

**ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT**

THIS ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT ("Agreement") is made and entered into by and between the **City of Lake Worth, Florida**, a Florida municipal corporation (the "City"), and **1601 Dixie Holdings, Inc.**, a Florida corporation and **1601 Dixie, LLC**, a Florida limited liability company (individually and collectively are referred to herein as the "Owner") effective as of the date the authorized representative for the City countersigns this Agreement ("Effective Date").

**RECITALS**

**WHEREAS**, the Owner, specifically 1601 Dixie, LLC, has a contract to purchase property located at 1601 N. Dixie Highway, located within the corporate limits of the City of Lake Worth, as more particularly described by the legal description attached hereto as **Exhibit "A"** ("Property"); and

**WHEREAS**, the Owner intends to construct a multifamily rental development on the Property to be comprised of approximately 230 units in 8 buildings, with a clubhouse, first floor live/work space fronting Dixie Highway and surface parking with the project description, conceptual site plan and renderings attached as **Exhibit "B"** ("Project"); and

**WHEREAS**, the Owner is proposing to construct certain public improvements to serve the Project, and which may serve adjacent properties and the public, including electric, street improvements, water, stormwater and sanitary sewer improvements ("Infrastructure Improvements"); and

**WHEREAS**, the City recognizes the positive impact that the Project will bring to the City through the timely development of a new market-rate housing facility on Dixie Highway which will provide much needed housing to existing residents, attract new residents and stimulate growth and development along the Dixie Highway corridor; and

**WHEREAS**, the City agrees to enter into this Agreement with Owner to advance the public purposes of developing the Project to provide new market-rate housing for existing residents, attract new residents to the City, stimulate growth and development along the Dixie Highway corridor and cause an overall increase in the ad valorem and sales and use tax revenues and other revenues to the City; and

**WHEREAS**, in consideration of the aforementioned public purposes, the City desires to enter into this Agreement as an economic development incentive for the Owner to develop, finance and construct the Project; and

**WHEREAS**, to ensure that the incentives the City provides under this Agreement are utilized in a manner consistent with the aforementioned public purposes, Owner has agreed that its receipt of such incentives shall be conditioned upon its satisfaction of its obligations enumerated herein, including performance standards and timeframes relating to the construction of the Project; and

**WHEREAS**, the City has determined and hereby finds that this Agreement promotes economic development in the City and, as such, is in the best interests of the City of Lake Worth and serves a valid public purpose.

**NOW, THEREFORE**, in consideration of the promises and mutual agreements set forth herein, the City and Owner agree as follows:

1. **RECITALS**. The foregoing Recitals are incorporated into this Agreement as true and correct statements and binding on the parties.
2. **DEFINITIONS**. The following words shall have the following meanings when used in this

Agreement.

(a) Agreement. The word "Agreement" means this Economic Development Incentive Agreement, together with all exhibits attached hereto from time to time, if any.

(b) As-Built Project Parameters. The phrase "As-Built Project Parameters" shall mean the actual final, as-built Project Parameters at the time the Project is placed in-service.

(c) City. The word "City" means the City of Lake Worth, Florida.

(d) Commencement Date. The phrase "Commencement Date" means the date by which construction of the Project shall commence, which is on or before 720 calendar days after the Effective Date of this Agreement (subject to the force majeure clause set forth herein).

(e) Owner. The word "Owner" means 1601 Dixie Holdings, Inc. and/or 1601 Dixie, LLC, its and/or their successors, grantees, and permitted transferees and assignees.

(f) Infrastructure Improvements. The phrase "Infrastructure Improvements" means those improvements identified in the Recitals and as further described in this Agreement and **Exhibit "C"**.

(g) Infrastructure Improvement Fund. The phrase "Infrastructure Improvement Fund" means that portion of the Project Fund to be paid by the City and used by the Owner for the design and construction costs of the Infrastructure Improvements, including any related City of Lake Worth permit fees or development-related fees, with all payments being subject to a maximum aggregate amount of City funding of **One Million Thirty-Five Thousand Dollars (\$1,035,000.00)**.

(h) Outside Completion Date. The phrase "Outside Completion Date" means the date by which the Project is to be fully completed and Placed-In-Service, which is on or before 720 calendar days after the Commencement Date (subject to the force majeure clause set forth herein).

(i) Performance Bond. The phrase "Performance Bond" shall mean a performance bond secured and paid for by Owner as a means of guaranteeing repayment to City of Utility Incentive Fund payment by the City if the Project does not produce anticipated Utility revenues as calculated in Exhibit "D". The Performance Bond shall continue to exist until the City has conducted the true-up of the Utility Incentive Fund that the City paid against the actual utility revenue received and all amounts owed to the City based upon the true-up (if any) have been paid by the Owner.

(j) Placed-In-Service. The phrase "Placed-In-Service" shall mean the time when the City has received written notice and supporting documentation from the Owner that all tasks and obligations of the Owner under this Agreement have been fully satisfied. The supporting documentation shall include the final certificate of occupancy, certificates of completion and the executed bill of sale and utility and maintenance/access easements (as applicable). The City shall be afforded thirty (30) days to independently verify Owner's compliance with the foregoing.

(k) Project. The word "Project" is as defined in the Recitals and as shown in **Exhibit "B"**.

(l) Project Fund. The phrase "Project Fund" means the aggregate amount of funding to be provided by the City as the Infrastructure Improvements Fund and Utility Incentive Fund, which is **One Million One Hundred Ninety-Eight Thousand, One Hundred Forty-Seven and 59/100 Dollars (\$1,198,147.59)**, subject to changes in the Utility Incentive Fund amount as stated herein.

(m) Project Parameters. The phrase "Project Parameters" means the proposed parameters of

the Project which the City utilized to calculate the Utility Incentive Fund identified in this Agreement which includes, but is not limited to, the total unit number and size of each unit of the Project, the total square footage for commercial space within the Project, and the total square footage for the clubhouse within the Project.

(n) Property. The word "Property" is as defined in the Recitals and described in **Exhibit "A"**.

(o) Utility Incentive Fund. The phrase "Utility Incentive Fund" means **One Hundred Sixty-Three Thousand, One Hundred Forty-Seven and 59/100 Dollars (\$163,147.59)**, which is based upon the City's calculation of what should be a reasonable rate of return to the City for the estimated increased utility revenues from the Project Parameters and the City's current rate schedules. The City's calculations for the Utility Incentive Fund are shown in **Exhibit "D"**. If the As-Built Project Parameters differ from the Project Parameters and/or the City's current rate schedule(s) changes, the Utility Incentive Fund amount paid by the City to the Owner will be revised to be an estimate based upon the As-Built Project Parameters and the then current rate schedule(s).

### 3. GENERAL COVENANTS.

(a) The parties hereto acknowledge and agree that this Agreement has been negotiated at arm's length. Each party has conferred, or has had the opportunity to confer, with their respective legal counsel. In the event any claim is made relating to any conflict, omission or ambiguity in this Agreement, no presumption, burden of proof, or persuasion shall be construed, interpreted or implied by virtue of the fact that this Agreement was drafted by or at the request of a particular party or its legal counsel.

(b) Owner represents, warrants and covenants to the City that:

1. It has all requisite corporate power to enter into this Agreement, and that its execution hereof has been duly authorized and does not and will not constitute a breach or violation of any of Owner's organizational documents, any applicable laws or regulations, or any agreements with third parties;

2. It has done and will continue to do all things necessary to preserve and keep in full force and effect its existence and the Agreement;

3. This Agreement is the legal, valid and binding obligation of Owner, in accordance with its terms, and all requirements have been met and procedures have been followed by Owner to ensure the enforceability of the Agreement;

4. The individual executing this Agreement on behalf of Owner has full rights and ability and all necessary approvals to bind Owner to this Agreement;

5. To Owner's best knowledge, there is no pending or threatened suit, action, litigation or proceeding against or affecting Owner that affects the validity or enforceability of this Agreement;

6. It is duly authorized to do business in Palm Beach County and the City of Lake Worth; and,

7. The Owner has consulted with its legal counsel and is relying on the advice of its counsel concerning all legal issues related to this Agreement, and is not relying on the City in this regard.

(c) In the performance of all obligations under this Agreement, the Owner shall comply with all applicable federal, state and local laws, regulations and policies.

(d) The Owner may request that the City Manager revise this Agreement based upon written requirements from the Owner's first mortgage lender or in order to accommodate a tax preferred structure for the Owner. The City Manager will review the written requirements from the Owner's first mortgage lender and/or the request to accommodate a tax preferred structure, and, if agreeable in consultation with the City Attorney, revise this Agreement through a written amendment signed by the Owner and the City Manager. The City Manager's agreement to the written requirements from the Owner's first mortgage lender or to accommodate a tax preferred structure will not be unreasonably withheld; however, if in the City Manager's opinion, the written requirements from the Owner's first mortgage lender and/or the accommodation for a tax preferred structure involve an adverse change to the terms and conditions of this Agreement for the City, the City Manager reserves the right to bring the matter before the City Commission for its review.

(e) This Agreement is subject to review by the City's City Commission and shall not become effective until approved by the City Commission and executed by the Mayor and City Clerk.

3. **TITLE TO PROPERTY MUST BE ESTABLISHED.** The Owner, specifically 1601 Dixie, LLC, represents and warrants that it currently has a contract to purchase the Property in fee simple. In order for the City to be obligated under this Agreement for payment of all or any portion of the Project Fund, the Owner must close on the purchase of the Property and become the fee simple owner. The Owner shall provide the City with evidence of fee simple ownership of the Property by tender of a title policy indicating the Owner as fee simple owner of the Property. Such evidence shall be provided to the City within five (5) days following the Owner's financial closing for the Project.

4. **DEVELOPMENT AGREEMENT.** If a development agreement (or similar agreement) is required by the City of Lake Worth Code of Ordinances for the Project, this Agreement shall be incorporated by reference into the development agreement and made a part thereof.

5. **OBLIGATIONS OF THE PARTIES.**

(a) **Obligations of Owner.** In addition to the Owner's other obligations set forth in this Agreement, the Owner shall:

- (1) Demonstrate sufficient sources of funding to pay for Project costs.
- (2) Close on the Lake Worth Community Redevelopment Agency Funding for the Project.
- (3) Close on first mortgage financing for the Project.
- (4) Close on the Property purchase.
- (5) Provide the City with proof of all insurance required herein or as may be amended in writing by the City and Owner.
- (6) Upon submittal for Project site plan approval to the City of Lake Worth (in its role as a governmental jurisdiction for site plan approval), Owner shall provide plans and specifications detailing the Infrastructure Improvements as described in **Exhibit "C"** (the "Design & Engineering Documents"). The Design & Engineering Documents must include all information typically required to obtain customary site plan approval and typically required in order to commence preparing the construction plans and drawings.

The City shall be afforded at least twenty (20) days to review the Design & Engineering Documents from the date of Site Plan submittal. All deficiencies noted by the City in the Design & Engineering Documents shall be remedied to the City's satisfaction. If all deficiencies have been corrected, the City's Water, Sewer, Stormwater and Electric Utility Directors shall sign off on the Design & Engineering Documents as approved.

(7) In addition to its application for the necessary building permits from the City of Lake Worth (in its role as a governmental jurisdiction for construction of the Project) and all regulatory permits, the Owner shall provide the City with the 100% complete construction documents based upon the approved Design & Engineering Documents for the Infrastructure Improvements (the "Construction Documents"). If all Infrastructure Improvements are shown on the plans submitted for the building permits, a second set of plans is not required to be submitted to the City under this section. The Construction Documents must include all information typically required in order to construct the Infrastructure Improvements and obtain any necessary permits or regulatory approvals. The City shall be afforded at least twenty (20) days to review the Construction Documents from the date of submittal. All deficiencies noted by the City in the Construction Documents shall be remedied to the City's satisfaction. If all deficiencies have been corrected, the City's Water, Sewer, Stormwater and Electric Utility Directors shall sign off on the Construction Documents as approved.

(8) Subject to the force majeure clause set forth herein, Owner shall commence construction of the Project within 720 calendar days after the Effective Date of this Agreement ("Commencement Date") and have the Project Placed-In-Service on or before 720 days from the Commencement Date ("Outside Project Completion Date"). The City Manager is authorized to extend the timeframes set forth herein by written amendment to this Agreement up to a maximum of 180 days. All further time extensions must be approved by the City Commission.

(9) As identified in Exhibit "C", prior to or upon receiving the certificate(s) of completion for the Infrastructure Improvements, execute all documents reasonably necessary to transfer ownership of the Infrastructure Improvements to the City in order for the City to own and maintain as a part of the City's overall utility systems including, without limitation, a City approved bill of sale and utility and maintenance/access easements. Prior to transfer of ownership, it shall be Owner's sole responsibility to insure there are no liens or other encumbrances on or related to the Infrastructure Projects which would cloud the City's ownership of the same. The Owner shall continue to maintain the required insurance to cover the Infrastructure Improvements until the Project is Placed-In-Service and shall be fully responsible at its sole cost and expense for any damage to the Infrastructure Improvements by the Owner, its contractors, subcontractors, consultants and/or agents until the Project is Placed-In-Service.

(10) Pay all necessary capacity and connection charges for the Electric, Water and Sewer services and commence utility service to the Project.

(11) Perform, or cause to be performed, all of its obligations and duties under this Agreement with that degree of skill, care and diligence normally shown by (and generally accepted as being appropriate for) State of Florida recognized design, engineering, and construction professionals performing services and work of a scope, purpose and magnitude comparable with its required tasks and duties. Owner will furnish efficient administration, supervision, and superintendence of the Infrastructure Improvements and overall Project's construction and will use commercially reasonable efforts to complete said construction in an expeditious and economical manner. All construction shall be

performed in accordance with all applicable federal, state, county and local laws, statutes, codes, regulations and ordinances and Owner is solely responsible for all permit and regulatory requirements associated with the Project and Infrastructure Improvements.

(12) Owner shall pay all Project costs not paid for by Project Fund as set forth herein.

(13) The Owner expressly acknowledges that by entering into this Agreement, the Owner, its successors, permitted assignees and transferees, vendors, grantees, and/or trustees, shall not construe any language contained herein or in any Exhibits attached hereto as waiving any of the requirements of the City's Code of Ordinances, Comprehensive Plan or other regulation, policy or rule applicable to the Project at the time of development.

(14) Notwithstanding the fact that the Owner's contracted cost of developing the Project will exceed the amount of the Project Fund, the City shall have no obligation to provide any monetary support to the Owner or for the Project above or beyond the Project Fund as set forth herein.

(15) The Project Fund shall be utilized solely by the Owner for the design and construction of the Project and/or to pay-off or reduce any debt associated with the design and construction of the Project.

(16) Once the Owner becomes fee simple owner of the Property and for the duration of this Agreement, the Owner shall maintain the Property consistent with the City's Code of Ordinances.

(17) Prior to any payment of the Infrastructure Improvements Fund or commencement of construction of the Infrastructure Improvements, the Owner shall provide evidence of an executed and recorded construction bond (or letter of credit) in the full amount of the Infrastructure Improvements Fund securing the obligation of the Owner to construct the Infrastructure Improvements and the payment of all or any claims or liens. The form of the proposed bond (or letter of credit) shall be in a form acceptable to the Owner's first mortgage lender and shall be subject to the City's review and acceptance, which acceptance shall not be unreasonably withheld or delayed. The bond (or letter of credit) shall state that it is to be construed in accordance with section 255.05, Florida Statutes, for all matters related to or arising from the Infrastructure Improvements.

(b) Obligations of City.

(1) Payments to the Owner for Infrastructure Improvements. Upon the Owner's receipt of the necessary building permits to commence construction of the Infrastructure Improvements and the City's approval of the Construction Documents, the Owner may submit a payment disbursement request to the City for fifty percent (50%) of the Infrastructure Improvements Fund. Along with the payment disbursement request, the Owner shall provide the fully executed and recorded copy of the public construction bond. Within thirty (30) days following the City's receipt of Owner's payment disbursement request and bond, the City shall verify the application for the building permits and, if verified, pay the Owner fifty percent (50%) of the Infrastructure Improvements Fund. Upon the receipt of a certificate(s) of completion for the Infrastructure Improvements or other confirmation of completion of the Infrastructure Improvements as agreed to by the City, the Owner may submit a payment disbursement request to the City for the remaining Infrastructure Improvement Fund. Within thirty (30) days following the City's receipt of Owner's payment disbursement request, the City shall verify that the Infrastructure

Improvements have been completed and, if verified, pay the Owner the remainder of the Infrastructure Improvement Fund.

(2) Payment of the Utility Incentive Fund. Based upon the Project Parameters in this Agreement, including without limitation the proposed size, number of units, square footage and amenities of the Project, and the City's current utility rate schedules, the City has calculated a reasonable rate of return that it should receive as a result of the estimated increase in utility revenues (the "Utility Incentive Fund"). The total Utility Incentive Fund amount to be paid by the City to the Owner is **One Hundred Sixty-Three Thousand, One Hundred Forty-Seven and 59/100 Dollars (\$163,147.59)** and is further broken down by utility as follows:

- i. Electric Utility: A total amount of up to **One Hundred Forty-Seven Thousand Eight Hundred Seventy Dollars (\$147,870.00)**.
- ii. Water & Sewer Utilities: A total amount of up to **Twelve Thousand Six Dollars (\$12,006)**.
- iii. Stormwater Utility: A total amount of up to **Three Thousand Two Hundred Seventy-One and 59/100 Dollars (\$3,271.59)**.

The actual payment of the Utility Incentive Fund shall be a one-time estimated payment made by the City based upon the As-Built Project Parameters. Once the Project is Placed-In-Service, the Owner shall request the disbursement of the Utility Incentive Fund along with a copy of the fully executed Performance Bond. If the Project Parameters have changed and/or the City's utility rate schedule(s) have changed when the Project is Placed-In-Service, the City will re-calculate the Utility Incentives Fund amount based upon the As-Built Project Parameters and the then current rate schedule(s). The Utility Incentive Amount will be increased or decreased in accordance with the calculations and As-Built Project Parameters and current rate schedule(s). The calculations for the Utility Incentive Amount are attached hereto as **Exhibit "D"** and incorporated herein.

(3) True-Up of the Utility Incentive Fund. Within sixty (60) days of the three (3) year anniversary that occurs after the City's payment of the Utility Incentive Fund based upon the As-Built Project Parameters, the City will conduct a true-up of the actual revenue that the City received from the Project for each of the utilities described in Exhibit "D" (Water & Sewer, Stormwater, and Electric Utility) over the three (3) year period ("True-up Amount"). If the True-up Amount establishes that the City did not receive the amount of revenue it used to calculate the Utility Incentive Fund over the three (3) year period, the Owner shall pay the City the difference between what was paid by the City and what was actually received for each of the respective utilities' contribution to the Utility Incentive Fund. Payment shall be made by the Owner to the City within 30 days of the Owner's receipt of written notice from the City. Failure of the Owner to pay the City the amount due under this provision will result in the City collecting the amount due from the Performance Bond. If the City is not able to collect the amount due from the Performance Bond within sixty (60) days of the City's notice to the Performance Bond surety, the City may treat the amount due as a delinquent utility bill and shall have all rights associated with a delinquent utility bill including, without limitation, a utility lien on the Property which will remain on the Property and accrue interest at the statutory amount until paid in full.

(4) Budget and Appropriation of Project Fund. Based upon the timeframes set forth in this Agreement, the City agrees to propose in each applicable fiscal year budget an amount to cover the City's obligations as stated herein commencing with the Fiscal Year 2018-2019

budget; however, the City's funding obligations as stated herein are all subject to the City's annual budgeting and appropriation process. The Owner understands and agrees that the City's funding obligations hereunder are payable exclusively from duly appropriated or otherwise legally available funds and shall not be construed to be debt, liability or obligation within the meaning of any applicable constitutional or statutory limitation or requirement. Neither the City nor the State of Florida nor any political subdivision or agency thereof has pledged any of its full faith and credit or its taxing power to make any payments under this Agreement.

6. **RIGHT TO AUDIT.** The City shall have the right at its expense to conduct a financial systems analysis and/or an audit of the Owner either by the City's own employee(s) or by an independent auditing firm employed by the City as may be reasonably required in order to determine if the Project is being fiscally managed so as to meet all of the Owner's obligations as stated herein and within the timeframes set forth herein. Failure of the Owner to reasonably cooperate with the City in the analysis and/or fiscally manage the Project so as to meet all of the Owner's obligations as stated herein and within the timeframes set forth herein will be grounds for termination of this Agreement.

7. **WARRANTY.** Owner and on behalf of its consultants, contractors and subcontractors warrants to the City that: (i) unless otherwise agreed in writing, the work, materials and equipment installed for the Infrastructure Improvements will be of good quality and new; (ii) the Infrastructure Improvements will be free from faults and defects not inherent in the quality required or permitted; (iii) the Infrastructure Improvements materials, equipment and construction work will conform with the requirements of this Agreement, City Approved Products and Construction Standard Details, specifications and regulatory requirements; and, (iv) the Infrastructure Improvements will be free from any encumbrances, liens, security interests, or other defects in title upon conveyance of title to City. If, at any time prior to the expiration of one (1) year following the Project being Placed-In-Service, the City discovers any failure or breach of Owner's warranties or Owner discovers any failure or breach of Owner's warranties, Owner will, upon written notice from City or of its own accord, at Owner's sole cost and expense, promptly correct such failure or breach (which corrective action must include, without limitation, any necessary removal, disassembly, reinstallation, repair, replacement, reassembly, retesting, and/or re-inspection of any part or portion of the work and any other property damaged or affected by such failure, breach, or corrective action). Owner will remedy any such failure or breach so, to the extent possible, to avoid disruptions to the operations of City. In the event Owner fails to initiate and diligently pursue corrective action within thirty (30) days of Owner's receipt of City's notice or Owner's discovery of the same, City may undertake such corrective action at Owner's expense. With regard to the Infrastructure Improvements, the Owner's obligations under this section shall be limited to the cost of repair of the faulty or defective condition. The Owner's warranty excludes remedy for damage or defect to the extent caused by (i) modifications by City not approved or executed by Owner or its subcontractors; (ii) the City's failure to properly maintain the Infrastructure Improvements; (iii) damage to the Infrastructure Improvements caused by the City or, (iv) normal wear and tear. Repaired or replaced equipment, materials or work will be warranted hereunder for a one (1) year warranty period. Owner's obligations contained in this provision shall survive termination of this Agreement. The Owner shall be fully responsible for ensuring it receives the same warranty as set forth herein from its contractors, consultants and subcontractors for the Project.

8. **NON-DISCRIMINATION POLICY.** The Owner warrants and represents that all of its employees, subconsultants and subcontractors are treated equally during selection, employment and/or engagement without regard to race, color, religion, disability, sex, age, national origin, ancestry, political affiliation, marital status, handicap, or sexual orientation. Further, the Owner shall not discriminate or permit discrimination against any employee or an applicant for employment on the basis of race, color, sex, religion, political affiliation, natural origin, ancestry, marital status, sexual orientation or handicap.

9. **OPPORTUNITIES FOR CITY OF LAKE WORTH RESIDENTS AND BUSINESSES.** The Owner shall make commercially reasonable efforts consistent with applicable law to provide City of Lake



Worth residents with opportunities for training and employment in connection with the Project. The Owner shall also make commercially reasonable efforts consistent with applicable law to provide City of Lake Worth business concerns with opportunities in connection with the Project, including the utilization of small business and minority/women-owned business enterprises.

10. **EVALUATION AND MONITORING.** The Owner agrees that the City, outside of its role as a governing jurisdiction for the Project, will carry out periodic monitoring and evaluation activities as determined necessary by the City to ensure satisfactory performance and compliance by the Owner in performing its duties and obligations under this Agreement. The Owner agrees to furnish upon request to the City copies of transcriptions of such records and information as is reasonably determined necessary by City to establish satisfactory performance and/or compliance. The City may request and Owner shall provide up to three (3) public presentations on the status of the Project after the effective date of this Agreement. The Owner acknowledges and agrees that any review, approval, monitoring, comment or evaluation by the City of any plans, drawings, specifications or other documents prepared by or on behalf of the Owner, including but not limited to the Design & Engineering Documents, or of any activities, tasks or work of Owner is solely for City's determining for its own satisfaction Owner's compliance with this Agreement, and may not be relied upon by the Owner, its subcontractors, or any other third party as a substantive review thereof. The City, in reviewing, approving, monitoring, commenting on or evaluating any plans, drawings, specifications or other documents, or activities, tasks or work of the Owner, will have no responsibility or liability for the accuracy or completeness of such documents, activities, tasks or work or for any defects, deficiencies or inadequacies therein or for any failure of the same to comply with the requirements set forth in this Agreement or with applicable law; the responsibility for all of the foregoing matters being the sole obligation of Owner. In no event will any review, approval, comment or evaluation by City relieve Owner of any liability or responsibility under this Agreement, it being understood that City is at all times ultimately relying upon Owner's skill, knowledge and professional training and experience in preparing any plans, drawings, specifications or other documents and in accomplishing any obligations, activities, tasks or work under this Agreement.

12. **DATA BECOMES CITY PROPERTY.** All reports, plans, surveys, as-built drawings, information, documents, maps, and other data procedures developed, prepared, assembled, or completed by the Owner, its contractors, consultants, subcontractors, subsidiaries or agents for the Infrastructure Improvements shall be made available to the City at any time upon request by the City. Upon completion of the Infrastructure Improvements, copies of all documents and records relating to the Infrastructure Improvements shall be surrendered to the City upon request. In any event, the Owner shall keep all documents and records related to the Infrastructure Improvements for five (5) years after the termination or expiration of this Agreement.

13. **INDEMNIFICATION.** The Owner agrees to assume all liability for and indemnify, hold harmless, and defend the City, its commissioners, mayor, officers, employees, agents and attorneys of, from, and against all liability and expense, including reasonable attorney's fees (at all levels), in connection with any and all claims, demands, damages, actions, causes of action, and suits in equity of whatever kind or nature, including claims for personal injury, property damage, equitable relief, or loss of use, which arise from or are related to a breach by Owner of Owner's obligations, tasks and performance under this Agreement or which arise from or relate to the Owner's, its contractors, subcontractors, consultants or agents negligent acts or omissions. The Owner's liability hereunder shall include all reasonable attorney's fees and costs incurred by the City in the enforcement of this indemnification provision at all levels. This provision includes claims made by the employees, consultants, contractors, subconsultants or subcontractors of the Owner against the City. The Owner's obligations contained in this provision shall survive termination of this Agreement and shall not be limited by the amount of any insurance required to be obtained or maintained under this Agreement.

Subject to the limitations set forth in this section, the Owner shall assume control of the defense of any claim, actions, causes of action, and suits in equity of whatever kind or nature, asserted by a third party

against the City, which arise from or are related to a breach by Owner of Owner's obligations, tasks and performance under this Agreement or which arise from or relate to the Owner's, its contractors, subcontractors, consultants or agents negligent acts or omissions and, in connection with such defense, shall appoint lead counsel, in each case at Owner's expense. The City shall have the right, at its option, to participate in the defense of the same without relieving Owner of any of its obligations hereunder. If Owner assumes control of the defense of any such third party action in accordance with this section, Owner shall obtain the prior written consent of the City before entering into any settlement of such action. Notwithstanding anything to the contrary in this section, Owner shall not assume or maintain control of the defense of any third party action, but shall pay the fees of counsel retained by the City and all expenses, including experts' fees, if (i) an adverse determination with respect to the third party action would, in the good faith judgment of the City, be detrimental in any material respect to the City's reputation; (ii) the third party action seeks an injunction or equitable relief against the City; and/or, (iii) the Owner has failed or is failing to prosecute or defend vigorously the third party action. The Owner and City shall cooperate, and cause its agents to cooperate, in the defense or prosecution of any third party action and shall furnish or cause to be furnished such records and information, and attend such conferences, discovery proceedings, hearings, trials, or appeals, as may be reasonably requested in connection therewith.

14. **INSURANCE AND RISK OF LOSS**

- (a) **Insurance.** Prior to any payment being made by the City under this Agreement and throughout the life of this Agreement at the Owner's sole expense, the Owner shall obtain the following insurance coverage from insurance companies licensed to do business in the State of Florida and in a form reasonably satisfactory to City. The insurance coverage shall add the City as an "Additional Insured" to each policy on a primary, non-contributing basis, other than Workers' Compensation, and shall require notice to the City prior to the cancellation, non-renewal or material modification of any such policies. If the Owner fails to furnish and maintain the insurance required by this section, the City may immediately terminate this Agreement. The City Manager may agree in writing to tailor the insurance requirements in order to satisfy the requirements of the Owner's first mortgage lender and may agree to revise the insurance requirements for the Owner if the City is identified as an additional insured on the Owner's general contractor's similar insurance for all Infrastructure Improvements.
- (1) Workers' Compensation at the statutory amounts and limits as prescribed by applicable law.
  - (2) Employer's Liability insurance (and, where applicable, Stop Gap extended protection endorsement) limits of liability shall be:
    - \$1,000,000 per occurrence
    - \$1,000,000 Disease Policy
    - \$1,000,000 Each Employee
  - (3) Owner shall carry, in the Occurrence Coverage Form, Comprehensive General Liability or Commercial General Liability, insurance covering Owner's operations and for completed works providing insurance for bodily injury and property damage with limits of liability stated below and including coverage for
    - Products and Completed Operation
    - Contractual Liability insuring the obligations assumed by Owner in this Agreement
    - Broad Form Property Damage (including Completed Operations)
    - Explosion, Collapse and Underground Hazards
    - Personal Injury Liability:

Limits of liability shall be \$1,000,000 per occurrence and \$3,000,000 aggregate.

- (4) Owner shall carry Automobile Liability Insurance in the Occurrence Coverage Form covering all owned, hired and non-owned automobiles and trucks used by or on behalf of Owner providing insurance for bodily injury liability and property damage liability for the limits of \$1,000,000 per occurrence/aggregate.
- (5) Owner shall carry Excess Liability Insurance in the Occurrence Coverage Form with limits of \$5,000,000 per occurrence/aggregate.

The insurance coverage afforded under the policies described in this section shall be primary and non-contributing with respect to any insurance carried independently by the City.

- (b) Risk of Loss. Risk of loss of the Infrastructure Improvements and Project shall, regardless of passage of title (if any), remain with Owner until the City pays the Utility Incentive Fund amount unless the damage is due to acts or omissions of the City. The foregoing shall not waive or otherwise impact Owner's warranties under this Agreement.

15. **CONFLICT OF INTEREST**. The Owner represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with its performance required hereunder, as provided for in Chapter 112, Part III, Florida Statutes, and Palm Beach County's Code of Ethics. Owner further represents that no person having any such conflicting interest shall be employed for said performance. Owner shall promptly notify the City, in writing, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence Owner's judgment or quality of performance being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that Owner may undertake and request an opinion of the City as to whether the association, interest or circumstance would, in the opinion of the City, constitute a conflict of interest if entered into by Owner. The City agrees to notify Owner of its opinion within thirty (30) days of receipt of notification by Owner. If, in the opinion of the City, the prospective business association, interest or circumstance would not constitute a conflict of interest by Owner, the City shall so state in the notification and Owner may, at its option, enter into said association, interest or circumstance.

16. **RECOGNITION**. When reasonably acceptable to the City and Owner, the Owner will include a reference to the financial support herein provided by the City in all publications and publicity related to the Project.

17. **TIME OF PERFORMANCE**. The effective date of this Agreement shall be the date this Agreement is approved by the City's City Commission and executed by the Mayor and City Clerk ("Effective Date"). Time is of the essence for the performance of all obligations under this Agreement. Unless otherwise agreed in a written amendment to this Agreement, this Agreement will expire if construction has not started by the Commencement Date. The timeframes set forth herein for the Owner's obligations may be extended in writing by the City Manager up to a maximum of 90 calendar days. Beyond 90 calendar days, a written amendment to this Agreement with City Commission approval will be required.

18. **TERMINATION AND SUSPENSION**.

- (a) 30-day Termination. If, through any cause, Owner fails to fulfill any of its obligations with regards to closing on the Property, obtaining and maintaining a construction bond, obtaining and maintaining insurance and/or fails to timely reach the Commencement Date or the Outside Completion Date set forth in this Agreement (including any extensions authorized under this Agreement), the City may in its sole discretion provide the Owner with a thirty day notice of termination and identify the ground(s) for termination consistent with this section. The City may also, in its sole discretion, suspend payment of the Project Fund, in

whole or part, upon sending the 30-day notice of termination. If the Owner fails to cure the ground(s) for termination within thirty (30) days after the receipt of the City's notice, this Agreement will terminate thirty (30) days after the receipt of the notice from the City without any further action by either party. The notice from the City under this provision may be provided by the City Manager.

- (b) 60-day Termination. If, through any cause, Owner shall fail to fulfill in a timely and/or proper manner its duties, tasks or obligations under this Agreement (including those in section 18(a) above should the City decide not to send a 30-day notice of termination), or if Owner shall violate any of the covenants, conditions or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement and/or suspend payment of the Project Fund, in whole or part, by giving 60 days' written notice to Owner of such termination and/or suspension. The notice from the City under this provision may be provided by the City Manager and shall state the ground(s) for termination. The Owner shall then have 60 days to cure the ground(s) for termination upon receipt of the City's notice. If the ground(s) for termination cannot reasonably be cured within 60 days, the City may extend the time for termination if the Owner makes a request for an extension of time within the 60 day timeframe and promptly takes action to remedy the ground(s) for termination and continues with such action for the extended timeframe granted by the City. The Owner shall provide the City with a detailed written explanation of all action to be taken to remedy the ground(s) for termination and timeframes to achieve the same in order to be eligible for an extension of the time for termination. If granted, the City will provide the Owner with a new time for termination based on the Owner's detailed written explanation.

Other grounds for termination for cause under this provision include the following:

- (1) False Statements. Any representation or statement made or furnished to the City by or on behalf of the Owner through an authorized representative under this Agreement or under any other agreement between the City and the Owner that is false or misleading in any material respect, either now or at the time made or furnished, or if the Owner learns that any such representation or statement has become false or misleading at the time it was made, and the Owner fails to provide written notice to the City of the false or misleading nature of such representation or statement within ten (10) days after the Owner learns of its false or misleading nature.
- (2) Insolvency. The dissolution or termination of the Owner's existence as a business, the Owner's insolvency, appointment of a receiver for any part of the Owner's property, any assignment of all or substantially all of the assets of the Owner for the benefit of creditors of the Owner, any type of creditor workout for the Owner, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against the Owner unless, in the case of involuntary proceedings, such proceedings are discharged within sixty (60) days after filing, any of which occur prior to the Project being placed in-service.
- (3) Property Taxes. Prior to the Project being placed in-service, the Owner allows its property taxes applicable to the Property to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of such taxes and to cure such failure within ninety (90) days after written notice thereof from the Palm Beach County Tax Collector.

19. **FORCE MAJEURE**. If by reason of force majeure, it is impossible for the Owner in whole or in part, despite commercially reasonable efforts, to carry out any of its obligations contained herein, the Owner shall not be deemed in breach of its obligations during the continuance of such force majeure event. Such force majeure event does not affect any obligations of the Owner other than the timing of performance of such

obligations. The term "force majeure" as used herein shall mean the following events: acts of God; acts of public enemies; orders or official restraints of any kind of the government of the United States of America or of the State of Florida or such federal or state officials, or of any military or judicial authority; insurrections; riots; terrorism, landslides; earthquakes; fires; storms; droughts; floods; or explosions; and, such other similar acts, orders, or restraints not reasonably within the control of the Owner, its consultants, contractors or subcontractors or due to their fault or negligence. The Owner agrees, however, to use commercially reasonable efforts to remedy the cause or causes preventing the Owner from timely carrying out its obligations under this Agreement. The Owner shall provide the City with written notice of any force majeure event within thirty (30) days of the event occurring and the timeframe for which the Owner's performance was delayed. Failure to properly notice the City will result in the Owner's waiver of the force majeure event as cause for delay in the Owner's performance of its obligations herein.

20. **SEVERABILITY OF PROVISIONS.** If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.

21. **BINDING NATURE AND NON-ASSIGNMENT.** The Owner binds itself, its successors and permitted assignees and/or transferees with respect to all covenants, agreements and obligations contained in this Agreement. The Owner shall not assign or transfer this Agreement, in whole or in part, without the prior written consent of City which the City may withhold in its sole discretion. For purposes of this section, "assign or transfer" includes, without limitation, a transfer or buy-out of all or a majority of the ownership of Owner or replacement of its officers; however, "assign or transfer" does not include an assignment or transfer to an entity solely controlled by the existing officers of the Owner.

22. **GOVERNING LAW, VENUE AND WAIVER OF JURY TRIAL.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Each of the Parties irrevocably submits to the jurisdiction of any Florida State or Federal court sitting in Palm Beach County, Florida, in any action or proceeding arising out of or relating to this Agreement. The Parties hereby each irrevocably agree that all claims in respect of any such action or proceeding may be heard and determined in any such Florida State court or in such Federal court and irrevocably waive, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of any such action or proceeding. EACH PARTY WAIVES ANY RIGHTS THAT EACH OF THEM MAY HAVE TO A TRIAL BY JURY FOR ANY DISPUTE WHICH ARISES OUT OF OR IS RELATED TO THIS AGREEMENT BETWEEN THE PARTIES.

23. **AMENDMENTS.** Prior to the issuance of the applicable building permits for the Project and regardless of expense to Owner, the City may, at its discretion, amend this Agreement to conform to changes required by federal, state, county or local law and any applicable guidelines, directives and objectives including, without limitation, any changes in the applicable building codes or applicable utility regulations. Such amendments shall be incorporated by written amendment as a part of this Agreement and shall be subject to approval of the City's City Manager. The Owner's failure to approve such an amendment will be deemed a breach of this Agreement. Except as otherwise provided herein, no amendment to this Agreement shall be binding on either party unless in writing, approved by the City's City Commission and the Owner, and signed by both parties.

24. **NOTICES.** All notices required to be given under this Agreement shall be sufficient when sent by certified mail (return receipt requested) or by nationally recognized overnight courier or by hand-delivery with a signed receipt and addressed as follows:

For the City:

City of Lake Worth  
Attn: City Manager

7 N. Dixie Highway  
Lake Worth, FL 33460

With copy to:

City of Lake Worth  
Attn: City Attorney  
7 N. Dixie Highway  
Lake Worth, FL 33460

For Owner:

1601 Dixie, LLC  
Attn: Jeff Burns  
414 N. Andrews Ave.  
Fort Lauderdale, FL 33301

With copy to:

Greenspoon Marder  
Attn: Scott Fuerst  
200 E. Broward Blvd., Suite 1700  
Fort Lauderdale, FL 33301

Either party may amend this provision by written notice to the other party. Notice will be deemed received on the fifth day after mailing if sent by certified mail or the next day after mailing if sent by overnight courier or if by hand delivery.

25. **INDEPENDENT CONTRACTOR.** The Owner agrees that, in all matters relating to this Agreement, it will be acting as an independent contractor with exclusive control of the manner and means of performing its obligations and tasks in accordance with the requirements of this Agreement. The Owner has no authority to act or make any agreements or representations on behalf of the City. This Agreement is not intended, and shall not be construed to create, between the City and the Owner, the relationship of principal and agent, joint-venturers, co-partners or any other such relationship, the existence of which is hereby expressly denied. No employee or agent of Owner shall be, or shall be deemed to be, an employee or agent of City.

26. **NO FORFEITURE OR WAIVER.** The rights of the City under this Agreement shall be cumulative and failure on the part of the City to promptly exercise or enforcement any rights given hereunder shall not operate to forfeit or waive any of the City's rights.

27. **PUBLIC ENTITY CRIMES.** As provided in section 287.133, Florida Statutes, by entering into this Agreement or performing any of its obligations and tasks in furtherance hereof, Owner certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the date hereof. This notice is required by section 287.133 (3)(a), Florida Statutes. Owner is under a continuing obligation for the term of this Agreement to immediately notify the City of any violation of this provision.

28. **PALM BEACH COUNTY OFFICE OF THE INSPECTOR GENERAL.** Palm Beach County has established the Office of Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes, but is not limited to, the power to review past, present and proposed City contracts, transactions, accounts and records, to require the production of records,

and to audit, investigate, monitor, and inspect the activities of the City and its agents in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be a breach of this Agreement and may result in termination of this Agreement or other sanctions or penalties as set forth in the Palm Beach County Code.

29. **EXCLUSION OF THIRD PARTY BENEFICIARIES.** No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizens, residents or employees of the City or Owner.

30. **INCORPORATION BY REFERENCE.** Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

31. **COUNTERPARTS OF THE AGREEMENT.** This Agreement, which include the Exhibits referenced herein, shall be executed in counterparts, each of which shall be deemed to be an original, and such counterparts will constitute one and the same instrument.

32. **ENTIRE UNDERSTANDING.** This Agreement and its provisions merge any prior agreements, if any, between the parties hereto with respect to the subject matter of this Agreement and constitute the entire understanding. The parties hereby acknowledge that there have been and are no representations, warranties, covenants, or undertakings other than those expressly set forth herein.

33. **PUBLIC RECORDS.** The Owner shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, to the extent applicable to any public records related to or arising from this Agreement.

34. **CONFIDENTIAL INFORMATION.** If during the term of this Agreement, either party is provided access to any records or other information that is confidential or proprietary in nature, the other party shall maintain the confidentiality of such information consistent with Florida's Public Records laws including, but not limited to, any building plans or GIS information provided to or by the Owner, its contractors, subcontractors, consultants or agents. The Owner shall ensure its contractors, subcontractors, consultants or agents are also contractually required to maintain the confidentiality of such information.

IN WITNESS our Hands and Seals on this 1st day of MAY, 2018.


ATTEST:

By:

  
Deborah M. Andrea, City Clerk

Approved for legal sufficiency

By:

  
Glen J. Torcivia, City Attorney

CITY OF LAKE WORTH

By:

  
Pam Tripolo, Mayor

**REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK**  
**OWNER SIGNATURE PAGE FOLLOWS**

OWNER: 1601 Dixie Holdings, Inc.

By: [Signature]

Print Name: Jeff Burns

Title: member

[Corporate Seal]

STATE OF FLORIDA  
COUNTY OF Broward

The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of April, 2018 by Jeffrey Burns, as member of 1601 Dixie Holdings, Inc., a Florida corporation, and who is personally known to me or who has produced the following (personally known) as identification.

Notary Public:



[Signature]

Print Name: Michelle A. Rice

My commission expires: 11-13-2021

OWNER: 1601 Dixie, LLC

By: [Signature]

Print Name: Jeff Burns

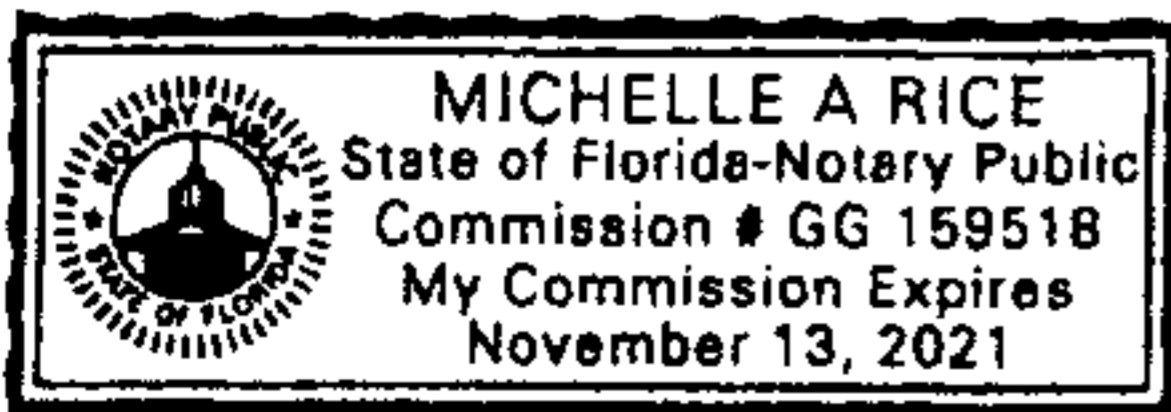
Title: member

[Corporate Seal]

STATE OF FLORIDA  
COUNTY OF Broward

The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of April, 2018 by Jeffrey Burns, as Member of 1601 Dixie, LLC, a Florida limited liability company, and who is personally known to me or who has produced the following (personally known) as identification.

Notary Public:



[Signature]

Print Name: Michelle A. Rice

My commission expires: 11-13-2021



**EXHIBIT "A"**  
**PROPERTY LEGAL DESCRIPTION**

The land referred to herein below is situated in the County of Palm Beach, State of Florida, and is described as follows:

**PARCEL A**

Lots 1 through 11, inclusive, Block "F", Lake Worth Heights, according to the map or plat thereof as recorded in Plat Book 7, Page 25, Public Records of Palm Beach County, Florida; said lands situate, lying and being in Palm Beach County, Florida.

**LESS:**

A portion of Lot 1, Block F, Lake Worth Heights, as recorded in Plat Book 7, Page 25, Public Records of Palm Beach County, Florida, lying in Section 16, Township 44 South, Range 43 East, Palm Beach County, Florida, being more particularly described as follows:

Commence at the Northwest corner of said Lot 1; thence South 89° 55' 17" East along the Northerly boundary line of said Lot 1, a distance of 167.30 feet to the Point of Beginning; thence continue South 89° 55' 17" East along said Northerly boundary line, a distance of 5.0 feet to a point on the Westerly Existing Right of Way line for State Road 805 (Dixie Highway), said point being on a line 2.70 feet Westerly of and parallel with the Easterly boundary line of said Lot 1; thence South 00° 00' 02" East along said Westerly Existing Right of Way line and said parallel line, a distance of 9.0 feet; thence North 29° 02' 11" West, a distance of 10.30 feet to the Point of Beginning.

**PARCEL B**

Lots 1 through 11, inclusive, Block "G", Lake Worth Heights, according to the map or plat thereof as recorded in Plat Book 7, Page 25, Public Records of Palm Beach County, Florida; said lands situate, lying and being in Palm Beach County, Florida.

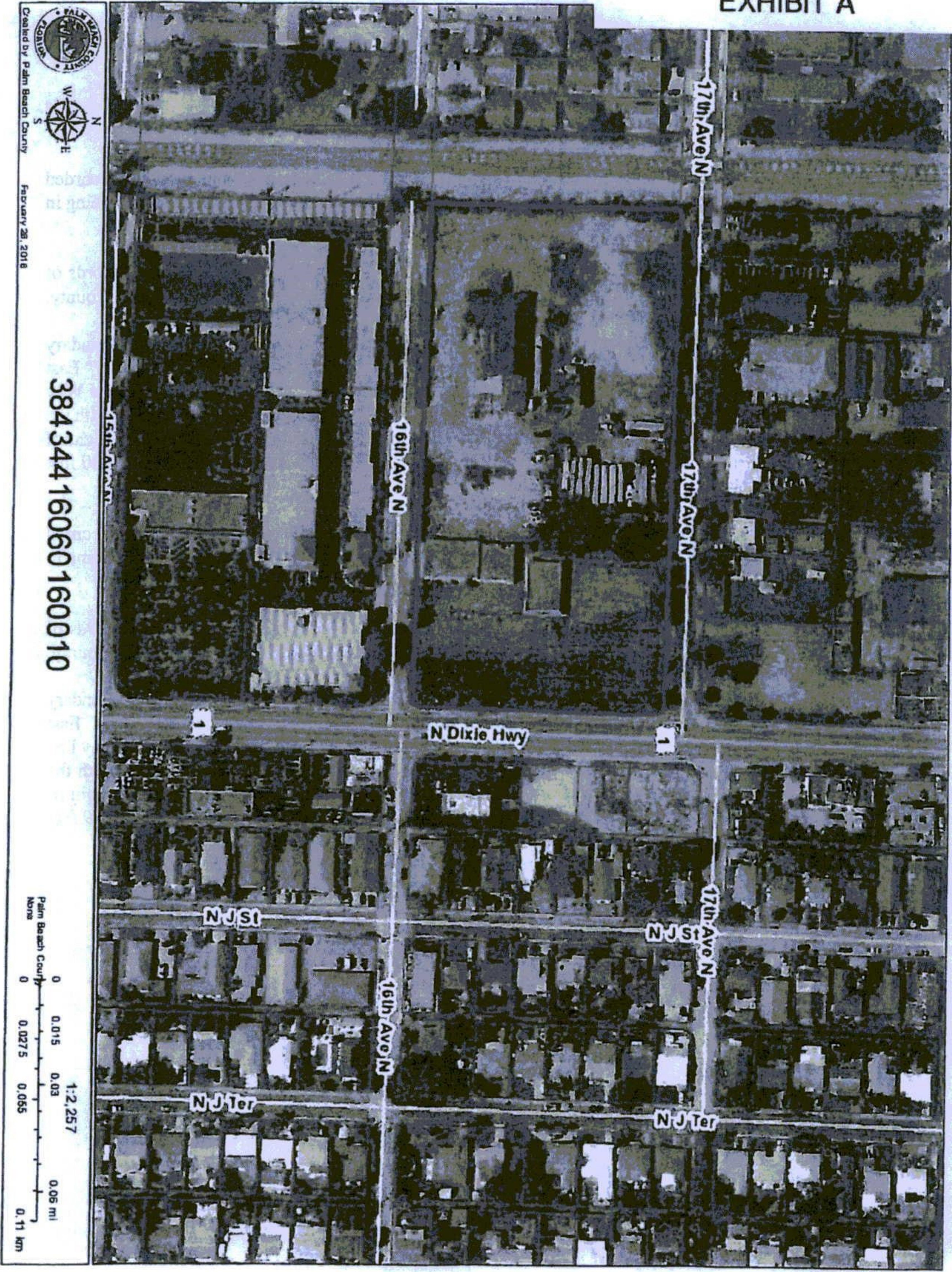
**LESS**

A portion of Lot 1, Block G, Lake Worth Heights, as recorded in Plat Book 7, Page 25, Public Records of Palm Beach County, Florida, lying in Section 16, Township 44 South, Range 43 East, Palm Beach County, Florida, being more particularly described as follows:

Commence at the Southwest corner of said Lot 1; thence South 89° 53' 05" East along the Southerly boundary line of said Lot 1, a distance of 167.30 feet to the Point of Beginning; thence continue South 89° 53' 05" East along said Southerly boundary line, a distance of 5 feet to a point on the Westerly Existing Right of Way line for State Road 805 (Dixie Highway), said point being on a line 2.70 feet Westerly of and parallel with the Easterly boundary line of said Lot 1; thence North 00° 00' 02" West along said Westerly Existing Right of Way line and said parallel line, a distance of 9.0 feet; thence South 29° 04' 53" West, a distance of 10.29 feet to the Point of Beginning

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# EXHIBIT A



**EXHIBIT "B"**  
**PROJECT DESCRIPTION, CONCEPTUAL SITE PLAN & RENDERINGS**

**Project Description:**

The MID is a market rate multifamily project that will feature approximately 230 total units (divided among eight buildings), 299 parking spaces and 4,800 square feet of amenity space. The Project will also provide approximately 9,440 square feet of street-level retail space along Dixie Highway.

Each residence will have quartz counter-tops, energy-efficient stainless steel appliances, plank flooring and upscale bathroom finishes. The Project's amenity spaces will include a pool, fitness center, clubhouse, game lawn and dog park.

**The Conceptual Site Plan and Renderings are attached\***

\* The Project has not received preliminary site plan or conditional use approval from the City.

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GLIDDENS PUNA AFFILIATED DEVELOPMENT

CONCEPTUAL ARCHITECTURAL RENDERING

THE MIDLANDS APARTMENT RESIDENCES

# THE MIDLANDS

apartment residences

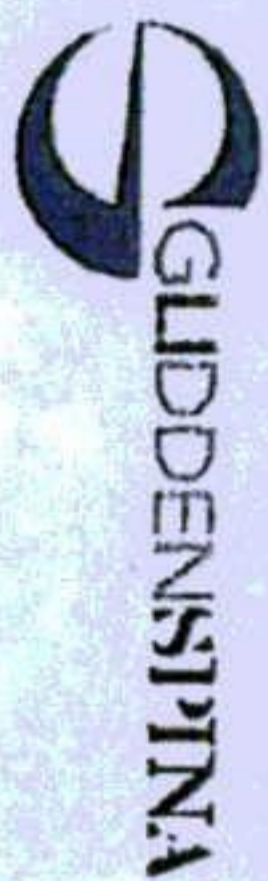
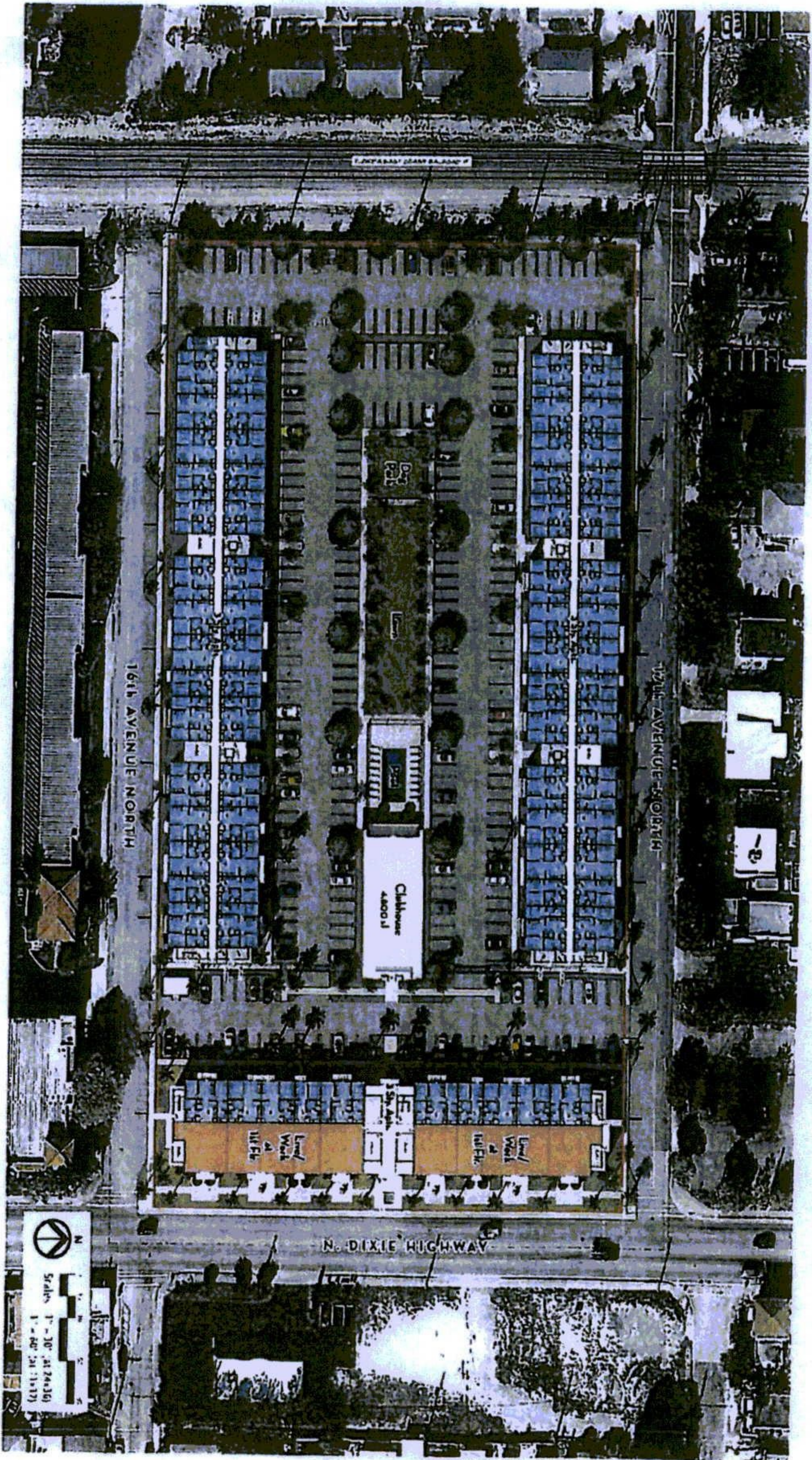


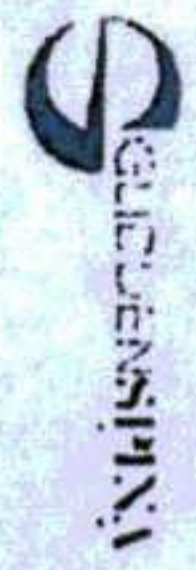
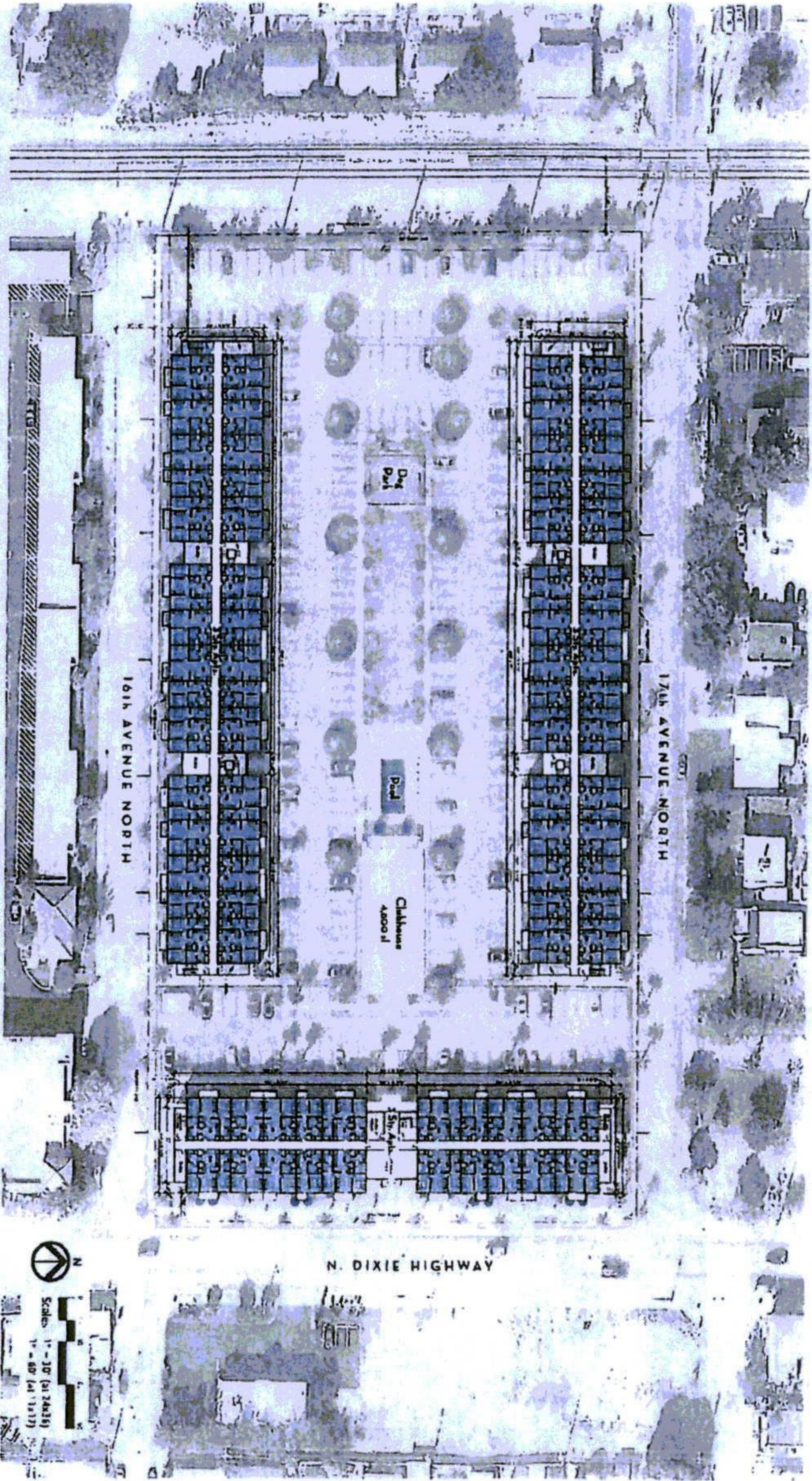
Exhibit B



Conceptual Site/First Floor Plan

THE MID APARTMENT RESIDENCES

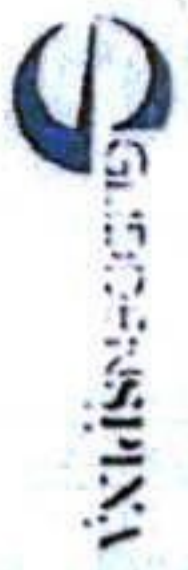
Lake Worth, Florida



Upper Floor Plan (Typical)

THE MID APARTMENT RESIDENCES

Lake Worth, Florida



Artist's Rendering  
View Looking Southwest from N. Dixie Hwy.

THE MID APARTMENT RESIDENCES  
Lake Worth, Florida



GLIDDENS, INC.

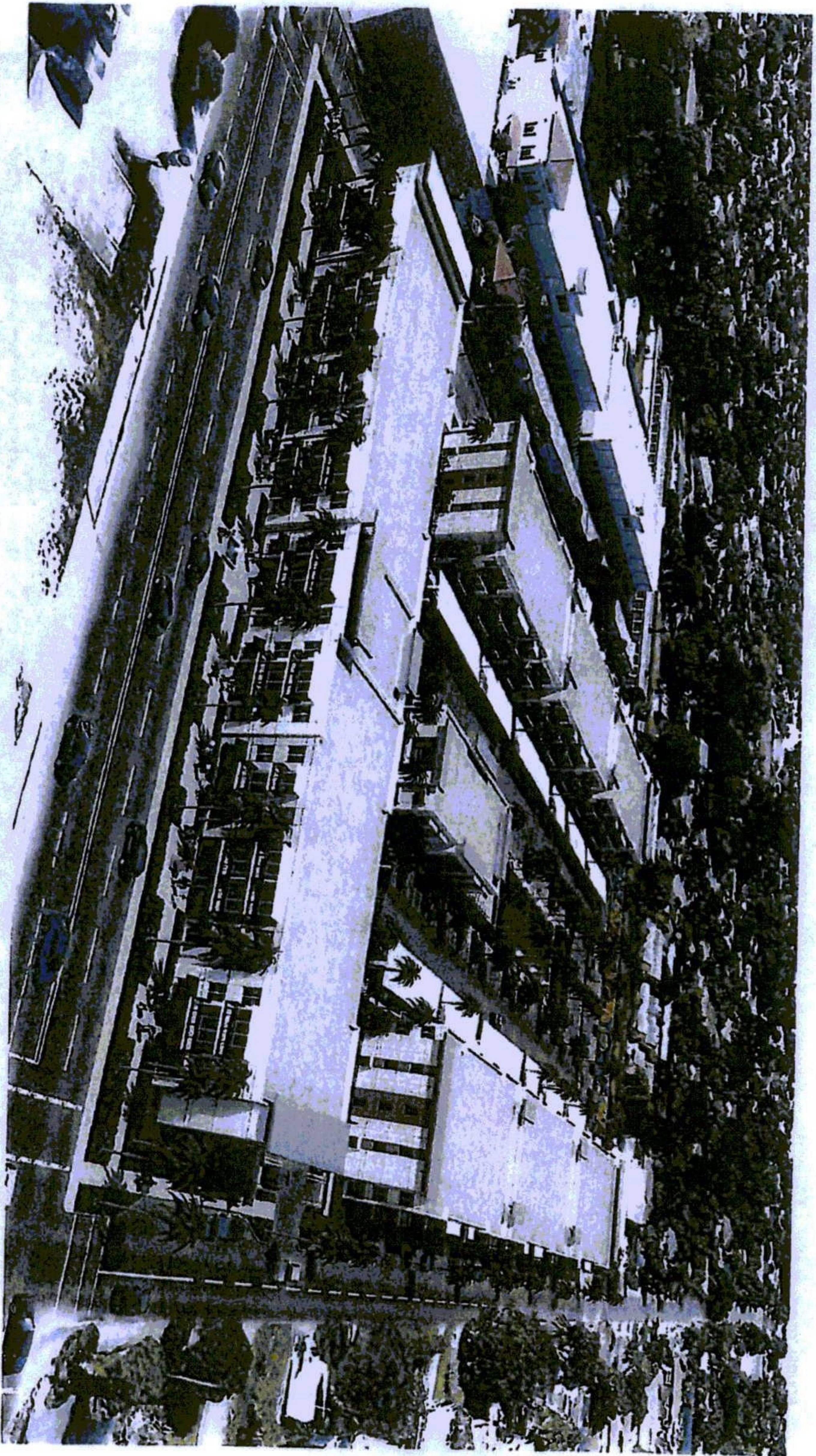


AFFILIATED  
-DEVELOPMENT

Artist's Rendering  
Clubhouse View

THE MID APARTMENT RESIDENCES  
Lake Worth, Florida





Aerial Rendering  
View Looking West

**THE MID APARTMENT RESIDENCES**  
Lake Worth, Florida



Aerial Rendering  
View Looking East

THE MID APARTMENT RESIDENCES  
Lake Worth, Florida

**EXHIBIT "C"**  
**INFRASTRUCTURE IMPROVEMENTS**

The Infrastructure Improvements identified below demonstrate the basic scope of the infrastructure work required of the Owner for the Project (both on and off the Property). The final detailed scope of work to be performed for the Infrastructure Improvements shall be based upon the final approved Construction Documents for the Project. The Infrastructure Improvements have been broken down by utility below and each utility has provided an estimated amount of the percentage of the amount to be allocated for infrastructure work on and off the Property. The City and Owner agree to finalize these percentages based on the approved Construction Documents and address any budgetary issues at that time.

**Electric:**

The Infrastructure Improvement Fund amount designated for the City's Electric Utility (\$150,000) is for the portion of infrastructure required to provide electricity to serve the Project's proposed 230 multifamily units with clubhouse, and first floor live/work space. This amount will finance the cost of engineering design, survey, subsurface locates, specifications, schedules, plans, permitting, construction, qualified inspection, restoration, certification and easements. The design and engineering shall include, but not limited to, construction set of plans and specifications as well as established agency permitting. Construction shall include the installation of electric infrastructure. The improvement will be to serve the property bounded by 17<sup>th</sup> Avenue N to 16<sup>th</sup> Avenue N and from N. Dixie Hwy to the FEC railway right of way.

The Electric Utility estimates 25% of the amount set forth above will be for off-Property Infrastructure Improvements and 75% of the amount set forth above will be for on-Property Infrastructure Improvements.

**Street Improvements:**

The Infrastructure Improvement Fund amount designated for the City's Street Improvements (\$85,000) is for the infrastructure required to repair/enhance the roadway. 17<sup>th</sup> Avenue North shall be milled and resurfaced from Dixie Highway west to the rail right-of-way. In additional, F curb and gutter shall be added to aid with stormwater conveyance and alleviate any ponding issues.

Public Services estimates 100% of the amount set forth above will be for off-Property Infrastructure Improvements.

**Water:**

The Infrastructure Improvement Fund amount designated for City's Water Utility (\$500,000) is for the portion of infrastructure required to provide potable water and fire protection distribution mains to serve the Project's proposed 230 multifamily units with clubhouse, and first floor live/work space. This amount will finance the cost of engineering design, survey, subsurface locates, specifications, schedules, plans, permitting, construction, qualified inspection, restoration, certification and easements. The design and engineering shall include, but not limited to, construction set of plans and specifications as well as established agency permitting. Construction shall include the installation of distribution mains, valves, fittings, fire hydrant assemblies, water services to meter with associated appurtenances, disinfection & testing, inspection administration, and restoration. The improvement will be to serve the property bounded by 17<sup>th</sup> Avenue N to 16<sup>th</sup> Avenue N and from N. Dixie Hwy to the FEC railway right of way. The watermains shall be designed and installed to serve potable water as well as have capacity for fire flow protection of the Property.

Upon receiving the certificate(s) of completion for the watermain distribution system, the Owner shall provide the City with a bill of sale of the infrastructure assets, utility easement dedication as needed, and other transfer documents such as owner affidavits and warranty terms. The warranty terms shall, at a minimum, be consistent

with the warranty requirements set forth in this Agreement.

The City has identified the need to upsize the watermain to serve this Property with the necessary fire flow protection. The increased watermain size extension was recently included in a project design on 18<sup>th</sup> Avenue N that will soon start in construction. The capacity upgrades include the extension of an 8" watermain from the west through the FEC railway right of way. The upsized main will afford the Property fire flow protection coverage that would be required if and when the 1601 N. Dixie Hwy building construction takes place. The further extension of this main will be necessary in order to fulfill the capacity needs of the Property as well as providing the distribution needs within the Property parcel.

The Water Utility estimates 50% of the amount set forth above will be for off-Property Infrastructure Improvements and 50% of the amount set forth above will be for on-Property Infrastructure Improvements.

**Stormwater:**

The Infrastructure Improvement Fund amount designated for the City's Stormwater Utility (\$100,000) is for the portion of infrastructure required to provide a stormwater collection and management systems to serve the Project's proposed multifamily with commercial use space of approximately 5.46 acres. This amount will finance the cost of engineering design, survey, subsurface locates, specifications, geotechnical data reports, schedules, plans, permitting, construction, qualified inspection, restoration, and certification. The design and engineering shall include, but not limited to, construction set of plans and specifications as well as established agency permitting and conforming to City stormwater policy. Construction shall include the installation of stormwater mains, catch basin structures, manholes, exfiltration trench, stormwater management basins, inspection administration, and restoration. The improvement will be to serve the property bounded by 17<sup>th</sup> Avenue N to 16<sup>th</sup> Avenue N and from N. Dixie Hwy to the FEC railway right of way.

The Stormwater Utility estimates 100% of the amount set forth above will be for off-Property Infrastructure Improvements.

**Sanitary Sewer:**

The Infrastructure Improvement Fund amount designated for the City's Sanitary Sewer Utility (\$200,000) is for the portion of infrastructure required to provide sanitary sewer collection system to serve the Project's proposed 230 multifamily units with clubhouse, and first floor live/work space. This amount will finance the cost of engineering design, survey, subsurface locates, specifications, schedules, plans, permitting, construction, qualified inspection, restoration, certification and easements. The design and engineering shall include, but not limited to, construction set of plans and specifications as well as established agency permitting. Construction shall include the installation of collection mains, sewer doghouse manholes, standard sewer manholes, service lateral to public cleanout, public cleanout assembly, testing, inspection administration, and restoration. The improvement will be to serve the property bounded by 17<sup>th</sup> Avenue N to 16<sup>th</sup> Avenue N and from N. Dixie Hwy to the FEC railway right of way.

Upon receiving the certificate(s) of completion for the sanitary sewer collection system, the Owner shall provide the City with a bill of sale of the infrastructure assets, utility easement dedication as needed, and other transfer documents such as owner affidavits and warranty terms. The warranty terms shall, at a minimum, be consistent with the warranty requirements set forth in this Agreement.

The Sanitary Sewer Utility estimates 10% of the amount set forth above will be for off-Property Infrastructure Improvements and 90% of the amount set forth above will be for on-Property Infrastructure Improvements.

**EXHIBIT "D"**  
**Calculations for Utility Incentive Fund**

1. Water and Sewer Calculation:

To determine the Water and Sewer Incentive amount, estimate that the average apartment unit consumes an average of 120 gallons of water per day. Using that estimation, calculate the Water and Sewer amounts as follows for the Volume Charge:

<b>Volume Charge Calculation Water</b>	
Gallons per day	120
Days	30
Monthly Gallon Usage	3,600
Divide by 100 (bill by hundreds of gal.)	36
Multiple by Block 1 Usage Rate of .319	<b>\$11.48</b>

<b>Volume Charge Calculation Sewer</b>	
Gallons per day	120
Days	30
Monthly Gallon Usage	3,600
Divide by 100 (bill by hundreds of gal.)	36
Multiple by Block 1 Usage Rate of .383	<b>\$13.79</b>

Once the appropriate volume charge for Water and Sewer is established, add the base charges that currently appear on water and sewer bills per the fee schedule:

<b>Charge Description</b>	<b>Water</b>	<b>Sewer</b>
Customer Charge	\$4.97	\$4.10
Base Facility Charge	\$14.82	\$8.57
Volume Charge	\$11.48	\$13.79
<b>Total Bill</b>	<b>\$31.27</b>	<b>\$26.46</b>
<b>Total Water/Sewer</b>	<b>\$57.73</b>	

Then determine the total cost of Water and Sewer for 230 units for 36 months at \$58 per month and calculate the Incentive discount of 2.5%:

<b>Discount Calculation</b>	
Apt Units	230
Avg Bill	\$58
Total Months	36
Total Charges for 3 years	\$480,240
<b>2.5% Discount</b>	<b>\$12,006.000</b>

2. Stormwater Calculation:

To determine the Stormwater amount, calculate the total amount of Equivalent Residential Units (ERU's) and apply the fee of \$75.60 per ERU (current fee amount). Once the annual cost of Stormwater is determined, multiple by 3 years and then calculate the Incentive discount at 25% of that amount:

<b>Stormwater Calculation</b>	
Property Area (SF)	247,486.14
Propose Impervious	98,970.46
ERU Calc (Prop Imp/1715 SF)	57.7
ERU Cost per year	\$75.60
Total Stormwater Cost for 3 years	\$13,086.36
<b>25% Discount</b>	<b>\$3,271.59</b>

3. Electric Utility Calculation:

To determine the Electric Utility amount, calculate the average kWh cost per square foot of a facility of similar type and multiply that cost by the overall building square footage to obtain an estimated Annual Electric Revenue generated amount.

<b>Average Annual Electrical Costs &amp; Revenue</b>	
Avg. annual electrical electrical costs kWh/Sq. foot	\$ 1.00
Building Square Footage	197,160
Annual Electric Revenue	\$ 197,160.00

Next, establish a 3-year average of Annual Electric Revenue and calculate the Incentive discount at 25% of that amount:

<b>3-Years</b>	
Annual Electric Costs	\$ 197,160.00
3-YR Electrical Costs	\$ 591,480.00
25% Developer Incentive	\$ 147,870.00