

January 19, 2018

625 N. Flagler Drive, 7th Floor
West Palm Beach, Florida 33401

VIA EMAIL: ceverett@fortlauderdale.gov

Cynthia A. Everett, Esq.
City of Fort Lauderdale
100 N. Andrews Avenue
Fort Lauderdale, FL 33301

***Re: Development of Parcel C of the City's Industrial Airpark - 1/23/18 Agenda
Item CM-7***

Dear Ms. Everett:

This firm represents Midgard Group, Inc. ("Midgard"). Midgard owns twelve acres within the area known as the Fort Lauderdale Industrial Airpark ("Airpark"), and has a vested interest in the use and development thereof. The City of Fort Lauderdale (the "City") now intends to consider negotiating a lease with Drive Shack, Inc. ("Drive Shack") without competitive bidding. In light of the fact of that this issue is on the January 23, 2018 agenda, please ensure that the Commission is provided a copy of this letter ahead of the meeting.

Specifically, the City Manager seeks authorization from the City Commission to negotiate a lease with Drive Shack for the development of Parcel C at Section 2 of the City's Industrial Airpark (the "Property"). Midgard objects to this course of action. Leasing of this property to Drive Shack is improper, and forbidden, for several reasons.

First, Drive Shack's proposed use of the Property violates the City's Corrected Declaration of Deed Restrictions and Protective Covenants ("Declaration"), as well as the zoning for the Property. The Declaration is attached as Exhibit "A". The City is already aware of this, because we identified this issue in Midgard's successful bid protest on June 26, 2017 with regarding to Solicitation 275-11844. That Solicitation was issued when the City was seeking to competitively award the lease and development of the Property. As you may know, Midgard submitted a proposal in response to that previous Solicitation. The City now appears to be abandoning a competitive process, in violation of the City's Charter as described more fully below.

The Declaration, in pertinent part, prohibits development of the Property in violation of applicable zoning ordinances. Further, in approving any development at the Airpark, the City is required to "give due regard to anticipated use of the property and as the same may affect other properties located in the Fort Lauderdale Industrial Airpark; uses and operations to be conducted

upon the property and upon adjoining properties..” (Clause IV); and “***to protect the owners and tenants of other building sites located in the Fort Lauderdale Industrial Airpark*** from any undesirable or improper use of the property described herein ***as will depreciate the value of any other properties...***”. Further, the covenants seeks to “***ensure adequate, reasonable and appropriate development of said property;***” and “***to prevent haphazard or inharmonious improvement of the building site***”. (Clause III).

Based on its prior proposal, Drive Shack’s proposed use of the Property includes an entertainment destination combining golf, competition, and dining in a 60,000 square foot building. A proposed entertainment facility is not a permitted use. In fact, under Clause II of the Declaration, the defined term “improvements” only includes commercial, industrial or light manufacturing buildings. Further, commercial recreational use is neither a Permitted nor Conditional Use pursuant to Section 47-14.11 of the City’s Unified Land Development Code (attached as Exhibit “B”). Further, no traffic study has been conducted to even determine the impact such a project might have on the Airpark and the surrounding area. There has been no impact study that has been published, and there has been no input from the Federal Aviation Administration about the use of this portion of the Airpark.

Any proposed change to the zoning would likely be subject to challenge, and would likely fail. A change to the zoning of only this limited parcel within the Airpark would clearly be impermissible “spot zoning.” It would create a small portion of property which different use restrictions than that of the surrounding properties for the sole benefit of Drive Shack. If the City sought to change the zoning for the entire Airpark, it would change the Airpark entirely and would open a proverbial “Pandora’s box” of issues as to what the Airpark would be used for.

In addition, based on Drive Shack’s proposal submitted in response to the prior, and now defunct Solicitation, it intends to erect a fence far in excess of ten (10) feet, in direct violation of Clause V of the Declaration, which states, “Fences shall not exceed ten feet in height.” Therefore, the proposed use of this land violates both the City’s zoning, and the Declaration.

Second, the City has failed to get approval from the requisite parcel owners of Section 2 of the Fort Lauderdale Industrial Airpark. Clause X of the Declaration states in pertinent part:

“... the owners of seventy-five percent (75%) of the fee simple of any and all properties so situated and subjected, excluding any properties owned by Declarant (the City), based on the number of square feet of land owned as compared to the total area so restricted, may add to, modify alter or amend any one or more of said restrictions by jointly executing and acknowledging an appropriate agreement or agreements in writing for such purposes and recording in the public deed records of the County of Broward and State of Florida.”

The City has not even taken a vote of the fee simple owners of the Airpark property, much less secured the requisite 75% vote required to change usage restrictions in the Deed. Further, Midgard owns enough square footage in the Airpark to make it impossible or very difficult at least

to amend the Covenants without Midgard's approval. For this reason alone the Commission should refrain from making the anticipated requested recommendation for the City Manager to negotiate a lease for the Property with Drive Shack.

Third, the City's Charter forbids the Commission from granting the City Manager with the power to negotiate a lease with Drive Shack without a competitive procurement. Section 8.09 of the City Charter states, in pertinent part:

City is hereby empowered to lease or concession to private persons, firms or corporations, for nonpublic purposes, any lands, improvements, ... Each lease shall be authorized only after public hearing, under authority of a resolution duly adopted at a meeting duly held at a designated adjourned meeting, under the following conditions, to wit:...

(c) At any time, not less than thirty (30) days nor more than sixty (60) days, after the adoption of such resolution **the land and improvements shall be offered upon competitive conditions for lease as desired and a notice shall be published** by the city in the official newspaper for two (2) issues prior to the date set for receiving such bids for lease, with the first publication not less than ten (10) days before said date of receiving bids and the second publication one (1) week after the first, on which date sealed bids shall be received by the city commission for the lease of said publicly owned lands and facilities. The sealed bids must be accompanied by cash, cashier's check or certified check payable to the city in an amount equal to at least ten (10) percent of the first year's rental. The city commission, in offering such public property or public owned facility for lease, shall set out in said resolution and notice such terms and conditions as deemed pertinent under which said facility will be leased and the number of years for which said facility shall be leased. The city commission shall consider any and all proposals and accept the proposal which, in its judgment, shall be the most advantageous lease for the city; but the city commission may reject any and all bids. Upon the city commission approving any proposal submitted as provided herein, said proposal shall be accepted by resolution duly adopted, authorizing preparation of the lease, provided a valid referendum petition has not been filed...

(d) The resolution accepting the bid shall require the preparation of a form of lease for execution, embodying the terms and conditions of the bid and other legal requirements, for submission to the commission at its next regular meeting or at a designated meeting. At least three (3) days before the meeting date, the lease shall be posted on a public bulletin board by the city clerk and each commissioner shall be given a copy of the lease with a covering summary letter, providing, however, that in case of emergency, such procedure may be waived by the affirmative vote of three

(3) of the commissioners. The city attorney or city manager shall be required to give a summary of the lease to the public at such meeting which shall be open to the public. Citizens and taxpayers shall have an opportunity to object to the terms and conditions of such lease. If the commission is satisfied with the terms and conditions of such lease, it shall pass a resolution authorizing execution of such lease by the proper officials of the city, upon compliance upon the part of the lessee. Amendment to such lease may be made from time to time by mutual consent, observing the same formality as in the original lease.

To the extent the city contends that Section 8.10 of the Charter applies, it states, in pertinent part:

“the city commission acting through the city manager shall have the power to negotiate any and all leases of land within the city owned airport known as Fort Lauderdale Executive Airport (Prospect Field); **provided, however, that the following conditions are fulfilled:** (a) No lease shall be for a term longer than ninety-nine (99) years; (b) **the lessee pursuant to the requirements of the lease shall be required to construct suitable improvements on the leased premises that will be of such a nature that they will aid in the development of said Fort Lauderdale Executive Airport (Prospect Field), or that portion of it available for such development, as an industrial center;** (c) **a general plan for the development of such site for an industrial center shall first have been adopted by resolution of the city commission,** although this requirement shall not prevent subsequent amendments of such plan; and (d) **the city manager certifies to the city commission and the city commission by resolution declares that the leasing of the property is in the best interests of the city and the development of the said industrial center and is the most advantageous lease that the city can make at the time of the area involved.**” (Emphasis added).

The conditions set forth have not been fulfilled. The City has not competitively procured the lease of this land in advance of this anticipated lease negotiation. In fact, none of the requirements set out in Section 8.09 of the City’s Charter have been complied with. Further, to the extent Section 8.10 is applicable, this proposed lease of land will not aid in the development of the Fort Lauderdale Executive Airport (Prospect Field) as an industrial center. Indeed, the proposal is not industrial at all, it is an entertainment facility. Further, there has been no certification by Resolution by the City Manager to the Commission that the leasing of the Property to Drive Shack is in the best interest of the City, or that this is the most advantageous lease the City can make. Even if the City Manager made such a recommendation, or the Commission came to that conclusion, it would completely contradict the determination made by the City’s own appraiser, which found that the highest and best use for the Property would be for “light industrial development”. *See, Meacham and Associates, Inc. Appraisal dated February 8 2017 at p. 81,*

attached hereto as Exhibit "C".

The fact that the City now seeks to proceed by asking the Commission to empower the City Manager to negotiate with Drive Shack is concerning. It appears to be way to side-step its own public procurement requirements and the substantive restrictions on the use of the Property. As stated above, the City undertook a competitive procurement for the Property last year, and its recommend award to Drive Shack was abandoned following Midgard's bid protest.

In sum, the City must reject any recommendation, plan or proposal to enter into a lease negotiation with Drive Shack for the Property. If such a lease agreement was created, it would violate the Declaration governing the Property, the City's zoning, and its own Charter regarding the competitive procurement for such leases, and Florida law. Midgard would be irreparably harmed by the fruition of Drive Shack's project within the Airpark. Given the current plan, Declaration and zoning for the Airpark, coupled with the extensive time required to study and obtain legislative and property owner approval(s) for any Airpark wide use and design changes, we believe any consideration for the use of Parcel C by the City Commission should occur only if any such use and design is actually permitted on the Property.

Very truly yours,



Mark J. Stempler
For the Firm

MJS2/jhb
Enclosures

cc: Ellyn Bogdanoff, Esq.
Courtney Crush, Esq.
Mr. James E. Goldstein

ACTIVE: 10480582_1



CITY OF FORT LAUDERDALE, FLORIDA

CORRECTED DECLARATION OF DEED RESTRICTIONS AND PROTECTIVE COVENANTS

Fort Lauderdale Industrial Airpark, Section 2

Conditions, Covenants, Restrictions, Reservations and Easements affecting certain property of the City of Fort Lauderdale, Florida.

THIS DECLARATION, made this 17th day of November, 1966, by the City of Fort Lauderdale, Florida, hereinafter called "Declarant".

WITNESSETH

WHEREAS, Declarant is the owner of the real property described in Clause I of this declaration and is desirous of subjecting the real property described in Clause I to the conditions, covenants, restrictions, reservations and easements hereinafter set forth, each and all of which is, and are, for the benefit of said property and of future owners and tenants thereof and shall inure to the benefit of and pass with said property, and shall apply to and bind the successors in interest and their successors, heirs, assigns, devisees and administrators, and any future owner thereof;

NOW, THEREFORE, the City of Fort Lauderdale, Florida, hereby declares that the real property, located in the Fort Lauderdale Industrial Airpark, described herein and referred to in the Clause I hereof is, and shall be, held, transferred, sold, conveyed and occupied subject to the conditions, covenants, restrictions, reservations and easements hereinafter set forth and any person, or other party acquiring any interests in such property shall take and hold such interests subject to all the terms, conditions, and provisions hereof.

CLAUSE I

PROPERTY SUBJECT TO THIS DECLARATION

The real property located in the Fort Lauderdale Industrial Airpark which is, and shall be, held, conveyed, transferred, occupied

and sold subject to the conditions, covenants, restrictions, reservations and easements set forth herein is located in the City of Fort Lauderdale, County of Broward, State of Florida, and is more particularly described as follows, to-wit:

The East 40 feet of the South one-half ($S\frac{1}{2}$) of the Northeast one-quarter ($NE\frac{1}{4}$) and the East 40 feet of the North 50 feet of the Southeast one-quarter ($SE\frac{1}{4}$) of Section 8, Township 49 South, Range 42 East; Together with the South one-half ($S\frac{1}{2}$) of the Northwest one-quarter ($NW\frac{1}{4}$); and the West three-quarters ($W3/4$) of the South one-half ($S\frac{1}{2}$) of the Northeast one-quarter ($NE\frac{1}{4}$); and the South one-half ($S\frac{1}{2}$) of the Northeast one-quarter ($NE\frac{1}{4}$) of the Northeast one-quarter ($NE\frac{1}{4}$); and the North 350 feet of the West three-quarters ($W3/4$) of the Southeast one-quarter ($SE\frac{1}{4}$); and the East 349 feet of the South 500 feet of the North 550 feet of the Southwest one-quarter ($SW\frac{1}{4}$) and the North 50 feet of the Southwest one-quarter ($SW\frac{1}{4}$) of Section 9, Township 49 South, Range 42 East. All of said lands lying in the City of Fort Lauderdale, Broward County, Florida; otherwise known as "Fort Lauderdale Industrial Airpark, Section 2", Lots 1 thru 51 inclusive.

CLAUSE II

DEFINITION OF TERMS

"Declarant" for purposes of this instrument shall mean the City of Fort Lauderdale, Florida, its successors and assigns unless the context indicates otherwise.

"City" wherever used herein shall refer to the City of Fort Lauderdale.

"Grantee" shall mean any person, receiving any deed, lease, or other instrument conveying any right, title, or other interest or ownership in the property described in Clause I hereof, including heirs, assigns, devisees, and all other successors in interest.

"Improvements" shall mean and include any commercial, industrial or light manufacturing building or buildings, outbuildings appurtenant thereto, storage areas, parking areas, loading areas, fences, masonry walls, hedges, lawns, mass plantings and any structures of any type or kind located above ground.

"Building site" or "property" shall mean any portion of the property described in Clause I hereof, conveyed or leased to a Grantee by Declarant.

"Building lines", "building setback lines", or "setback" shall mean the minimum distance which commercial or light industrial buildings and outbuildings or any structures of any type or kind located above ground, except as noted hereafter, shall be set back from property, public street or rights-of-way lines.

CLAUSE III

GENERAL PURPOSES OF CONDITIONS

The real property described in Clause I hereof is subject to the conditions, covenants, restrictions, reservations and easements declared herein to ensure proper, desirable use and appropriate development and improvement of the building site; to protect the owners and tenants of other building sites located in the Fort Lauderdale Industrial Airpark from any undesirable or improper use of the property described herein as will depreciate the value of any other properties; to guard against the erection thereon of structures built of improper or unsuitable materials; to ensure adequate, reasonable and appropriate development of said property; to encourage the erection of attractive improvements thereon with appropriate locations thereof upon the building site; to prevent haphazard or inharmonious improvement of the building site; to secure and maintain proper setbacks from streets and adequate open landscaped space between structures and between structures and property lines; to require high type and quality improvements on said property, and in general, ensure development and improvement of said property in park-like character and an attractive manner.

CLAUSE IV

APPROVAL OF PLANS AND IMPROVEMENTS

No buildings, structures, signs, pavements, landscaping or other improvements or facilities shall be started, erected, altered or added to upon the property, except interior alteration and modification of buildings, until plans, specifications, architectural renditions, plot plans, grading plans and landscaping plans as appropriate, showing the location, nature and characteristics of such improvements have been submitted to and approved in writing by Declarant, in conformance with the restrictions contained herein and the ordinances of the City of Fort Lauderdale. Consideration for such approvals shall give due regard to anticipated use of the property and as the same may affect other properties located in the Fort Lauderdale Industrial Airpark; uses and operations to be conducted upon the property and upon adjoining properties; general

appearance, adequacy, compliance and fire hazard of any and all improvements and as to the design, location and construction of such improvements and with respect to topography, grade, finished ground elevation and landscaping; and upon due consideration of technical reports and recommendations provided by the City Manager and appropriate departments of the City of Fort Lauderdale, Florida. To carry out the foregoing and ensure high standards, quality development and proper maintenance of the property and improvements constructed or erected thereon, Grantees, successors in interest, heirs, assigns, devisees and administrators and all future owners and tenants of the property, by acceptance of a deed or other legal instrument, covenant and agree to become and remain bound by all conditions and restrictions contained herein, unless such shall be amended as provided in Clause X, and agree that all interpretations of conditions and restrictions shall be decided by the Declarant.

Declarant shall either approve or disapprove any plans submitted to it within forty-five (45) days from the date on which four (4) sets of such plans are delivered to the office of the City Manager, and failure to either approve or disapprove within this period shall constitute approval of said plans.

The following information, as appropriate, shall be submitted to the office of the City Manager for Declarant's approval of any plans:

(A) A description of proposed operations in sufficient detail to permit judgment of whether or not they are permitted under the terms, conditions and restrictions contained herein and under the ordinances of the City of Fort Lauderdale.

(B) A description of proposed operations in sufficient detail to permit judgment of the extent of any noise, odor, glare, vibration, smoke, dust, fumes, gases, fire hazard, radiation, radioactivity, electrical radiation, electromagnetic interference or liquid wastes that may be created.

(C) Engineering and architectural plans for the solution of any problem indicated by item (B) above, including any necessary plans for compliance with the performance standards contained herein, by laws of the State of Florida, regulations established by the Federal Aviation Agency or ordinances of the City of Fort Lauderdale.

(D) An estimate of the maximum number of employees required for operations and contemplated for the proposed development and timing of shifts during which they would work.

(E) An accurate and detailed site plan for traffic, engineering and zoning analysis, showing location and design of buildings, driveways, proposed driveway intersections with streets,

parking areas, outside storage areas, loading areas, maneuvering areas and sidewalks.

(F) A grading plan and a planting plan, including screening walls and fences, for analysis of adequacy of visual screening, erosion control and landscape architectural design.

(G) Preliminary and finished architectural plans and renditions for the proposed building or buildings.

(H) A site plan showing utilities and utility easements, including any and all proposed waste disposal facilities.

(I) Plans for all signs to be erected, including sign location, design, size, color and lighting.

(J) Any other information or plans required in order to ensure compliance with requirements contained herein.

Declarant, its agents and employees shall not be liable in damages to any one so submitting plans for approval or to any owner or tenant of property covered by this instrument by reason of mistake in judgment, negligence or non-feasance, arising out of, or in connection with the approval or disapproval, or failure to approve any such plans; likewise any one so submitting plans for approval, by the submitting of such plans, and any owner, by so acquiring title to the property covered hereby, agrees that he or it will not bring any action or suit to recover for any such damages against Declarant, its agents or employees.

CLAUSE V

PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS

No buildings or above ground structures to be erected upon any property described in Clause I hereof shall be located closer than one hundred (100) feet from right-of-way line of N. W. 62nd St. and N. W. 9th Ave., closer than 50 feet from N. W. 64th St., N. W. 65th St., N. W. 12th Ave., N. W. 15th Ave. and N. W. 21st Ave.; nor closer than 30 feet from any other building site or adjacent property line, or the right-of-way line of any other abutting public street or service road; nor shall any buildings or structures extend beyond the building setback lines now existing or hereafter revised or established by ordinances of the City of Fort Lauderdale. For the purpose of enforcing these setback provisions, any question concerning the location of right-of-way lines shall be determined by Declarant.

The first one-half of the setback shall be professionally and attractively landscaped with lawn, trees, shrubs, etc., and permanently maintained in such a manner as to provide an attractive park-like setting for all buildings and structures. This land-

scaping strip may be used for minimum walkways and driveways, but shall not be used for parking or any other purpose.

The second one-half or interior portion of the setback may be utilized for walkways, paved driveways and paved parking, and if so utilized must be maintained by Grantees in good condition at all times. If the second half of the setback is not used for parking, then it shall be developed to an approved finished grade and developed and maintained as a landscaped area as required for the first one-half of the setback.

At no time and under no conditions shall any portion of the setback area between building lines and property lines be utilized for outside storage of parts, materials, supplies or bulk commodities, nor shall any buildings or above ground structures, except signs and lighting standards approved by Declarant, in conformance with applicable zoning ordinances, extend into the setback area and beyond the building lines so established.

Adequate, permanent, paved (asphalt or concrete) parking shall be constructed, added to and maintained in good condition upon the site for off-street parking in an amount necessary to accommodate all automobiles and vehicles regularly coming to the site. No parking shall be permitted on any public street or service road, or at any place other than in approved paved parking areas. All driveways and parking areas shall be approved as to design specifications and layout by the City Engineer and Traffic Engineer of Declarant and shall be constructed in accordance with the highest established engineering standards of Declarant for such use.

All loading docks and paved areas for loading and handling shall be located at the side or rear of buildings and structures, completely upon the property, and shall not face the major or main front street or streets as provided by zoning or as otherwise established by Declarant. Loading docks shall not extend into the building setback area or be permitted closer than fifty (50) feet to any residentially zoned district, and paved loading, handling and maneuvering areas other than minimum on-site driveways shall not extend to the first one-half of the building setback area.

No loading or unloading shall be permitted on any public or private street within the Fort Lauderdale Industrial Airpark, and maneuvering of trucks and trailers shall be confined to off-street paved areas upon the property.

All parts, materials, supplies and finished or semi-finished products shall be stored in a completely enclosed building or shall be enclosed by a decorative masonry wall, together with plantings of such height as to completely shield such materials from public view and render an attractive improvement.

No fence, masonry wall or mass plantings shall be permitted to extend beyond the building lines into the front setback; no fence, masonry wall or mass plantings shall be permitted to extend beyond

the building lines into any side setback abutting any public street or service road.

Screening walls shall be constructed of masonry or concrete and any fences shall be of the open weave chain link type. Fences shall not exceed ten feet in height. Signs shall not be illuminated by exposed tubes, bulbs or similar light sources, nor may they be of the flashing, rotating, or animated type. Signs, may however, be illuminated by shielded spot lighting. All exterior lighting shall be installed and operated so as to prevent any nuisance to adjoining properties, nearby buildings and any adjoining residentially zoned districts, or to traffic upon any public street or to aircraft in flight.

All lighting, telephone and electrical service wiring shall be placed underground, and no exposed telephone or electrical overhead wires shall be permitted anywhere upon the property. No wooden light, telephone or electrical poles shall be permitted upon the property. All lighting standards shall be constructed of masonry, precast concrete or metal, and all lighting (security, sign, parking lot, street, etc.) shall be installed and operated so as to prevent any nuisance to adjoining properties, and nearby buildings, or to traffic on public streets, or to aircraft in flight.

No harsh, extremely brilliant, obnoxious, objectionable or unattractive paint, coloring, colors or color combinations shall be permitted or used on the exterior of any buildings, structures or other improvements located upon the building site. At its option, Declarant may require prior approval of such exterior colors and color combinations as will be visible to view from any public street or adjacent properties or buildings.

Main buildings or structure erected upon any of the property described herein shall contain a minimum of ten thousand (10,000) square feet of floor space under one roof at ground level; but in no event shall any buildings or structures be constructed to contain less square feet than called for in plans approved by Declarant.

The property shall be filled, as required, and completely improved to a finished grade in accordance with Declarant's grading plan for any property herein described. Any part or portion thereof not otherwise improved with buildings, structures, driveways, screened areas, paved areas, parking areas and professionally landscaped setback areas, shall be attractively landscaped in lawns and with trees, shrubs and other plantings. This shall be accomplished within a reasonable time not to exceed two (2) years from date of conveyance, and all open areas so improved shall be permanently maintained in good condition and an attractive manner.

The property or any portion thereof or any buildings or structures thereon shall not at any time be used for any activity

and in any manner which would increase or create a fire hazard for adjoining property, or which would in any way injure the reputation and value of said property or of any adjoining properties, or for any purpose or use in violation of the laws of the State of Florida or of the laws and ordinances of the City of Fort Lauderdale now in effect or as hereafter amended.

Declarant reserves all water and mineral rights to all properties herein described. No wells of any kind shall be permitted. Grantee may however, apply to Declarant for a special permit to install a lawn sprinkling well. The depth of the well, pump capacity and location of the well shall be approved by the City Engineer, and Declarant reserves the right to restrict the use of ground water for lawn sprinkling.

It is expressly announced that Declarant has and maintains underground water well fields in the general area of the property described in Clause I hereof, which well fields are vital and necessary for the supply of water to the community and citizens of Fort Lauderdale and Broward County. No use of the property shall be conducted which in any way would cause pollution or in any other manner cause contamination of this underground water supply.

Grantee shall keep the property, buildings, improvements and appurtenances in good, safe, clean, neat and attractive condition, and shall maintain all buildings and structures in a finished, painted and attractively maintained condition. Grantee shall not allow any unsightly accumulation of junk, rubbish or debris of any character upon the property. Failure to maintain the property, buildings, structures, etc., in the manner required herein, and upon failure of Grantee to make such corrections within thirty (30) days of written notice, shall be sufficient cause for Declarant to enter upon the premises, by its own forces or under contract, and make such improvements or corrections as may be necessary, the cost of which shall be paid for by Grantee.

No obnoxious or offensive trade or activity shall be carried on upon the property, nor shall anything be done thereon which will be or become an annoyance or nuisance to other owners and tenants in the Fort Lauderdale Industrial Airpark by reason of unsightliness, glare, vibration, heat, electromagnetic interference or undesirable emission of sound, dust, dirt, fumes, odors, noxious gases or anything equally disruptive and obnoxious.

Without otherwise limiting the provisions contained herein or any of the other terms and conditions of these restrictions, all uses, buildings and improvements upon the property shall conform with the zoning and other ordinances of the City of Fort Lauderdale except that the following uses, operations and construction shall not be permitted:

- (A) automobile wrecking and salvage yard, used material and junk yard, storage or commercial bailing of waste or scrap paper, rags, bottles or junk, or bulk storage of scrap metals;
- (B) mixing plant for asphalt, mortar, plaster, concrete or any similar material;
- (C) commercial concrete or lime production, storage or distribution; roofing, plumbing or lumber supply yard;
- (D) tire recapping plant, automotive repair garage or paint and body shop;
- (E) gasoline service station;
- (F) petroleum refining, tank storage farm or distribution of petroleum products;
- (G) commercial manufacture, bulk tank farm storage or distribution of propane, butane or any similar gases or liquids;
- (H) manufacture of pyroxyline or any equally hazardous material or product; manufacture or storage of explosives;
- (I) acid manufacture or paint manufacture;
- (J) any residential use;
- (K) fill mining or quarrying operation, except for canal construction in designated easement;
- (L) meat packing plants, stock or slaughter yards; rendering plants or glue works;
- (M) pulp or paper mills, fertilizer plants or fertilizer mixing;
- (N) radio and television towers;
- (O) any use or operation that would violate the applicable zoning ordinance of the City of Fort Lauderdale.

CLAUSE VI

RIGHTS-OF-WAY AND EASEMENTS

Grantees hereby agree to cooperate to the fullest extent with Declarant or third parties in the planning and granting of any easements and rights-of-way, not otherwise retained by Declarant, necessary and reasonable for further development of the property or

the Fort Lauderdale Industrial Airpark. Easements and rights-of-way may include those for natural gas, water, sewage, storm drainage outfall, underground telephone and electric lines, and entrance, access, and service roads.

Nothing contained herein or in any conveyance, deed or plat shall be construed to be a conveyance to a Grantee of any right to property located in any public right-of-way, street or service road, or any other right-of-way property owned by the Declarant.

The Declarant reserves unto itself, its successors and assigns for the use and benefit of the public and civil aviation, a right of flight for the passage of aircraft in the airspace above the surface of the property heretofore described, together with the right to allow in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in said airspace, and for use of said airspace for landing on, taking off from or operating on the Fort Lauderdale Executive Airport. Grantees, their successors and assigns by acceptance of deed or conveyance agree to restrict the height of buildings, structures, objects of natural growth and other obstructions on the property in accordance with the criteria or standards prescribed by regulations of the Federal Aviation Agency and agree to prevent any use of the property which would interfere with or adversely affect the operation or maintenance of the Fort Lauderdale Executive Airport.

CLAUSE VII

SUBDIVIDING OF LOTS

Property conveyed by the Declarant shall not be further divided or subdivided, and Grantees hereby and by acceptance of any deed or conveyance agree not to subdivide the property, sell, convey or lease any part in lesser size than the whole, or file a plat for further subdivision thereof. Nothing herein contained shall be deemed to prohibit the consolidation of two or more lots into a larger building site under one ownership.

CLAUSE VIII

CONTINUANCE, ENFORCEMENT AND LIABILITY

The covenants contained herein, except as otherwise amended as provided under Clause X shall run with the land and bind all Grantees, their successors and assigns, and all parties claiming by, through or under them shall be taken to hold, agree and covenant with Declarant, its successors and assigns, and with each of them,

to conform to and observe said conditions and restrictions as to the use of the building site, and the construction of improvements thereon; but no restrictions herein set forth, shall be personally binding on any company, corporation, person or persons, except in respect to breaches committed during its, his or their seisin of, or title to said land, and Declarant or the owner or owners of any land located in the Fort Lauderdale Industrial Airpark shall have the right to sue for and obtain an injunction prohibitive or mandatory, to prevent the breach of or to enforce the observance of the conditions and restrictions above set forth, in addition to ordinary legal action for damages, and the failure of Declarant or the owner of any other lot or lots or building sites located in the Fort Lauderdale Industrial Airpark to enforce any of the restrictions herein set forth at the time of its violation, shall in no event be deemed to be a waiver of the right to do so as to any subsequent violation. Violation of these restrictions shall not defeat nor render invalid the lien or any mortgage, deed of trust, or other similar instrument made in good faith and for value. Declarant shall not in any manner be liable or responsible for any violation or continued violation of these restrictions nor shall it have any mandatory responsibility to enforce these restrictions.

CLAUSE IX

REVERTER

If after the expiration of eighteen months from date of execution of a deed of conveyance or other instrument conveying title from Declarant to a Grantee, the Grantee shall have failed to complete a building or structure on the property conveyed, required to be constructed as a condition of the sale agreement between Declarant and Grantee, then title to said property conveyed shall revert back to the Declarant, unless time for completion of said building or structure is otherwise extended by Declarant. Said reverter shall be accomplished in the following manner:

(A) Within 45 days after the expiration of said eighteen month period, or duly authorized extension thereof, the Declarant shall pass a resolution declaring that the subject property has reverted to Declarant by reason of the failure of the particular Grantee to complete construction of the required building or structure within the required time limit.

(B) Declarant shall further, within the 45 days described in (A) above tender to Grantee (or his successors in interests, assigns, etc.) a check in an amount equal to the price paid Declarant for the subject property, less any real estate commission paid by Declarant at the sale to Grantee. Said check shall be made payable and tendered directly or by mail to the last know address of the owner of record of the subject property as of the date of

tender, and the fact of such tender shall be set forth in the resolution required in (A) above.

(C) A copy of said resolution which shall contain the legal description of the reverted property shall within 10 days after passage thereof be recorded upon the public records of Broward County, Florida, and upon recording shall constitute prima facie evidence of the reversion of said property to Declarant.

Declarant may by appropriate resolution extend the aforesaid eighteen month time limitation if in its discretion good cause therefor be shown by Grantee. Failure of Declarant to comply with the provisions of (A), (B), and (C) above shall constitute a waiver of its reversion rights.

Once having commenced construction, a Grantee shall proceed to complete such construction without delay.

Prior to construction and completion of the initial building and improvements, required herein and as approved by the Declarant, the property shall not be leased, sold, conveyed or otherwise transferred to any third party, and a Grantee hereby and by acceptance of deed agrees that no lease, sale, transfer or other conveyance shall be agreed to or consummated prior to completion of said building improvements, except that the property, with clear title thereto, may be returned to Declarant for refund in an amount equal to the purchase price paid the Grantor less any real estate commissions paid by Declarant.

CLAUSE X

AMENDMENT

Except for changing the life and amendment provision of these covenants, conditions and restrictions, the same may be added to, altered or amended at any time by the Declarant, with the consent of the fee owners of fifty percent (50%) of all properties located in the Fort Lauderdale Industrial Airpark subject to these particular covenants, conditions and restrictions, based upon the number of square feet of land owned as compared to the total area so restricted, by jointly executing and acknowledging an appropriate agreement or agreements in writing for such purposes and recording in the public deed records of the County of Broward and State of Florida; provided, however, that after January 1, 1991 the owners of seventy-five percent (75%) of the fee simple of any and all properties so situated and subjected, excluding any properties owned by Declarant, based on the number of square feet of land owned as compared to the total area so

restricted, may add to, modify alter or amend any one or more of said restrictions by jointly executing and acknowledging an appropriate agreement or agreements in writing for such purposes and recording in the public deed records of the County of Broward and State of Florida. The mere lapse of time shall not affect or alter the application of this section.

The amendment provision, stipulated above, and the life of the covenants, conditions and restrictions as herein set forth may be changed only upon the written consent of Declarant and at least ninety percent (90%) of the fee simple owners of any and all properties located in the Fort Lauderdale Industrial Airpark and subjected to these particular covenants, conditions and restrictions, based on the number of square feet of land owned as compared to the total area so restricted, by jointly executing and acknowledging an appropriate agreement or agreements in writing for such purposes and recording in the public deed records of the County of Broward and State of Florida.

CLAUSE XI

SEPARABILITY

Invalidation of any of the foregoing covenants or any part or parts thereof by judgments or court order shall not affect the validity of any other such covenants, conditions and restrictions, but same shall remain in full force and effect.

IN WITNESS WHEREOF, the said Grantor has caused these present to be signed and executed in its name by its proper officers, and its official seal to be affixed, this 17th day of November, 1966.

Signed, sealed and delivered
in our presence:

/s/ Elizabeth A. Mitchum

/s/ Marguerite Docen

CITY OF FORT LAUDERDALE

By /s/ Edmund R. Burry
Mayor-Commissioner

By /s/ R. H. Bubier
City Manager

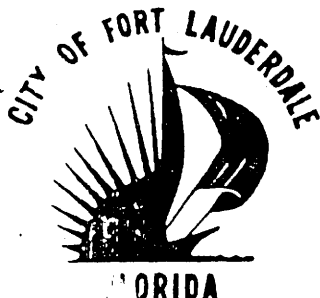
ATTEST:

/s/ Marie L. Crow

City Clerk

Approved by:

/s/ Dean Andrews
City Attorney

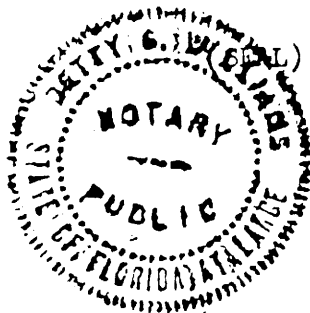


STATE OF FLORIDA:

COUNTY OF BROWARD:

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared EDMUND R. BURRY, R. H. BUBIER and MARIE L. CROW, Mayor-Commissioner, City Manager and City Clerk, respectively, of the City of Fort Lauderdale, Florida, a municipal corporation of Florida, and acknowledged they executed the foregoing as the proper officials of the City of Fort Lauderdale, and the same is the act and deed of the said City of Fort Lauderdale.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at Fort Lauderdale, in the State and County aforesaid, this 17th day of November, 1966.



/s/ Betty G. Williams

Notary Public

My Commission Expires: Oct. 24, 1969

RESOLUTION NO. 85-16

A RESOLUTION AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE AN AMENDMENT TO THE CORRECTED DECLARATION OF DEED RESTRICTIONS AND PROTECTIVE COVENANTS APPLICABLE TO FORT LAUDERDALE INDUSTRIAL AIRPARK, SECTION 2, PERTAINING TO REQUIREMENTS FOR THE SUBDIVISION OF LOTS.

WHEREAS, the City of Fort Lauderdale, Florida, referred to as the Declarant, filed a certain instrument known as a Declaration of Deed Restrictions and Protective Covenants dated November 15, 1966, applicable to certain land known as Fort Lauderdale Industrial Airpark, Section 2, which instrument was filed for record on November 15, 1966, in Official Records Book 3324, commencing at Page 79 of the Public Records of Broward County, Florida; and

WHEREAS, the City, as Declarant, filed an instrument identified as a Corrected Declaration of Deed Restrictions and Protective Covenants, dated November 17, 1966, also applicable to Section 2 of the Fort Lauderdale Industrial Airpark, to correct a typographical error in the original Declaration, which instrument was filed for record on November 18, 1966, in Official Records Book 3325, Pages 755 through 771, inclusive, in the Public Records of Broward County, Florida; and

WHEREAS, Clause X of that latter instrument, entitled "Amendment" specifies a procedure for amendment of the Corrected Declaration; and

WHEREAS, the City desires to clarify certain language existing in Clause VII, which clarification will uphold the spirit and intention of the Clause and continue to operate as a prohibition against any division or subdivision of lots lying within that Section of the Airpark; and

WHEREAS, the request has been reviewed and approved by the City Planning Division, Building and Zoning Department and, as to form, approved by the office of the City Attorney; and

WHEREAS, the City Commission is willing to execute an Amendment to provide for such clarification of Clause VII and the City is authorized to so amend the corrected instrument, since the City is the fee owner of more than fifty percent (50%) of all property lying within that Section of the Airpark, based upon the number of square feet of land owned, as compared to the total area so restricted

THE CITY WHEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF LAUDERDALE, FLORIDA:

SECTION 1. the proper City officials are hereby authorized to execute an Amendment to the Corrected Declaration of Deed Restrictions and Protective Covenants applicable to Fort Lauderdale Industrial Airpark, Section 2, which Amendment will clarify certain language in Clause VII, entitled "Subdividing of Lots".

SECTION 2. That the office of the City Attorney shall review and approve such Amendment as to form prior to its execution by the proper City officials.

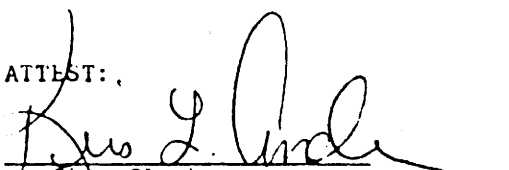
ADOPTED this the 15th day of January, 1985.



Mayor

Robert A. Dressler

ATTEST:


City Clerk
Kris L. Anderson

4500g

AMENDMENT TO CORRECTED DECLARATION OF DEED
RESTRICTIONS AND PROTECTIVE COVENANTS APPLICABLE TO
FORT LAUDERDALE INDUSTRIAL AIRPARK, SECTION TWO

WHEREAS, the City of Fort Lauderdale, Florida, referred to as the Declarant, filed a certain instrument known as a Declaration of Deed Restrictions and Protective Covenants dated November 15, 1966, applicable to certain land known as Fort Lauderdale Industrial Airpark, Section 2, which instrument was filed for record on November 15, 1966, in Official Records Book 3324, commencing at Page 79 of the Public Records of Broward County, Florida; and

WHEREAS, the City, as Declarant, filed an instrument identified as a Corrected Declaration of Deed Restrictions and Protective Covenants, dated November 17, 1966, also applicable to Section 2 of the Fort Lauderdale Industrial Airpark, to correct a typographical error in the original Declaration, which instrument was filed for record on November 18, 1966, in Official Records Book 3325, Pages 755 through 771, inclusive, in the Public Records of Broward County, Florida; and

WHEREAS, pursuant to Resolution No. 85-16, adopted January 15, 1985, the City Commission authorized its officials to execute an Amendment to provide for clarification to Clause VII and the City is empowered to so amend the Corrected Declaration, since the City is the fee owner of more than fifty percent (50%) of all properties lying within that Section of the Airpark, based upon the number of square feet of land owned, as compared to the total area so restricted;

NOW, THEREFORE, the Declarant and the undersigned fee owner declare their intention to amend, and do hereby amend, the Corrected Declaration of Deed Restrictions and Protective Covenants of Fort Lauderdale Industrial Airpark, Section Two, as follows:

1. Clause VII, entitled "Subdividing of Lots" is hereby deleted and the following Clause VII, also entitled "Subdividing of Lots", is hereby substituted in its place:

"SUBDIVIDING OF LOTS

Platted lots lying within the Fort Lauderdale Industrial Airpark Sec. 2 Plat, as recorded in Plat Book 63, commencing at Page 8, of the Public Records of Broward County, Florida, which are conveyed by the Declarant shall not be further divided or subdivided, and a Grantee of any such lot(s) by acceptance of a deed to or conveyance of any such platted lots agrees that such Grantee shall neither subdivide, sell, encumber or convey any part of a lot so platted in lesser size than the whole, nor file a plat for a further subdivision of such platted lot. Title to a lot shall remain under one ownership; provided, however, that nothing herein contained shall be deemed to prohibit the consolidation of two or more platted lots into a larger building site under one ownership; nor shall anything herein contained be deemed to preclude the building of more than one building upon a single platted lot. Moreover, nothing herein set forth pertaining to the subdividing of lots shall be deemed to prohibit the creation or assignment of leasehold estates of any tenant or subtenant in either the underlying land or in any improvements erected thereon including multiple tenants in single or multiple buildings located upon any portion of a lot or lots to which these covenants apply; nor shall anything hereinabove set forth preclude the encumbrance of the leasehold estate of any tenant or subtenant."

2. Except as amended above, the Corrected Declaration of Deed Restrictions and Protective Covenants identified above is hereby ratified and confirmed in all respects.

IN WITNESS of the foregoing, the undersigned parties have executed this instrument on February 4, 1984⁵

WITNESSES:

Cathy H. Burr

C. Susan Cochran

(CORPORATE SEAL)

CITY OF FORT LAUDERDALE

By: [Signature]
Mayor

By: [Signature]
City Manager

ATTEST:
[Signature]
City Clerk

APPROVED AS TO FORM:

[Signature]
City Attorney

The undersigned is a fee owner of property located in Fort Lauderdale Industrial Airpark, Section Two and hereby consents to the above Amendment to the Corrected Declaration of Deed Restrictions and Protective Covenants by jointly executing and acknowledging the same. The undersigned further consents to allow this Amendment to be recorded in the Public Records of Broward County, Florida.

WITNESSES:

GATEWAY INVESTMENTS CORPORATION

Barbara Anderson

Constance L. Vign

By: [Signature]

ATTEST:
[Signature]

STATE OF FLORIDA)
COUNTY OF BROWARD) SS:

BEFORE ME, personally appeared ROBERT A. DRESSLER, CONSTANCE HOFFMANN and KRIS L. ANDERSON, as Mayor, City Manager and City Clerk, respectively, of the CITY OF FORT LAUDERDALE, a municipal corporation, to me well known and known to me to be the persons described in and who executed the foregoing instrument and they acknowledged to and before me that they executed the instrument for the purposes expressed in it.

WITNESS my hand and official seal on January 22, 1984⁵

[Signature]
NOTARY PUBLIC
STATE OF FLORIDA AT LARGE

My Commission expires:

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXPIRES MAY 24 1987
BONDED THRU GENERAL INSURANCE UND

STATE OF FLORIDA)
) SS:
COUNTY OF BROWARD)

BEFORE ME, personally appeared J.D. Miller
and Patricia E. Masters, as President
and Secretary of GATEWAY INVESTMENTS CORPORATION, to
me well known and known to me to be the persons described in and who
executed the foregoing instrument, and acknowledged before me that
they executed the instrument for the purposes expressed in it.

WITNESS my hand and official seal on February 5
1988.

Carole J. Felton
NOTARY PUBLIC
STATE OF FLORIDA

My Commission expires:

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. JAN 28, 1989
BONDED THRU GENERAL INS. UND.

1109E

RECORDED IN THE OFFICIAL RECORDS BOOK
OF BROWARD COUNTY, FLORIDA
F. T. JOHNSON
COUNTY ADMINISTRATOR

REC 12021 PAGE 200

RETURN TO CITY ATTORNEY
P. O. DRAWER 14250
FT. LAUDERDALE, FLA. 33302

Sec. 47-14.11. - List of permitted and conditional uses, Airport Industrial Park (AIP) District.

District Categories—Aeronautical/Aircraft/Aviation, Food and Beverage, Lodging, Manufacturing, Public Purpose Facilities, Research and Development, Services/Office Uses, Wholesale Operations, Accessory Uses, Buildings and Structures, and Urban Agriculture.

A. PERMITTED USES		B. CONDITIONAL USES: See <u>Section 47-24.3</u> .	
1. Aeronautical/Aircraft/Aviation			
a.	Aircraft and Aviation Manufacture of Components, Parts and Accessories.	a.	Heliport, Helistop, see <u>Section 47-18.14</u> .
b.	Automotive Service Station, only on sites so designated on the development plan of the Fort Lauderdale Executive Airport.		
2. Food and Beverage			
a.	Restaurants, see Limitations on Permitted and Conditional Uses, <u>Section 47-14.20</u> .		
3. Lodging			
a.	Hotel, minimum 100 units or minimum 85 hotel suites, see <u>Section 47-18.16</u> .		
4. Manufacturing			
a.	Boats.		
b.	Cabinets.		
c.	Canvas Products.		
d.	Electronic Appliances, Devices, and Fixtures and Components.		
e.	Luggage and Leather Products.		
f.	Medical and Orthopedic Instruments and Supplies.		
g.	Metal Furniture.		
h.	Optical Instruments and Goods.		
i.	Rubber Goods.		
j.	Phonographic Radio, and Television Equipment and Supplies.		
k.	Plastics, except Pyroxylyene.		
l.	Precision Instruments.		
m.	Silverware.		
n.	Small Parts and Devices.		
5. Public Purpose Facilities			
a.			

EXHIBIT B

	Active and Passive Park, see <u>Section 47-18.44.</u>	
6	Research and Development	
a.	Industrial Research Operations.	
7.	Services/Office Uses	
a.	Professional and Administrative Offices.	a. Vocational Schools.
b.	Medical Office.	
c.	Indoor Firearms Range, see <u>Section 47-18.18.</u>	
8.	Wholesale Operations	
a.	Regional Wholesale and Industrial Distribution Centers (no retail sales or outlets) with a minimum requirement of a structure of no less than ten thousand (10,000) sq. ft. on any approved land parcel.	
9.	Urban Agriculture See <u>Section 47-18.41.</u>	

(Ord. No. C-97-19, § 1(47-14.3), 6-18-97; Ord. No. C-12-24, § 4, 7-10-12 ; Ord. No. C-15-36, § 10, 10-20-15 ; Ord. No. C-16-24, § 2, 11-1-16)

Sec. 47-14.12. - List of accessory uses General Aviation Airport (GAA) and Airport Industrial Park (AIP) Zoning Districts.

The following uses are permitted as accessory uses to those uses found in Sections 47-14.10, List of Permitted and Conditional Uses, General Aviation Airport (GAA) District and 47-14.11, List of Permitted and Conditional Uses, Airport Industrial Park (AIP) District. These are intended to provide services and amenities consistent with and supportive of the GAA and AIP zoning districts. No accessory use shall be permitted to be constructed, placed, erected, or built on any parcel of land prior to the start of construction of the principal building or establishment of the principal use.

Permitted accessory uses shall be limited to a maximum of two thousand five hundred (2,500) square feet unless specifically noted.

(Ord. No. C-16-24, § 3, 11-1-16)

Sec. 47-14.12.B. - List of accessory uses, Airport Industrial Park.

1.	Automotive
a.	Fuel Pumps when accessory to Automotive Rental & Leasing.
2.	Commercial Recreation Uses
a.	Accessory uses and structures that are an integral part of and supportive to the commercial recreation conditional use or other permitted secondary use.
3.	Food & Beverage Service
a.	Bakery Store.

**AN APPRAISAL OF
LOTS 8, 9, 10 AND 11
(AKA PARCEL C)
OF THE
FORT LAUDERDALE INDUSTRIAL AIR PARK
LOCATED AT
6499 NW 12TH AVENUE
FORT LAUDERDALE, FL

(OUR FILE #16-50788A)**

FOR

MS. DIANA R. MCDOWELL
FORT LAUDERDALE EXECUTIVE AIRPORT
6000 NW 21ST AVENUE #200
FORT LAUDERDALE, FL 33309

BY

MEACHAM AND ASSOCIATES, INC.
3409 NW 9TH AVENUE, SUITE 1106
OAKLAND PARK, FL 33309



HIGHEST AND BEST USE
(Continued)

Financially Feasible

Current demand for light industrial uses in the subject neighborhood is average. In light of current economic conditions, light industrial development is considered to be feasible at this time, particularly for owner/user developments. There have been some new as well as proposed multi-tenant industrial developments in other areas of the county and multi-tenant industrial development would also be considered feasible. The subject site is located along light to moderately traveled roads; however, it has good access to major roadways and proximity to employment centers and residential areas. It should be noted that there is a very substantial amount of existing office space in the area along Cypress Creek Road and Commercial Boulevard. New office development, therefore, would be difficult due to intense competition from existing buildings. Because of this, new office space is not considered to be feasible at present.

Maximally Productive

The maximally productive use is that use or uses which are physically possible, legally permissible, and financially feasible and which provides the greatest rate of return or value to the site.

As discussed previously, marginally feasible uses include a variety of light industrial uses. There is not a specific maximally productive use that would generate a higher value to the subject site than other uses.

Based on the preceding, the highest and best use of the subject site would be for light industrial development.