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 Palm Beach County, Florida  
 Sharon R. Bock, CLERK & COMPTROLLER  
 Pgs 0733 - 745; (13pgs)

Prepared by/Return to:  
 Richard P. Zaretsky, Esq.  
 1655 Palm Beach Lakes Blvd.  
 Suite 900  
 West Palm Beach, FL 33401  
 (561) 689-6660  
 version 4.4

**DECLARATION OF USE AGREEMENT BETWEEN THE TOWN OF PALM BEACH  
 AND  
 PALM BEACH ORTHODOX SYNAGOGUE, INC.**

This Declaration of Use Agreement ("Declaration") is entered into this 12<sup>th</sup> day of May, 2008 by Palm Beach Orthodox Synagogue, Inc. ("Declarant") whose address is 120 N. County Road, Palm Beach, FL 33480 and the Town of Palm Beach, Florida, a municipal corporation ("Town").

**RECITALS**

A) WHEREAS, Declarant is the fee simple owner of that certain real property located at 122 N. County Road, Palm Beach, FL 33480, more completely described in Exhibit "A" attached hereto (the "Property").

B) WHEREAS, the Property as described in drawing dated June 12, 2007 drawn by Arthur Chabon Architect which is made a part of the application and shows certain 2<sup>nd</sup> floor space located in 122 North County Road, and depicts such certain space as "undeveloped". A partial reproduction of that drawing is attached hereto as Exhibit "B".

C) WHEREAS, Declarant, for the purposes of obtaining approval of the Town of Palm Beach Special Exception #3-2007, has agreed to enter into this Declaration of Use Agreement with the Town of Palm Beach as set forth in the Minutes of the meeting of the Town Council held on May 8, 2007. A partial reproduction of the minutes of that meeting, being all of the minutes relating to Special Exception #3-2007, is attached

hereto as Exhibit "C".

D) WHEREAS, Declarant, for the purposes of obtaining approval of the Town of Palm Beach Special Exception #3-2007, has agreed to allow seating and use in all areas other than the "undeveloped" area as set forth in Exhibit "B". Attached as Exhibits "D-1" and "D-2" are the room seating designations for the space other than the "undeveloped" area.

E) WHEREAS, the Town has as part of its file for Special Exemption #3-2007, full sets of the Exhibits A, B, C and D -1 and D -2 that are made a part of this Agreement and those drawings are incorporated into this Agreement.

NOW, THEREFORE, the parties agree as follows:

1) The foregoing Recitals are true and correct, and are incorporated herein by reference.

2) Declarant hereby imposes on the Property the seating and use designations provided for in Special Exception #3-2008 with Site Plan Review identified in exhibits D -1 and D -2 as follows:

- a. The maximum of 158 seats are allowed in the sanctuary.
- b. A maximum of 158 seats are allowed in the multi-purpose room when the sanctuary is not in use.
- c. A maximum of 100 seats are allowed in the multi-purpose room when the sanctuary is in use.
- d. A maximum of 21 seats are allowed to be used in the upstairs area as identified in D -1 and D - 2.

3) Declarant hereby imposes on the Property the following restriction of

the "undeveloped" area identified in Exhibit B as follows: The room depicted as the "undeveloped" area will remain vacant and locked at all times unless and until Declarant has received from the Town a variance and a modification to this Agreement so as to allow this restriction to be rescinded.

4) It is the intention of the Declarant that the limitation on use contained in this Declaration shall run with the land and with the title to the Property, and shall apply to and be binding upon and inure to the benefit of successors and assigns of Declarant, and to Town, its successors and assigns and to any and all parties hereafter having any right, title, or interest in the Property or any part thereof. The Town, its successors and assigns, may enforce the terms and conditions of this Declaration by injunctive relief and other appropriate available legal remedies. Any forbearance on behalf of the Town to exercise its right in the event of the failure of the Declarant, its successors and assigns to comply with the provisions of the Declaration shall not be deemed or construed to be a waiver of the Town's rights hereunder. This Declaration shall continue in perpetuity, unless otherwise modified in writing by Declarant, its successors and assigns and the Town, its successors and assigns as provided in Paragraph 6 hereof. At such time as Declarant or any successor or owner of this Property has conveyed all of its right, title, and interest in the Property, Declarant shall have no further duties or obligations under this Declaration.

5) In order to ensure the perpetual nature of these restrictions, Declarant shall record this Declaration at its own expense. Declarant, its successors and assigns, shall reference this Declaration in any subsequent deed of conveyance including

the recording book and page of record of this Declaration; provided, however, if said reference is for some reason omitted, it shall be deemed to be included by virtue of the recording of this Declaration, and it shall continue to be binding upon any such grantee in the same manner as if the reference to this Declaration had been included in said deed.

6) This Declaration is binding until a release of covenant or other document evidencing the release is executed by the Town Manager or designee of the Town of Palm Beach and Declarant, or its successors or assigns, and is recorded in the county land records. This Declaration may be modified in writing only. Any subsequent amendment must be executed by both Declarant and the Town or their respective successors and assigns, and be recorded by Declarant or its successors and assigns.

7) If any provision of this Declaration is held to be invalid by any Court of competent jurisdiction, the invalidity of such provision shall not affect the validity of any other provisions thereof. All such provisions shall continue unimpaired in full force and effect.

8) The Town shall have all remedies available at law and equity in order to enforce the terms of this Agreement, including but not limited to: (a) the Town's Code Enforcement procedures in the Code of Ordinances; (b) revocation of the approval of expansion of the Synagogue and the additional seating relating thereto; (c) revocation of the occupational license; and (d) all remedies otherwise authorized in the Town's Code of Ordinances. All of such remedies shall be available as set forth in the Town's Code of Ordinances and in the civil courts of Palm Beach County, Florida. In the event the Town is required to seek injunctive relief, it shall not be required to post bond and it shall not be required to demonstrate irreparable harm or injury to secure an injunction to enforce the terms of this Agreement. Additionally, in the event of any breach, default or non-

performance of this Agreement, or any of its covenants, agreement, terms or conditions, the prevailing party shall be entitled to recover its costs, expenses and reasonable attorney fees incurred as a result of litigation, including appeals.

IN WITNESS WHEREOF, Declarant has executed this instrument this 8 day of April, 2008.

[Signature]  
Witness

[Signature]  
Witness

[Signature]  
Witness

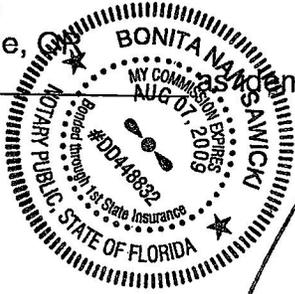
[Signature]  
Witness

[Signature]  
By: Richard P. Zaretsky, Esq.,  
on behalf of  
Palm Beach Orthodox Synagogue, Inc.  
P.O. Box 1028  
Palm Beach, FL 33480

[Signature]  
By: PETER B. ELWELL, TOWN MANAGER  
Town of Palm Beach

STATE OF FLORIDA  
COUNTY OF PALM BEACH

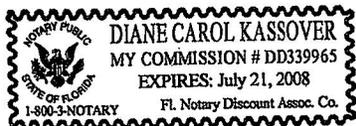
The foregoing instrument was acknowledged before me this 8 day of May, 2008, by Richard P. Zaretsky, authorized representative on behalf of the Palm Beach Orthodox Synagogue, Inc., who  is personally known to me,  has produced \_\_\_\_\_ as identification



[Signature]  
Notary Public

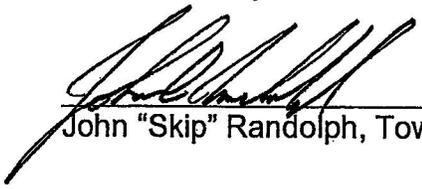
STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of May, 2008, by PETER B. ELWELL, on behalf of the Town of Palm Beach, who  is personally known to me, OR  has produced \_\_\_\_\_ as identification



[Signature]  
Notary Public

Approved as to legal form  
and sufficiency



John "Skip" Randolph, Town Attorney

date: 5/8/08

RECOMMEND APPROVAL:

5/7/08

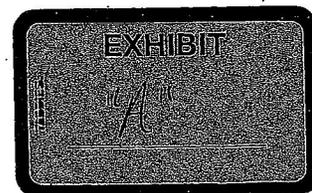


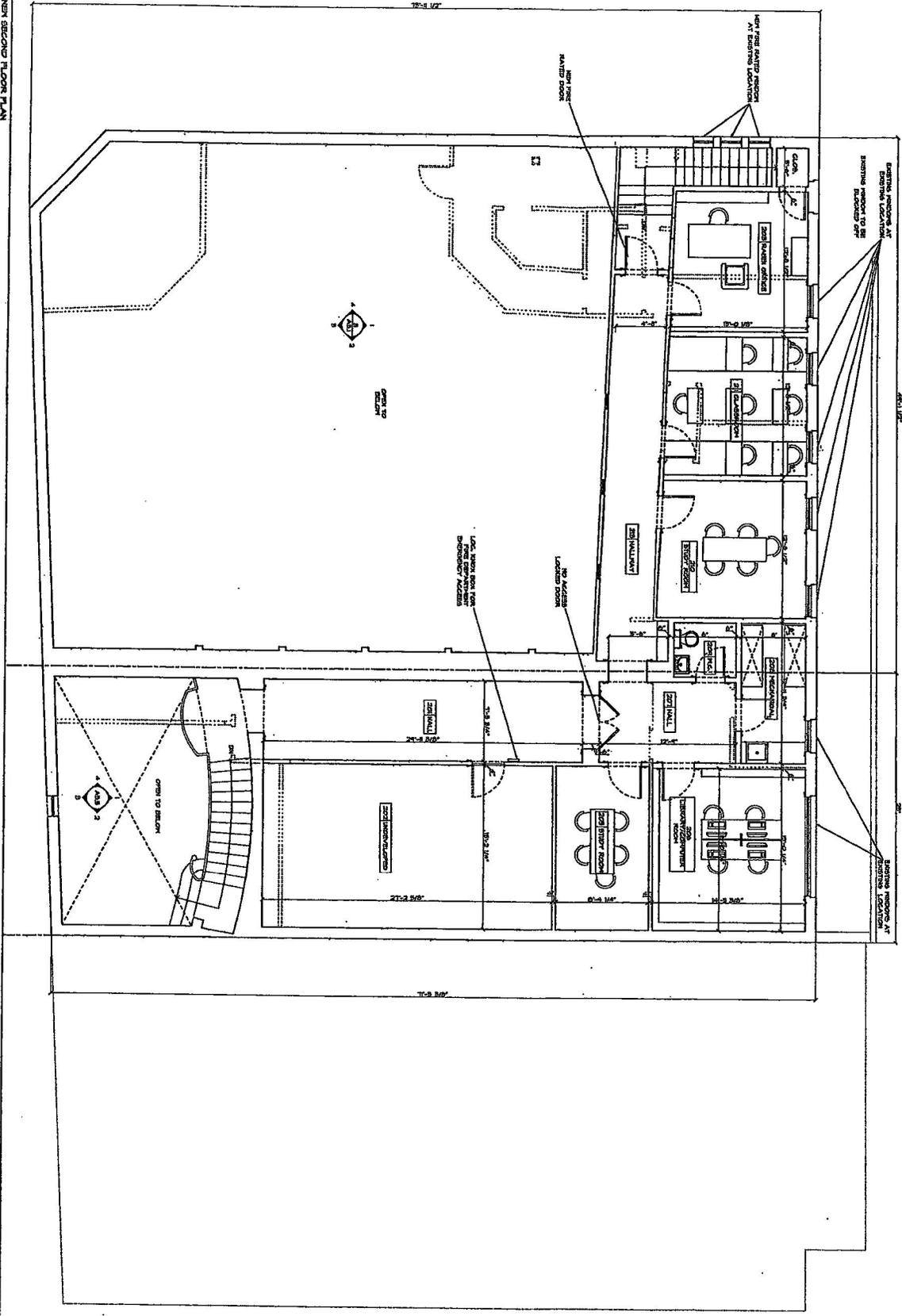
Paul Castro, AICP  
Zoning Administrator

Special Exception No. 3-2007 with Site Plan Review

**EXHIBIT A - LEGAL DESCRIPTION**

Lots 178-176 and the South 8.14 Feet of Lot 175, Floral Park, as recorded in Plat Book 2, Page 6,  
Palm Beach County, Florida Public Records, less the East 15 Feet of County Road Right of Way.

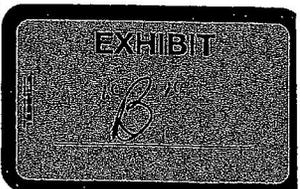
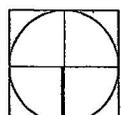




NO	ISSUE	DATE	NO	ISSUE	DATE
01	CLIENT REVIEW	11-27-06			
	CLIENT REVIEW	02-14-07			
	REVIEW	04-25-07			
04	REVIEW	04-18-07			

PALM BEACH SYNOGOGUE  
 PALM BEACH, FLORIDA

ARTHUR CHABON ARCHITECT  
 3 WEST MAIN STREET, SUITE # 204  
 IRVINGTON, NY 10533  
 330 WEST 38TH ST., SUITE # 902  
 NY NY 10018  
 212 216 9269 TEL  
 914 478 1082 TEL  
 914 478 1597 FAX



**MINUTES OF THE REGULAR TOWN COUNCIL MEETING  
HELD ON TUESDAY, MAY 8, 2007**

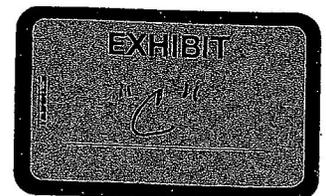
In response to Council Member Coniglio, Mr. Castro advised that ARCOM had approved the project that met the Zoning Code without requiring a variance.

**On roll call, the motion to deny Variance #3-2007 carried unanimously.**

- b. **SPECIAL EXCEPTION #3-2007 WITH SITE PLAN REVIEW** The application of Palm Beach Orthodox Synagogue, Inc. relative to property described as Floral Park Lots 178, 177, 176, and S. 8.14 feet of Lot 175; commonly known as 120, 122 and 126 North County Road; located in the C-TS Zoning District. Special Exception to expand the existing Synagogue by using the existing office building that was Rampell & Rampell as the foyer to join the applicant's property to the South (the operating sanctuary) to the property to the North (the previously approved multi-purpose room); and to reconfigure the 2nd story by removing 1,127 square foot thereof while retaining room for 3 offices. Based on the principle of equivalency of this use, the additional space will demand less parking than the previous use. The request proposes to increase the occupancy of the multi-purpose room from 132 (as allocated under Special Exception #14-99) seats to 158 seats to match sanctuary occupancy. In addition, this request also proposes to allow this multi-purpose occupancy to increase based on the permitted principal of equivalency for parking from the approved 52 (as allocated under Special Exception #27-2001) seats to 100 seats when the sanctuary is in use. Such increase does not maximize its permitted use under equivalency. *Deferred from the March 13, 2007, and April 10, 2007, Town Council meetings.*

Ex-parte communication was declared by President Kleid who had met with the President of the Synagogue several months ago.

Attorney Richard Zaretsky, on behalf of the applicant, provided an overview of the request for a special exception to expand the Synagogue using the existing office building that was Rampell & Rampell. He stated that the key point was that this had essentially been rolled back into a re-approval of Special Exception No. 15-2005, approved July 12, 2005. He noted that the primary focus was the upstairs of the old Rampell & Rampell building. He provided architectural plans to discuss the proposed project.



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HELD ON TUESDAY, MAY 8, 2007**

Zoning Administrator Castro reviewed the architectural plans to discuss the proposed project. He commented that if the Town Council approved the plan, as presented today, staff recommended, as a condition of that approval, a Declaration of Use Agreement, as it related to the enclosure of the vacant area, seating in the offices or the small study rooms, and specifically the use of that area. He advised that the applicant would have to come back before the Town Council when they wanted to use additional space, but they would have to find parking either in a shared parking concept with a variance request and a special exception or some other type of mitigating factor.

In response to President Kleid, Attorney Zaretsky responded that he questioned staff's request for a Declaration of Use Agreement.

In response to Attorney Zaretsky, Mr. Castro advised that they would still be short of parking spaces, but because of the proposed seating. He explained that the second floor plan had originally been for offices only, but the present proposal shown was for study rooms with more seating capacity. Staff looked at seating capacity, not just the room function, when the special exception use was for any assembly such as this. He noted that the seating capacity was a concern.

Mr. Castro advised that in addition to the execution of a Declaration of Use Agreement, a Unity of Title would be required in order to open up and join all three areas along with a special exception, a site plan review, and a parking analysis as it related to the proposal for the vacant area, which would be kept locked.

After further discussion, a motion was made by Council Member Brooks to approve **Special Exception #3-2007 with Site Plan Review with conditions that a Declaration of Use Agreement and a Unity of Title be executed by Attorney Zaretsky representing the Palm Beach Orthodox Synagogue and Director of Planning, Zoning, and Building Close representing the Town of Palm Beach.**

Ms. Close suggested that the Town Manager be authorized to execute the Declaration of Use Agreement.

Council Member Brooks amended his motion to authorize the Town Manager to execute the Declaration of Use Agreement on behalf of the Town. The motion was then seconded by Council Member Coniglio.

Mr. Castro clarified that the Declaration of Use Agreement would be related to the vacant room, and advised that staff wanted the Declaration of Use Agreement to include that the applicant agreed to keep that vacant room locked at all times. The area could only be used after they came back to the Town Council to get approval for its use, which might then require a variance for parking,

**MINUTES OF THE REGULAR TOWN COUNCIL MEETING  
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depending on what was proposed in respect to seating.

Discussion ensued relative to the entire upstairs area as it related to parking, and Attorney Zaretsky advised that President Kleid was correct that if that area was used for office space only, there would be enough parking, but if it was decided to use it for other reasons, there might not be enough parking.

On roll call, the motion carried unanimously.

Mr. Zaretsky advised that the Rabbi just mentioned to him that those rooms were previously designated as office space, and if the applicant applied for permitting for office space, then that would not be an issue.

Mr. Castro advised that would be the decision of the Town Council, because the applicant's proposal was to keep the vacant area locked. He noted that he would have to re-evaluate their seating again, as well, because the first proposal showed five offices and that would be a different parking scenario than was shown on their plans.

President Kleid advised that basically they had received the requested approval, and if they wanted more they would have to come back before the Town Council.

- c. VARIANCE #9-2007 The application of Malcolm and Linda Glazer relative to property described as lengthy legal description on file; commonly known as 1482 South Ocean Boulevard; located in the R-AA Zoning District. Request for a variance to construct an elevator addition with a building height plane setback of 44.4 feet in lieu of the 60.3 feet minimum setback required by code. *Deferred from the April 10, 2007, Town Council Meeting.*

Item XII.C.3.b. was withdrawn under Item VII., Approval of Agenda.

4. New Business- More Than 15 Minutes

- a. SITE PLAN REVIEW #8-2007 WITH VARIANCE The application of Victor Moore and John J. Tatoes relative to property described as Lots 6 and 6A of OCEAN VIEW, according to the Plat thereof as recorded in Plat Book 21, Page(s) 16, of the Public Records of Palm

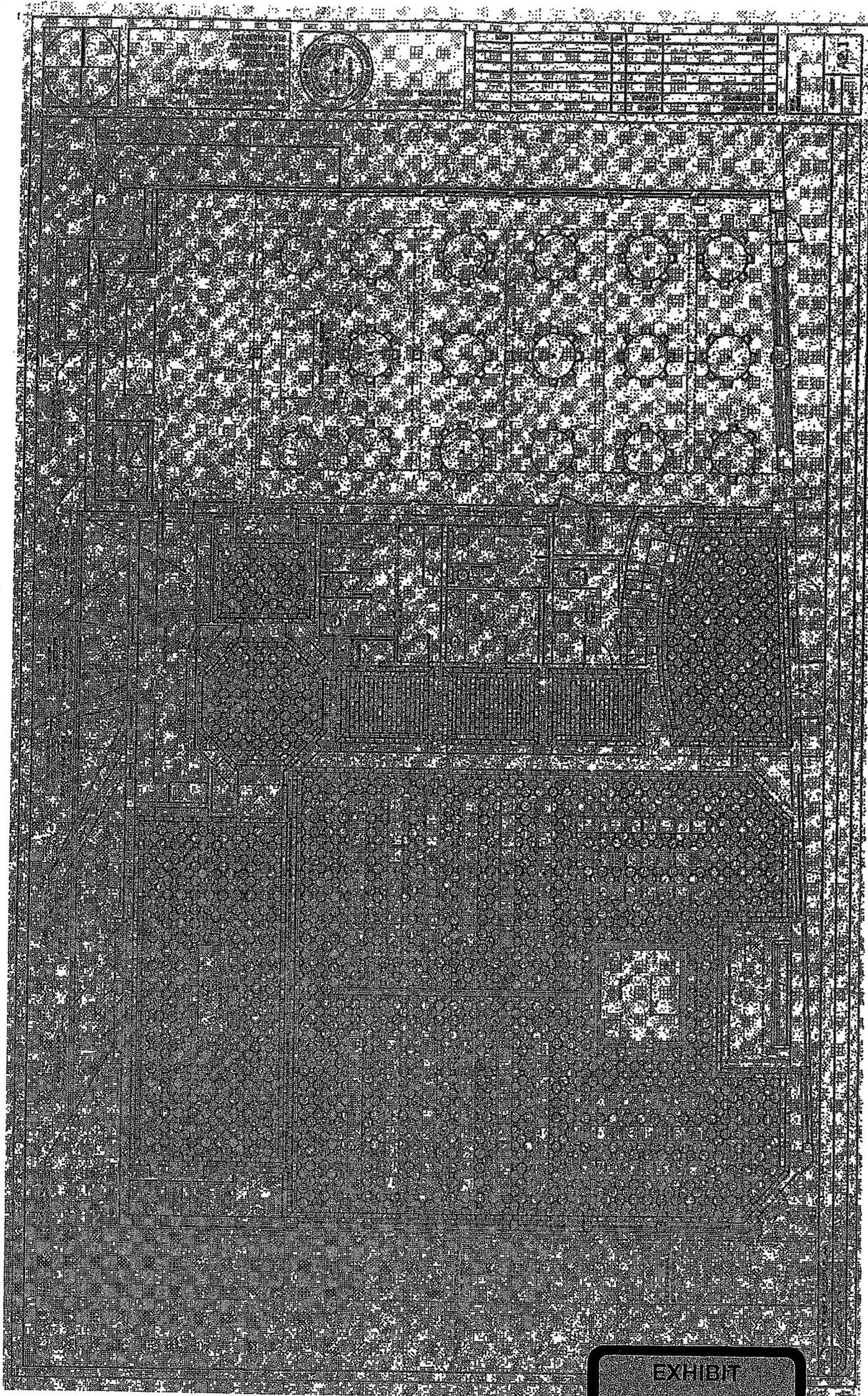
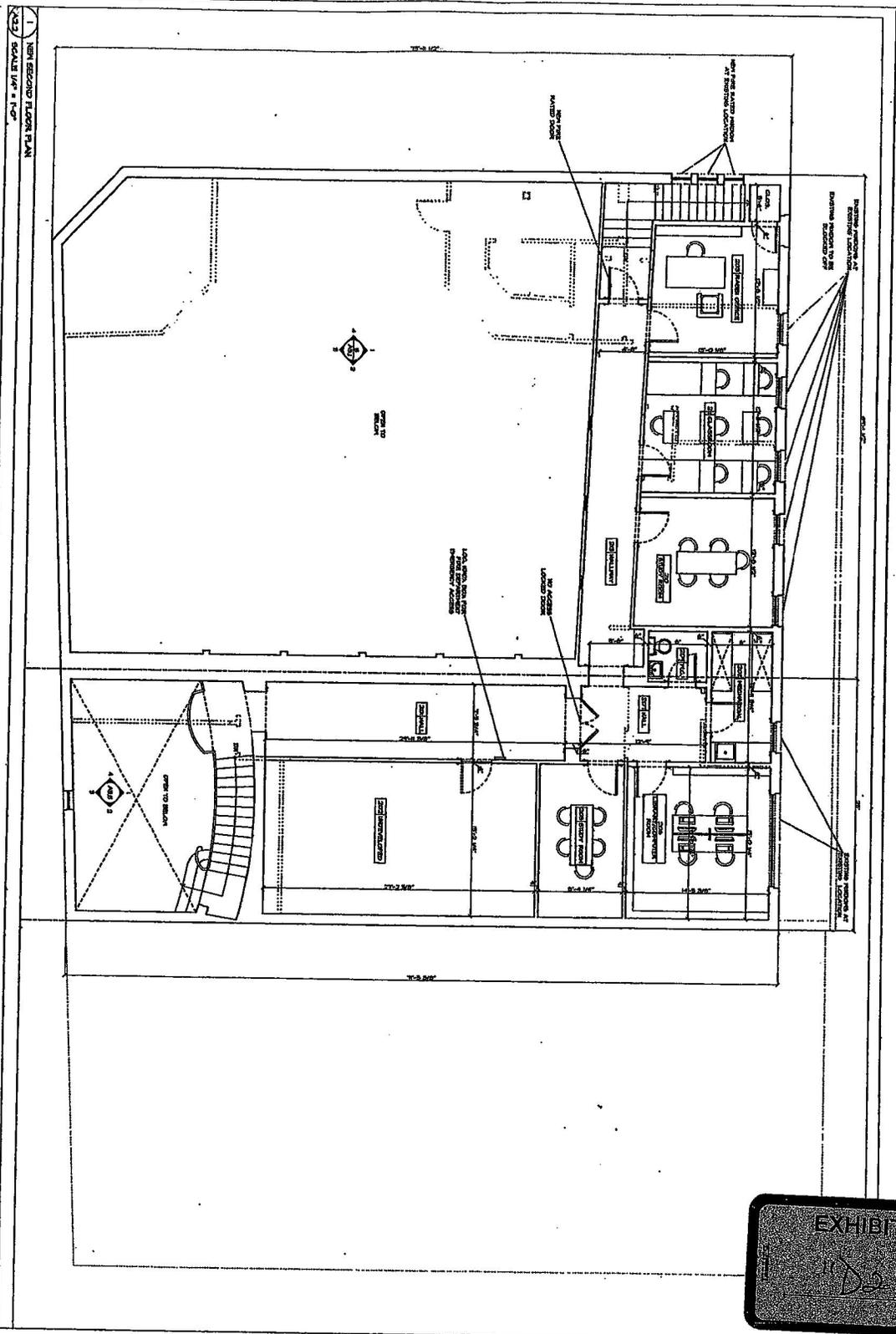
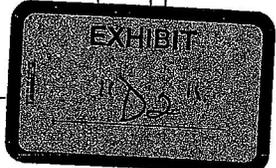


EXHIBIT  
"D1"



1  
FIRST FLOOR PLAN  
SCALE 1/8" = 1'-0"

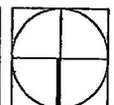


NO.	ISSUE	DATE	NO.	ISSUE	DATE
01	CLIENT REVIEW	11-07-08			
02	CLIENT REVIEW	02-13-09			
03	REVISION	04-23-09			
04	REVISION	04-23-09			
05					
06					
07					
08					
09					
10					

PALM BEACH SYRACUSE  
PALM BEACH, FLORIDA



ARTHUR CHASON ARCHITECT  
3 WEST MAIN STREET, SUITE # 204  
BINGHAMTON, NY 13933  
330 WEST 38TH ST., SUITE # 502  
NY NY 10018  
718 238 9068 TEL  
914 478 1082 TEL  
914 4781887 FAX



STATE OF FLORIDA - PALM BEACH COUNTY

I hereby certify that the foregoing is a true copy of the record in my office.

THIS 14 DAY OF May, 20 08

SHARON R. BOCK  
CLERK & COMPTROLLER

By Doberphia Ward  
DEPUTY CLERK