

EXHIBIT "C-1"



CFN 20170175462

OR BK 29090 PG 0717
RECORDED 05/16/2017 16:46:00
Palm Beach County, Florida
Sharon R. Bock, CLERK & COMPTROLLER
Pgs 0717 - 741; (25pgs)

PREPARED BY AND
RETURN TO:

STEVEN D. RUBIN, ESQ.
200 West Palmetto Park Road, Suite 301
Boca Raton, Florida 33432

PARKING FACILITY EASEMENT AGREEMENT AND PROJECT COVENANT

THIS Parking Facility Easement Agreement and Project Covenant is made this 3rd day of March, 2017, by DELRAY BEACH HOLDINGS, LLC, a Florida Limited Liability Company, its successors and assigns (hereinafter referred to as "Developer"), whose mailing address is 433 Plaza Real, Suite 335, Boca Raton, Florida 33432, and the City of Delray Beach, a Florida Municipal Corporation, its successors and assigns, whose mailing address is 100 N. W. 1st Avenue, Delray Beach, Florida 33444 (hereinafter referred to as "City").

WITNESSETH:

WHEREAS, the Developer intends to construct and develop a 497 seat movie theatre, 42,446 square feet of office space, 7,487 square feet of retail area, and a parking garage (the "Project", a/k/a Fourth and Fifth Delray) on that certain real property described as follows (the "Overall Parcel"):

See Exhibit "A" attached hereto and made a part hereof;

WHEREAS, City and Developer have entered into a Tri-Party Agreement ("Tri-Party Agreement") with the Delray Beach Community Redevelopment Agency ("CRA"), pursuant to that certain Purchase and Sale Agreement having an effective date of December 17, 2013, as amended (collectively, the "Purchase Agreement"), pursuant to which Developer agreed to purchase from CRA and CRA agreed to sell to Developer the Overall Parcel; and

WHEREAS, final subdivision plat and waivers were approved by the City Commission on March 15, 2016, during which the City Commission requested certain conditions of approval and covenants be incorporated into an agreement; and

WHEREAS, the Purchase Agreement, Tri-Party Agreement, and certain development conditions imposed by the City require that Developer and City enter into this Parking Facility Easement and Project Covenant setting forth the easements, covenants and agreements more particularly set forth below.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and for Ten Dollars (\$10.00) and other good and valuable consideration in hand paid by

the City to Developer, the adequacy and receipt of which are hereby acknowledged, the parties, intending to be legally bound, do hereby agree as follows:

I. Definitions. The following definitions apply to all sections of this Parking Facility Easement Agreement and Project Covenant:

- a. "City" shall mean City of Delray Beach, a Florida Municipal Corporation and its successors and assigns.
- b. "Developer" shall mean Delray Beach Holdings, LLC, a Florida Limited Liability Company and its successors and assigns. Developer presently owns the real property described in attached Exhibit "A" which is incorporated by referenced herein and is referred to as the "Overall Parcel".
- c. "Easement Parcel" means the portion of the Overall Parcel on which the Garage will be constructed in accordance with the Site Plan.
- d. "PFA" or "Agreement" means this Parking Facility Easement Agreement and Project Covenant.
- e. "Garage" means the parking garage which shall be constructed on the Overall Parcel by Developer.
- f. "Parking Garage Facility" means the Garage, and all related and appurtenant fixtures, equipment, walkways, driveways, sidewalks, landscaping, and signage, which shall be constructed by the Developer on the Overall Parcel.
- g. "Parking Spaces" means the ninety (90) public parking spaces located in the Easement Parcel as shown on Exhibit "C" which is attached hereto and made a part hereof, which the Developer is required to provide pursuant to the Purchase Agreement.
- h. "Site Plan" is defined as the approved site plan, as of the execution of this Agreement and as set forth in Exhibit "D", which is a composite exhibit consisting of the sketch of the site, the landscape plan, and building elevations. The term "Site Plan" shall also include any site plan certified, and/or amended with the approval of the City subsequent to the execution of this Agreement.
- i. "Completion of Construction" or "Complete Construction" is defined as the time at which the Parking Garage Facility has passed all governmental inspections, the Parking Spaces may be used for the parking of vehicles as permitted in this PFA, the Parking Garage Facility has been constructed substantially in accordance with the Specifications, and the final certificate of completion has been issued for the Parking Garage Facility.
- j. "CRA" means the Delray Beach Community Redevelopment Agency.

II. Developer's Commencement and Completion of Construction of the Parking Garage Facility.

1. Developer, at its sole cost and expense, shall construct the Parking Garage Facility containing not less than Three Hundred Fifteen (315) parking spaces pursuant to the Site Plan approved by the City. Developer shall diligently seek to obtain all necessary plans, permits,

and approvals for the construction of the Parking Garage Facility in accordance therewith. The final certificates of completion for the Project shall not be issued unless and until the Developer completes construction of the Parking Garage Facility which shall contain the Parking Spaces.

2. Within ninety (90) days after Completion of Construction, Developer, at Developer's sole cost and expense, shall cause the preparation of an affidavit by a Florida licensed surveyor, mapper, architect, or engineer containing the graphic depiction of the as built Parking Spaces located on the Easement Parcel and such affidavit shall constitute an amendment to this PFA and the as built graphic depiction of the Parking Spaces shall form the basis for being a substitute Exhibit "C" to this Agreement. The Parking Spaces shall be located on the second deck and approximately half of the third deck of the Garage.

3. Prior to the commencement of construction of the Parking Garage Facility by the Developer, all of the parking spaces presently existing and located on the Overall Parcel, shall remain available and may be used for public parking of vehicles.

III. Parking Garage Facility Easement.

1. Developer hereby grants, bargains and conveys to the City, an exclusive vehicular parking space easement and a non-exclusive public vehicular and pedestrian ingress and egress easement, in, on, across, over, and through the Easement Parcel, all as more particularly described in and subject to the covenants, terms and conditions stated in this PFA. This PFA is entered into, in part, for the purpose of allowing the general public and Developer to share parking facilities which are located in the Parking Garage Facility which shall be constructed by Developer on the Overall Parcel. As a condition precedent to Developer's acquisition of the Overall Parcel, Developer agreed to provide City with ninety (90) public parking spaces in the Garage pursuant to the Purchase Agreement.

2. The initial construction of the Parking Garage Facility shall be made by Developer at Developer's sole cost and expense. Upon completion of construction, Developer hereby shall and does accept sole responsibility for the operation and maintenance, repair, and replacement of the Parking Garage Facility, in good condition and repair, and in compliance with all applicable governmental rules, laws, regulations and ordinances.

3. City shall have, and is hereby granted, the exclusive right to use all of the Parking Spaces within the Easement Parcel as designated on Exhibit "C" for the parking of vehicles by the general public. Developer may not make alterations to the configuration of the Parking Spaces, unless the City consents in writing in advance, which consent may be withheld in its sole and absolute discretion, and Developer agrees that the Easement Parcel will always contain at least ninety (90) Parking Spaces available for the exclusive use by City under the terms of this Agreement.

(a) City shall have the exclusive right to use the Parking Spaces in the same manner it uses other City-owned parking facilities, or as otherwise reasonably determined by the City in its sole and absolute discretion. No fee or other expense shall be charged by Developer to the general public for the use of the Parking Spaces, vehicular and pedestrian ingress from a public

right of way to the Parking Spaces, or vehicular and pedestrian egress to a public right of way from the Parking Spaces, unless the City consents in advance, in writing, which consent may be withheld in its sole and absolute discretion. City, at its sole cost and expense, has the right to install parking meters in the Easement Parcel for the Parking Spaces, and all revenue generated by the parking meters shall belong exclusively to the City. City shall have the right to place signage designating "Public Parking" and such other appropriate signage within the Easement Parcel and outside the Garage at locations approved and designated on the Site Plan, or as otherwise permitted by and in accordance with governmental regulations. City shall erect and maintain all of its signage. Developer shall erect such signage as required by the Site Plan, and may erect other signage in accordance with applicable governmental regulations, subject to the governmental approval process.

(b) Ingress and egress to the Garage shall be in the same manner as other City-owned parking facilities or as otherwise determined by the City in its sole and absolute discretion subject to the limitations set forth herein. City's rights under this PFA include, without limitation, a non-exclusive easement for pedestrian and vehicular ingress and egress from SE 4th Avenue to and from the Parking Garage Facility to utilize the Parking Spaces, which ingress and egress includes through, on, upon, and across walkways, elevators, stairwells, and common areas in the Parking Garage Facility. Developer shall not install a gate, fence, barrier, or other access device which will prevent or interfere with ingress or egress to or from the Parking Spaces from SE 4th Avenue. Developer may install a gate or other access device in the Garage to control access to parking spaces other than the ninety (90) Parking Spaces, provided the gate is installed a sufficient distance beyond the last Parking Spaces located on the third deck (i.e., closer to the fourth deck) so as not to interfere with ingress or egress to and from the Parking Spaces.

(c) City, and its invitees, employees, agents, representatives, commissioners, residents, guests and the public in general, shall have unimpeded non-exclusive vehicular and pedestrian ingress and egress to, from, by, through, over and across all portions of the Parking Garage Facility and Easement Parcel, including without limitation, driveways and walkway areas, to enter the Parking Garage Facility from the SE 4th Avenue public right-of-way, and for ingress and egress to and from the Parking Spaces and Easement Parcel to the SE 4th Avenue public right-of-way. However, City shall utilize those portions of the Parking Garage Facility and Easement Parcel, such as driveways and walkways, that are intended for vehicular and pedestrian traffic, respectively. In addition, City is hereby granted a non-exclusive easement through, over, upon, on, in, across and under the Parking Garage Facility for utility conduits, ducts, plumbing and wiring and other facilities reasonably necessary for the use and enjoyment of the Easement Parcel, and the City is hereby granted a non-exclusive easement of support and necessity for the Parking Spaces.

4. The standards and practices to be used by Developer and its employees and contractors, in operating and cleaning of the Parking Garage Facility (including the Parking Spaces), shall be in keeping with the current industry practice for a public parking garage facility. Developer shall operate the Parking Garage Facility in a commercially reasonable manner and in compliance with all applicable legal requirements. No obstruction or interference of the free flow of pedestrian and vehicular traffic or use of the Parking Spaces for parking shall be permitted or caused by Developer.

5. Developer, at its sole cost and expense, shall cause any and all maintenance, repairs, and replacements to be made to the Parking Garage Facility as may be necessary or appropriate from time to time to keep the Parking Garage Facility in a commercially reasonable condition and in good repair. Maintenance items include, without limitation, the surface of the parking lot, the concrete underlay, curbs, gutters, lighting facilities, striping, markers, and directional signs. City shall have no obligation to maintain, repair, or replace, any portion of the Parking Garage Facility, and shall have no obligation to pay or reimburse Developer any portion of the costs and expenses Developer incurs in its maintenance, repair, or replacement of the Parking Garage Facility. However, nothing contained in this PFA shall preclude the Developer from requesting the CRA to enter into an agreement with the Developer for the CRA's reimbursement of a portion of the Developer's costs and expenses for such maintenance, repair, or replacement ("Reimbursement Agreement"). If the Developer and CRA enter into a Reimbursement Agreement in which the CRA reimburses Developer a portion of the Developer expenses of the maintenance, repair, and replacement of the Parking Garage Facility, notwithstanding any applicable or contrary term or provision contained in the Reimbursement Agreement, in the event the CRA is dissolved for any reason and at the time of dissolution the Reimbursement Agreement is in existence, the City shall only be responsible for reimbursing the Developer an amount equal to the dollar amount the City pays or incurs on a monthly basis to maintain a parking space located in a typical City owned parking garage, multiplied by the ninety (90) Parking Spaces in the Parking Garage Facility. Such maintenance expenses shall be paid in arrears to the Developer by the City on an annual basis within sixty (60) days after the end of each of the City's fiscal years, prorated for any partial year.

(a) The Developer's cost and expenses of constructing, maintaining, repairing, and replacing the Parking Garage Facility, include, without limitation:

(i) All costs of initial construction of improvements on the Overall Parcel;

(ii) All costs of maintaining, repairing, or replacing the sidewalks and fences on the Overall Parcel;

(iii) All costs of maintaining, mowing, weeding, trimming, and watering all landscaped areas on the Overall Parcel;

(iv) All costs of repairs or replacements of or to any structural component of the Parking Garage Facility.

(vi) All ad valorem real estate taxes.

(vii) All costs of management fees, wages, or salaries, and related employment benefits of any agents, managers, officers, directors or employees of Developer;

(viii) All costs of any replacements that are capital in nature (i.e., repairs and replacements the costs of which are considered capital expenditures and not current expenses under generally accepted accounting principles, consistently applied);

(ix) All utility expenses related to the Overall Parcel; and

(x) Any penalties or late charges associated with the late payment of any invoices, bills, or statements.

(b) For any and all, maintenance, repairs, and replacements or other work to be constructed or performed by Developer in or about the Parking Garage Facility, Developer shall take any and all safety measures reasonably required to protect the persons and property of City and invitees of City from accidental death, injury, or damage caused by or resulting from the construction or performance of any such work.

6. (a) City shall have the right to place signage designating "Public Parking" inside and outside the Parking Garage Facility at locations approved and designated on the Site Plan, at City's sole cost and expense. City shall erect and maintain all such signage in accordance with the applicable code and, if applicable, any private restrictions.

(b) Developer shall have the right to place signage designating its parking and business inside and outside the Parking Garage Facility at locations approved and designated on the Site Plan, at Developer's sole cost and expense. Developer shall erect and maintain all such signage in accordance with applicable code, and, if applicable, any private restrictions. In addition, Developer shall be responsible for any directional and other signage required by applicable code. Such signage shall be included in the Costs of Operation and Maintenance of the Parking Garage Facility.

7. Each party to this Agreement shall notify the other parties to this Agreement of any unsafe condition in the Parking Garage Facility promptly upon its discovery. As between City and Developer, Developer shall be responsible for the safety and security of all Parking Garage Facility patrons and other invitees using the Parking Garage Facility, including without limitation, the Parking Spaces located within the Easement Parcel. Developer shall keep the Parking Garage Facility illuminated in accordance with the City parking garage standards.

8. Upon completion of construction of the Parking Garage Facility:

(a) Developer shall purchase and maintain "all risk" property damage insurance including flood and wind up to the full replacement cost of the Parking Garage Facility.

(b) Developer shall purchase and maintain workers' compensation insurance in accordance with statutory requirements of the State of Florida. Included shall be Employer's Liability Insurance with limits no less than \$500,000 each accident and an occupational disease limit of \$500,000 per employee/\$500,000 aggregate.

(c) Developer shall purchase and maintain Garage Liability Insurance to cover legal liabilities arising from the Parking Garage Facility premises and operations, to include independent contractors and indemnity obligations as under this Agreement; and to include legal liabilities for all autos used by, or for the Developer related to the Parking Garage Facility premises and operations. The combined bodily injury and property damage limits shall not be less than \$1,000,000 per occurrence with an annual aggregate of \$2,000,000.

(d) Developer shall purchase and maintain Garage Keepers Insurance to cover damage liabilities to the vehicles of patrols of the Parking Garage Facility. Insurance limits should be not less than \$60,000 per vehicle/\$500,000 annual aggregate.

(e) All insurance policies required by this Section shall (i) have an A.M. Best rating of at least A-/VII, (ii) shall provide for a least thirty (30) days written notice by Developer, or its insurer(s) to the City of any cancellation, intent to non-renew, or material reduction or change in insurance coverage and (iii) name the City as an additional insured.

(f) The City shall be named as an additional insured by way of the most current ISO endorsement, or its equivalent, on the Developer's liability insurance policies required under this Agreement.

(g) Upon execution of this Agreement, the City must receive and approve Certificates of Insurance evidencing the insurance coverages and requirements under this Agreement. Renewal Certificates shall be provided to the City at least ten (10) days prior to the expiration of any policy.

(h) To the extent permitted by law, the Developer and its insurers waive (and will so endorse their insurance policies) all rights of subrogation they may have against the City, its employees, officers, directors, and agents for the recovery of damages covered under any of the City's insurance and self-insurance programs. It is the express intention of the City that the waivers apply to all matters described in this Agreement, including, without limitation, any matter that is caused in whole or in part by the sole or concurrent negligence of the City.

V. Relocation of Developer's Corporate Headquarters.

1. Developer agrees to relocate its corporate headquarters to the Project site within one-hundred eighty (180) days after the final certificate of occupancy is issued for the office portion of the Project. Developer's corporate headquarters shall remain within the Project for a minimum time period of five (5) years from the date of first occupancy of its headquarters in the Project. At no time during the five (5) year period shall the portion of the Property designated as corporate headquarters be less than twenty thousand (20,000) square feet. The term "corporate headquarters" shall mean the Developer's business office from where its business operations are conducted, its executive officers and directors and their support staff regularly work, its principal decision makers work, and its principal decisions are made. In addition, during the five-year period when Developer's corporate headquarters are located within the Project, Developer shall represent to the general public, its investors, and the media, in its written and oral corporate communications, advertising, and marketing, that its corporate headquarters are located in the City of Delray Beach.

VI. Public Terrace.

1. Pursuant to the Site Plan, Developer shall construct a terrace on the upper level, third floor terrace garden area and corresponding access areas to such garden area (hereinafter referred to as the "Public Terrace"). Developer hereby grants, bargains and conveys to the City a non-exclusive easement for the general public to use the Public Terrace, and a non-

exclusive public pedestrian ingress and egress easement, in, on, across, over, and through the the Public Terrace (where other pedestrian access to the Public Terrace is designated on the Site Plan). Developer shall not charge the general public or City for use of or access to the Public Terrace. Developer shall be solely responsible, at its expense, for the maintenance, repair, and replacement of the Public Terrace. Developer shall maintain, repair, and replace the Public Terrace in good repair and condition, and in accordance with industry standards for garden areas. Developer may limit the operational hours of the Public Terrace, however, operating hours shall at minimum extend to normal business hours (Monday through Friday, 9:00 A.M. to 5:00 P.M.), and all other times when all of the Developer's customers, guests, tenants, and invitees are allowed to use the Public Terrace. Developer and Developer's customers, guest, tenants, and invitees may use the Public Terrace at the same time as the general public. Developer may adopt reasonable rules and regulations regarding the use of the Public Garden, provided they apply to all users of the Public Terrace on an equal basis, and they do not materially interfere with the general public's right to use the Public Terrace. City is hereby granted a non-exclusive easement of support and necessity for the Public Terrace. At no time shall the Developer rent or lease the Public Terrace area for commercial, public or private events separate and apart from the use of the movie theater. Notwithstanding anything contained herein to the contrary, the easement contained herein for the public to use the Public Terrace shall be limited to use of the Public Terrace and specifically designated stairwells and elevators for use by the general public to access the Public Terrace ("Terrace Facilities") and pedestrian ingress and egress through the easement to and from the Terrace Facilities. The general public shall not have any other easement to access the Public Terrace from any other location on the Overall Parcel other than the specifically designated public stairwells and public elevator for access to the Public Terrace.

VII. General Provisions

1. Developer shall pay or cause to be paid before delinquency all ad valorem real property taxes, general and special assessments and other governmental charges assessed against the Land and improvements on the Overall Parcel, and provide evidence of the same to City. If those amounts are not timely paid by Developer, City may (but shall not be obligated to) pay all or part of those amounts and Developer shall immediately reimburse City those amounts upon demand, together with interest at the rate of eighteen percent (18.0%) per annum on the amounts so paid by City, from the date of advance until reimbursed.

2. **Waivers; Remedies.** No delay or omission to exercise any right, power or remedy inuring to any party upon any breach or default of any party under this Agreement shall impair any such right, power, or remedy of such party nor shall it be construed to be a waiver of any such breach or default, or an acquiescence to such a breach of default, or of any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default under this Agreement before or after occurring, nor shall there be any estoppel to enforce any provision of this Agreement, except by written instrument signed by the party charged with such waiver or estoppel. All remedies either under this Agreement or by law or otherwise afforded to the parties shall be cumulative and not alternative; provided that suspension or termination of this Agreement on account of any breach shall not be an available remedy.

3. Further Assurance. The parties to this Agreement shall cooperate fully with each other in order to promptly and fully carry out the terms and provisions of this Agreement. Each party to this Agreement shall from time to time execute and deliver such other agreements, documents, or instruments and take such other actions as may be reasonably necessary or desirable to effectuate the terms of this Agreement.

4. Counterparts. The parties may execute this Agreement in one or more identical counterparts, all of which when taken together will constitute one and the same instrument.

5. The terms and provisions of this Agreement are enforceable with all remedies at law and in equity, including, but not limited to, bringing an action for actual damages, an action for specific performance, an action for temporary restraining orders, preliminary or permanent injunctions, declaratory judgments or other similar orders for relief; provided, however, that suspension or termination of this Agreement on account of a breach shall not be an available remedy. The parties to this Agreement hereby acknowledge and stipulate the inadequacy of legal remedies and the irreparable harm that would be caused by a material breach of any obligation under this Agreement by a party to this Agreement. This Agreement may not be suspended or terminated except by an instrument in writing signed by City and Developer and recorded in the real property records of Palm Beach County, Florida. All remedies provided in this PFA are cumulative. Without limiting the foregoing, City retains its right to enforce any obligation of Developer as provided in its codes, rules, and ordinances, including code enforcement, denial of issuance of permits and approvals, and the revocation of permits and approvals.

6. If any party to this Agreement is delayed, hindered in, or prevented from the performance of any act required to be performed by that party by reason of acts of God, strikes, lockouts, unavailability of materials, failure of power, prohibitive governmental laws or regulations, riots, insurrections, the act or failure to act of any other party to this Agreement, adverse weather conditions preventing the performance of work as certified to by an architect, war, act of terrorism, or other reason beyond that party's reasonable control and for which, in each of the aforesaid circumstances, the party is diligently and in good faith and with reasonable dispatch seeking to abate and remove the circumstances causing the delay or hindrance or prevention from performance of the act required to be performed by that party, then the time for performance of the act shall be extended for a period equivalent to the period of the delay. Lack of adequate funds or financial inability to perform or financial or economic losses or hardship resulting from performance shall not be deemed to be a cause beyond the reasonable control of such party.

7. If any portion of the Overall Parcel is taken under an exercise of the power of eminent domain, condemnation, expropriation or any conveyance in lieu of condemnation under a threat thereof, to a purchaser having the power of condemnation, Developer and City shall, insofar as it is reasonably practicable to do so, promptly upon payment of the award thereof, apply the proceeds of such award, or an amount equivalent to such proceeds, to the restoration of the Overall Parcel partially taken or sold, as may be appropriate, and to the construction of additional surface parking areas or a Public Terrace, as the case may be, upon the remainder of the Overall Parcel or on any adjacent land then controlled by Developer or one of its affiliates. A

condemnation shall not affect the existence of the easements or rights granted to City under this Agreement, except as they may burden the land so taken.

8. The parties to this Agreement acknowledge that this Agreement shall be recorded in the Public Records of Palm Beach County, Florida.

9. By its joinder in this Agreement, The Retirement System of Alabama, its successors and/or assigns. (Developer's "Lienholder"), the holder of a lien on the Overall Parcel, has consented and does hereby consent to this Agreement, and the liens and security interests held by Lienholder are hereby made subject and subordinate to the terms of this Agreement without the necessity of the execution of any other document. Any future deeds of trust or mortgages on the Overall Parcel shall automatically, without the necessity of any additional instrument, be subject and subordinate to the terms and conditions of this Agreement and shall be bound by the terms of this Agreement. Any party foreclosing any such deed of trust or mortgage, or acquiring title by deed in lieu of foreclosure or trustees sale shall acquire title subject to all the terms and provisions of this Agreement.

10. In the event of damage or destruction, for any reason, of the Parking Garage Facility or Public Terrace, or any portion thereof, the Developer agrees to commence repair and restore the property, within one hundred twenty (120) days after the damage or destruction to the Parking Garage Facility or Public Terrace, as the case may be, occurs and insurance proceeds and building permits are issued, to a condition substantially similar to that immediately prior to such damage or destruction.. Said repair or restoration shall be at the sole expense of the Developer, who shall exercise due diligence and complete said repair or restoration in a commercially reasonable time

11. Should Developer fail to maintain, repair or replace any portion of the Parking Garage Facility or Public Terrace, and as a consequence, City's easement rights created by this Agreement become impaired, or City is unable to utilize the Parking Spaces or Public Terrace as intended by this Agreement, in addition to any remedy City may have, City after not less than thirty (30) days prior written notice to Developer to cure the default (except no notice shall be required in the event of an emergency), may, but it is not obligated to, enter onto any portion of the Parking Garage Facility or Public Terrace, to perform all necessary construction, repair, maintenance, replacement and operating work and may assess Developer for the cost of said work. Developer shall pay the cost of said work within thirty (30) days after assessment by City. The assessment, plus interest thereon at eighteen percent (18.0%) per annum, shall be lien against the Overall Parcel. The lien shall attach and shall be effective upon recording of a notice thereof in the Public Records of Palm Beach County, Florida, but its priority shall relate back to the date on which this Agreement is recorded. The lien rights granted herein will not affect the easements and other rights granted herein to the City, and such rights shall continue in full force and effect. Such lien may be foreclosed in the same manner as a mortgage and in accordance with law. Reimbursement of such work costs, expenses, and interest shall also be the personal obligation of Developer at the time the costs and expenses are incurred, and may be collected by the City accordingly.

12. The easements created by this PFA are easements appurtenant to the City's rights-of-way and is intended to benefit such properties and shall run in favor of the City, and shall be binding upon Developer and its successors and assigns with Developer holding the servient estate.

13. This Agreement is a covenant running with the land and shall be binding upon and shall inure to the benefit of the heirs, legal personal representatives, successors and assigns of the parties hereto, and shall bind all present and subsequent Developers of the Overall Parcel.

14. All work performed by Developer in the Parking Garage Facility and Public Terrace shall be performed only by properly licensed Florida, Palm Beach County, and Delray Beach contractors and in compliance with all applicable building codes and zoning ordinances. Every contractor performing the work shall be reasonably insured and without cost to City, insured for any claim arising out of the work, and that City will be indemnified and held harmless for any claims that may arise out of the work.

15. Developer warrants that it is seized of the Overall Parcel and has the right to convey the easements described herein to the City free and clear of all liens and encumbrances and that City shall have quiet enjoyment of the easements created hereunder.

16. All notices under this Agreement shall be mailed to the parties at the following respective addresses:

To Developer:

DELRAY BEACH HOLDINGS, LLC, a Florida Limited Liability Company,
433 Plaza Real, Suite 335
Boca Raton, Florida 33432
Attn: Mr. Paul Safran

With a Copy to:
Bonnie Miskel, Esq.
Dunay, Miskel & Backman, LLP
14 S.E. 4th Street
Boca Raton, Florida 33432

To City:

City Manager
City of Delray Beach
100 N. W. 1st Avenue
Delray Beach, Florida 33444

With a Copy to:
City of Delray Beach
City Attorney

200 N. W. 1st Avenue
Delray Beach, Florida 33444

All notices, consents or other instruments or communications provided for under this Agreement shall be in writing, signed by the party giving the same, and shall be deemed properly given and received (a) when actually delivered and received personally, by messenger service, or by fax or telecopy delivery; (b) on the next business day after deposited to delivery in an overnight courier service such as Federal Express; or (c) three (3) business days after deposit in the United States mail, by registered or certified mail with return receipt requested. All notices or other instruments shall be transmitted with delivery or postage charges prepaid, addressed to the parties at the address above for the party(s) or to such other address as such party(s) may designate by written notice to the other party (s).

In connection with any litigation, arbitration, or dispute arising out of this Agreement, each party shall bear its own attorneys' fees and costs.

18. This Agreement shall be construed and interpreted in accordance with Florida law and shall not be more strictly construed against one party than against the other by virtue of the fact that it may have been physically prepared by one party or by its attorneys, all parties (and their respective attorneys, where applicable) having participated in the negotiation of this Agreement.

19. In the event any term or provision of this Agreement is determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning, or be construed as deleted as such authority determines, and the remainder of this Agreement shall be construed to be in full force and effect.

20. The parties agree to execute all future instruments and take all further action that may be reasonably required by any party to fully effectuate the terms and provisions of this Agreement and the transactions contemplated herein.

21. This Agreement supersedes any and all understandings and agreements between the Parties hereto whether oral or written, and this Agreement represents the entire agreement between the parties hereto with respect to the subject matter hereof. No representations or inducements made prior hereto which are not included and embodied in this Agreement shall be of any force and effect. This Agreement may be amended, altered or modified only by a written agreement executed by the parties.

22. Any dispute relating to this Agreement shall only be filed in a court of competent jurisdiction in Palm Beach County, Florida, and each of the parties to this Agreement submits itself to the jurisdiction of such court.

23. Any party to this Agreement shall within a reasonable period of time and from time to time, upon not less than ten (10) days prior written request by any other party, execute, acknowledge and deliver to such party a statement in writing certifying that this Agreement is unmodified and in full force and effect, or if there has been any modification thereof that the same

is in full force and effect as modified and stating the modification or modifications and that there are no defaults existing, or if there is any claimed default stating the nature and extent thereof; and stating that costs and charges have been paid or if not, the amount claimed due, from whom, and the basis of the claim. It is expressly understood and agreed that any such statement delivered pursuant to this paragraph may be relied upon by any prospective purchaser of the requesting party's property or any lender or prospective lender on the security of the property or the fee estate of any part thereof, and any third person.

24. No breach of the provisions of this Agreement shall entitle any party to cancel, rescind or otherwise terminate this Agreement or the applicability to it.

25. In the event of a breach, or attempted or threatened breach, of any obligation of this Agreement, the other party(ies) shall be entitled forthwith to obtain an injunction to specifically enforce the performance of such obligation, acknowledging the inadequacy of legal remedies the irreparable harm which would be caused by any such breach being hereby acknowledged and/or to relief by all other available legal and equitable remedies from the consequences of such breach.

26. Nothing in this Agreement shall be construed to make the parties hereto partners or joint venturers or render any of said parties liable for the debts or obligations of the other.

27. The term of this PFA shall be perpetual and this PFA shall be irrevocable.

28. **Waiver of Trial by Jury. IT IS MUTUALLY AGREED BY AND BETWEEN CITY AND DEVELOPER THAT THE RESPECTIVE PARTIES HERETO SHALL, AND THEY HEREBY DO, WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES AGAINST THE OTHER ON ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE RELATIONSHIP OF CITY AND DEVELOPER HEREUNDER, OR THE USE OF THE OVERALL PARCEL, OR BY ANY COURSE OF CONDUCT OR COURSE OF DEALING.**

29. Governmental Functions.

- a. The parties agree that this Agreement shall not constitute a waiver of any portion of the City of Delray Beach's Code of Ordinances, Land Development Regulations, or any other applicable law, code, or regulation, and that the Tenant shall comply with all applicable statutes, codes, regulations, and ordinances that apply to the Developer's performance of its obligations pursuant to this Agreement.
- b. To the extent approval or permission must be obtained from the City of Delray Beach, 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.
- c. The City has not waived its sovereign immunity and the limits of tort liability set forth in F. S. §768.28(5), as may be amended from time to time.

Nothing contained in this subparagraph or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon the City's liability as set forth in Florida Statutes, Section 768.28; and

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

30. Nothing contained in this Agreement shall be construed so as to confer upon any other party the rights of a third party beneficiary.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hand and seals on this 3rd day of March, 2017.

ATTEST:

CITY OF DELRAY BEACH, FLORIDA

By: Kimberly Ryan
acting City Clerk

By: Cary Glickstein, Mayor

Date: 3/3/2017

Approved as to Form:

By: [Signature]
City Attorney

WITNESSES:

DELRAY BEACH HOLDINGS, LLC, a
Florida limited liability company
IPIC-GOLD CLASS ENTERTAINMENT,
LLC, a Florida limited liability company,
its Manager

Maria Bolivar
Print Name: Maria Bolivar

By: [Signature]

Print: Hamid Hashemi

Its: Manager

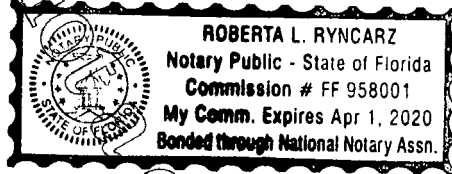
Date: 02/24/17

Roberta L. Ryncarz
Print Name: Roberta L. Ryncarz

STATE OF FLORIDA
COUNTY OF PALM BEACH

I, Roberta L. Ryncarz, a Notary Public, in and for said County
in said State, hereby certify that Hamid Hashemi, whose name
as manager of Ipic-Gold Class Entertainment, LLC, is signed to the foregoing instrument and who
is known to me, acknowledged before me on this day that, being informed of the contents of the
instrument, he or she, as such officer and with full authority, executed the same voluntarily for and
as the act of said limited liability company.

Given under my hand and seal this 24th day of February, ²⁰¹⁷~~2016~~.



Roberta L. Ryncarz
Notary Public

Certified copy

Exhibit "A"
Legal Description of Property

Parcel 1

Lot 7, LESS the North 16.0 feet and the West 8.17 feet and Lots 8 and 9, LESS the West 8.17 feet, all of Block 101, 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.

Parcel 2

The North 20 feet of Lot 10, LESS the West 8.17 feet thereof, Block 101, 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.

Parcel 3

Lots 14, 15 and 16, LESS the East 10 feet thereof for road right-of-way, all of Block 101, 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.

Parcel 4

Lot 17, LESS the South 52 feet and LESS the East 10 feet thereof for road right-of-way, Block 101, 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.

Parcel 5

The South 52 feet of Lot 17 and Lot 18, LESS the East 10 feet thereof for road right-of-way, all of Block 101, 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.

Together With:

The West 8.17 feet of Lots 7, 8, 9 and the North 20 feet of Lot 10, Block 101, Town of Linton (now Delray Beach) according to the Plat thereof, as recorded in Plat Book 1, Page 3, of the Public Records of Palm Beach County, Florida.

Together With:

The North 16 feet of Lot 7, Block 101, Town of Linton (now Delray Beach), less the West 8.17 feet thereof, according to the Plat thereof as recorded in Plat Book 1, Page 3, of the Public Records of Palm Beach County, Florida.

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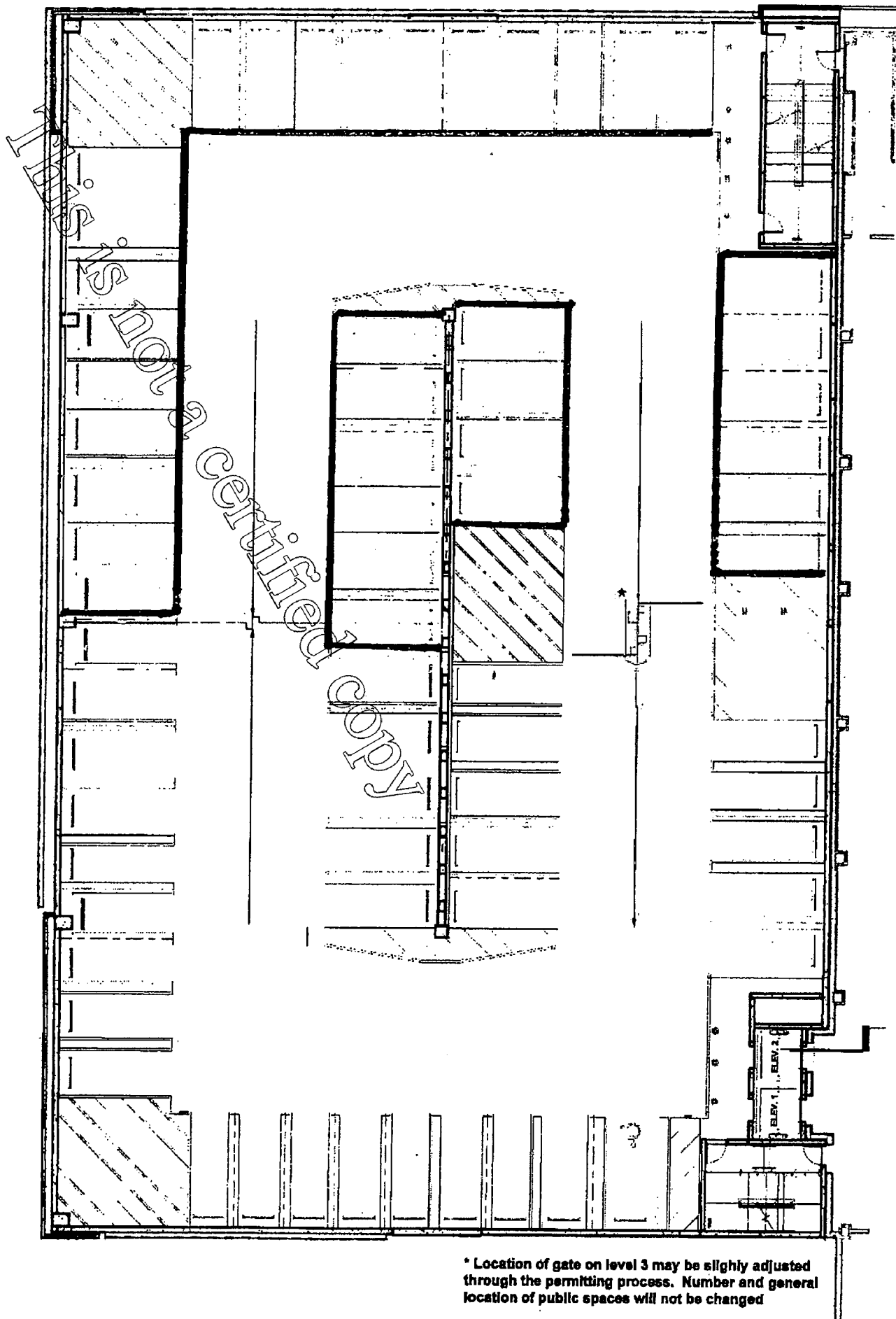
Exhibit "B"

Intentionally Omitted

Exhibit "C"
Parking Spaces

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4th & 5th DELRAY - PARKING GARAGE - LEVEL 3
PUBLIC PARKING SPACES



EXHIBIT

4th & 6th DELRAY - PARKING GARAGE - LEVEL 2
PUBLIC PARKING SPACES

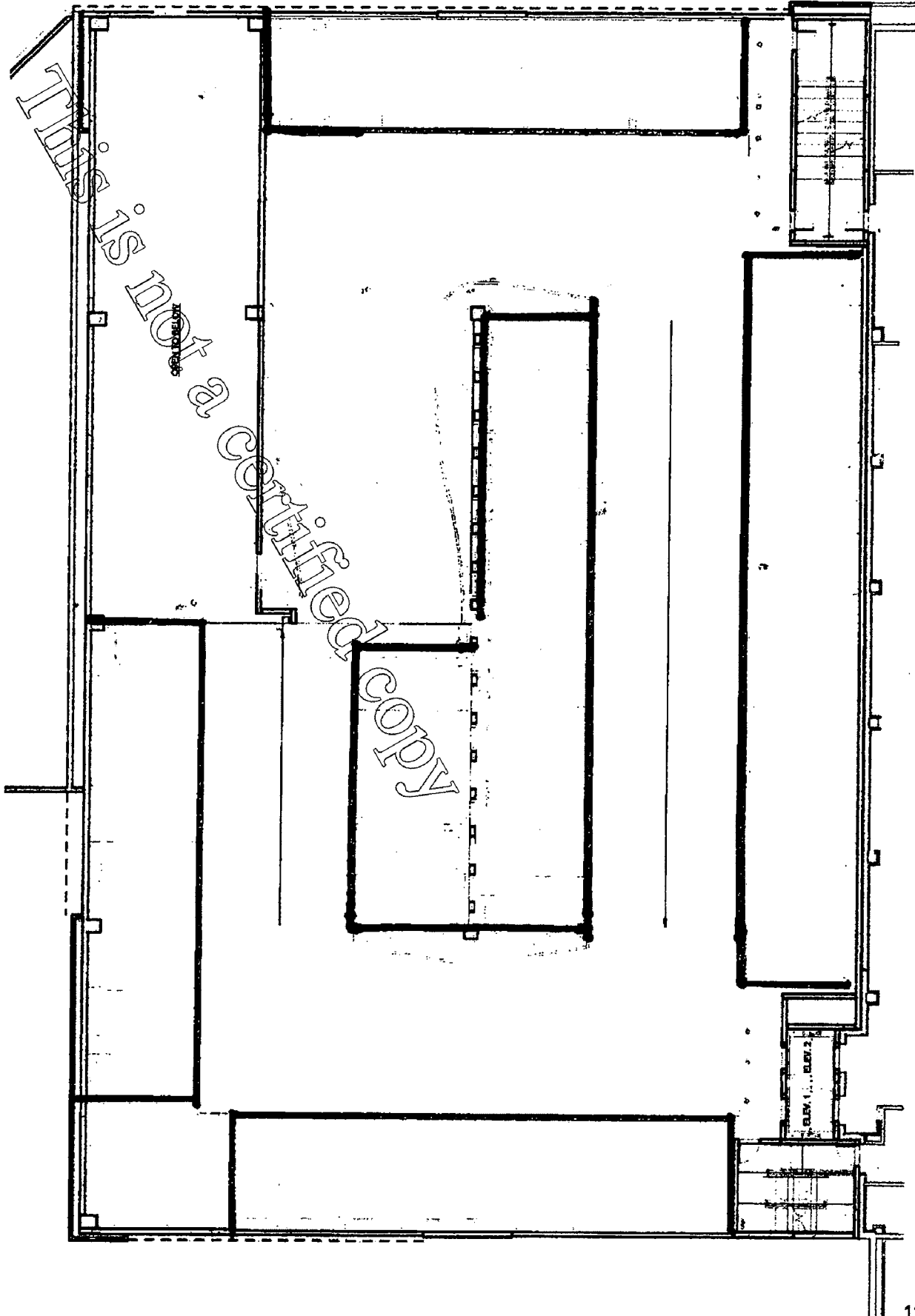


Exhibit "D"
Class V Site Plan, Landscape Plan, Architectural Elevation

(See attached)

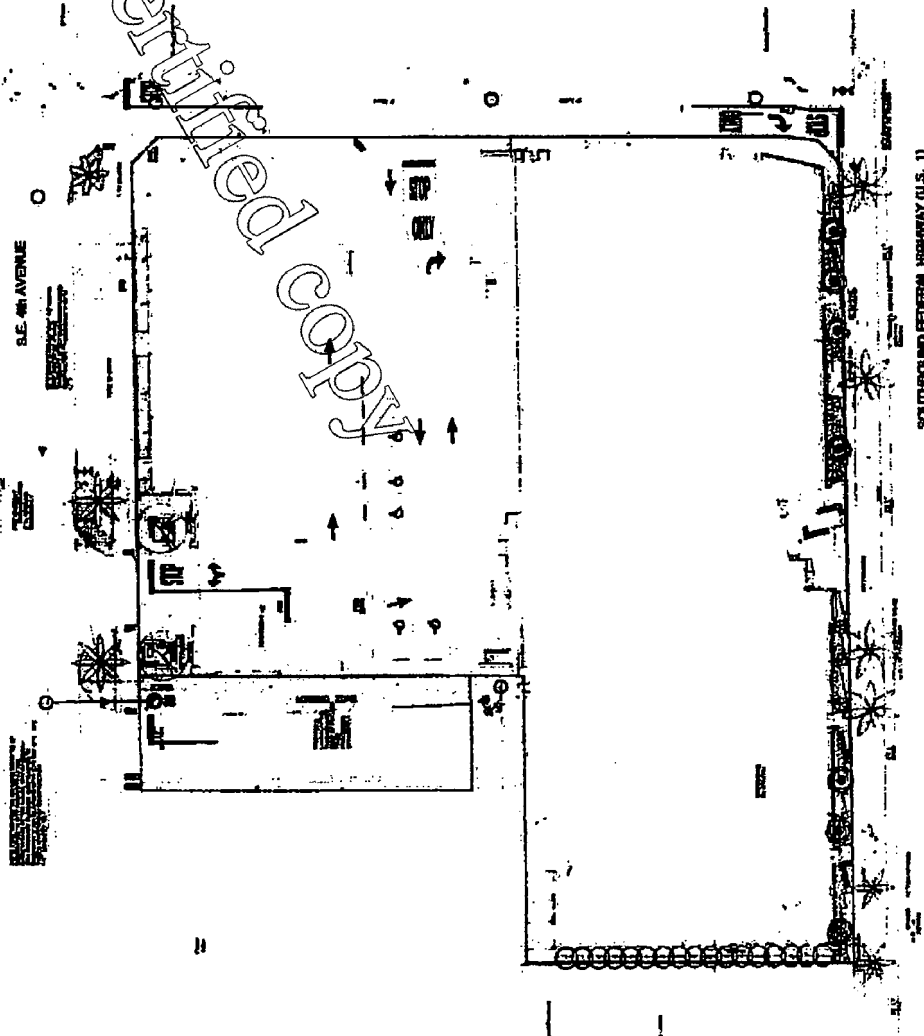
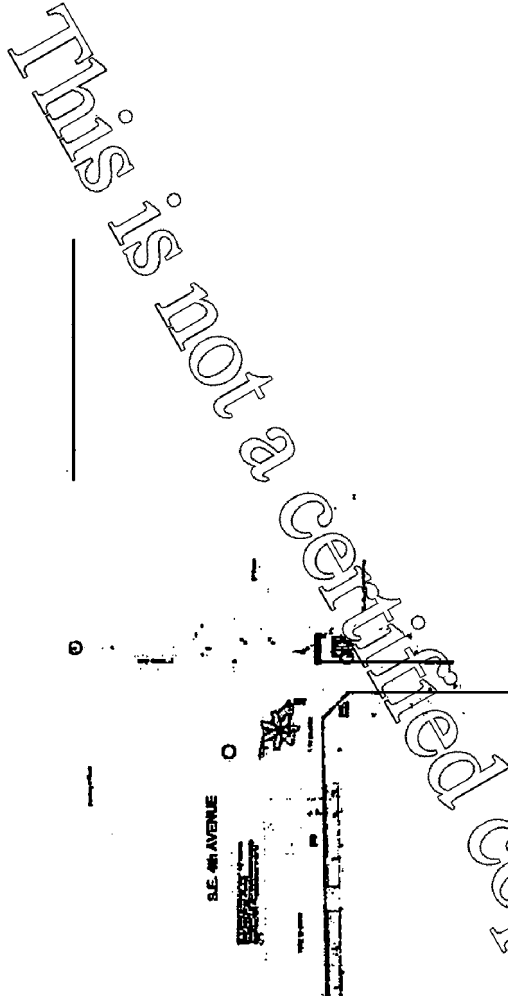
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AGRI LAND
A GRASSY TECHNOLOGY
LANDSCAPE ARCHITECTURE

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1 760 330-0877
central@agri-land.com

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