

RESOLUTION NO. R2022-XX

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, APPROVING THE SITE PLAN AND FOUR RELATED VARIANCES FROM THE ZONING AND LAND DEVELOPMENT CODE FOR THE CONSTRUCTION OF A 1,219,643 SQUARE FOOT MIXED-USE DEVELOPMENT, CONSISTING OF TWO, TWENTY-EIGHT-STORY TOWERS WITH 11,540 SQUARE FEET OF RETAIL SPACE, 6,810 SQUARE FEET OF OFFICE, 700 RESIDENTIAL UNITS, AND 957 PARKING SPACES ON A 1.86 ACRE PARCEL LOCATED AT 1959 AND 1999 NE 164 STREET; GRANTING A VARIANCE TO PERMIT DECORATIVE SCREENING OF THE PARKING GARAGE FOR THE EAST AND WEST TOWER FRONTING ALONG NE 164 STREET, WHERE THE CODE REQUIRES A 20-FOOT-DEEP LINER BUILDING; GRANTING A VARIANCE TO PERMIT A 98.21% IMPERVIOUS AREA AT THE PODIUM LEVEL, WHERE THE CODE PERMITS A MAXIMUM IMPERVIOUS AREA OF 90% AT THE PODIUM LEVEL; GRANTING A VARIANCE TO PERMIT THE EAST SIDE OF THE EAST TOWER AT 7'7" TO 11'4" SETBACK FROM THE PODIUM, WHERE THE CODE REQUIRES A MINIMUM SETBACK OF 15 FEET; AND GRANTING A VARIANCE TO PERMIT A FURNISHINGS/GREEN AREA WITH A WIDTH OF 12'6", WHERE THE CODE REQUIRES AN 18-FOOT WIDTH ALONG THE NE 19 AVENUE GREENWAY; PROVIDING FOR FINDINGS OF FACT; CONFIRMING EXPIRATION AND LIMITATION OF APPROVAL; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of North Miami Beach ("City") Code of Ordinances, Chapter 24, "Zoning and Land Development Code" (the "ZLDC"), Article XV, "Other Development Review Procedures," Section 24-172, "Site Plan Review" provides that site plan approval is required for new developments, for any significant shift in the type of land use that involves major interior alteration, and any change in required parking or other similar impact determined to be significant by the Community Development Director; and

WHEREAS, GFS, Corp., on behalf of NMBPLACE, LLC and TFH GRPB, LLC ("Applicant"), requests site plan approval and four (4) non-use variances to develop a 1,219,643 square foot mixed-use development, consisting of two towers, 11,540 square feet of retail space,

RESOLUTION NO. R2022-XX

6,810 square feet of office space, 700 dwelling units and 957 parking spaces, on a 1.86-acre parcel located at 1959 and 1999 NE 164 Street, North Miami Beach, Florida, (“Property”), as legally described in Exhibit “A;” and

WHEREAS, Section 24-176 of the ZLDC provides that the City Commission may grant a variance based on its determination that the non-use variance maintains the basic intent and purpose of the zoning and other land use regulations and the Applicant has demonstrated that the necessary criteria identified in the ZLDC have been satisfied; and

WHEREAS, the Applicant requests a variance to permit decorative screening of the parking garage for the east and west tower fronting along NE 164 Street (primary frontage), where Section 24-58(K)(2)(b.) of the ZLDC requires a minimum 20-foot-deep liner building; and

WHEREAS, the Applicant requests a variance to permit A 98.21% impervious area at the podium level, where Section 24-58(S)(3) Figure MU-8 of the ZLDC permits a maximum impervious area of 90% at the podium level; and

WHEREAS, the Applicant requests a variance to permit the east side of the east tower at a seven (7)-foot seven (7)-inches to eleven (11)-foot fourteen (14)-inches setback from the podium, where Section 24-58(S)(3) Figure MU-8 of the ZLDC requires a minimum setback of fifteen (15) feet; and

WHEREAS, the Applicant requests a variance to permit a furnishings/green area with a width of twelve (12)-feet six (6)-inches, where 24-58.1(I)(1)(b.) Figure MU/TC-9 of the ZLDC requires a an eighteen (18)-foot width along the NE 19 Avenue Greenway; and

WHEREAS, the Property is zoned Fulford Mixed-Use Town Center District (“MU/TC”) which is intended to enable transit-oriented development that contributes to the creation of an urban downtown and the formation of a quality pedestrian-oriented, mixed-use district. The objective is to

RESOLUTION NO. R2022-XX

shape development to create a "place," an exciting, enlivened social gathering point and a destination, which encourages the establishment of a wide mix of commercial and residential uses that offer the flexibility to meet a variety of market needs. The aim of these regulations is to create an environment that attracts day and evening activities so that the street is occupied by visitors, residents, business owners and operators who have a clear and vested interest in the vitality of the Fulford Mixed-Use Town Center District (MU/TC); and

WHEREAS, after a duly noticed public hearing held on January 10, 2022, the Planning and Zoning Board by vote of 6 to 0, recommended approval of the Variances and Site Plan, subject to the conditions set forth and included below in Section 2; and

WHEREAS, the City Commission conducted a duly noticed public hearing in accordance with the law; and

WHEREAS, the Mayor and City Commission find the proposed Site Plan application consistent with the North Miami Beach Comprehensive Plan and find that approval of the application furthers the purpose, goals, objectives and policies of the Comprehensive Plan, and is in the best interest of the City.

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

Section 1. **Recitals.** The foregoing recitals are confirmed, adopted, and incorporated herein and made a part hereof.

Section 2. **Decision.** Pursuant to Section 24-172 and Section 24-176 of the ZLDC, the following site plan, attached and incorporated by reference as Exhibit “B,” and the four (4) related variances (relief from Sections 24-58.2(K)(2)(b.)(i.), 24-58(S)(3) (Figure MU-8), and 24-58.1(I)(1)(b.)), as specified herein and in the Application) for the development of the existing

RESOLUTION NO. R2022-XX

property, on a 1.86-acre parcel, legally described in Exhibit “A,” are approved, subject to the following conditions:

1. Unless otherwise provided, all the below mentioned conditions shall be completed and complied with prior to the issuance of the building permit.

Project Conditions:

2. Prior to the issuance of the Master Building Permit, the Applicant shall coordinate with Public Works to provide a final selection of street furniture in accordance with existing conditions or adopted corridor plans.
3. Prior to the issuance of a Master Building Permit, the Applicant shall revise the landscape plans to ensure clusters of three (3) palms trees used to constitute one (1) required tree, shall have a minimum height of 16 feet per Section 21-119 (A)(5).
4. Prior to the issuance of demolition permit, a tree removal permit shall be reviewed and approved.
5. Prior to the issuance of demolition permit, product-data sheets highlighting the permeability of the artificial turf shall be submitted.
6. Prior to issuing the Master Building Permit, the Applicant shall have the registered engineer provide a photometric plan for each parking level and certify that the illumination of the enclosed parking facilities has been designed and will be operating according to Section 24-93(G). On-site lighting must not exceed 1.0 Foot-candle beyond all property lines.
7. The Applicant’s request to vacate the approximately 2,800 square foot southern portion of the north-south Alley bounded to be north by South Glades Drive, to the south by NE 164th Street, and to the east and west by the properties located at 1959 NE 164 Street must be approved separately by the City Commission, and if approved, the vacation and any conditions thereto, are hereby incorporated into a made a part of this site plan approval. If the City fails to grant the vacation of the Alley, then the parties recognize that this Resolution shall be null and void and have no further effect. If granted, the Alley will not be closed until an alternate easement, as described in section 15 below, has been constructed to provide alternate access to the public or an alternate plan is approved by the Community Development Director.
8. If the Alley described in section No. 7 above is vacated to satisfy the condition described in section No. 7, the Applicant or its successors shall pay the City the lesser of the total net sum of \$500,000.00 or the appraised value of the Alley (“Public Purpose Funds”) within five (5) days of the adoption of the resolution vacating the Alley. If Applicant fails to pay the Public Purpose Funds within the required time period, this site plan approval resolution shall be declared null and void, and the Applicant shall not be permitted to obtain any building permit pursuant to this resolution.
9. The Applicant is required to submit a signed and sealed pavement, marking and signage plans signed and sealed by a registered professional engineer in the State of Florida prior to Building Permit approval.

RESOLUTION NO. R2022-XX

10. The Applicant should design, permit and construct a turn lane extension for the eastbound left turn lane on NE 164th Street at NE 22nd Avenue.
11. The Applicant should design, permit and construct a turn lane extension for the southbound left turn lane on US-1/Biscayne Boulevard at NE 163rd Street.
12. The Applicant should design, permit and construct a turn lane extension for the southbound right turn lane on US-1/Biscayne Boulevard at NE 163rd Street.
13. Signal timing improvements are recommended to improve approach delays at the NE 22nd Avenue/ NE 163rd Street and Biscayne Boulevard / NE 163rd Street intersections. The applicant is required to get approval from Miami Dade County and/or FDOT to implement these signal timing modifications.
14. The Applicant must join the *NMBPD Trespass After Warning Program*, provide the NMBPD with access to the property at all times, and a safety plan.
15. The Applicant shall grant an easement allowing public access through the urban greenways and alley sidewalk depicted on the site plan, prior to the issuance of a Master Building Permit.

General Conditions:

16. The conditions of approval for this site plan are binding on the Applicant, the property owners, operators, and all successors in interest. Prior to issuance of any Master Building Permit, Applicant shall execute a covenant running with the land, binding upon its heirs, successors, and assigns, subject to the approval of the City Attorney, which shall be recorded in the public records of Miami-Dade County, Florida, at Applicant's sole expense, containing all of the conditions and provisions required by this Resolution. This recorded covenant may be amended from time to time and shall be re-recorded after each amendment at the Applicant's sole expense, subject to the approval of the City Attorney.
17. Construction of the of the proposed project shall be in conformance with the certified site plan as signed by the Community Development Director on file with the City of North Miami Beach Community Development Department Planning & Zoning Division with file number 21-10.
18. All representations proffered by the Applicant's representatives as a part of the site plan application review at the Planning and Zoning Board and City Commission public hearings.
19. Substantial modifications to the plans submitted and approved as part of the application may require the Applicant to return to the Planning and Zoning Board and Mayor and City Commission for approval. Insubstantial changes shall include proportionate reductions in residential units and parking spaces by less than 5% of the total proposed project, changes that do not alter the project more than 5% of lot coverage, setbacks, height, density and intensity calculations so long as the proposed amendment does not cause an increase in the number of average daily trips; does not alter the location of any points of ingress, egress, access and vehicular and pedestrian patterns to the site; and does not violate any condition placed upon the site plan as originally approved. Insubstantial changes may be administratively approved by the City Manager or designee. Any de minimis amendments to the plans or site plans which cannot be resolved administratively shall be returned to the Mayor and City Commission for a formal review. However, under no circumstances, shall

RESOLUTION NO. R2022-XX

- any plans, site plans, building, structure, or project be administratively altered by more than 5% lot coverage, setbacks, height limitations, as well as density or intensity calculations set forth in a previously approved site plan.
20. The Applicant shall remove all public hearing signage no later than 48 hours after the final public hearing for the development project.
 21. No later than 90 days following the final City Commission approval, the Applicant shall enter into an agreement with the City to defend, indemnify and hold harmless (using legal counsel acceptable to the City) the City, its agents, servants, and employees, from and against any loss, cost, expense, claim, demand or cause of action of whatever kind or nature arising out of or related to any act or omission related to the variances and for which the City, its agents, servants, or employees, are alleged to be liable or charged with such expense. The Applicant shall pay all costs and expenses related to any legal defense required by the City pursuant to the foregoing.
 22. The Applicant shall provide a unity of title or covenant in lieu of unity of title, in a form acceptable to the City Attorney, for all parcels prior to the issuance of the Master Building Permit. The unity of title or covenant in lieu of unity of title shall be recorded in the Public Records of Miami-Dade County, Florida, at the expense of the Applicant.
 23. The Applicant shall comply with all applicable conditions and permit requirements of the Miami-Dade County Fire Department, the Water and Sewer Department, and Department of Regulatory and Economic Resources; and the Florida Department of Environmental Protection (FDEP), the Florida Department of Transportation (FDOT) and any other applicable regulatory agency.
 24. The words "Aventura," "Miami Beach," and "Sunny Isles Beach" shall not be used by the Applicant immediately preceding or following the Project name. The words "Aventura," "Miami Beach," and "Sunny Isles Beach" shall not be part of the website address for the Project. References in the marketing materials to nearby communities shall be limited to descriptions of entertainment, shopping or dining locations, or other landmarks; the Applicant shall identify the Project as being located in the City of North Miami Beach, Florida.
 25. The Applicant shall post a sign on-site providing contact information in case of any complaint or concern during construction. The sign shall be removed upon the earlier of the City's issuance of a temporary or full Certificate of Occupancy.
 26. All water and sewer service installations are the responsibility of the Applicant and must be permitted through the NMB Water Department.
 27. The Applicant, its successors, and assigns shall comply with all City ordinances applicable to development and permit approvals at the time of adoption of the Resolution, and in the event the Master Building Permit expires, all approvals and prior fees paid shall be subject to forfeiture. This shall not be applied to the City of North Miami Beach impact fees paid, which would not be refunded but would be credited to the property for any subsequent development.
 28. All City impact fees shall be paid prior to the issuance of a Master Building Permit. In the event the Master Building Permit expires, all approvals and prior fees paid, shall be subject to forfeiture. This shall not be applied to impact fees paid to the City of North Miami Beach, which would not be refunded, but credited to the property for any subsequent development.

RESOLUTION NO. R2022-XX

29. Prior to the issuance of a Master Building Permit, the City Manager or designee and the City Attorney, may refer any application for review by engineering, planning, legal, technical, environmental, or professional consultant(s) as deemed necessary. The City shall be reimbursed by Applicant for reasonable fees and charges made by such consultant(s) or professional(s) within thirty (30) days of submission of a City voucher. These fees and charges are in addition to any and all other fees required by the City.
30. Prior to the issuance of the Master Building Permit, the Applicant shall meet all requirements of the Department of Public Works Solid Waste Division.
31. Prior to the issuance of the Master Building Permit, the Applicant shall submit a Site Management Plan and a Temporary Construction Fencing plan pursuant to Section 16-5 of the North Miami Beach Code of Ordinances.
32. Prior to issuance of a Certificate of Occupancy, the Applicant shall have the registered landscape architect, or a certified arborist certify that the landscaping, tree removal, and tree mitigation have been completed in accordance to the landscape plan and tree removal permit.
33. Prior to the issuance of a Temporary Certificate of Occupancy, the Applicant shall request and complete the address assignment process for the common areas and residential units as required, with the U.S. Postal Service, Miami-Dade County Fire Rescue, and the Miami-Dade County Property Appraisers. This Resolution shall be made part of any condominium declaration and other applicable condominium documents if so established.
34. The Applicant and its successors and assigns, including but not limited to the successor homeowners' association, if any, shall maintain all landscape and exterior hardscape features and materials on site and throughout all public improvements in good condition, replacing diseased, dying or dead plant material as necessary and repairing / cleaning / painting all hardscape features so as to present a healthy and orderly appearance at all times.
35. Upon issuance of a hurricane warning by the National Weather Service or similar agency, all removable items from pool decks, roof decks and other outdoor spaces shall be immediately removed and secured.
36. To obtain CRA benefits, the Applicant shall satisfy the requirements of Code Section 24-58.1(O)(1) for Public Infrastructure and Streetscape, prior to the time of issuance of the Master Building Permit.
37. To obtain CRA benefits, the Applicant shall satisfy the requirements of Code Section 24-58.1(O)(2) for Public Open Space, prior to the time of issuance of the Master Building Permit.
38. To obtain CRA benefits, the Applicant shall satisfy the requirements of Code Section 24-58.1(O)(3) for Public Art, prior to the time of issuance of the Master Building Permit.

Section 3. **Findings of Fact.** The Mayor and City Commission make the following

FINDINGS OF FACT based upon the substantial competent evidence provided:

The requested site plan meets the applicable Site Plan Review Standards provided for in Section 24-172 of the Code of Ordinances of the City of North Miami Beach. The requested site plan approval is not contrary to the public interest or detrimental

RESOLUTION NO. R2022-XX

to the community and is compatible with the surrounding land uses while maintaining the basic intent and purpose of the zoning and land use regulations.

Section 4. **Non-use Variance from Section 24-58(K)(2)(b.)(i.).** The Mayor and City Commission make the following FINDINGS OF FACTS from Section 24-176(B) based on the substantial competent evidence provided:

The requested non-use variance from Section 24-58(K)(2)(b.)(i.) of the ZLDC, to permit to permit decorative screening of the parking garage for the east and west tower fronting along NE 164 Street (primary frontage), where the Code requires a minimum 20-foot-deep liner building, maintains the basic intent and purpose of the applicable zoning, subdivision and other land use regulations. Moreover, the requested variance is not contrary or detrimental to the public interest because the proposed use and design is compatible with the surrounding land uses and is in keeping with the surrounding properties.

Section 5. **Non-use Variance from Section 24-58(S)(3) Figure MU-8.** The Mayor and City Commission make the following FINDINGS OF FACTS from Section 24-176(B) based on the substantial competent evidence provided:

The requested non-use variance from section 24-58(S)(3) Figure MU-8 of the ZLDC, to permit a 98.21% impervious area at the podium level, where the Code permits a maximum impervious area of 90% at the podium level, maintains the basic intent and purpose of the applicable zoning, subdivision and other land use regulations. Moreover, the requested variance is not contrary or detrimental to the public interest because the proposed use and design is compatible with the surrounding land uses and is in keeping with the surrounding properties.

Section 6. **Non-use Variance from Section 24-58(S)(3) Figure MU-8.** The Mayor and City Commission make the following FINDINGS OF FACTS from Section 24-176(B) based on the substantial competent evidence provided:

The requested non-use variance from section 24-58(S)(3) of the ZLDC, to permit the east side of the east tower at a seven (7)-foot seven (7)-inches to eleven (11)-foot fourteen (14)-inches setback from the podium, where the Code requires a minimum setback of fifteen (15) feet, maintains the basic intent and purpose of the applicable zoning, subdivision and other land use regulations. Moreover, the requested variance is not contrary or detrimental to the public interest because the proposed use and

design is compatible with the surrounding land uses and is in keeping with the surrounding properties.

Section 7. Non-use Variance from Section 24-58.1(I)(1)(b.) Figure MU/TC-9. The Mayor and City Commission make the following FINDINGS OF FACTS from Section 24-176(B) based on the substantial competent evidence provided:

The requested non-use variance from Section 24-58.1(I)(1)(b.) Figure MU/TC-9 of the ZLDC, to permit furnishings/green area with a width of twelve (12)-feet six (6)-inches, where the Code requires an eighteen (18)-foot width along the NE 19 Avenue Greenway, maintains the basic intent and purpose of the applicable zoning, subdivision and other land use regulations. Moreover, the requested variance is not contrary or detrimental to the public interest because the proposed use and design is compatible with the surrounding land uses and is in keeping with the surrounding properties.

Section 8. Time for Building Permit. Pursuant to Section 24-172(I) of the Code of Ordinances of the City of North Miami Beach, the Applicant must apply for a master building permit from the City within one (1) year of the date of this Resolution or the granted site plan approval and variances shall be deemed null and void, and the Applicant shall be required to reinstate the site plan review process unless the term is extended administratively or by the City Commission prior to its expiration.

Section 9. Limitation of Approval. The issuance of this development permit does not in any way create a vested right(s) on the part of the Applicant to obtain a permit from a county, state or federal agency, and does not create any liability on the part of the municipality for issuance of the permit if the Applicant fails to obtain requisite approvals or does not fulfill the obligations imposed by a county, state or federal agency or undertakes actions that result in a violation of county, state, or federal law.

Section 10. Conflicts. All resolutions or parts of resolutions in conflict with this Resolution are repealed to the extent of such conflict.

Section 11. **Effective Date.** This Resolution shall be in force and take effect immediately upon its passage and adoption.

APPROVED AND ADOPTED by the City Commission of the City of North Miami Beach, Florida at regular meeting assembled this ____**the day of** _____, **2022.**

[SIGNATURE PAGE TO FOLLOW]

RESOLUTION NO. R2022-XX

ATTEST:

ANDRISE BERNARD
CITY CLERK

(CITY SEAL)

ANTHONY F. DEFILLIPO
MAYOR

APPROVED AS TO FORM &
LANGUAGE & FOR EXECUTION

HANS OTTINOT
INTERIM CITY ATTORNEY

SPONSORED BY: Mayor and City Commission

| | YES | NO | ABSTAIN | ABSENT |
|----------------------------------|-----|----|---------|--------|
| Commissioners | | | | |
| Mayor Anthony DeFillipo | | | | |
| Vice-Mayor Fortuna Smukler | | | | |
| Commissioner McKenzie Fleurimond | | | | |
| Commissioner Barbara Kramer | | | | |
| Commissioner Michael Joseph | | | | |
| Commissioner Paule Villard | | | | |
| Commissioner Daniela Jean | | | | |

RESOLUTION NO. R2022-XX

**Exhibit “A”
LEGAL DESCRIPTION**

**LOTS 12 THROUGH 21, INCLUSIVE, BLOCK 72, FULFORD BY THE SEA SECTION “F”
ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 8, PAGE 64,
OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.**

THE ABOVE ALSO KNOWN AS:

**LOTS A AND E, BLOCK 72, 3RD REVISED PLAT OF SECTIONS - A, B, D, E, F AND
AMENDED PLATS OF SECTIONS C, G, H, I AND J, OF FULFORD BY THE SEA,
ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 34, PAGE 20,
OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.**

**LOT 11, BLOCK 72, FULFORD BY THE SEA, ACCORDING TO THE PLAT THEREOF
AS RECORDED IN PLAT BOOK 8 AT PAGE 64 OF THE PUBLIC RECORDS OF MIAMI-
DADE COUNTY, FLORIDA.**

Tax Folio(s): 07-2216-001-0370
07-2216-001-0360

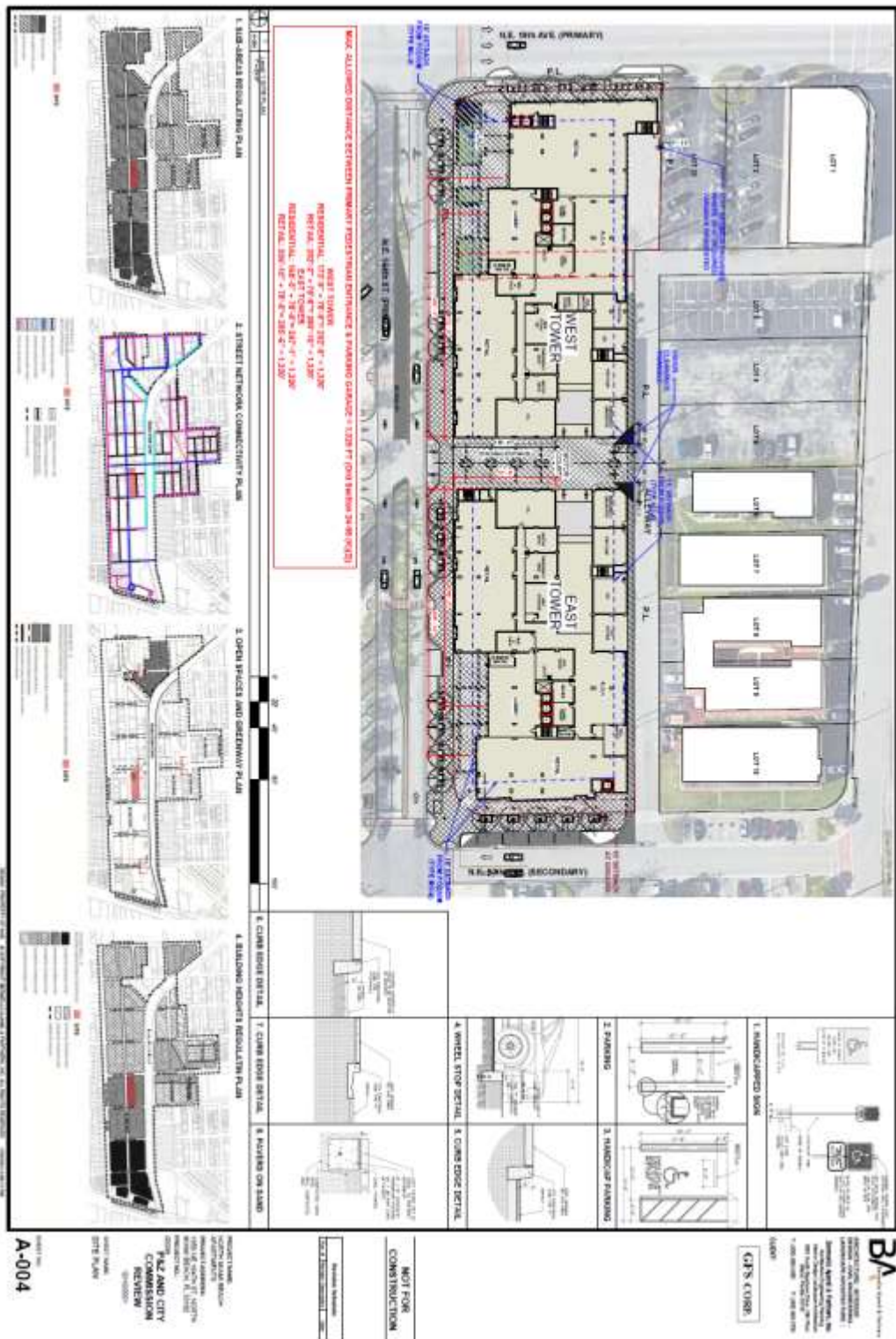
A/K/A

1959 NE 164th Street
1999 NE 164th Street

North Miami Beach, Florida

RESOLUTION NO. R2022-XX

Exhibit “B” SITE PLAN

**RESOLUTION NO. R2022-XX**