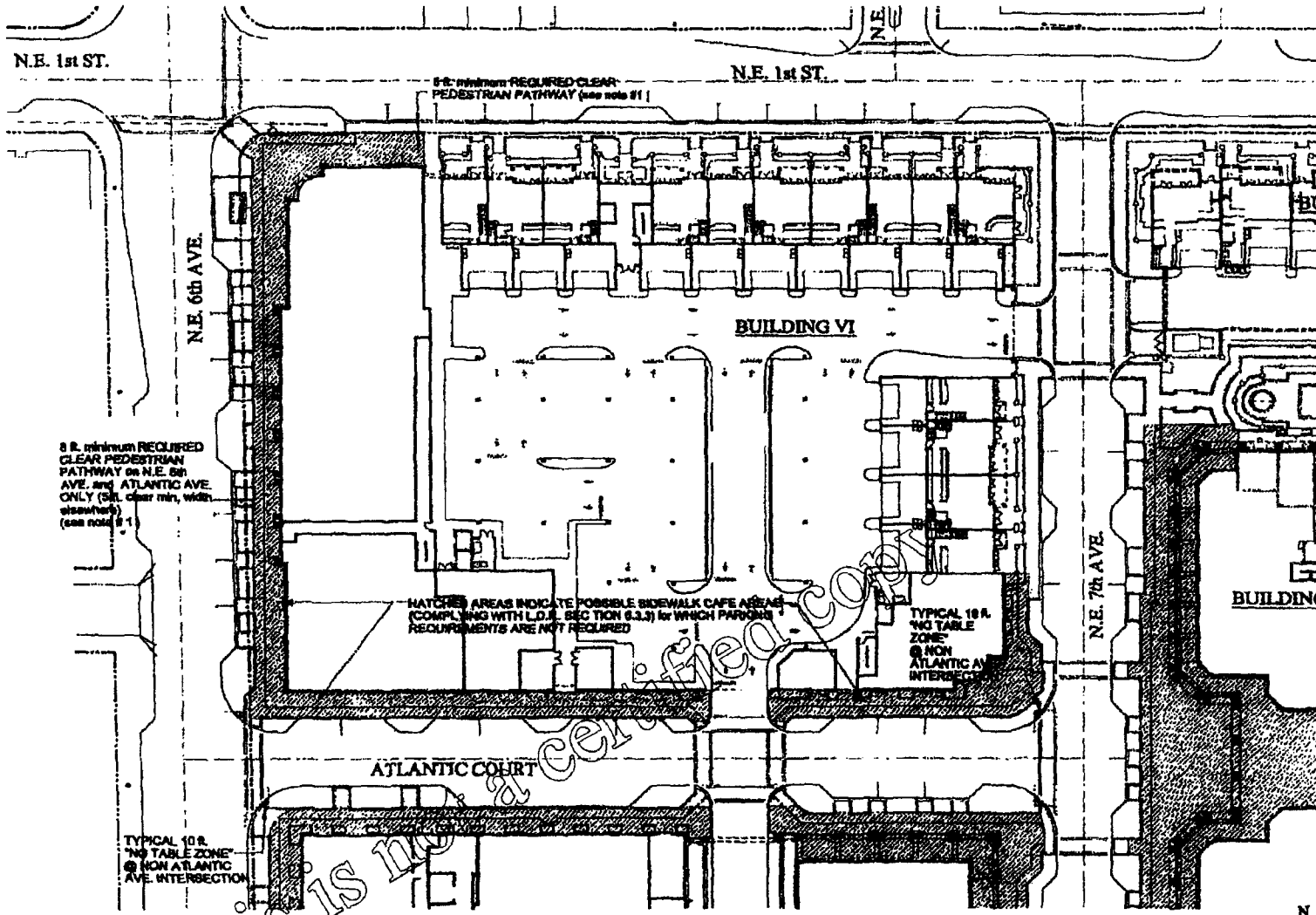
Valet Parking Stations

- Valet parking has been approved for use pursuant to Section 9(e)(6); the site plan for valet parking, once approved, is incorporated by reference into this agreement.

EXHIBIT "C"

This is not a certified copy





SIDEWALK CAFE - EXHIBIT

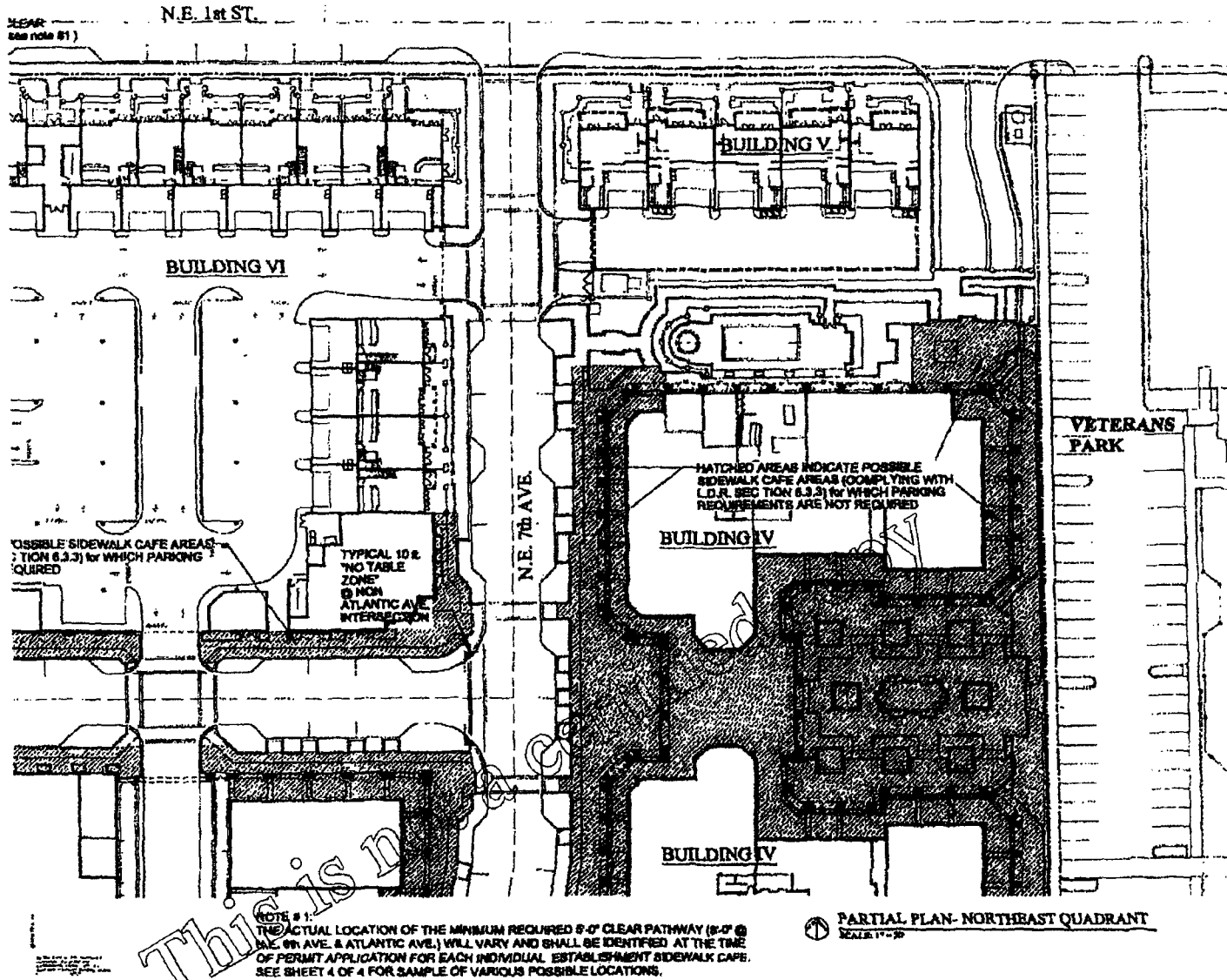
ATLANTIC PLAZA II

CITY OF DELRAY BEACH, FLORIDA

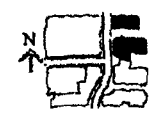
Vander Ploeg and Associates, Inc.
architects and planners
155 west hwy. 1 north
delray beach, florida 33432
(407) 266-1000
(407) 266-1001 fax



2 of 4
12/21/97



This is in



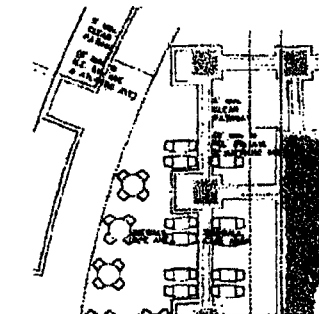
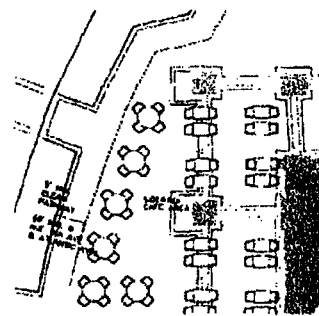
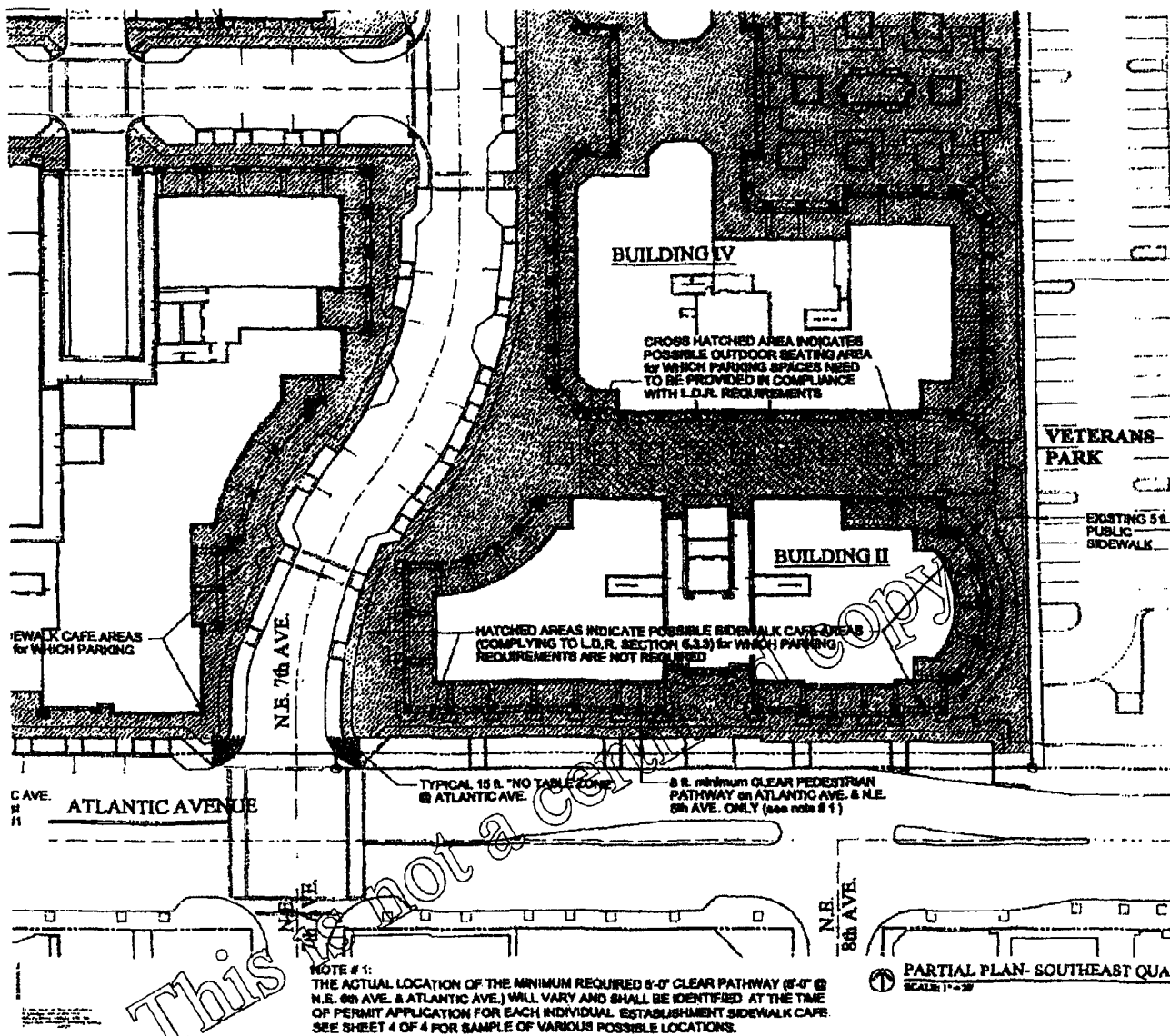
SIDEWALK CAFE- EXHIBIT

ATLANTIC PLAZA II
CITY OF DELRAY BEACH, FLORIDA



Vander Ploeg and Associates, Inc.
architects and planners
155 West Broward Blvd.
Boca Raton, Florida 33433
(407) 366-4474
(407) 366-4475 fax

3 of 4
SHEET



POSSIBLE LOCATIONS of CLEAR PATHWAY

SEWALK CAFE- EXHIBIT

Atlantic Plaza II
CITY OF DELRAY BEACH, FLORIDA

4 of 4

Project:
SHEET NO. 15-11
DATE: 8-24-11

Prepared by:
Vander Ploeg and Associates, Inc.
Architect and Planner
135 West Palm Beach Blvd.
Palm Beach, Florida 33412
(561) 844-1111
(561) 844-1112

EXHIBIT "D"

This is not a certified copy

Prepared by and return to:

R. Brian Shutt, Esq.
City Attorney's Office
City of Delray Beach, Florida
200 N.W. 1st Avenue
Delray Beach, Florida 33444

CERTIFICATE OF UNIVERSAL APPROVAL EXPIRATION DATE

WHEREAS, the Developer Parties and the City of Delray Beach properly recorded that certain fully executed Development Agreement ("Agreement") at ORB ____, PG ____, Public Records of Palm Beach County, Florida, on _____; and

WHEREAS, the Effective Date of the Agreement is _____, which date is, pursuant to the Agreement, the latter of thirty (30) days after the Agreement has been received by the state land planning agency pursuant to Section 163.3239, Florida Statutes (2010) or when site plan certification has been achieved; and

WHEREAS, Section 12(a) of the Agreement provides that all of the Approvals for the Project (as those terms are defined therein) shall have a Universal Approval Expiration Date concurrent with the expiration of the Agreement, which date is ten (10) years from the Effective Date, and which date shall be confirmed by the recordation of this Certificate of Universal Approval Expiration Date in the Public Records of Palm Beach County, Florida.

NOW, THEREFORE, the City of Delray Beach hereby records this Certificate of Universal Approval Expiration Date confirming that the Approvals for the Project shall expire ten (10) years from the Effective Date, which date is _____.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written. This Certificate shall not be effective unless signed by both the City and the Developer Parties.

ATTEST:

CITY OF DELRAY BEACH, FLORIDA

City Clerk

By: _____
Nelson McDuffie, Mayor

Approved as to Form:

City Attorney

DEVELOPER PARTIES

By: _____
Developer Parties Authorized Agent

Print Name

EXHIBIT "E"

This is not a certified copy

Vesting for the entirety of the Project will occur when the following two scopes of work are completed:

1. Upon the recordation by the City Engineer of that "Certificate of Substantial Completion" relating to the abandonment and relocation of NE 7th Avenue, as set forth in that certain Financial Guarantee & Agreement, dated February 17, 2009, between the City and Atlantic Center, Ltd., as further referenced in Section 10 to that Easement Agreement (Vacated 7th Avenue Easement) recorded in the Public Records of Palm Beach County at ORB 23166, PG 1533, and in the form attached thereto as Exhibit

And

2. The completion of the Phase IIA (buildings 1 and 3) load-bearing primary structural elements, consisting of the below grade foundations, columns, walls, and other major structural components, and upper level floor slabs, uppermost roof slab, main columns, and beams, stairway and elevator structures, and other like major structural elements, considered part of what is generically associated with the "topping-out" of the primary structure.