

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into as of this ___ day of _____, 2020 (the "Effective Date"), by and between OAKLAND PARK STORAGE BUILDERS, LLC, a Delaware limited liability company (the "Developer") and the CITY OF OAKLAND PARK, FLORIDA, a Florida municipal corporation (the "CITY").

RECITALS

- A. Developer is the owner of approximately 0.88 acres generally located near 880 W. Prospect Road, Oakland Park, FL 33309, as more particularly described on Exhibit A attached hereto ("Property").
- B. Developer intends to seek the required government approvals to build and operate a self storage facility on the Property and has agreed to enter into a Commercial Lease for a two-story fire station unit to consist of not less than 11,300 net square feet located on the first and second floor of the self storage facility.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein set forth, the Developer and CITY hereby agree as follows:

Article 1. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference.

Article 2. General; Project; Definitions.

2.1 General. The purpose of this Agreement is to provide the terms and conditions pursuant to which the Developer shall develop the Property. The Property shall be entitled and developed in substantial accordance with the terms set forth in this Agreement, the Conceptual Plan, the Site Plan, and Applicable Laws (all as hereinafter defined). From and after the date of this Agreement, Developer shall diligently, expeditiously, and in good faith take all action necessary to develop the Property for the Project in accordance with the terms and conditions of this Agreement.

2.2 Project. The Project shall include the development and construction of a facility consisting of two (2) components within the same building: 1) a commercial self storage component ("Self Storage Component"), and 2) a Fire Station ("Fire Station Component"). The Fire Station component shall include the following specifications, and as further depicted in the schematic design documents to be provided by the Developer prior to the City entering into a Commercial Lease for the Fire Station component:

(a) Fire Station Component Requirements:

- i. Two-story Fire Station Component consisting of not less than 11,300 net square feet, and located on the first and second floors of the self storage component as generally set forth on the Conceptual Plan and Site Plan attached hereto; Shell construction only unless otherwise specified in this Agreement.
- ii. All utility (water, sewer, electrical, communications, IT/data, etc.) connections to the self storage component to be provided and properly sized with all conduits and connections for the Fire Station component utilities separated from the self-storage operation. The Developer's Utility plans shall be approved by the City prior to installation;

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- iii. Parking area/apparatus bay area to be completely fenced and gated with automatic four-fold trackless folding gate. Gate and control system to be approved by City prior to installation. Underground conduits as needed for gate operation from the fire station shall be installed by Developer;
- iv. Fire Station Component shall include two (2) drive-through bays each with 14' wide by 16' high clearance ingress/egress openings with four-fold doors on both the exit and entrance sides. All doors and windows shall be approved by City prior to installation;
- v. The Interior of each apparatus bay to have the following minimum dimensions: 40' wide by 17'8" high (clear to bottom of lowest part of the structure and 66' deep);
- vi. All drivable areas within the Fire Station component, including apparatus bays, shall be designed for heavy loading, including soil compaction/subsoil improvements, asphalt and concrete paved areas to achieve full-service loading. Geotechnical report to be completed by the developer shall be submitted with plan submittals to the City for review and approval;
- vii. Exterior openings for ventilation, including louvers, exhaust fans, etc. to be provided in the building exterior wall at locations agreed upon by City;
- viii. Enclosed and secured vertical chases and conduits from 1st floor Fire Station Component to the roof shall provide for all wiring or ductwork for Fire Station component equipment to be located on the roof of the structure;
- ix. Developer to provide access to and space on structure roof for Fire Station component communications equipment, including structural supports and infrastructure required for equipment to be securely anchored and installed at the City's sole expense;
- x. All exterior walls shall be a minimum of 8" thick and designed to meet essential facilities design requirements, subject to the CITY's approval. Exterior walls and interior apparatus bay walls to be concrete/masonry only. Entire building shall be Category 5 building hurricane rating;
- xi. All interior apparatus bays to include center-placed full length trench/floor drains for wash down collection routed to sanitary system via oil/water separator;
- xii. 4-hour rated separation to be provided between Fire Station Component and self-storage components;
- xiii. Conduits necessary to support NFPA 13 compliant fire sprinkler system;
- xiv. Conduits necessary to support NFPA 72 compliant fire alarm system with total building smoke detection coverage;
- xv. Conduits necessary to support Separate access control and security system (cameras). to be approved by City prior to installation;

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- xvi. Conduits necessary to support fire station alerting system;
- xvii. Given the City's Fire Rescue needs, placement of building elements including but not limited to columns, stairs, elevators, walls are subject to change based on City needs and reviews, and subject to the CITY's approval.

(b) Exterior building requirements:

- i. Fire Station Component Parking Lot Area – total of ten (10) dedicated parking spaces with nine (9) 9' by 18' spaces and one (1) Florida Building Code compliant ADA space;
- ii. Fire Station Component to include a minimum of 40' wide by 35' deep apparatus concrete driveways on both the entry and exit sides;
- iii. All vehicle ingress/egress areas will be located on the Property and related/required improvements shall be completed by Developer;
- iv. Developer shall provide appropriate space for City installation of a full capacity emergency standby generator and underground fuel tank, as depicted in the schematic design documents. Generator to be located in a secure and protected area. Underground fuel tank area provided shall be in a location acceptable to the City and other regulatory agencies having related jurisdiction, (Ex. Broward County Environmental). If an underground fuel tank is not feasible, Developer shall provide the space necessary to install a sperate enclosed area for an above ground fuel tank;
- v. Fire Station Component to be provided separate paved and enclosed area for dumpster/cart solid waste service;
- vi. Development to include layout of drives, proper signing, and pavement markings to assure ingress and egress are not hindered by commercial operations;
- vii. Developer to provide a location on the site and near the building for mechanical equipment to be used by the Fire Station Component, as depicted in the schematic design documents;
- viii. Exterior covered and enclosed outdoor cooking and seating area to be provided with controlled access to building. Area to include gas and electrical hookups. Location to be approved by the City;
- ix. Developer to provide grease trap for kitchen and oil/water separator as required for the apparatus bays;

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- x. All parking, excluding specifically designated loading and unloading spaces used by the Developer can be used for Fire-Rescue related purposes;
- xi. City and the Developer shall collaborate to improve upon the standard façade of the Self-Storage Operation. City shall provide the Developer with a list of upgrades to the façade and exterior of the Self- Storage operation. City shall have final approval for exterior design (façade, decoration, lettering, and associated elements) for entire structure;
- xii. Developer to provide a fire hydrant at entrance side of the station for use by the Fire Rescue personnel.

2.3 **Definitions.** As used in this Agreement, the following defined terms shall have the following meanings set forth below.

"Agreement" shall mean this Development Agreement.

"Applicable Laws" shall mean any applicable law, statute, code, ordinance, regulation, permit, license, approval or other rule or requirement now existing or hereafter enacted, adopted, promulgated, entered, or issued by Governmental Authorities, including, but not limited to, the Florida Building Code.

"Building Shell" shall mean the basic minimum enclosure of a building consisting of the foundation and floors, structural framework, roof coverings, exterior walls and exterior doors and windows, fire sprinkler systems, underground electrical power stubs, plumbing system stubs, but excluding all Tenant Improvements.

"Business Day" shall mean any day that the City is open for business.

"City" shall mean the City of Oakland Park, a Florida municipal corporation.

"Code" shall mean the City's Charter, Code of Ordinances, and Land Development Regulations now existing or hereafter enacted, adopted, promulgated, entered, or issued by the City.

"Design Contracts" shall mean those contracts between the Developer and the engineers and architects who have been engaged by the Developer to provide engineering and design services for the Project.

"Developer" shall have the meaning provided in the introductory paragraph herein.

"Developer's Representatives" shall mean Developer and its directors, officers, employees, agents, affiliates or other representatives (including without limitation, attorneys, accountants, engineers, experts, consultants, contractors, financial advisors, and any other person or entity performing services for Developer in connection with this

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Agreement), and their respective successors and assigns.

"Development Approval" as used in this Agreement, shall mean all City approvals, consents, permits, amendments, rezonings, special exceptions or variances as well as such other official actions of the Governmental Authorities which are necessary to develop the Project.

"Development Review Application" shall mean Developer's applications to the City to approve the Site Plan as required in the development review procedure.

"Development Review Application Date" shall mean that date which is thirty (30) days after approval of this Agreement by the CITY Commission by which the Developer must submit to the CITY the Development Review Application

"Effective Date" shall mean the date when the last one of the Developer and CITY executes this Agreement and delivers an unaltered counterpart hereof to the other party, which date shall be inserted on the first page of this Agreement.

"Governmental Authorities" shall mean the United States Government, the State of Florida, Broward County, the City or any other governmental agency or any instrumentality of any of them.

"Project" shall have the meaning as provided herein.

"Surviving Obligations" shall mean any indemnities, covenants and obligations of Developer which survive any termination of this Agreement. Unless otherwise expressly set forth in this Agreement, all indemnities of Developer contained in this Agreement shall be Surviving Obligations.

"Termination Notice" shall mean written notice given by Developer or the CITY stating that Developer or CITY has elected to terminate this Agreement in accordance with the terms set forth herein.

Article 3. Approvals.

3.1 **Development Approvals.** The term **"Development Approvals"** as used in this Agreement, shall mean all City approvals, consents, permits, amendments, rezonings, special exceptions or variances as well as such other official actions of the City or any other governmental entity which are necessary to develop the Project. Only conceptualls have been reviewed and no approval has been issued. The CITY hereby acknowledges and agrees that the Developer's Conceptual Plan, as shown on **Exhibit B** attached hereto and made a part hereof, is acceptable to the CITY. The foregoing shall in no way constitute or be construed as the approval or issuance of a Development Order, it being expressly acknowledged and agreed by the Developer that the "Site Plan" will require separate submission, review, and approval pursuant to the requirements of the CITY's Code and requirements of any other Governmental Authorities. The Developer shall submit to the CITY for its review and approval, all applications and other submittals required to obtain the Development Approvals for the Project, such approval not to be unreasonably withheld, delayed or conditioned provided applications and other submittals are consistent with the approved Project and comply with all Applicable Laws. If any such documents in which the CITY's joinder is requested contain material financial obligations binding (or which may become binding) upon the CITY, such obligations must be assumed by the Developer. If this Agreement is terminated, then upon the CITY's request, Developer shall withdraw all of its pending applications and terminate all agreements which are

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terminable and/or withdrawable by Developer, with respect to the Development Approvals, which foregoing obligations shall survive termination of this Agreement.

3.2 Third Party Review: The Developer may at its sole discretion in order to maintain and or expedite the Development Approval process, including construction and inspection phase, request that the CITY engage the services of an outsourced consulting firm to complete the various development reviews. The Developer shall be responsible for any additional costs associated with the engagement of the third party reviews.

3.3 Site Plan. The CITY hereby acknowledges the Developer's Conceptual Plan, as shown on **Exhibit B** attached hereto and made a part hereof submitted by Developer. Only conceptals have been reviewed and no approval has been issued. The foregoing shall in no way constitute or be construed as the approval or issuance of a development order, it being expressly acknowledged and agreed by the Developer that the "Site Plan" will require separate submission, review, and approval pursuant to the requirements of the CITY's Code and requirements of any other Governmental Authorities.

The entire proposed Site Plan, to be based upon the Conceptual Plan attached as **Exhibit B** hereto, shall be approved by the City and all applicable Governmental Authorities in order for the Developer to proceed with development of the Project. Except for a Permitted Change no changes, alterations or modifications shall be made to the Site Plan (either prior to or after Development Approvals) without the prior written approval of the CITY, which approval shall not be unreasonably withheld, delayed or conditioned; provided, however such approval may be withheld in the CITY's sole and absolute discretion if the requested change, alteration or modification consists of a Material Change. For purposes of this Agreement, a "**Material Change**" to the Site Plan means and refers to a requested change, alteration or modification that (i) Change in use from the intended storage facility component, or the addition of any other component to the development, (or number of parking spaces shall be a Material Change) (iv) decreases or increases the height of any building, (v) deletes any amenities, (vi) significantly modifies traffic circulation on the site as determined by the CITY Manager and/or (vii) significantly alters the Architectural Scheme from that previously approved by the CITY, as determined by the CITY Manager. All Material Changes are subject to requirements of the City's review process. Following approval of the Site Plan for the Project by the City pursuant to the City's Code, except for Permitted Changes, the Developer shall not initiate or request review by the City of any changes or alterations to the approved Site Plan for the Project, which approval shall be granted in CITY's sole discretion. The CITY shall expeditiously process all requests for Material Changes.

3.4 Plans and Specifications; Construction Documents. Following Development Approvals of the Site Plan and prior to full submittal of construction documents for permitting the Developer shall prepare and submit to the City for review schematic design documents in connection with the Developer's work related to the Project ("Work"). The City shall confirm that the plans and specifications are in compliance with the provisions of this Agreement (e.g., schematic, design development, and construction) (collectively referred to as the "**Plans and Specifications**"). The Plans and Specifications shall comply with all applicable laws. The CITY shall provide its written approval or disapproval (specifying the basis for disapproval and/or comments) to any such Plans and Specifications as to the existence of material changes within ten (10) Business Days of receipt of request for same. The CITY review and approval of the Plans and Specifications as set forth herein is not the review required by the City, but only a general review for compliance with the terms and conditions of this Agreement. If the CITY fails to either tacitly approve or disapprove (either with or without conditions) the submitted Plans and Specifications within fifteen (15) Business Days following written notice from the Developer to the CITY advising the CITY that it has failed or refused to provide comments to the as afore-mentioned Plans and Specifications submittal by Developer to the CITY, the Plans and Specifications in the form submitted shall be deemed approved as to compliance

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with the elements of this agreement by the CITY. Without limiting the foregoing, the approval of the Plans and Specifications pursuant to this Agreement shall in no way constitute or be construed as the approval or issuance of a Development Order, it being expressly acknowledged and agreed by Developer that the Plans and Specifications will require separate submission, review, and approval pursuant to the requirements of the City's Code and/or its applicable rules and regulations. Once any Plans and Specifications receive the written approval of the CITY or are deemed approved pursuant to this Agreement, such Plans and Specifications shall be deemed the "**Construction Documents**." The Construction Documents for the Project shall be signed and sealed by the Developer's design professional and shall consist of: (a) working drawings, (b) technical specifications, (c) schedule for accomplishing improvements, and (d) such other information as may be required by the City in accordance with its Code and as otherwise necessary to confirm compliance with this Agreement. No Material Changes or alterations (other than Permitted Changes) shall be made to any Construction Documents, without the prior written approval of the CITY, which approval shall be in the CITY's sole discretion. Developer is hereby authorized to make Permitted Changes without CITY approval. A "**Permitted Change**" shall mean (i) a change which is required to be made to comply with Applicable Laws; (ii) a change which involves only substituting materials of comparable or better quality; (iii) a change required by the failure of the Construction Documents to satisfy field conditions where the change will not have a material adverse effect on the quality, appearance or function of Project; (iv) changes that fall within the acceptable percentages, as described herein; and (v) a change which is made to correct inconsistencies in various Construction Documents; provided, however, in each such instance, the Developer shall obtain any necessary approvals to a Permitted Change from the City or any other Governmental Authority to the extent required.

3.5 Timeline; Development, Development Approvals and Permits.

- (a) Developer will file its Development Review Application with the City within thirty (30) calendar days after execution of this Agreement and shall use commercially reasonable efforts in order to obtain the City Development Approval within one hundred eighty (180) calendar days as required and subject to extension by the CITY, as determined by the CITY Manager. The parties agree that they will act promptly and in good faith throughout the approval process in an effort to obtain the City Development Approval in as short a time period as is possible within the applicable laws that define the approval process. City will not act in an arbitrary or capricious manner in processing, reviewing and approving the Development Review Application. Furthermore, the City shall include the Developer in the City's internal Development Review Committee (DRC) process prior to any public hearings related to the Development Review Application. Prior to submission of the Development Review Application, City's staff shall consult with and advise Developer on resolution of zoning and related entitlement issues associated with the Development Review Application. Developer shall prepare a preliminary traffic and circulation plan for the Project as part of its submission of the Development Review Application and related entitlement approvals. Developer shall be responsible for all cost and fees associated with securing City Development Approval and related entitlement approvals.
- (b) Assuming Developer obtains the City Development Approval, Developer shall use commercially reasonable efforts in order to obtain all Permits necessary to permit the construction and completion of the Project on the Property within 180 calendar days from obtaining the Development Approvals and subject to extension by the CITY, as determined by the CITY Manager. The parties agree that they will act promptly and in good faith throughout the approval process for such Permits controlled by the City (such as building permits) in an effort to obtain the Permits

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controlled by the City in as short a time period as is possible within the applicable laws that define the approval process. City will not act in an arbitrary or capricious manner in processing, reviewing and approving any applications for Permits controlled by City. Developer shall be responsible for all cost and fees associated with securing the Permits.

3.6 Failure to Provide Approvals: In the event that the CITY and or its boards, departments, or agencies, acting in their police power/quasi-judicial capacity to consider certain governmental actions, fails to provide development approvals necessary to construct the Project, after the Developer submitted applications necessary for the Project, Plans and Specifications in compliance with applicable laws and in accordance with the Developer's Conceptual Plan shown on **Exhibit B** attached hereto, such failure will be deemed a termination of this Agreement, and the CITY'S Long-Term Lease Agreement with the Developer, or its affiliated Landlord for the Fire Station Component.

Article 4. Development Obligations.

4.1 Construction Contract. All contractors and subcontractors on the Project shall be properly licensed and insured and properly skilled in the type of work being done.

- a. Fire Station Component Construction Costs. The CITY's contribution to the Developer for the Fire Station Component shall not exceed One Million and 00/100 Dollars (\$1,000,000.00) ("Fire Station Component Price Cap"). Any costs to the Developer that exceed the Fire Station Component Price Cap shall be the sole responsibility of the Developer. The parties agree the following items are included in the Fire Station Component Price Cap:
 - i. All items listed in Section 2.2a entitled "Fire Station Component Requirements."
 - ii. All items listed in Section 2.2b entitled "Exterior Building Requirements."
 - iii. 50% of the cost of the elevator to be contained within the Fire Station Component.
 - iv. Additional construction costs to the exterior and façade of the Self Storage Component. Improvement costs under this Section shall be approved by the CITY in writing prior to being applied as part of the Fire Station Component Price Cap.
 - v. The Developer will provide the City with the estimated construction cost of the afore-mentioned items no later than sixty (60) calendar days after the execution of the Agreement. The City shall have the 30 days to review the Developers construction cost estimate and either concur or request clarification and or justification of the cost.
- b. Fire Station Component Payment Installments. The CITY shall pay to the Developer for construction of the Fire Station Component in three (3) equal installments, an amount not to exceed the Fire Station Component Price Cap:
 - i. The first installment payment by the CITY shall be due within 180 Calendar days from the commencement of construction, provided that the City has obtained confirmation from the Building Official that the "Building Shell" is complete. If the Developer has not completed the "Building Shell" the City shall withhold

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- payment until the Building Official has confirmed that the “Building Shell” is complete.
- ii. The second installment payment by the CITY shall be paid to the Developer 180 Calendar days after the first installment payment, provided that the Developer has received a Temporary Certificate of Occupancy for the Building. If the Developer has not obtained a Temporary Certificate of Occupancy, the City will withhold payment until the Temporary Certificate of Occupancy is obtained.
 - iii. The third installment payment by the CITY shall be paid to the Developer no later than 60 days after the final completion of the Fire Station Component. Final completion is defined as successfully completing all requirements necessary to obtain a Certificate of Occupancy for the Fire Station Component.
- c. Self Storage Component. The Developer shall pay for all fees and expenses in connection with construction of the Self Storage Component.

4.2 Tenant Improvements. The CITY shall be afforded the opportunity to either for construct the interior space for the Fire Station Component or elect to have the Developer construct the interior space of the Fire Station Component (“Tenant Improvements”). The Developer agrees to allow the CITY to utilize a contractor of its choice to complete the Tenant Improvements for the Fire Station Component after the Long-Term Lease is executed, and the CITY shall be responsible for the costs of the Tenant Improvements. All tenant improvements are to be owned by tenant.

4.3 In addition to any warranties provided by Applicable Laws, Developer shall cause the general contractor to warrant the Work for a period of one (1) year from the date of Project Final Completion not to include, however, typical operating repairs and maintenance. Other than with respect to the foregoing warranty, all maintenance and repair obligations with respect to the Work shall be the responsibility of the CITY.

4.4 Long-Term Lease. The transaction contemplated between Developer and CITY shall be subject to a long term lease (“Long-Term Lease”) for the Fire Station Component. Each party shall bear its own costs and expenses in connection with the negotiation and execution of the Long-Term Lease. The material Long-Term Lease terms shall be as follows:

- i. Term: The Long-Term Lease shall be for a period of 55 years with one option to renew for an additional 10 year term.
- ii. Long-Term Lease Costs: Annual rent to be in the amount of \$1.00 per annum to be paid up-front.
- iii. Common Area Maintenance: Developer shall not assess any Common Area Maintenance charges during the term of the Lease or any subsequent additional terms. The CITY shall be responsible for maintaining, the 11,300 net square foot two-story fire station and all associated parking areas, exterior enclosures,

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apparatuses, and fixtures associated with the Fire Station operation. Notwithstanding the foregoing, the CITY shall not be responsible for maintenance of the structural elements of the facility housing the self-storage and fire station components.

- iv. Utilities: Fire Station Component utilities shall be separately metered and the responsibility of the City.
- v. Security: Security of the Fire Station Component shall be the responsibility of the City.
- vi. Termination: Developer shall not have the right to terminate or initiate an eviction action to evict the CITY from the Fire Station Component.
- vii. License Agreement: The Developer shall have the right to use the CITY dedicated Property for the full term of the Long-Term Lease and any subsequent renewals.
- viii. The City shall hold the Developer harmless for any loss or damage to the Property or its improvements resulting or arising from the City's negligence in the use and operation of its Fire Station Component.

Article 5. Default; Termination.

5.1 Developer Default. An "Event of Default" or "default" entitling CITY to its remedies below shall occur by the Developer on the happening of any of the following events:

- (a) Failure to Observe Agreement. The Developer shall fail to observe, satisfy or perform any material term, covenant or agreement contained in this Agreement and such failure shall continue without remedy for ten (10) days after written notice thereof from the CITY to the Developer; provided, however, that if such failure is capable of cure but cannot reasonably be cured within ten (10) days, such failure shall not constitute an Event of Default so long as the Developer, within the ten (10) day period, commences and thereafter is in good faith proceeding diligently and continuously to remedy such failure; or
- (b) Inaccuracy of Representation and Warranties. Any representation or warranty made herein by the Developer shall prove to have been incorrect in any material respect as of the date made; or
- (c) Work Stoppage. The occurrence of any unscheduled work stoppage, or any work stoppage inconsistent with industry standards, of any building within the Project, or portion thereof, for more than ten (10) consecutive days, other than as a result of Force Majeure; or
- (d) Abandonment of Development Approvals. The Developer abandons the diligent prosecution of any of the Development Approvals for the Project, or withdraws

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applications for the Development Approvals, each without the consent of the CITY, without amending or re-submitting requests for the Development Approvals within one hundred twenty (120) days; or

- (e) Material Adverse Change. The occurrence of a material adverse change in the financial condition of the Developer or its members that materially and adversely impairs the Developer's ability to perform or to cause to be performed its obligations under this Agreement; or
- (f) Bankruptcy. The Developer or its members shall generally fail to pay debts as such debts become due or shall admit in writing its or their inability to pay its or their debts as such debts become due or shall make a general assignment for the benefit of creditors; the Developer or its members shall commence any case, proceeding, or other action seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or them or its or their debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian, or other similar official for it or them or for all or any substantial part of its or their property; or any case, proceeding or other action against the Developer or its members shall be commenced seeking to have an order for relief entered against the Developer or its members, as debtor, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of the Developer or its members or their debts under any law relating to insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official for the Developer or its members or for all or any substantial part of their respective properties, and (i) the Developer or its members shall by any act or omission, indicate its consent or approval, of, or acquiescence in such case, proceeding or action, (ii) such case, proceeding or action results, in the entry of an order for relief that is not fully stayed within sixty (60) days after the entry thereof, or (iii) such, case, proceeding or action remains undismissed for a period of ninety (90) days or more or is dismissed or suspended only pursuant to Section 305 of the United States Bankruptcy Code or any corresponding provision of any future United States bankruptcy law; or
- (g) Attachment/Garnishment. The issuance of any attachment or garnishment against the Developer and the failure to discharge the same (by bond or otherwise) within sixty (60) days from the issuance thereof, and the impact of which shall materially and adversely affect the Developer's ability to perform its obligations hereunder; or
- (h) Judgments. One or more judgments, orders or decrees shall be entered against the Developer or its members which materially interferes with Developer's Construction Financing or ability to perform under this Agreement, and such judgments, orders, or decrees are not fully covered by effective insurance (less deductibles) or shall not have been vacated, discharged, stayed or bonded pending an appeal within thirty (30) days from the entry of such judgment, order or decree; or

5.2 CITY's Remedies. Upon the occurrence of an Event of Default by the Developer, the CITY shall be entitled to terminate this Agreement and the Long-Term Lease, and to equitable remedies (excluding specific performance) and, the following additional remedies set forth below:

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5.2.1 The CITY may elect to terminate this Agreement and the Long-Term Lease upon written notice to Developer.

5.3 CITY Default. An "Event of Default" or "default" entitling the Developer to its remedies below shall occur by the CITY upon the happening of any of the following events:

- (a) Failure to Observe Agreement. The CITY shall fail to observe, satisfy or perform any material term, covenant or agreement contained in this Agreement and such failure shall continue unremedied for forty-five (45) days after written notice thereof from the Developer to the CITY; provided, however, that if such failure is capable of cure but cannot reasonably be cured within forty-five (45) days, such failure shall not constitute an Event of Default, so long as the CITY provides the Developer with written notice within fifteen (15) days of receipt of the Developer's default notice advising the Developer that the default cannot be reasonably cured within forty-five (45) days and specifying the reasons therefore and, within the forty-five (45) day period, commences and thereafter is in good faith proceeding diligently and continuously to remedy such failure, but in no event shall any additional time to cure granted hereunder exceed one hundred twenty (120) days in the aggregate after CITY's receipt of the original written default notice.

5.4 Developer's Remedies. If CITY fails to materially perform or observe any of the covenants, restrictions, requirements and/or stipulations to be performed and/or observed by CITY hereunder, and such failure to perform or observe is not cured within forty-five (45) calendar days after written notice thereof from Developer to CITY, then the Developer shall be entitled to terminate this Agreement.

5.5 Attorney-in-Fact. For the purpose of carrying out the provisions of this Agreement but only on the occurrence of an Event of Default by the Developer and to the extent necessary to enable the CITY to exercise its rights and remedies on the occurrence of such Event of Default, the Developer hereby constitutes the CITY and each of its officials with full power of substitution, as its true and lawful attorney-in-fact to complete the Project and to do and perform any all actions permitted hereunder which directly relate to the Completion of the Project.

5.6 Termination. This Agreement (but not the Surviving Obligations) shall terminate upon the occurrence of the earlier of the following events:

- (a) A termination of this Agreement as may be permitted under a Section of this Agreement; or
- (b) Failure of the CITY to provide the approvals necessary to develop the project as set forth in the schematic design documents in **Exhibit B** attached hereto.
- (c) The completion of the development and construction of the Project and the remaining obligations of the parties under this Agreement with respect to the Project pursuant to the terms and conditions of this Agreement.

5.7 Effect of Termination. If this Agreement shall terminate, the Developer shall, as soon as practicable, but in no event later than the fifteenth (15) days after a termination notice is given, or such shorter period of time in the event of emergency or a life/safety issue:

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- (a) Unless the reason for the termination was the failure of the CITY to provide the necessary approvals as set forth herein, deliver to the CITY all Plans and Specifications, Construction Documents, materials, equipment, tools and supplies, keys, contracts and documents relating to the Fire Station Component, and copies of such other accountings, papers, and records as the CITY shall request pertaining to the Project;
- (b) Furnish all such information and otherwise cooperate in good faith in order to effectuate an orderly and systematic ending of the Developer's duties and activities hereunder, including, without limitation, the delivery to the CITY of any written reports required hereunder for any period not covered by prior reports at the time of termination. With regard to the originals of all papers and records pertaining to the Project, the possession of which are retained by the Developer after termination, the Developer shall: (i) reproduce and retain copies of such records as it desires; (ii) deliver the originals to the CITY; and (iii) not destroy originals without first offering to deliver the same to the CITY.
- (c) Notwithstanding anything herein to the contrary, all representations and warranties of Developer shall survive the termination of this Agreement for a period of one (1) year along with any other obligations of Developer that expressly survive termination or by their nature need to survive termination in order to provide the CITY with ability to enforce its rights and remedies hereunder.

Article 6. Indemnification.

6.1 Indemnification by the Developer. The Developer agrees to indemnify and hold the CITY, its Commission members, agents, consultants and employees harmless, to the fullest extent permitted by law, from all liabilities, losses, interest, damages, costs and/or expenses (including, without limitation, reasonable attorneys' fees, whether suit is instituted or not, and if instituted, whether incurred at any trial, appellate or post judgment level), threatened or assessed against, levied upon, or collected from, the CITY arising out of, from, or in any way connected with or arising from the negligence, gross negligence, fraud, and/or breach of trust of the Developer in the performance of this Agreement. Notwithstanding the foregoing, the Developer shall not be required to indemnify the CITY with respect to any liability, loss, damages, costs or expenses suffered as a result of the negligence, gross negligence and/or willful misconduct of the CITY or its agents. To the extent this indemnification clause or any other indemnification clause in this Agreement is subject to the provisions of Chapter 725, Florida Statutes, and such does not comply with Chapter 725, Florida Statutes, as such may be amended, such provision shall hereby be interpreted as the parties' intention for the indemnification clauses and to comply with Chapter 725, Florida Statutes, as such may be amended.

6.2 Third Party Claim Procedure. If a third party (including, without limitation, a governmental organization) asserts a claim against the CITY and indemnification in respect of such claim is within the scope of indemnification and indemnification is sought under the provisions of this Article by the CITY against the Developer, the CITY shall promptly give written notice to the Developer of such claim. The Developer shall have the right at its election to take over the defense or settlement of such claim by giving prompt written notice to the CITY at least five (5) Business Days prior to the time when an answer or other responsive pleading or notice with respect thereto is required. If the Developer makes such election, it may conduct the defense of such claim through counsel or representative of its choosing (subject to the CITY's approval of such counsel or representative, which approval shall not be unreasonably withheld), shall be responsible for the expenses of such defense, and shall be bound by the results of its defense or settlement

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of claim to the extent it produces damage or loss to the CITY. The Developer shall not settle any such claim without prior notice to and consultation with the CITY and no such settlement involving any equitable relief or which might have a material and adverse effect on the CITY may be agreed to without its written consent provided Developer may settle any claim without the CITY's prior consent if such claim may be settled solely by the payment of money. So long as the Developer is diligently contesting any such claim in good faith, the CITY may pay or settle such claim only at its own expense without receiving indemnification from Developer. Within twenty (20) Business Days after the receipt by the Developer of written request by the CITY for indemnification with respect to a claim in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00), the Developer shall make financial arrangements reasonably satisfactory to the CITY, such as the posting of a bond or a letter of credit, to secure the payment of its obligations under this Section in respect of such claim. If the Developer does not make such election, or having made such election does not proceed diligently to defend such claim, or does not make the financial arrangements described in the immediately preceding sentence, then the CITY may, upon three (3) Business Days' written notice (or shorter notice if a pleading must be filed prior thereto) and at the expense of the Developer, take over the defense of and proceed to handle such claim in its exclusive discretion and the Developer shall be bound by any defense or settlement that the CITY may make in good faith with respect to such claim. The parties agree to cooperate in defending such third party claims and the defending party shall have access to records, information and personnel in control of the other party or parties which are pertinent to the defense thereof. The City should indemnify the Developer for its negligence like any tenant would do.

6.3 Limitation on Indemnification. Notwithstanding anything in this Article to the contrary, Developer shall not have any obligation to indemnify or defend the CITY against any claims brought against the CITY by any third party challenging: the CITY's legal authority enter into this Agreement or the terms and provisions of this Agreement, regardless of whether such claim seeks monetary damages or injunctive, declaratory or other relief. In this event of any conflict between this Section and any other provision in Article 7, this Section shall control and govern.

6.4 Survival. The provisions of this Article shall survive the expiration or earlier termination of this Agreement.

6.5 Tort Liability. Any tort liability to which the CITY is exposed under this Agreement will be limited to the extent permitted by applicable law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, as may be amended, which statutory limitations will be applied as if the parties had not entered into this Agreement. The CITY expressly does not waive any of its rights and immunities under applicable law.

Article 7. Representations and Warranties.

7.1 Developer. The Developer represents and warrants to the CITY as follows:

- (a) That (i) it is a limited liability company duly organized, validly existing and in good standing under the laws of Florida; (ii) the execution, delivery and performance of this Agreement and the consummation of the transactions provided for in this Agreement have been duly authorized and upon execution and delivery by the Developer will constitute the valid and binding agreement of the Developer enforceable in accordance with its terms; and (iii) the execution and delivery of this Agreement and the performance by the Developer hereunder, will not conflict with, or breach or result in a default under, any agreement to which it is bound.

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- (b) That there are no pending, threatened, judicial, municipal or administrative proceedings, consent decrees or judgments against Developer which would materially and adversely affect Developer's ability to perform its obligations hereunder.
- (c) The Developer has the credit worthiness and financial capacity to reasonably obtain conventionally acceptable financing to complete this project.

7.2 CITY. The CITY represents and warrants to the Developer that it is a public body corporate and politic of the State of Florida duly organized under the laws of the State of Florida; (ii) the execution, delivery and performance of transactions provided for this Agreement have been duly authorized and upon execution and delivery by the CITY will constitute the valid and binding agreement of the CITY enforceable in accordance with its terms; and (iii) the execution and delivery of this Agreement and the performance by the CITY hereunder, will not conflict with, or breach or result in a default under any agreement to which it is bound.

7.3 Survival. The representative and warranties set forth in this Article shall survive the expiration or earlier termination of this Agreement.

Article 8. Inspections.

8.1 Upon prior notice (which for purposes hereof may include oral and/or telephone notice) the CITY shall have reasonable access to the Property for CITY inspections as per required in the agreement thereof provided that CITY's inspections do not interfere with the Work, but CITY shall not be obligated to conduct any such inspection. The Developer shall provide proper and safe facilities for such access and inspection by the CITY. If any of the Work is required to be inspected or approved by any public authority, the CITY shall cause such inspection or approval to be performed.

8.2 No inspection performed or failed to be performed by CITY shall be a waiver of any of the Developer's obligations or be construed as an approval or acceptance by CITY of the Work or any part thereof.

Article 9. Miscellaneous.

9.1 Notices. All notices, requests, consents, demands, approvals or other communications required or permitted under this Agreement shall be in writing, addressed to the appropriate person at the receiving party, and shall be (as elected by the person giving such notice): (a) hand delivered, (b) delivered by overnight courier by a nationally recognized courier, with all fees prepaid; (c) delivered by Registered or Certified Mail, in each case, return receipt requested and postage prepaid; or (d) delivered by email with "FORMAL NOTICE UNDER DEVELOPMENT AGREEMENT" in the subject line (but only if a party's email address is included in its notice address and a hard copy is delivered via one of the other methods described in (a) through (c)), addressed to:

- (a) If to the CITY:

City of Oakland Park, Florida
David Hebert, City Manager
3650 NE 12th Avenue
Oakland Park, FL 33334

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With copies to:

Goren, Cherof, Doody and Ezrol, PA
3099 East Commercial Boulevard, Suite 200
Fort Lauderdale, FL 33308
Attn: Donald J. Doody, Esq.
Email: ddoody@gorencherof.com

(b) If to the Developer:

Oakland Park Storage Builders, LLC
Richard Beavers, President.
11920 W Colonial Drive, Suite 20, Ocoee, FL 34761.
E-mail is rbeavers60@gmail.com

Each such notice shall be deemed delivered: (i) if delivered by hand, the date the receipt is signed; (ii) if sent by overnight courier, on the courier's confirmation of delivery date, (iii) if sent by Registered or Certified Mail, upon receipt as indicated by the date on the signed return receipt; (iv) if sent by email, the date the notice was emailed (but only if a party's email address is included in its notice address and a hard copy is delivered via one of the other methods described in (i) - (iii) above); or (v) if the notice is rejected or refused at a physical notice address shown above, or to such other address as either party may designate by notice to the other party from time to time (as long as such rejection or refusal of delivery occurs on a Business Day).

9.2 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute one and the same instrument.

9.3 Assignment. Except as expressly provided herein, the Developer may not assign this Agreement or any of its rights and obligations hereunder, in whole or in part, without the prior written consent of the CITY (which may be withheld in the CITY's sole discretion).

9.4 Project Representatives. The CITY hereby appoints the CITY Manager to serve as its representative. The CITY Manager shall have the right and authority to provide all consents and approvals, and take other actions, required hereunder on behalf of the CITY; provided, however the CITY Manager shall obtain the consent of the CITY Commission to the extent required by Applicable Laws or where specifically required under this Agreement. The Developer hereby appoints Richard Beavers to serve as its representative. The parties may change their respective designated representative(s) at any time by providing written notice thereof to the other party.

9.5 Governing Law. The nature, validity and effect of this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Florida.

9.6 Captions. Captions are for descriptive purposes only and shall not control or alter the meaning of this Agreement as set forth in the text.

9.7 Entire Agreement and Amendment. This Agreement constitutes the entire agreement between the parties hereto related to the development and construction of the Project and no modification hereof shall be effective unless made by a supplemental agreement in writing executed by all of the parties

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hereto. In the event of any conflict between the terms and provisions of this Agreement and the terms and provisions of the Letter of Intent, this Agreement shall control and govern.

9.8 No Joint Venture. The Developer shall not be deemed to be a partner or a joint venturer with the CITY, and the Developer shall not have any obligation or liability, in tort or in contract, with respect to the Property, either by virtue of this Agreement or otherwise, except as may be set forth to the contrary herein.

9.9 Severability. If any provision of this Agreement, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of the Agreement, or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

9.10 Successors. Except as herein otherwise specifically provided, this Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns.

9.11 Pronouns. Whenever from the context it appears appropriate, each term stated in either the singular or the plural shall include the singular and the plural, and pronouns stated in either the masculine, the feminine or the neuter gender shall include the masculine, feminine and neuter.

9.12 Attorneys' Fees. If any party commences an action against the other party to interpret or enforce any of the terms of this Agreement or as the result of a breach by the other party of any terms hereof, the non-prevailing party shall pay to the prevailing party all reasonable attorneys' fees, costs and expenses incurred in connection with the prosecution or defense of such action, including those incurred in any appellate proceedings, and whether or not the action is prosecuted to a final judgment.

9.13 Further Assurances. The parties to this Agreement have negotiated in good faith. It is the intent and agreement of the parties that they shall cooperate with each other in good faith to effectuate the purposes and intent of, and to satisfy their obligations under, this Agreement in order to secure to themselves the mutual benefits created under this Agreement; and, in that regard, the parties shall execute such further documents as may be reasonably necessary to effectuate the provisions of this Agreement; provided that the foregoing shall in no way be deemed to inhibit, restrict or require the exercise of the City's police power or actions of the City when acting in a quasi-judicial capacity.

9.14 Equitable Remedies. In the event of a breach or threatened breach of this Agreement by any party, the remedy at law in favor of the other party will be inadequate and such other party, in addition to any and all other rights which may be available, shall accordingly have the right of injunction in the event of any threatened breach of this Agreement by any party.

9.15 Third Party Rights. The provisions of this Agreement are for the exclusive benefit of the parties to this Agreement and no other party (including without limitation, any creditor of the CITY or the Developer) shall have any right or claim against the CITY or the Developer by reason of those provisions or be entitled to enforce any of those provisions against the CITY or the Developer.

9.16 Survival. All covenants, agreements, representations and warranties made herein or otherwise made in writing by any party pursuant hereto shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

9.17 Remedies Cumulative; No Waiver. The rights and remedies given in this Agreement and by law to a non-defaulting party shall be deemed cumulative, and the exercise of one of such remedies shall

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not operate to bar the exercise of any other rights and remedies reserved to a non-defaulting party under the provisions of this Agreement or given to a non- defaulting party by law.

9.18 No Waiver. One or more waivers of the breach of any provision of this Agreement by any party shall not be construed as a waiver of a subsequent breach of the same or any other provision, nor shall any delay or omission by a non-defaulting party to seek a remedy for any breach of this Agreement or to exercise the rights accruing to a non-defaulting party of its remedies and rights with respect to such breach.

9.19 Signage. Subject to the reasonable approval of the CITY and in accordance with Applicable Laws, the Developer shall have the right to place one or more appropriate signs upon the Property.

9.20 Construction. This Agreement shall be interpreted without regard to any presumption or rule requiring construction against the party causing this Agreement to be drafted.

9.21 Venue. This Agreement shall have been deemed to have been executed within the State of Florida. The validity, construction, and effect of this Agreement shall be governed by the laws of the State of Florida. Any claim, objection or dispute arising out of this Agreement shall be litigated only in the courts of the Seventeenth Judicial Circuit in and for Broward County, Florida or federal court in the Southern District of Florida.

9.22 WAIVER OF JURY TRIAL. THE PARTIES TO THIS AGREEMENT HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY ACTION, PROCEEDING, LAWSUIT OR COUNTERCLAIM BASED UPON THE CONTRACT, ARISING OUT OF, UNDER, OR IN CONNECTION WITH THE MATTERS TO BE ACCOMPLISHED IN THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR THE ACTIONS OR INACTIONS OF ANY PARTY.

Article 10. Safety and Protection.

10.1 Developer shall be responsible for initiating, maintaining and supervising commercially reasonable safety precautions and programs in connection with the Work. Developer shall take all necessary safety precautions (required by Applicable Laws), and shall take commercially reasonable industry practices and precautions, to prevent damage, injury or loss to:

- (a) all persons on the Property or who may be affected by the construction;
- (b) all Work and materials and equipment to be incorporated in the Project, whether in storage on or off the Property; and
- (c) other property at the Property or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadway, structures, utilities and underground facilities (i.e., the Force Main) not designated for removal, relocation or replacement in the course of construction.

10.2 Developer shall comply with Applicable Laws of Governmental Authorities having jurisdiction for safety or persons or property to protect them from damage, injury or loss; and shall erect and maintain commercially reasonable safeguards for such safety and protection, taking into consideration the effect on the Project. Developer shall notify owners of adjacent property regarding the commencement

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of the Work (and other matters as reasonably determined by Developer), and of underground facilities and utility owners as required by Applicable Laws. All damage, injury or loss to any property including, without limitation, the Force Main caused, directly or indirectly, in whole or in part, by the negligent acts of Developer, any contractor, subcontractor, materialman, supplier, vendor, or any other individual or entity directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by Developer. Developer's duties and responsibilities for safety and for protection of the construction shall continue until Final Completion.

10.3 The Developer shall act in a commercially reasonable manner to protect and prevent damage to all components of the Work, and any existing facilities or improvements, including but not limited to the protection thereof from damage by the elements, theft, or vandalism. During the course of the Work, the Developer shall remain responsible for the risk of loss of the Work and shall promptly remedy, repair and replace all damage and loss (other than damage or loss insured under required insurance) to the Work caused in whole or in part by the Developer, the general contractor, a contractor, subcontractor, or anyone directly or indirectly employed or controlled by any of them, or by anyone for whose acts they may be liable and for which the Developer is responsible.

10.4 In emergencies affecting the safety or protection of persons or the construction or property at the Property Site or adjacent thereto, Developer, without special instruction or authorization from the CITY, is obligated to act to prevent threatened damage, injury or loss. Developer shall give CITY prompt written notice if Developer believes that any significant changes in the construction or variation from the Construction Documents have been caused thereby.

[Signatures Appear on Following Page(s)]

Development Agreement

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed by their duly authorized officer where applicable and sealed as of the date first above written.

**DEVELOPER: OAKLAND PARK STORAGE BUILDERS, LLC,
a Delaware limited liability company**

By: _____

Name: _____

Title: _____

Date: _____

**CITY: CITY OF OAKLAND PARK, FLORIDA,
a Florida municipal corporation**

Attest:

By: _____
MAYOR

By: _____
CITY Clerk

Date: _____

Approved as to form and legal sufficiency:

By: _____
CITY Attorney

EXHIBIT A

Legal Description of the Property

STREET ADDRESS:

880 West Prospect Road, Oakland Park, Florida 33334

LEGAL DESCRIPTION:

PARCEL 1:

A parcel of land located in the Northwest one-Quarter (NW 1/4) of Section 22, Township 49 South, Range 42 East, said parcel containing portions of Lots 11 and 12 of Block 2, PROSPECT GARDENS, as recorded in Plat Book 22, Page 26, Public Records of Broward County, Florida, said parcel being bound as follows:

On the North by the Southerly right-of-way line of Prospect Road as shown on Broward County's Right-of-Way Map, Section 86518-2602 (Sheet 2 of 6), dated March 30, 1981, said right-of-way line being 50.00 feet South of and parallel with the North line of the Northwest One-Quarter (NW 1/4) of said Section 22;

On the East by the Westerly limited access line of 1-95 as shown on the Florida State Road Department's Right-of-Way Map, Section 86070-2412 (Sheet 10), dated March 3, 1970, and last revised November 6, 1972, said Westerly limited access line being shown on said map as 190.00 feet Westerly of and parallel with the baseline of survey on said map;

On the South by the South line of said Lot 12 of Block 2, said line also being the North right of way line of Lena Boulevard (now known as Northwest 43rd Court), as shown on said Plat of Prospect Gardens.

On the West by a line 80.00 feet Easterly of and parallel with the centerline of right-of-way of Powerline Road as shown on the Florida State Road Department's Right-of-Way Map, Section 86550-2608 (Sheets 14 and 15), dated March 9, 1970;

LESS therefrom all that portion of the above described parcel which lies Northwesterly of the chord of a circular curve which is concave to the Southeast, having a radius of 35.00 feet, and being tangent to said Southerly right-of-way line of Prospect Road and being tangent to a line 80.00 feet Easterly of and parallel with the centerline of right-of-way of Powerline Road as shown on the above referenced Right-of-Way Map, Section 86550-2608;

ALSO LESS therefrom all that portion of the above described parcel conveyed by and described in the Deed recorded in Official Records Book 7485, Page 291, Public Records of Broward County, Florida.

Legal Description of the Property
(continued)

PARCEL 2:

Part of Lots Nine (9) and Eleven (11) in Block Two (2) of PROSPECT GARDENS, according to the Plat thereof, recorded in Plat Book 22, Page 26, Public Records of Broward County, Florida, described as follows:

Commencing at the Southeast corner of the West-Half of Lot Nine (9); West 135.7 feet to a point of beginning; continue West 14.3 feet; thence North to the North line of Lot Eleven (11); thence East 82.82 feet; Southwest 171.9 feet to the Point of Beginning.

SAID LANDS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE at the Southeast corner of the West-Half of Lot 9; thence, South $87^{\circ}58'37''$ West, a distance of 135.7 feet to the Point of Beginning (POB); thence South $21^{\circ}24'57''$ West, a distance of 141.69 feet to a point lying on the North right-of-way line of Lena Road (N.W. 43rd Court); thence South $87^{\circ}58'37''$ West, a distance of 73.00 feet, to a point lying on a curve concave to the West, through which a radial line bears North $89^{\circ}35'26''$ East; thence North along said curve lying 80.00 feet East of and parallel to the centerline of Powerline Road (S.R.D. S-809); having a radius of 2371.83 feet, a central angle of $01^{\circ}48'43''$ and an arc length of 75.00 feet, to a Point of Tangency (P.T.); thence North $02^{\circ}13'37''$ West, a distance of 55.00 feet to the beginning of a curve concave to the West, having a radius of 3899.82 feet, a central angle of $01^{\circ}47'30''$, and an arc length of 121.95 feet to a point through which a radial line bears North $85^{\circ}59'13''$ East; thence North $42^{\circ}04'41''$ East, a distance of 50.47 feet to a point lying on the South right-of-way line of Prospect Road; thence North $88^{\circ}10'30''$ East along said right-of-way, a distance of 164.20 feet to a point lying on the West right-of-way of Interstate 95 (I-95); thence South $21^{\circ}24'57''$ West along said right-of-way, a distance of 171.90 feet to the Point of Beginning.

EXHIBIT B
Conceptual Plan

DRAFT