RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, PROVIDING FOR APPROVAL OF A MODIFICATION TO THE BIFURCATED GROUND LEASE BETWEEN THE CITY OF NORTH MIAMI, FLORIDA, THE OAKS I AT BISCAYNE LANDING CONDOMINIUM ASSOCIATION, INC., AND ROYAL OAKS LANE (BISCAYNE LANDING) - NORTH MIAMI, LLC; AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO NEGOTIATE AND EXECUTE THE MODIFICATION; PROVIDING FOR AN EFFECTIVE DATE AND ALL OTHER PURPOSES.

WHEREAS, the City of North Miami, Florida ("City"), and BLIA Developers, Ltd., a Florida limited partnership ("Original Tenant"), entered into a Bifurcated Ground Lease, dated October 18, 2005 ("Ground Lease"), pursuant to which Landlord leased the Real Estate (as defined in the Ground Lease) to Original Tenant, as indicated in the Memorandum of Lease, recorded in Official Records Book 23898, Page 1158, of the Public Records of Miami-Dade County, Florida ("County Records"); and

WHEREAS, the Ground Lease provided for, among other things, the leasing of five (5) percent residential units within any individual condominium and a gross sales price for each condominium unit at One Hundred Fifty Dollars ($150.00) per saleable square foot; and

WHEREAS, Article II, Section 4 of the Ground Lease provides that "in the event that the Tenant elects to lease in excess of five (5) percent of the residential units within any individual condominium, Tenant must obtain prior written consent of the Landlord, such consent not to be unreasonably withheld, unreasonably conditioned or unreasonably delayed"; and

WHEREAS, because of the downturn in the real estate market, the need has arisen to reconsider the five (5) percent rental unit cap as well as the per saleable square footage for each condominium; and

WHEREAS, in order to properly respond to the current market conditions, the City desires to amend the Ground Lease to allow the leasing of units in excess of five (5) percent of the residential units within any individual condominium with respect to any existing or future leases for four (4) years and to reduce the saleable square footage per unit from One Hundred Fifty Dollars ($150.00) to One Hundred Dollars ($100.00); and

E

WHEREAS, the Mayor and City Council believe that it is in the best interests of the residents and City to consent to the modification of the Ground Lease.

NOW THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA:

Section 1. **Authorization to execute Consent and Modification of Lease Agreement.** The Mayor and City Council of the City of North Miami, Florida, hereby approve the execution of a Consent and Modification to the Bifurcated Ground Lease Agreement, in substantially the attached form, (see Exhibit A).

Section 2. **Authorization of City Manager and City Attorney.** The Mayor and City Council of the City of North Miami, Florida, hereby authorize the City Manager and City Attorney to do all things necessary to effectuate the terms of the Lease Agreement, in accordance with the direction provided to City Administration, without the necessity of further action by the Mayor and City Council.

Section 3. **Effective Date.** This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED by a _____ vote of the Mayor and City Council of the City of North Miami, Florida, this _____ day of April 2013.

_____
ANDRE D. PIERRE, ESQ.
MAYOR

ATTEST:

_____
MICHAEL A. ETIENNE, ESQ.
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

_____
REGINE M. MONESTIME
CITY ATTORNEY

SPONSORED BY: CITY ADMINISTRATION

Moved by: _____

Seconded by: _____

Vote:

Mayor Andre D. Pierre, Esq.	_____ (Yes)	_____ (No)
Vice Mayor Marie Erlande Steril	_____ (Yes)	_____ (No)
Councilperson Michael R. Blynn, Esq.	_____ (Yes)	_____ (No)
Councilperson Scott Galvin	_____ (Yes)	_____ (No)
Councilperson Jean R. Marcellus	_____ (Yes)	_____ (No)

THIS INSTRUMENT WAS PREPARED BY
AND AFTER RECORDING RETURN TO:

Douglas L. Noren, Esq.
Katten Muchin Rosenman LLP
525 W. Monroe Street
Chicago, Illinois 60661

[Space Above Reserved for Recorder's Use]

CONSENT AND MODIFICATION TO BIFURCATED GROUND LEASE

THIS CONSENT AND MODIFICATION TO BIFURCATED GROUND LEASE (this "**Agreement**"), is made this ___ day of March, 2013 (the "**Effective Date**"), by and among the CITY OF NORTH MIAMI, FLORIDA, a Florida municipal corporation ("**Landlord**"), THE OAKS I AT BISCAYNE LANDING CONDOMINIUM ASSOCIATION, INC., a Florida not for profit corporation ("**Tenant**" or "**Association**"), and ROYAL OAKS LANE (BISCAYNE LANDING) – NORTH MIAMI LLC, a Delaware limited liability company ("**Owner**").

RECITALS

A. Landlord and BLIA Developers, Ltd., a Florida limited partnership ("**Original Tenant**") entered into a Bifurcated Ground Lease, dated October 18, 2005 (the "**Ground Lease**"), pursuant to which Landlord leased the Real Estate (as defined in the Ground Lease) to Original Tenant.

B. The Ground Lease has been amended, supplemented and/or otherwise affected by (i) the Memorandum of Lease, dated October 18, 2005, made by and between Landlord and Original Tenant, recorded in Official Records Book 23898, Page 1158, of the Public Records of Miami-Dade County, Florida (the "**County Records**"); (ii) the Bifurcated Ground Lease and Estoppel Agreement, dated October 18, 2005, made by and between Landlord, Original Tenant and Freemont Investment & Loan, recorded in Official Records Book 23898, Page 1162, of the County Records; (iii) the Letter Agreement, dated March 26, 2009, made by and between Landlord and Original Tenant; (iv) the Landlord's Estoppel, dated June 24, 2010, made by Landlord, recorded in Official Records Book 27336, Page 2215, of the County Records; and (v) the Landlord's Consent, dated June 24, 2010, made by Landlord, recorded in Official Records Book 27336, Page 2221, of the County Records.

C. Original Tenant, as "Developer", submitted its leasehold interest in the Real Estate to the condominium form of ownership pursuant to the Declaration of Condominium of The Oaks I Condominium (as amended, the "**Declaration**"), dated March 6, 2007 and recorded

in Official Records Book 25427, Page 4613, of the County Records, under which The Oaks I Condominium (the "**Condominium**") was established.

D. Under the Declaration, the Association was deemed "Tenant" under the Ground Lease and the Association assumed all of the rights and obligations of "Tenant" under the Ground Lease other than the obligation for payment of Annual Basic Rent (as defined in the Declaration), which, pursuant to the Ground Lease, remains the obligation of the individual condominium unit owners. The Ground Lease contemplated that a condominium association would become the "Tenant" when the Ground Lease was submitted to condominium ownership.

E. Owner is the owner of one hundred sixty (160) units in the Condominium (collectively, the "**Owned Units**").

NOW, THEREFORE, Landlord, Tenant and Owner agree as follows:

1. **Incorporation of Recitals; General Provisions**. The above recitals are true and correct. All capitalized terms in this Agreement shall have the same meaning as in the Ground Lease, except if otherwise noted. Except as amended by this Agreement, all of the terms of the Ground Lease shall remain in full force and effect. In the event of any conflict between the provisions of the Ground Lease and the provisions of this Agreement, this Agreement shall control.

2. **Waiver of 5% Rental Restriction**. Article II, Section 4 of the Ground Lease provides that "in the event that the Tenant elects to lease in excess of five percent (5%) of the residential units within any individual condominium, the Tenant must obtain the prior written consent of the Landlord, such consent not to be unreasonably withheld, unreasonably conditioned or unreasonably delayed." Landlord hereby consents to Tenant or Owner leasing in excess of five percent (5%) of the residential units within any individual condominium with respect to any existing or future leases, for a period ending on the last day of the calendar month occurring forty-eight (48) months after the Effective Date. On or prior to the expiration of such forty-eight month period, if Owner reasonably believes that continued leasing of the Owned Units is necessary based on then market conditions, Landlord will not unreasonably withhold, condition or delay its consent to an extension of Landlord's waiver of the 5% leasing restriction in the Ground Lease (provided, subject to the foregoing, such consent may not be on the same terms set forth in this Agreement). The parties acknowledge and agree that, if Tenant or Owner is in default or breach of the terms of this Agreement, and such default or breach continues for a period of thirty (30) days after written notice from Landlord, then the waiver described in this Section 2 shall be declared null and void, and cancelled immediately upon notice from Landlord to Tenant (provided that leases existing as of the date of such termination shall continue to be exempt and permitted hereunder).

3. **Rental Revenues**. Article II, Section 4 of the Ground Lease requires the payment to Landlord of a rental fee equal to four percent (4%) of the gross revenues received as rent or its equivalent on any leased condominium units, net of certain taxes and other costs and expenses, as more particularly set forth in Article II, Section 4 (as adjusted, the "**Rental Fee**"). On the date hereof, and as a condition to the execution of this Agreement by Landlord, Owner

shall pay to Landlord the amount of $16,381 in full settlement of any Rental Fees owed to Landlord under the Ground Lease through March 31, 2013 with respect to the Owned Units. The calculation of such amount owed by Owner is set forth in the attached Schedule 1 and each party hereto agrees that such calculation is final and binding on the parties, provided, however, that Owner represents and warrants that such calculation and the information set forth on Schedule 1 is complete and accurate. Notwithstanding anything to the contrary in the Ground Lease, Owner shall pay the Rental Fee with respect to any leased condominium units owned by Owner (based on actual in place rentals) to Landlord in arrears, commencing on May 15, 2013 (with respect to the Rental Fee due for April, 2013), and on a monthly basis thereafter within fifteen (15) days following the last day of the preceding month.

4. **Condominium Sales**.

(a) Article II, Section 4 of the Ground Lease requires the payment to Landlord of a sales fee equal to four percent (4%) of the gross sales price, net of certain commissions and other closing costs and expenses, as more particularly set forth in Article II, Section 4 (as adjusted, the "**Sales Fees**"), with respect to the "first time sale" of each condominium unit and/or parking space in the Condominium. In consideration of Landlord entering into this Agreement, Owner has agreed to pre-pay a portion of the Sales Fees that will become due with respect to the sale of the Owned Units on the date hereof in the amount of $600,000.00 (the "**Pre-Payment**"). Upon each sale of an Owned Unit, Owner will receive a credit against any Sales Fees owed until the Pre-Payment has been fully applied. Other than the Sales Fees, Landlord agrees that no other fee shall be due to Landlord pursuant to the Ground Lease or otherwise upon the sale by Owner of any or all of the Owned Units.

(b) The requirement that "the minimum gross sales price for each condominium unit constructed on the Real Estate shall be One Hundred and Fifty and No/100 Dollars ($150.00) per saleable square foot", as set forth in the third sentence of Article II, Section 4(a) of the Ground Lease, is hereby changed to "the average gross sales price for each condominium unit constructed on the Real Estate shall be not less than One Hundred Dollars ($100.00) per saleable square foot."

5. **Re-Occupancy Inspection Requirement**. Within ten (10) days after written request from Owner with respect to any or all of the Owned Units, Landlord shall commence the Re-Occupancy Inspection (as required by the City Code of the City of North Miami, Florida) for such units, and shall use its best efforts to expeditiously complete such inspections. Upon satisfactory completion of its Re-Occupancy Inspection for each such unit, Landlord shall issue a Certificate of Re-Occupancy (as required by the City Code) with respect to the inspected Owned Units. After completion of the Re-Occupancy Inspection and issuance of a Certificate of Re-Occupancy for any Owned Unit at the Condominium, no additional Re-Occupancy Inspection shall be required at any time thereafter for such Owned Unit so long as such unit is still owned by Owner. The aggregate fee payable to Landlord for the Re-Occupancy Inspections and issuance of Certificates of Re-Occupancy for the Owned Units shall be $1,860, not including any escrow payments that may be required to pay for the cure of any code violations in the applicable units.

6. **Condominium Amenities**. Subject to the terms of this Agreement, Tenant agrees to construct additional amenities at the Condominium commensurate with the overall quality of the project known as The Oaks, in accordance with all applicable laws, and in each case taking into account feasibility, environmental and other physical constraints at the site, as described in Schedule 2 attached hereto (the "**Amenities**"). Tenant will complete or cause the completion of the Amenities substantially in accordance with (i) the timeline attached hereto as Schedule 3 (subject to delays due to force majeure, Unavoidable Delays, and other causes beyond the reasonable control of Tenant), (ii) the preliminary budget for the Amenities work attached hereto as Schedule 4, and (iii) the concept development plan attached hereto as Schedule 5. Owner agrees to contribute the amount of $1,741,127 (the "**Owner's Special Assessment**") as its portion of a special assessment to be incurred by all unit owners in the Condominium to pay for the Amenities work. Owner shall advance its portion of such special assessment at such times and subject to such conditions reasonably agreed upon by the Association and Owner.

7. **Default and Remedies**. If Tenant fails to complete the construction of the Amenities in accordance with Section 6 hereof, and such failure continues for ninety (90) days after written notice by Landlord to Tenant, then Landlord may as its sole remedy enforce specific performance of such obligations subject to the terms of this Agreement. In addition, if Owner fails to contribute $1,741,127 as its share of the special assessment to pay for the Amenities as and when due and payable, as set forth in Section 6 hereof, and such failure continues for thirty (30) days after written notice by Landlord to Owner, then Landlord shall be entitled to liquidated damages from Owner in the amount equal to the difference between (i) $1,741,127, and (ii) the amount Owner has actually contributed towards the Owner's Special Assessment. Landlord agrees that if it collects the liquidated damages described in the previous sentence from Owner, that it shall, upon Tenant's request, make such funds available to pay for costs of the Amenities. In no event shall Landlord have the right to terminate the Ground Lease as a result of a breach or default by any party of its obligations under this Agreement.

8. **No Waiver**. No failure by Landlord to insist upon strict performance of any covenant, agreement, term, or condition of the Ground Lease or to exercise any right or remedy upon an Event of Default, and no acceptance of full or partial Rent during continuance of any such Event of Default, shall waive any such Event of Default or such covenant, agreement, term, or condition. No covenant, agreement, term, or condition of the Ground Lease to be performed or complied with by Tenant, and no Event of Default, shall be modified except by a written instrument executed by Landlord. No waiver of any Event of Default shall modify the Ground Lease. Each and every covenant, agreement, term, and condition of the Ground Lease shall continue in full force and effect with respect to any other then-existing or subsequent Event of Default of such covenant, agreement, term or condition of the Ground Lease.

9. **Ratification**. Except as modified by this Agreement, the Ground Lease shall remain otherwise unmodified and in full force and effect and the parties ratify and confirm the terms of the Ground Lease as modified by this Agreement. The Ground Lease, as amended, contains the entire agreement between Landlord and Tenant as to the Real Estate, and there are no other agreements, oral or written, between Landlord and Tenant relating to the Real Estate. All future references to the Ground Lease shall mean the Ground Lease as modified by this Agreement.

10. **Counterparts**. This Agreement may be executed in counterparts each of which shall be deemed an original and all of which together shall constitute one instrument. A PDF or facsimile signature shall be deemed for all purposes to be an original.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Landlord, Tenant and Owner have executed this Agreement as of the date first above written.

WITNESSES:

LANDLORD:

THE CITY OF NORTH MIAMI, FLORIDA

Sign: _____
Print Name: _____

By: _____
City Manager

Sign: _____
Print Name: _____

Attest: _____
City Clerk

APPROVED:

By: _____
City Attorney

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me, the undersigned authority, this ___ day of _____, 2013, by _____ [name], as _____ [title] of the City of North Miami, Florida, a Florida municipal corporation. He/she is either [ ] personally known to me or [ ] produced a Florida driver's license as identification.

[STAMP/SEAL]

_____
[signature of notary]

_____
[printed name]

Notary Public, State of Florida

Commission No. _____

Commission Expiration _____

WITNESSES:

TENANT:

THE OAKS I AT BISCAYNE LANDING CONDOMINIUM ASSOCIATION, INC.

Sign: _____
Print Name: _____

By: _____
Name: _____
Title: _____

Sign: _____
Print Name: _____

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me, the undersigned authority, this ___ day of _____, 2013, by _____ [name], as _____ [title] of The Oaks I At Biscayne Landing Condominium Association, Inc., a Florida not for profit corporation. He/she is either [ ] personally known to me or [ ] produced a Florida driver's license as identification.

[STAMP/SEAL]

_____
[signature of notary]

_____
[printed name]

Notary Public, State of Florida

Commission No. _____

Commission Expiration _____

WITNESSES:

OWNER:

ROYAL OAKS LANE (BISCAYNE LANDING) - NORTH MIAMI LLC, a Delaware limited liability company

Sign: _____
Print Name: _____

By: _____
Name: _____
Title: _____

Sign: _____
Print Name: _____

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me, the undersigned authority, this ___ day of _____, 2013, by _____ [name], as _____ [title] of Royal Oaks Lane (Biscayne Landing) – North Miami LLC, a Delaware limited liability company. He/she is either [ ] personally known to me or [ ] produced a Florida driver's license as identification.

[STAMP/SEAL]

_____
[signature of notary]

_____
[printed name]

Notary Public, State of Florida

Commission No. _____

Commission Expiration _____

SCHEDULE 1

CALCULATION OF ACCRUED RENTAL FEES

Biscayne Landing
Fee Analysis

Square Feet	297,412	
Percentage	5.0%	
Applicable Square Feet	14,871	
Gross Rental Rate	$1.02/SF	
Monthly Applicable Gross Rents	15,168	
City Fee	4.0%	
Monthly Fee	607	
Number of Months	27	January 2011 through March 2013
Total Amount*	**16,381**	

SCHEDULE 2

LIST OF AMENITIES

Amenities shall include, assuming feasibility, environmental and other physical constrains at the site:

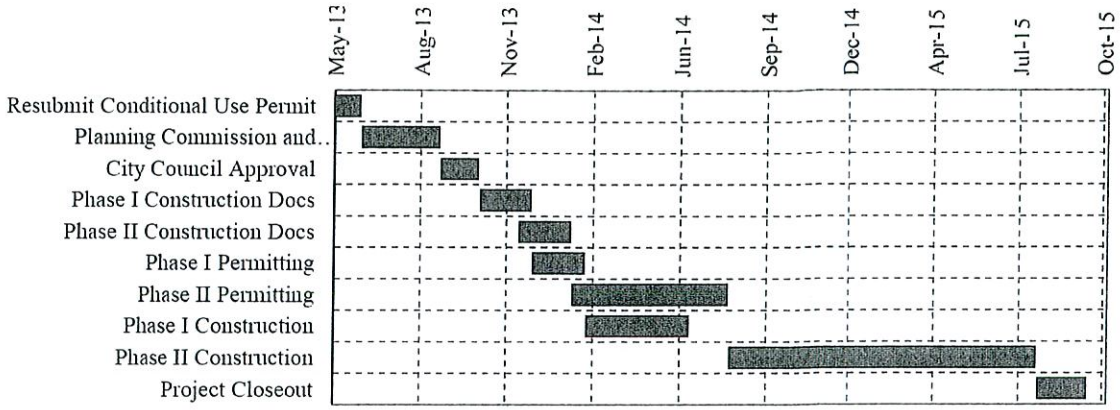
i. A pool
ii. A fitness room
iii. A club room
iv. A basketball court
v. A playground
vi. A men's and women's bathroom with showers
vii. Green space / garden area

SCHEDULE 3

TIMELINE FOR AMENITIES

The Oaks at Biscayne Landing

Project Timeline



Phase I - Guardhouse, Exterior Painting, General Landscaping, Roadwork
Phase II - Amenities (Pool, Clubhouse, Gym, Playground)

Line Item	Start Date	End Date	Duration	Months
Resubmit Conditional Use Permit	5/1/2013	5/31/2013	30 days	1.0
Planning Commission and DRC Review	6/1/2013	8/31/2013	91 days	3.0
City Council Approval	9/1/2013	10/16/2013	45 days	1.5
Phase I Construction Docs	10/17/2013	12/16/2013	60 days	2.0
Phase II Construction Docs	12/1/2013	1/31/2014	61 days	2.0
Phase I Permitting	12/17/2013	2/16/2014	61 days	2.0
Phase II Permitting	2/1/2014	7/31/2014	180 days	6.0
Phase I Construction	2/17/2014	6/16/2014	119 days	4.0
Phase II Construction	8/1/2014	7/31/2015	364 days	12.0
Project Closeout	8/1/2015	9/30/2015	60 days	2.0

The timeline is an estimated schedule and is subject to change based on the City Council's schedule, the City's ability to timely process all design/construction related requests, reviews and approvals needed to construct the amenities, cooperation of the adjoining tenants, and approvals of Miami-Dade County, the State of Florida and DERM.

SCHEDULE 4

BUDGET FOR AMENITIES

(see attached)

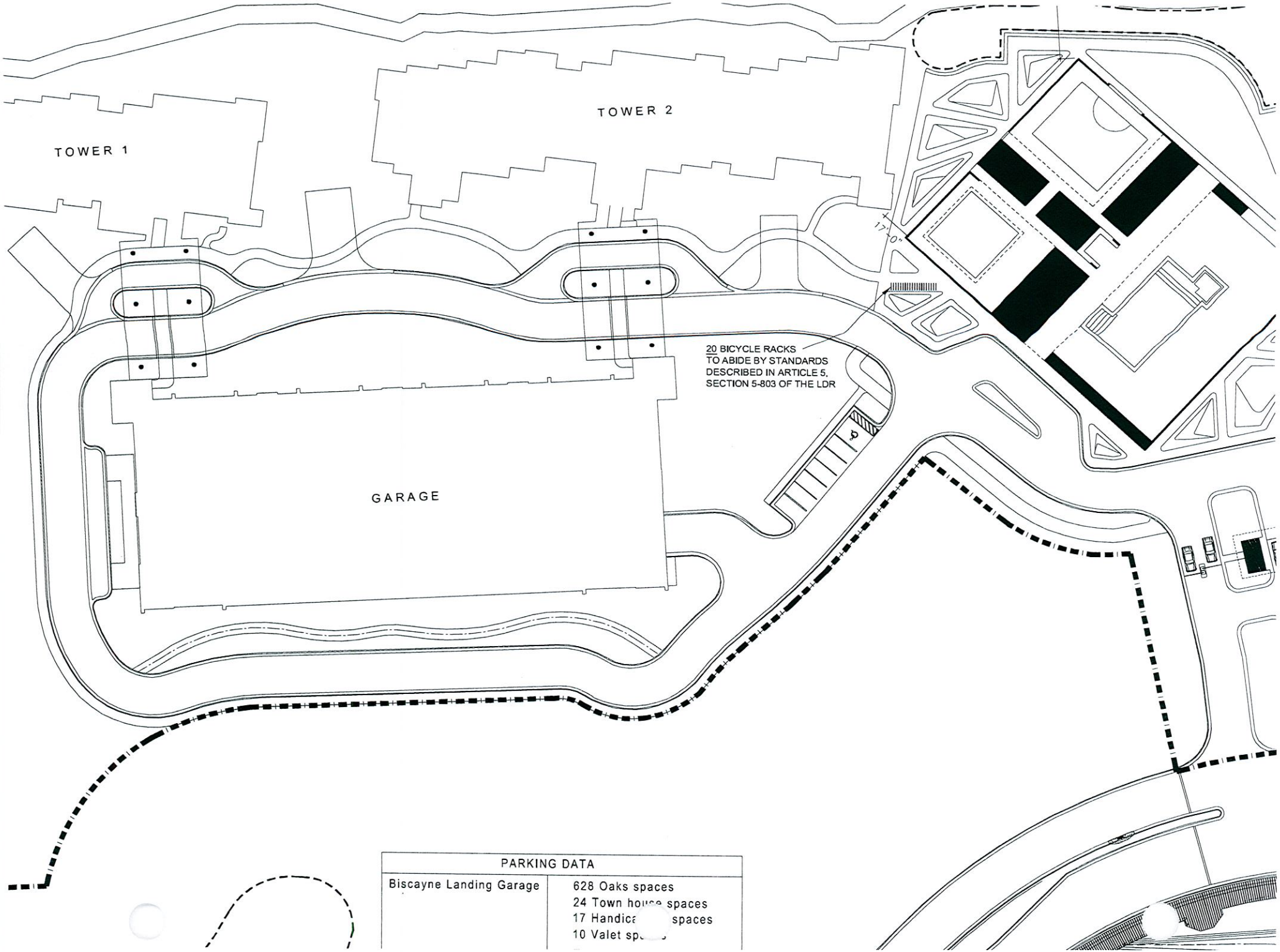
Oaks Improvement and Amenities Budget
Oaks I Amenities [1]

Line Items	Estimate
Architectural - schematic site plan design	20,000
Architectural - construction documents/supervision	160,000
Structural engineer	75,000
MEP engineer	35,000
Civil engineer	70,000
Sitework	400,000
Piles, test pile and load test	65,000
Shell	375,000
Waterproofing overlayments	45,000
Methane trap	250,000
Swimming pool	200,000
Deck area finishes (incl pavers)	45,000
Basketball court/tennis (1/2 court)	35,000
Fitness Room, bathroom, hall	225,000
Children play equipment	45,000
Gym equipment Upgrades	25,000
Interior landscaping - children's garden & 20 trees	15,000
Additional Landscape	40,000
Additional roadwork (curbs, sidewalks, concrete walkway)	40,000
Windows/Doors	70,000
Fire, Telephone, Security System/Alarm	150,000
Subtotal Clubhouse	**2,385,000**
Guardhouse - shell	130,000
Guardhouse - interior, electric, HVAC, plumbing, finishes	50,000
Guardhouse - Site Work	70,000
Subtotal Guardhouse	**250,000**
Painitng	**500,000**
Site Work - Existing Buildings	**75,000**
Total Clubhouse Guardhouse Painting Site Work	**3,210,000**
Contingency	200,000
General Conditions	256,800
Insurance	35,000
Project Supervision & Fee	256,800
Subtotal	**748,600**
Total Project	**3,958,600**

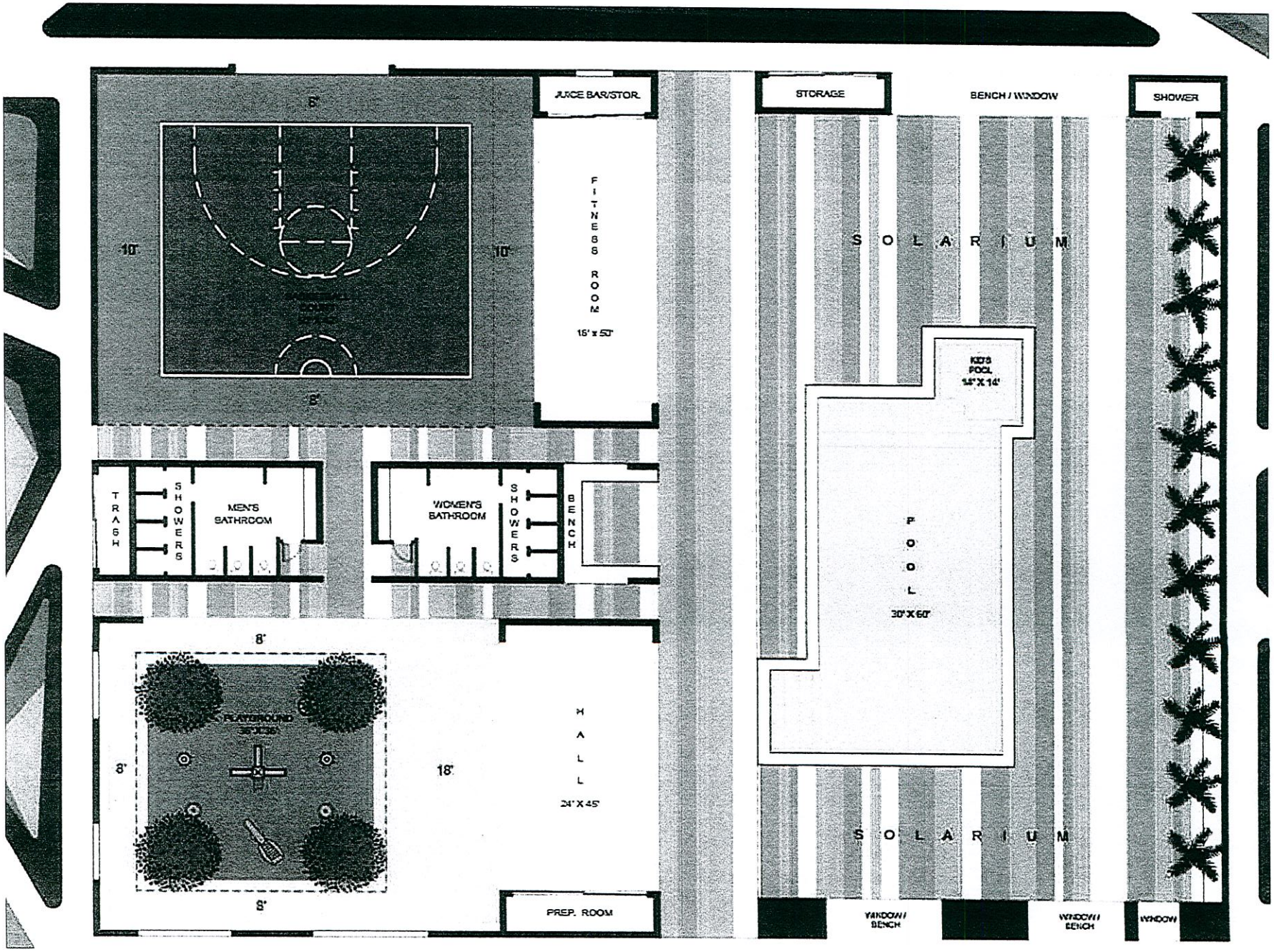
[1] Subject to change based on construction document work, engineering reports, geotechnical issues, DERM and drainage issues sitework review, city review and compliance and environmental/methane issues

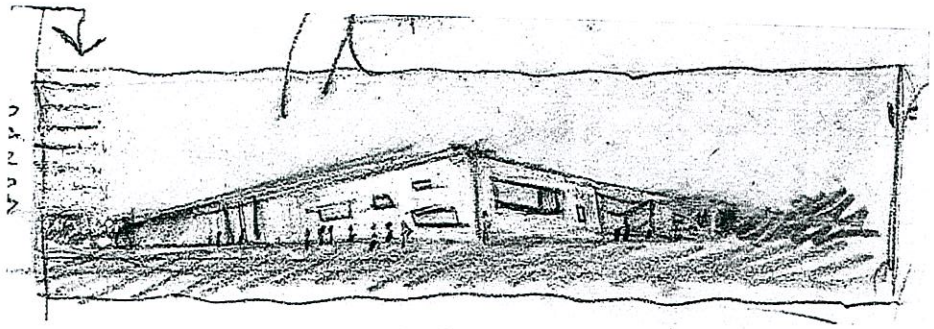
SCHEDULE 5

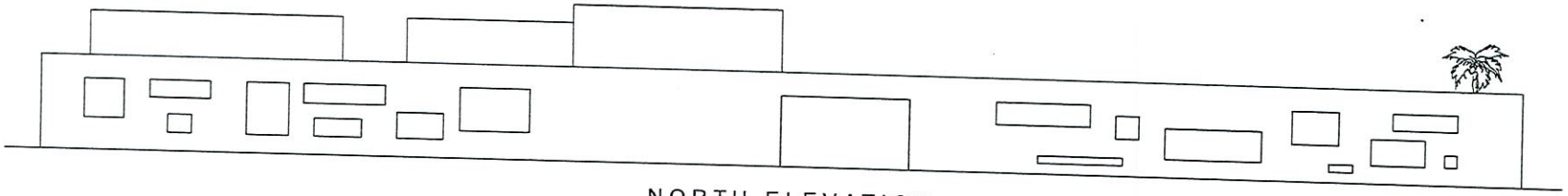
CONCEPT DEVELOPMENT PLAN



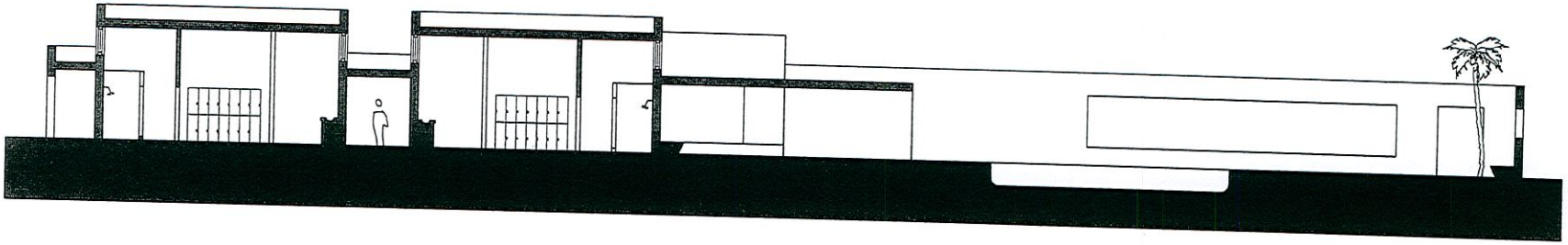
PARKING DATA	
Biscayne Landing Garage	628 Oaks spaces 24 Town house spaces 17 Handicap spaces 10 Valet spaces

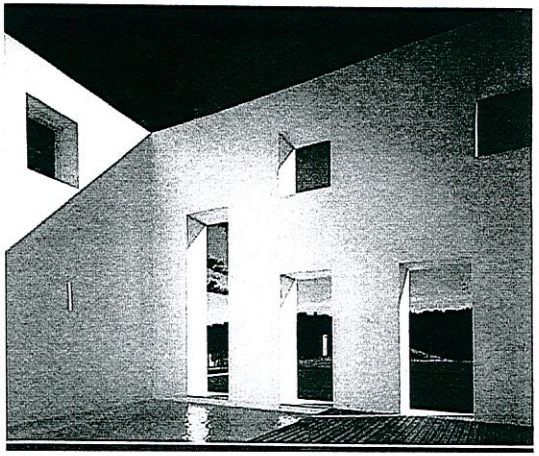

JUICE BAR/STOR.
8'
10'
10'
8'
FITNESS ROOM
15' x 50'
TRASH
SHOWERS
MEN'S BATHROOM
WOMEN'S BATHROOM
SHOWERS
BENCH
8'
8'
18'
HALL
24' X 45'
8'
PREP. ROOM
STORAGE
BENCH / WINDOW
SHOWER
SOLARIUM
KIDS POOL
14' X 14'
POOL
30' X 60'
SOLARIUM
WINDOW/ BENCH
WINDOW/ BENCH
WINDOW

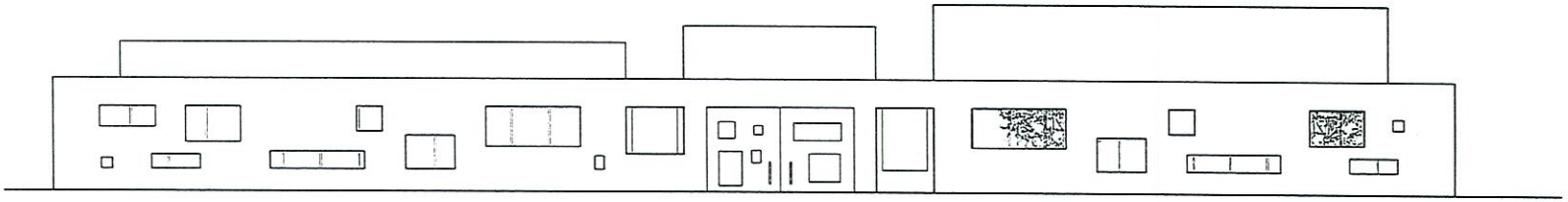




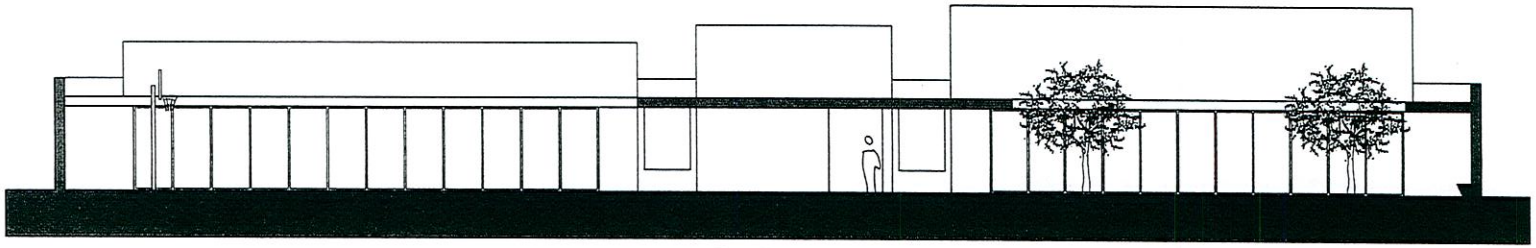
NORTH ELEVATION







EAST ELEVATION



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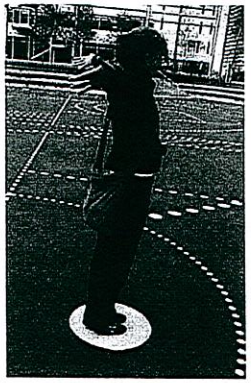

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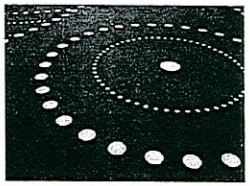

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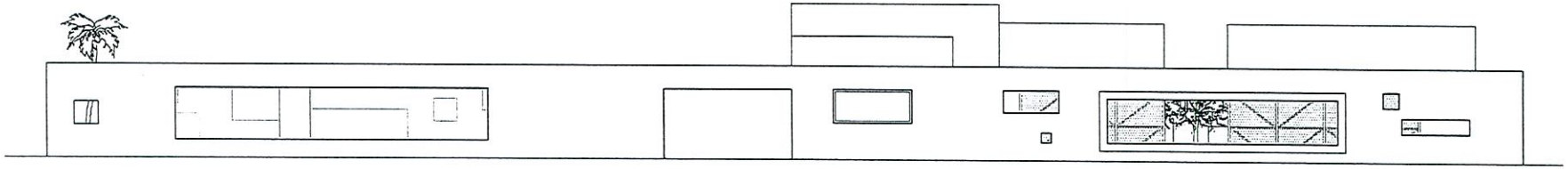
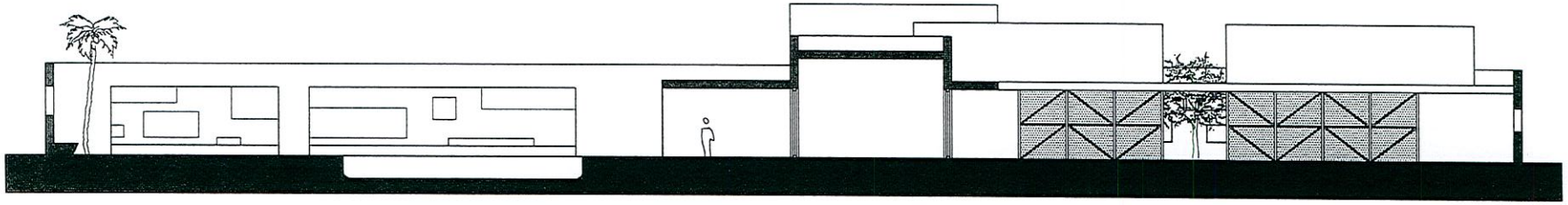
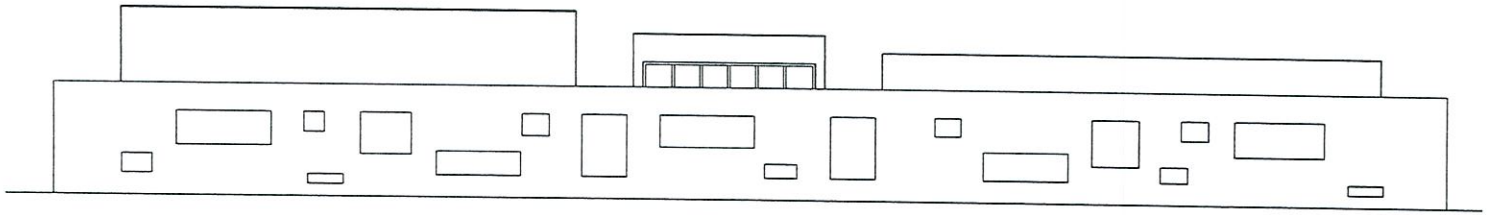
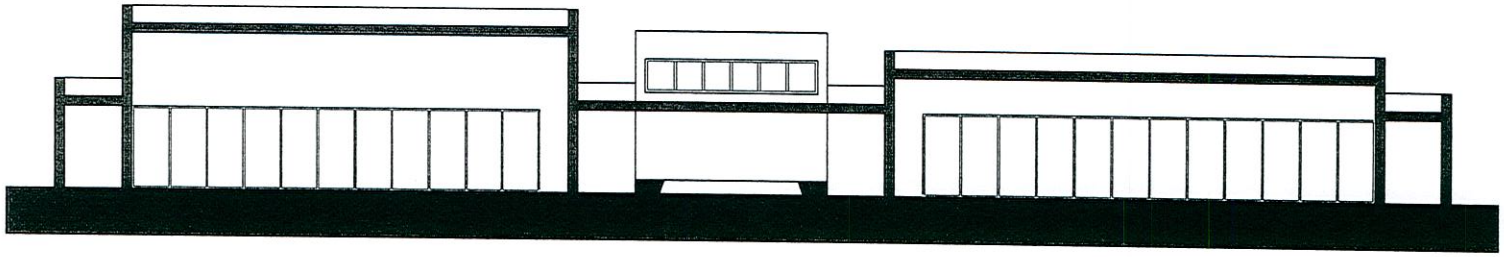


SOUTH ELEVATION





WEST ELEVATION