

**TOWN OF DAVIE  
TOWN COUNCIL AGENDA REPORT**

**TO:** Mayor and Councilmembers  
**FROM:** Monroe D. Kiar, Town Attorney  
**SUBJECT:** Resolution - Unified Parcel Agreement

**TITLE OF AGENDA ITEM:**

**A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE UNIFIED CONTROL AND USE OF AN EXISTING PARCEL PRESENTLY UTILIZED AS AN OFFICE BUILDING, FOR USE AS BUSINESS OFFICES BY BNS INTERNATIONAL INC. AND PHILLIPS FIRE SPRINKLERS, INC.**

**REPORT IN BRIEF:**

BNS International is the present owner of an office building within the Town of Davie that was approved and developed under a single plan approval issued by the Town under Site Plan No. SP 5-3-01. In October, 2002, representatives of BNS made inquiries with the Town's Planning and Zoning Division as to whether the Town would approve a proposed agreement between BNS International and Phillips Fire Sprinklers, Inc. to share ownership of the existing building.

The Town's Planning and Zoning Division subsequently asked the Town Attorney's Office to provide an opinion determining whether BNS International and Phillips Fire Sprinklers, Inc. could validly share the existing building. The Town Attorney's Office determined, through its memorandum to Marcie Nolan of the Planning and Zoning Division dated December 20, 2002 that in order for the BNS and Phillips Fire Sprinklers to share ownership of the building, the parties must enter into a unified control agreement whereby the parties agree to be jointly responsible to the Town for any violations of the Davie Town Code.

BNS and Phillips Fire Sprinklers has submitted such an agreement as is contemplated under Sections 12-376(A)(1) and 12-376(A)(2) of the Davie Town Code. The Town's Planning and Zoning Department has reviewed the agreement and has determined that the agreement meets the Town's requirements with respect to ensuring the ability of the Town to enforce the Town Code.

**PREVIOUS ACTIONS:** None

**CONCURRENCES:** None

**FISCAL IMPACT:** Not Applicable

**RECOMMENDATION(S):** Motion to approve.

Attachments(s): Resolution, Agreements, Subject site map.

RESOLUTION \_\_\_\_\_

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE UNIFIED CONTROL AND USE OF AN EXISTING PARCEL PRESENTLY UTILIZED AS AN OFFICE BUILDING, FOR USE AS BUSINESS OFFICES BY BNS INTERNATIONAL INC. AND PHILLIPS FIRE SPRINKLERS, INC.

WHEREAS, BNS International Inc.'s construction and utilization of an office building located at 405 S.W 148<sup>th</sup> Ave Davie, Florida was approved under a single plan approval issued by the Town of Davie under Site Plan No. SP 5-3-01.

WHEREAS, BNS International Inc. desires to sell a portion of the above mentioned office building to Phillips Fire Sprinklers Inc. for use as an office building.

WHEREAS, BNS International Inc. and Phillips Fire Sprinklers Inc have proposed a unified control agreement whereby both parties will be held responsible to the Town for any Town Code violations.

WHEREAS, unified control agreements, which provide that the parties to the agreement shall be held responsible to the Town for violations of the Town Code, are contemplated within the Town Code of Ordinances.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA.

SECTION 1. The Town Council of the Town of Davie does hereby authorize the Mayor and Town Administrator to enter into the Agreement, attached hereto as Exhibit "A", with BNS International Inc. and Phillips Fire Inc. to allow the joint ownership of the subject building.

SECTION 2. The Mayor is authorized to sign such agreement on behalf of the Town and the Town Clerk is directed to affix the Town's seal to such Agreement.

SECTION 3. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_,  
2003.

\_\_\_\_\_  
MAYOR/COUNCILMEMBER

ATTEST:

\_\_\_\_\_  
TOWN CLERK

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2003.

Prepared By and Return To:

Robert Cheng, Esq.  
SHUTTS & BOWEN LLP  
1500 Miami Center  
201 S. Biscayne Boulevard  
Miami, Florida 33131

**DECLARATION OF COVENANTS, RESTRICTIONS, EASEMENTS  
AND PARTY WALL AGREEMENT**

**THIS DECLARATION OF COVENANTS, RESTRICTIONS, EASEMENTS AND PARTY WALL AGREEMENT** (this "Declaration") is made as of February \_\_, 2003, by and between BNS INTERNATIONAL, INC., a Florida corporation ("BNS") and PHILLIPS FIRE SPRINKLERS, INC., a Florida corporation ("Phillips") (BNS and Phillips are sometimes referred to herein individually as an "Owner" and collectively as the "Owners").

**WHEREAS**, BNS constructed an approximately 37,700 square foot building (the "Building") on that certain parcel of land located in the Town of Davie (the "Town"), Broward County, Florida, and more particularly described on Exhibit "A" hereto ("Overall Parcel").

**WHEREAS**, immediately prior to the recording of this Declaration, BNS conveyed a portion of the Overall Parcel to Phillips, and after such conveyance, BNS is the fee simple owner of that portion of the Overall Parcel more particularly described on Exhibit "B" attached hereto ("BNS Parcel") and Phillips is the fee simple owner of that portion of the Overall Parcel adjoining the BNS Parcel, and more particularly described on Exhibit "C" attached hereto ("Phillips Parcel") (the BNS Parcel and the Phillips Parcel are sometimes referred to herein individually as a "Parcel" and collectively as the "Parcels").

**WHEREAS**, the Building is partially located on the BNS Parcel ("BNS Unit") and partially located on the Phillips Parcel (the "Phillips Unit") (the BNS Unit and the Phillips Unit are sometimes referred to herein individually as a "Unit" and collectively as the "Units").

**WHEREAS**, BNS and Phillips wish to record this Declaration in order to provide mutual easements for access and utilities, to place certain covenants and restrictions on the parcels and buildings and to provide a party wall agreement between the parties.

**NOW, THEREFORE**, in consideration of the provisions hereinafter contained and for other good and valuable consideration, BNS and Phillips hereto approve the following restrictions and grant the following rights and easements:

1. **MAINTENANCE**

1.1 **Obligation to Maintain and Repair**. All maintenance, repairs and replacements, in or to any Parcel, including, but not limited to, any Unit, whether structural or nonstructural, ordinary or extraordinary, foreseen or unforeseen, including, without limitation, maintenance, repair and replacement of the windows, window coverings, and entrance door, electrical, mechanical, plumbing lines, pipes, fixtures, equipment, switches, wires, valves,

drains, conduits, ducts, and other facility for the furnishing for utility and other services serving exclusively the Unit, heating and air conditioning equipment, floor coverings, all interior surfaces of the entire interior of the Unit shall be performed by the Owner of such Unit at the such Owner's sole cost and expense.

1.2 Maintenance Standards. Each Owner shall maintain its Parcel (including its Unit) and the Facilities (as hereinafter defined) in a good and clean condition and repair, with the type of material originally installed or such other substitute as shall in all respects be equal or superior in quality, use and character to the original requirement which maintenance shall include, without limitation, the following:

- (a) Maintaining, repairing, restriping and resurfacing, when necessary, all paved surfaces in a level, smooth and evenly covered condition;
- (b) Maintaining and repairing all walkways and pavement areas;
- (c) Removing all papers, debris, filth and refuse and thoroughly sweeping the area to the extent necessary to keep the area in a clean and orderly condition;
- (d) Maintaining, repairing and replacing, when necessary, all traffic directional signs, markers and lines;
- (e) Maintaining, repairing and replacing, when necessary, all artificial lighting facilities;
- (f) Maintaining all landscaped areas (including, without limitation, those on the perimeter of its Parcel), all automatic sprinkler systems and water lines and replacing shrubs, trees and other landscaping as necessary;
- (g) Maintaining, repairing and replacing, when necessary, all fences and walls located on its Parcel;
- (h) Maintaining, repairing and replacing, when necessary, all storm drains, sewers and other utility lines and facilities not dedicated to the public or conveyed to any public or private utility which are located on its Parcel; and
- (i) Maintaining, repairing and replacing, when necessary, all signs located on its Parcel.

In the event either Owner fails to maintain its Building or its Parcel in the manner required by this Declaration, the other Owner may, upon twenty (20) days prior written notice to such Owner, specify the nature of such default (except in the event of an emergency, in which case no notice shall be required), and should such Owner fail to correct the default, the non-defaulting Owner may proceed to enter upon such Owner's Building or Parcel and correct the default. Any cost expended in curing such default shall be immediately due and payable from the defaulting Owner and shall bear interest from the date of the notice of default to the date such is paid at a rate equal to the lesser of eighteen percent (18%) per annum or the maximum interest rate allowed by applicable law. Each Owner hereby grants to the other Owner, its

agents or designees, the right, privilege and easement to enter its respective Parcel and Building in order to effect such cure.

## 2. IMPROVEMENTS.

2.1 Improvements and Alterations. Except as otherwise expressly provided herein, no improvement, alteration or change (either interior or exterior) may be made to either Unit, and no building, sign, fence, other improvement may be constructed upon, over or under either Parcel, nor shall the location of any utility or other improvement be moved, without the prior written approval of the Owner of the other Parcel or Unit. Before commencement of (i) any improvement, alteration or change to the exterior of either Unit, or (ii) construction of any building, sign, fence, utility or other improvement on either Parcel or any modification thereto, the Owner intending to make such improvements, alteration, change, building, sign, fence, utility or any modification thereof shall submit request, in writing, to the other Owner, together with such information as shall be sufficient to enable such other Owner to make a reasonable determination as to the architectural and aesthetic compatibility of said alteration, change, improvement, building, sign, fence, utility, or any modification thereof, with its Unit and the Building as a whole. The Owner receiving a request for its approval of a proposed change shall approve or disapprove the request in writing within thirty (30) days after receipt of the request. If written notice of approval or disapproval of the proposal as contained in such request is not given within said thirty (30) day period, the proposal be deemed to have been approved. If the proposal is disapproved as provided herein, then an alternate proposal may be submitted, which alternate proposal shall be subject to the same approval procedures as the initial proposal. Notwithstanding anything contained herein to the contrary, either Owner may make non-structural alterations or improvements to the interior of its Unit without obtaining the consent of the other Owner. Nothing contained in this Declaration shall in any way alter or modify any obligation to obtain applicable permits from the Town for any improvements or alterations for which a building permit is required by the Town's Code of Ordinances (the "Code").

2.2 Site Plan. The parties acknowledge and agree that the Parcels and the Building were approved and developed under a single plan approval issued by the Town under No. SP 5-3-01 ("Approved Site Plan"). As such, each Owner agrees not to take any action with respect to its Parcel or Unit which would require a modification of the Approved Site Plan including, without limitation, changing the permitted use, the number or configuration of the parking spaces or altering the facade of the Building in a manner inconsistent with the facade approved by the Town without the prior written consent of the Town.

2.3 Master Sign Plan. Within (15) days after the recording of this Declaration in the Public Records of Broward County, BNS and Phillips jointly agree to submit to the Planning and Zoning Division (the "Division") of the Town's Development Services Department for its approval, a master sign plan with respect to the Overall Parcel which shall meet the requirements of Section 12-240 of the Code ("Sign Plan"). The Division shall have twenty (20) days after receipt of the Sign Plan either to approve or to disapprove the Sign Plan by written notice delivered to BNS and Phillips. If the Division disapproves the Sign Plan, the notice of such disapproval shall state with particularity the reasons for such disapproval. BNS and Phillips shall have ten (10) days after receipt of such disapproval in which to submit a revised Sign Plan (the "Revised Sign Plan") to the Division, and the Division shall have twenty (20) days following receipt of such Revised Sign Plan either to approve or disapprove such Revised Sign Plan. If the Division either fails to approve or disapprove the Sign Plan or Revised Sign Plan within the time provided herein, such Sign Plan or Revised Sign Plan, as the case

may be, shall be deemed approved; provided such Sign Plan or Revised Sign Plan meets the requirements of Section 12-240 of the Code. Once the Sign Plan or Revised Sign Plan has been approved (the "Approved Sign Plan"), BNS and Phillips each agree to maintain all signs on its respective Parcel in accordance with the Approved Sign Plan. Any modifications to the Approved Sign Plan shall require the written consent of each party hereto as well as the consent of the Division, which consents shall not be unreasonably withheld, conditioned or delayed.

### 3. CASUALTY AND CONDEMNATION.

In the event all or any portion of a Unit or any other improvement constructed upon a Parcel is damaged or destroyed by fire or other casualty or taken or damaged as a result of the exercise of the power of eminent domain or any transfer in lieu thereof, the Owner of such Parcel, Unit or improvement shall, subject to any applicable requirements of the Town, promptly (i) in the event of a casualty, repair or cause to be repaired that portion of the Parcel, Unit or improvement so damaged or destroyed, or, (ii) in the event of a taking, restore or cause to be restored the remaining portion of such Parcel, Unit or improvement not so taken.

### 4. EASEMENTS.

#### 4.1 Reciprocal Ingress and Egress.

(a) Each Owner hereby grants to the other Owner and their respective agents, employees, contractors, guests and invitees, a perpetual non-exclusive right and easement for pedestrian and vehicular ingress to, egress from and access across their respective parcels as an easement appurtenant to each Parcel, as applicable, for the purpose of driving, walking or going upon or across any curb cut, driveway, access road, sidewalk or walkway, now existing or hereafter constructed on a Parcel.

(b) Either Owner may relocate, at its cost and expense, any curb cut, driveway access road, sidewalk or walkway located on its respective Parcel; provided, however, no such relocation shall materially and adversely affect the rights of the other Owner hereunder.

(c) Each Owner shall each be responsible for the maintenance and repair of all driveways, walkways, access roads and sidewalks located on its Parcel.

(d) Nothing contained herein shall be deemed to grant reciprocal parking rights to the other Owner, and each of BNS Parcel and the Phillips Parcel shall have its own independent parking facilities and improvements sufficient to meet the requirements of the Town of Davis.

#### 4.2 Utility and Drainage Lines and Facilities.

(a) BNS and Phillips acknowledge and agree that pursuant to the Approved Site Plan, the Parcels share a common stormwater drainage and other facilities. To that end, BNS hereby grants to Phillips, and Phillips hereby grants to BNS, a perpetual non-exclusive right and easement to connect into and use all water drainage systems or structures, water mains, sewers, water sprinkler system lines, telephone lines, electrical conduits or systems, gas mains and other public or private utilities located upon their respective Parcels

(collectively, the "Facilities").

(b) At all times and from time to time BNS and/or Phillips shall have the right to relocate on its respective Parcel any utility line or Facility installed pursuant to the foregoing grant of easement which is then located on the Parcel of such Owner, provided that any such relocation (i) shall be performed only after sixty (60) days written notice of such Owner's intention to undertake the relocation shall have been given to the other Owner, (ii) shall not interfere with or diminish utility service to the other Parcel, (iii) shall not reduce or impair the usefulness or function of the utility line or Facility, (iv) shall be performed without cost or expense to the other Owner or occupant of the other Parcel, and (v) shall provide for the original and relocated area to be restored to the original specifications. The party performing such relocation shall provide as-built plans for all such relocated utility lines and Facilities to the other Owner within thirty (30) days after the date of completion of such relocation.

(c) BNS and Phillips agree to grant such additional easements as are reasonably required by any public or private utilities for the purpose of providing the utility lines and/or the Facilities described herein, provided such easements are not otherwise inconsistent with the provisions of this Declaration and will not unreasonably interfere with the use or development of the Parcels or the Building.

(d) The installation, operation, maintenance, repair and replacement of the easements and Facilities described herein shall not unreasonably interfere with the use of the Parcels or the Building or with the normal operation of any business in the Parcels or in the Building or with any improvements that have been or are in the future constructed on the Parcels in accordance with the Declaration. The grantee using such easements or Facilities shall bear all costs related to the installation, operation, maintenance, repair and replacement of such easements and Facilities and the cost to repair any damage resulting from such use.

(e) The respective Owner of each Parcel shall be responsible for maintaining and repairing the drainage lines and drainage facilities located on that Owner's respective Parcel. All other utility lines shall be maintained by the appropriate utility provider.

(f) Neither BNS nor Phillips shall take any action that interferes with or impairs the usefulness or function of any utility lines or the Facilities.

4.3 **Support.** Each of the BNS Unit and the Phillips Unit shall have an easement of support and of necessity and shall be subject to an easement of support and of necessity in favor of the other Unit.

4.4 **Encroachment.** If any Unit or other improvement constructed on a Parcel encroaches upon the other Unit or any portion of the Parcel of the other Owner and such encroachment shall occur as a result of (i) the initial construction of the Building, (ii) settling or shifting of the Building or other improvements, (iii) any addition, alteration or repair to any Unit or other improvements as a result of any casualty or as may otherwise be permitted hereunder, then in any such event, a valid easement shall exist for the existence and maintenance of same so long as the Building or other improvement shall stand.

5. **STATEMENT OF JOINT RESPONSIBILITY.** BNS and Phillips agree that each shall be jointly responsible to the Town to ensure that the access drives, landscaping, lighting, shared drainage facilities and utilities and signs located on the Overall Parcel are in compliance with the Approved Site Plan and the Approved Sign Plan. Notwithstanding such joint

responsibility to the Town, each party hereto expressly reserves its right to demand and receive compensation and/or contribution from the other for any sums advanced by such party pursuant to this Declaration for which the other party is responsible hereunder.

6. PARTY WALL AND PARTY ROOF AGREEMENT

6.1 Declaration of Party Wall. The westerly wall of the BNS Unit is part of and common with the easterly wall of the Phillips Unit, which wall is approximately one hundred thirty four (134) feet in length, approximately eight (8) inches in width and approximately eighteen (18) feet in height, the location of which is set forth on Exhibit "C" hereto (the "Party Wall"). It is hereby declared that the Party Wall and any extensions of it, shall be legally deemed to be a party wall in all respects and shall be subject to the covenants and restrictions set forth in this Declaration.

6.2 Party Roof. Any common roof shared by the Units and which is not clearly applicable to any particular Unit shall be a party roof (the "Party Roof"). The Party Roof shall be for the perpetual benefit of and for use by the respective Owners of the Units.

6.3 Damage and Repairs. In the event of damage or destruction of the Party Wall or Party Roof from any causes, other than the negligence of either Owner, then (i) with respect to the Party Wall, both Owners shall, at joint and equal expense, repair or rebuild the Party Wall on the same spot and on the same line, and be of the same size, and of the same or similar material and of like quality with the present wall, and each Owner shall have the right to the use of the Party Wall so repaired or rebuilt; and (ii) with respect to the Party Roof, each Owner shall pay its pro-rata share of the expense or any such repairs to or replacement of the Party Roof. For purposes of clause (ii) above, each Owner's pro-rata share shall be calculated by multiplying the cost of such repair or replacement by a fraction the numerator of which shall be the square footage of such Owner's Unit and the denominator of which shall be the square footage of the entire Building. The Owners agree that repairs and reconstruction of the Party Wall or Party Roof shall be undertaken wherever a condition exists which may result in damage or injury to person or property if repair or reconstruction work is not undertaken. Either Owner, upon discovering the possibility of damage or destruction to either the Party Wall or Party Roof, shall notify the other of the nature of the damage, the work required to remedy the situation, and the estimated cost of the repair or reconstruction. The other Owner shall then have twenty (20) days from the receipt of the notice either to object to the repairs or reconstruction or to pay such Owner's share of the cost of the work. However, in the event of an emergency (i.e., a condition that is immediately threatening to the safety of persons or property), no notice shall be required under this Section prior to commencing the necessary repairs or reconstruction, and each Owner shall pay such Owner's share of the cost of the work. If either Owner's negligence shall cause damage to or destruction of the Party Wall or Party Roof, the negligent Owner shall bear the entire cost of repair or reconstruction.

6.4 Alterations. Except as expressly permitted herein, neither Unit Owner may make any alterations or additions to the Party Wall or Party Roof without the prior written consent of the other Owner.

6.5 Easements. Each Owner and its respective successors, heirs, assigns, contractors, licensees, agents, and employees shall have an easement in that part of the parcel and building of the other necessary or desirable to repair, restore, or extend the Party Wall or

Party Roof. Each Owner shall permit the other party and said other Owner's contractors, licensees, agents and employees to enter its Parcel and/or Unit for the purpose of repairing, restoring, and/or extending the Party Wall and/or Party Roof and shall secure the permission of the tenants, if any, occupying the Parcel or Unit for such entrance.

**6.6 Use of Party Wall.** Each Owner shall have the right to use the side of the Party Wall facing that Owner's Unit in any lawful manner, including attaching structural or finishing materials to it; however, an Owner shall not create windows or doors or place air conditioning equipment in the Party Wall without the consent of the other Owner. Any consent given to one of the Owners to make openings in the Party Wall shall be subject to the right of the other Owner to close up such openings and/or remove such air conditioning equipment at such times as that Owner desires to use that part of the Party Wall.

**7. INDEMNIFICATION, INSURANCE.** Each Owner hereby agrees to indemnify, defend and save harmless the other Owner from and against any and all liability, claims, damages, expenses (including, but not limited to, reasonable attorney's fees, including attorney's fees incurred with respect to any litigation and any appeal or in any case or proceeding), judgments, proceedings and causes of action for injury to or death of any person or damage to or destruction of any property occurring as a result of each Owner's use or misuse of any of the easements or other rights granted in this Declaration, unless caused by the negligent or willful act or omission of the indemnified person, its tenants, subcontractors, agents, contractors or employees. Each Owner shall maintain or cause to be maintained comprehensive general liability insurance with broad form endorsement insuring all persons who now or hereafter own the Building, or any portion thereof, or any leasehold estate or other interest therein, as their respective interests may appear, against claims on account of loss of life, bodily injury or property damage that may arise from or be occasioned by the condition, use or occupancy of its Unit and/or its Parcel and/or its use or misuse of any of the easements or other rights granted in this Declaration. Such insurance shall (i) be carried by a reputable insurance company or companies qualified to do business in the State of Florida and (ii) have limits for loss of life or bodily injury in the amounts of not less than Two Million Dollars (\$2,000,000.00) for each person, Two Million Dollars (\$2,000,000.00) for each occurrence and Fifty Thousand Dollars (\$50,000.00) for property damage for each occurrence. Each Owner shall maintain "All Risks" insurance for the Phillips Unit in an amount equal to one hundred percent (100%) of the full replacement value of its Building, without deductions for depreciation. Such insurance may be provided under a blanket policy, provided such policy otherwise complies with the requirements of this Declaration. Each Owner shall provide a copy of such insurance to the other Owner at the beginning of each year.

**8. RIGHT OF FIRST REFUSAL.** No Owner may sell his Unit except by complying with the following provisions:

**8.1 Notice of Offer.** Any Owner who receives a bona fide offer to purchase its Parcel (such offer to purchase a Parcel, is called an "Offer," the party making any such Offer is called a "Buyer," and the Owner to whom the Offer is made is called an "Offeror Owner"), which such Offeror Owner intends to accept, then such Offeror Owner shall give written notice to the other Owner (the "Offeree Owner") of the receipt of such Offer (the "Offer Notice"). The Offer Notice shall state the name and address of the Buyer, the terms of the proposed transaction and such other information as may reasonably be requested by the Offeree Owner. The giving of the Offer notice shall constitute an offer by such Offeror Owner to sell the Parcel to the Offeree Owner or its designee upon the same terms and conditions as contained in such Offer and shall also constitute a warranty and representation by the Offeror Owner that the Offeror Owner believes

the Offer to be bona fide in all respects. Not later than seven (7) days after receipt of such notice, together with such further information as may have been requested (the "Offer Period"), the Owner or its designee may elect, by sending written notice to the Offeror Owner before the expiration of said the Offer Period to purchase such Parcel upon the same terms and conditions as contained in the Offer and as stated in the Offer Notice together with a deposit in the amount required by the Offer. Such deposit shall be made payable to the attorney of the Offeror Owner as set forth herein.

**8.2 Closing.** In the event the Offeree Owner elects to purchase the Parcel or to cause the same to be purchased by its designee, title shall close in accordance with the terms of the Offer, within forty five (45) days after such Offeree Owner gives written notice of its election to accept such offer. At the closing, the Offeror Owner shall convey the Parcel to the Offeree Owner, or to its designee, by special warranty deed. All documentary stamps and all other taxes, costs and expenses arising out of such sale shall be allocated in the manner set forth in the Offer. Real estate taxes and assessments shall be apportioned between the Offeror Owner and the Offeree Owner, or its designee, as of the closing date.

**8.3 Failure to Exercise Right of First Refusal.** In the event the Offeree Owner or its designee elects not to exercise its right to purchase the Parcel or fails to accept such offer within the Offer Period, the Offeror Owner shall be free to accept the Offer. In the event the Offeror Owner does not accept, in writing, the Offer or if the Offeror Owner accepts the Offer or if the Offeror Owner accepts the Offer, but such sale is not consummated in accordance with the terms of such Offer or within a reasonable time after the date set for closing thereunder, then, should such Offeror Owner thereafter elect to sell such Parcel, the Offeror Owner shall be required to again comply with all of the terms and provisions of this Article 8.

**8.4 Effect of Declaration.** Any deed to a Buyer shall automatically be deemed to provide that the acceptance thereof by the grantee shall constitute an assumption of the provisions of this Declaration, as the same may be amended from time to time.

**8.5 Exceptions.** The foregoing restrictions shall not apply to (a) a Parcel owned by any mortgagee of a Parcel ("Mortgagee") acquiring title to a Parcel by foreclosure or by a deed in lieu of foreclosure or in satisfaction of debt. A Mortgagee shall have the right to sell a Parcel it owns without having to first offer the same for sale to the other Owner, or (b) any sale or conveyance of any Parcel by the Owner thereof to a subsidiary, affiliate or parent or other entity or individual which controls, is controlled by, or is under common control with such Owner, or to the beneficial owners of such Owner or their respective family members; provided, however, that each succeeding owner shall be bound by, and its Parcel subject to, the provisions of this Article 8.

## 9. USE RESTRICTIONS.

**9.1 Use.** The Unit may be used only in accordance with applicable zoning requirements and for any lawful purpose by the Owners thereof and their guests, tenants and invitees, subject to any restrictions contained in this Declaration. Each party acknowledges and agrees that portions of each Unit adjacent to the Party Wall is intended by the respective Owner thereof (and/or its proposed tenants or other occupants) to be used as office space. As such, each Owner hereby agrees that in addition to any other restrictions regarding use of its Unit, such Owner will not, and will not permit any tenant or other occupant of the unit to, attach anything to the Party Wall or otherwise use its Unit in a manner that may cause noise and/or

vibrations to travel across or through the Party Wall and interfere with the use of the of the other Owner Unit as offices or for office purposes.

9.2 **Nuisances.** No nuisances shall be allowed on either Parcel nor in any Unit nor shall any use or practice be allowed which is a source of annoyance to occupants of either of the Units or which interferes with the peaceful possession or proper use of either of the Units by their respective Owner, contractors, guests, invitees, or tenants.

9.3 **No Improper Uses.** No improper, offensive, hazardous or unlawful use shall be made of either Parcel or any Unit or a part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereover shall be observed.

10. **LIEN RIGHTS.** Each of BNS and Phillips shall have the right to a lien on the Parcel of such other Owner, to secure payments due to BNS or Phillips, as applicable, pursuant to this Declaration, and in connection therewith, each Owner shall have the right to file a claim of lien upon such other Owner's Parcel. The lien shall be effective from and after the recording of the claim of lien in the Public Records of Broward County, Florida. The claim of lien shall not be released until all sums secured by it have been fully paid or until it has been barred by law. No such lien shall be effective longer than one (1) year after the claim of lien has been recorded unless, within that one (1) year period, an action to enforce the lien is commenced. The one (1) year period shall automatically be extended for any length of time during which the Owner of the Parcel enforcing the lien is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy or other insolvency petition filed by the other Owner or any person claiming an interest in the Parcel. The claim of lien shall secure, whether not stated herein, all unpaid cost which are due and which may accrue subsequent to the recording of the claim of lien and prior to the entry of a certificate of title, as well as interest and all reasonable costs and attorneys' fees incurred by the Owner enforcing the lien incident to the collection process. Upon payment in full, the Owner making the payments is entitled to a satisfaction of lien in recordable form. The Owner enforcing the lien may bring an action in its name to foreclose the lien for unpaid cost in the manner of a mortgage of real property is foreclosed and may also bring an action at law to recover a money judgment for the unpaid costs without waiving any claim of lien. The Owner enforcing the lien is entitled to recover its reasonable attorneys' fees incurred in either a lien foreclosure action or an action to recover money judgment for unpaid costs together with interest on such unpaid amounts at the rate of 18% per annum.

## 11. **GENERAL PROVISIONS.**

11.1 **Covenants Run with the Land.** Each covenant, restriction and easement on each Parcel shall be a burden on that Parcel, shall be appurtenant to and for the benefit of the other Parcel and each part thereof, and shall run with title to the land.

11.2 **Successors and Assigns.** Any and all references in this Declaration to BNS and Phillips shall include their respective heirs, personal representatives, successors and assigns. This Declaration and the covenants, restrictions and easements created hereby shall inure to the benefit of and be binding upon BNS and Phillips, their respective heirs, personal representatives, successors and assigns; provided, however, that if BNS sells all or any portion of its interest in the BNS Unit or BNS Parcel, or if Phillips sells all or any portion of its interest in the Phillips Unit or the Phillips Parcel, such Owner shall thereupon be released and discharged from any and all obligations in connection with the parcel or building sold by it arising under this Declaration after the conveyance of title but shall remain liable for all obligations arising under

this Declaration prior to the conveyance of title. The new Owner of any such parcel or building or any portion thereof (including, without limitation, any Owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all obligations arising under this Declaration with respect to such Parcel or Building or portion thereof after the date of conveyance of title.

**11.3 Duration.** Except as otherwise provided herein, the term of this Declaration shall be for thirty (30) years from the date hereof, after which time this Declaration shall be automatically extended for successive periods of ten (10) years each unless prior to the expiration of the original thirty (30) year term or any ten (10) year renewal term, a notice of termination signed by BNS and Phillips is recorded in the Public Records of Broward County, Florida. The easements created hereunder shall continue as long as and to the extent reasonably necessary or desirable for the continued use and enjoyment of any affected Parcel or Building.

**11.4 Injunctive Relief.** In the event of any violation or threatened violation by any person of any of the terms, restrictions, covenants or easements contained in this Declaration, each of the Owners shall have, in addition to the right to collect damages, the right to enjoin such violation or threatened violation in a court of competent jurisdiction. The right of injunction shall be in addition to all other remedies set forth in this Declaration or as provided by law.

**11.5 Modification and Termination.** This Declaration may only be modified, amended or terminated by written agreement signed by both BNS and Phillips. Notwithstanding anything contained herein to the contrary, BNS and Phillips agree (i) to provide the Town with not less than fifteen (15) days notice prior to the effective date of any amendment, termination or modifications to Section 2.1 hereof, and (ii) that no amendment, termination or modifications to Sections 2.2 and 2.3 hereof shall be effective without the prior written consent of the Town, which consent shall not be unreasonably withheld, conditioned or delayed.

**11.6 Not a Public Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Overall Building or the Parcels to or for the general public or for any public purpose whatsoever, it being the intention of the parties that this Declaration shall be strictly limited to and for the purposes herein expressed.

**11.7 Breach Shall Not Permit Termination.** It is expressly agreed that no breach of this Declaration shall entitle any Owner to terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies which any Owner may have hereunder by reason of a breach of this Declaration. Any breach of this Declaration shall not defeat or render invalid the lien of any mortgage made in good faith for value, but this Declaration shall be binding upon and be effective against any Owner whose title is acquired by foreclosure, trustee's sale or otherwise.

**11.8 Notices**

(a) All notices given pursuant to this Declaration shall be in writing and shall be given either by personal delivery, by United States mail or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the person and address shown designated below or, in the absence of such designation, to the person and address shown on the then-current real property tax rolls of Broward County, Florida.

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BNS: BNS International, Inc.  
405 S.W. 148<sup>th</sup> Avenue  
Davie, Florida 33325  
Attn: Gil Nehamkin  
Telephone: (954) 476-3200  
Facsimile: (954) 474-3111

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with copy to: Shutts & Bowen LLP  
1500 Miami Center  
201 South Biscayne Boulevard  
Miami, Florida 33131  
Attn: Brian Belt, Esq.  
Telephone: (305) 358-6300  
Facsimile: (305) 381-9882

Phillips: Phillips Fire Sprinklers, Inc.  
405 S.W. 148<sup>th</sup> Avenue  
Davie, Florida 33325  
Attn: Robbie Phillips  
Telephone: (954) 217-0600  
Facsimile: (954) 217-0601

with copy to: Benson, Mucci & Associates, LLP  
One Financial Plaza, Suite 1600  
Ft. Lauderdale, Florida 33394  
Attn: Mark S. Mucci, Esq.  
Telephone: (954) 524-6800  
Facsimile: (954) 463-6963

Town: The Town of Davie  
6591 Orange Drive  
Davie, Florida 33314  
Attn: \_\_\_\_\_  
Telephone: (954) 797-1030  
Facsimile: \_\_\_\_\_

The person and address to which notices are to be given may be changed at any time by any party upon written notice to the other parties. All notices given pursuant to this Declaration shall be deemed given upon receipt.

For the purpose of this Declaration, the term "receipt" shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document as shown on the return receipt, (ii) the date of actual receipt of the notice or other document by the person or entity specified pursuant to this Section, or (iii) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (a) the date of the attempted delivery or refusal to accept delivery, (b) the date of the postmark on the return receipt, or (c) the date of receipt of notice of refusal or notice of non-delivery by the sending party.

11.9 Waiver. The failure of an Owner to insist upon strict performance of any of the covenants or restrictions contained herein shall not be deemed a waiver of any rights or remedies that said Owner may have and shall not be deemed a waiver of any subsequent breach or default in any of the covenants or restrictions contained herein by the same Owner.

11.10 Attorney's Fees. In the event of any litigation or other action or proceeding to enforce or interpret any of the terms of this Declaration, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable costs and attorney's fees (including its reasonable costs and attorney's fees on any appeal).

11.11 Severability. If any term or provision of this Declaration or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Declaration or the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby and each term and provision of this Declaration shall be valid and shall be enforced to the extent permitted by law.

11.12 Not a Partnership. The provisions of this Declaration are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the parties hereto.

11.13 Captions and Headings. The captions and headings in this Declaration are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.

11.14 Entire Agreement. This Declaration contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Declaration shall be construed as a whole and not strictly for or against any party.

11.15 Construction. In construing the provisions of this Declaration and whenever the context so requires, the use of a gender shall include all other genders, the use of a singular shall include the plural, and the use of the plural shall include the singular.

11.16 Joint and Several Obligations. In the event any party hereto is composed of more than one person, the obligations of said party shall be joint and several.

11.17 Recordation. This Declaration shall be recorded in the Public Records of Broward County, Florida.

11.18 Florida Law Applicable. This Declaration shall be subject to and shall be enforced and construed under the laws of the State of Florida.

11.19 Counterparts. This Declaration may be executed in several counterparts and all such executed counterparts shall constitute one declaration, binding on all of the parties hereto notwithstanding that all of the parties hereto are not signatories to the original or to the same counterpart.

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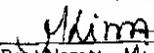
**[Remainder of this page intentionally left blank]**

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IN WITNESS WHEREOF, BNS and Phillips each have executed this Declaration, under seal, as of the day and year first above written.

BNS:

Witnesses:

  
Print Name: Lisa DeCesari  
  
Print Name: Milena Lima

BNS INTERNATIONAL, INC.,  
a Florida corporation

By:   
Name: A. J. Burke  
Title: President

Phillips:

Witnesses:

  
Print Name: Greg M. ...  
  
Print Name: Colina M. ...

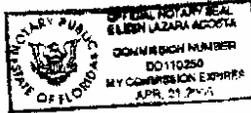
PHILLIPS FIRE SPRINKLERS, INC.,  
A Florida corporation

By:   
Name: ROBERT H. PHILLIPS  
Title: PRESIDENT

STATE OF FLORIDA )  
 ) ss:  
COUNTY OF Broward

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of February, 2003, by Anthony Lucas Dancer of BNS INTERNATIONAL, INC., a Florida corporation, on behalf of the corporation. ~~He~~ She is personally known to me or produced a State of Florida Driver's License as identification.

Signature: [Handwritten Signature]  
Name: (Type or Print) \_\_\_\_\_  
Title: Notary Public  
Serial No., if any: \_\_\_\_\_  
My commission expires: 4-21-06  
(SEAL)



STATE OF FLORIDA )  
 ) ss:  
COUNTY OF Broward

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of February 2003, by Robert H. Phillips as President of PHILLIPS FIRE SPRINKLERS, INC., a Florida corporation, on behalf of the corporation. ~~He~~ She is personally known to me or produced a State of Florida Driver's License as identification.

Signature: [Handwritten Signature]  
Name: (Type or Print) Robert H. Phillips  
Title: Notary Public  
Serial No., if any: \_\_\_\_\_  
My commission expires: 7/17/05  
(SEAL)



**ACKNOWLEDGMENT AND JOINDER OF TOWN OF DAVIE**

The Town of Davie (the "Town") hereby acknowledges that the BKS Parcel and the Phillips Parcel as such terms are defined in the foregoing Declaration of Covenants, Restrictions, Easements and Party Wall Agreement between BNS International, Inc. and Phillips Fire Sprinklers, Inc. (the "Declaration") are considered by the Town to constitute a single site for development purposes. As such, the conveyance of the Phillips Parcel without replatting the Overall Parcel (as defined in the Declaration) does not violate any provision of the Code (as defined in the Declaration), including, but not limited to platting, waiver of plat, or building set-back requirements. By executing this Acknowledgment, the Town also joins in the foregoing Declaration for the limited purpose of acknowledging its agreement to be bound by the terms of Sections 2.3 and 11.5 of the Declaration.

**TOWN OF DAVIE**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

The foregoing Declaration and this Joinder are approved as to form and legal sufficiency.

By: \_\_\_\_\_  
Name: Monroe D. Kjar  
Title: Town Attorney

STATE OF FLORIDA            )  
  ) ss:  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2003, by \_\_\_\_\_ and \_\_\_\_\_ as the \_\_\_\_\_ and \_\_\_\_\_ of the Town of Davie, respectively, on behalf of the Town. They are personally known to me or produced a State of \_\_\_\_\_ Driver's Licenses as identification.

Signature: \_\_\_\_\_  
Name: [Type or Print] \_\_\_\_\_  
Title: Notary Public  
Serial No., if any:  
My commission expires:

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**EXHIBIT A**  
**Overall Parcel**

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LAND DESCRIPTION

PORTIONS OF TRACTS 1 AND 2, "FLORIDA FRUIT LANDS COMPANY SUBDIVISION NO. 1,  
SECTION 9, TOWNSHIP 50 SOUTH, RANGE 20 EAST, AS RECORDED IN PLAT BOOK 2,  
PAGE 17 OF THE PUBLIC RECORDS OF MIAMI/DADE COUNTY, FLORIDA, MORE FULLY  
DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTH-EAST CORNER OF SAID TRACT 2,

THENCE SOUTH 89°51'44" WEST, ALONG THE SOUTH LINE OF SAID TRACT 2, A DISTANCE  
OF 463.25 FEET;

THENCE NORTH 41°34'53" EAST, ALONG THE EASTERLY RIGHT-OF-WAY OF INTERSTATE 75, A  
DISTANCE OF 637.79 FEET;

THENCE SOUTH 00°21'21" EAST, ALONG A LINE 37.00 FEET WEST OF AND PARALLEL WITH  
THE EAST LINES OF TRACTS 1 AND 2, A DISTANCE OF 206.06 FEET;

THENCE NORTH 89°36'39" EAST, A DISTANCE OF 37.00 FEET;

THENCE SOUTH 00°21'21" EAST, ALONG THE EAST LINE OF SAID TRACT 2, A DISTANCE OF  
270.12 FEET TO THE POINT OF BEGINNING.

LESS THEREFROM:

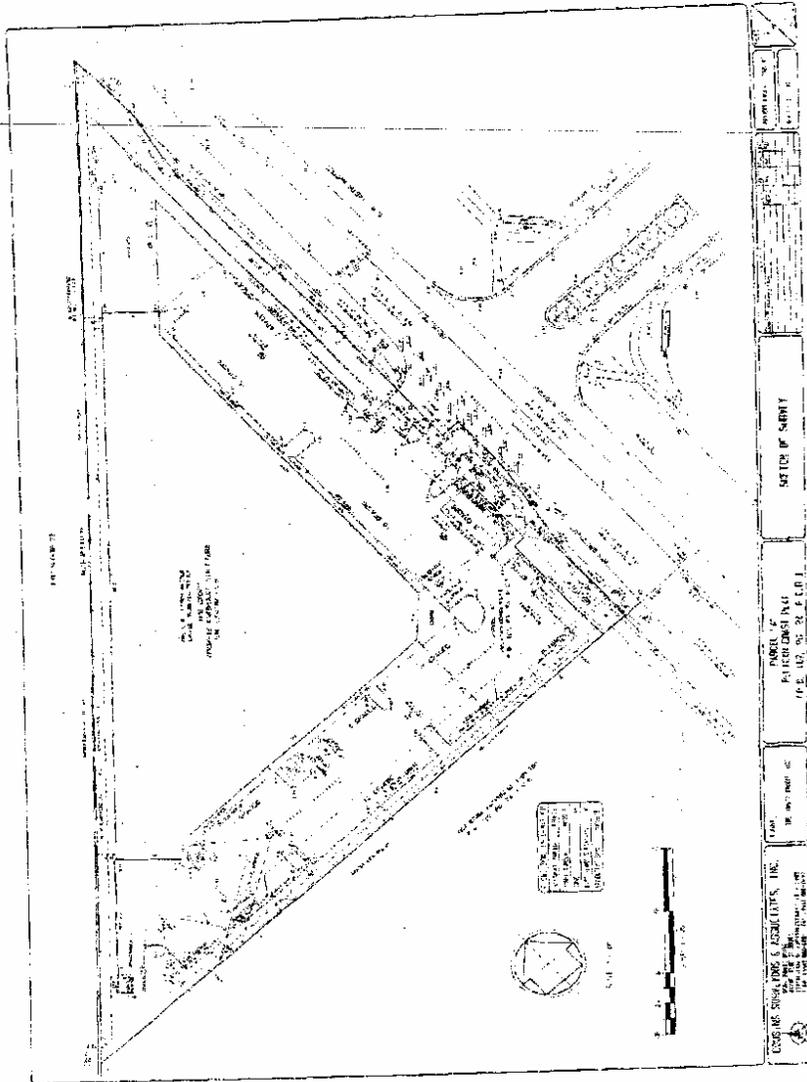
RIGHT-OF-WAY DEDICATED BY "PELICAN COAST PLAT", ACCORDING TO THE PLAT THEREOF,  
AS RECORDED IN PLAT BOOK 167, PAGE 24, OF THE PUBLIC RECORDS OF BROWARD COUNTY,  
FLORIDA

SAID LANDS SITUATE, LYING BEING IN THE TOWN OF DAVIE, BROWARD COUNTY, FLORIDA  
AND CONTAINING 99,547 SQUARE FEET, MORE OR LESS.

ALSO KNOWN AS:

PAPCEL "A", "PELICAN COAST PLAT", ACCORDING TO THE PLAT THEREOF AS RECORDED  
IN PLAT BOOK 167, PAGE 24 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA

SAID LANDS SITUATE, LYING BEING IN THE TOWN OF DAVIE, BROWARD COUNTY, FLORIDA  
AND CONTAINING 99,547 SQUARE FEET, MORE OR LESS



SECTION OF SHIPYARD

DRAWING OF

FOR THE U.S. NAVY

SCALE: 1" = 100'

N

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**EXHIBIT B**

**BNS Parcel**

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LAND DESCRIPTION:

PARCEL "A" "PELICAN COAST PLAT", ACCORDING TO THE PLAT THEREOF,  
AS RECORDED IN PLAT BOOK 167, PAGE 24 OF THE PUBLIC RECORDS  
OF BROWARD COUNTY, FLORIDA

LESS:

A PORTION OF PARCEL "A" "PELICAN COAST PLAT", ACCORDING TO THE PLAT  
THEREOF, AS RECORDED IN PLAT BOOK 167, PAGE 24 OF THE PUBLIC RECORDS  
OF BROWARD COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHWEST CORNER OF SAID PARCEL "A":

THENCE NORTH  $41^{\circ}34'53"$  EAST ALONG THE WESTERLY LINE OF SAID PARCEL "A" AND  
ALONG THE EASTERLY RIGHT-OF-WAY LINE OF INTERSTATE 75, A DISTANCE OF 249.27  
FEET;

THENCE SOUTH  $48^{\circ}25'09"$  EAST, A DISTANCE OF 96.05 FEET;

THENCE SOUTH  $00^{\circ}01'41"$  WEST, A DISTANCE OF 54.62 FEET;

THENCE NORTH  $89^{\circ}09'36"$  EAST, A DISTANCE OF 4.65 FEET;

THENCE SOUTH  $00^{\circ}01'57"$  EAST, A DISTANCE OF 15.07 FEET;

THENCE SOUTH  $43^{\circ}42'06"$  WEST, A DISTANCE OF 33.92 FEET;

THENCE SOUTH  $00^{\circ}01'57"$  EAST, A DISTANCE OF 28.35 FEET;

THENCE SOUTH  $69^{\circ}51'44"$  WEST ALONG THE SOUTH LINE OF SAID PARCEL "A", A DISTANCE  
OF 219.98 FEET TO THE POINT OF BEGINNING.

ALL LYING AND BEING IN THE TOWN OF CAVIE, BROWARD COUNTY, FLORIDA; CONTAINING  
73,699 SQUARE FEET, MORE OR LESS.

