

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING AND AUTHORIZING THE MAYOR AND THE CITY CLERK TO EXECUTE A LANDSCAPE MAINTENANCE MEMORANDUM OF AGREEMENT ("MMOA") BETWEEN THE CITY OF MIAMI BEACH ("CITY") AND SUKKAH MIAMI BEACH ACQUISITIONS LLC, A DELAWARE LIMITED LIABILITY COMPANY ("OWNER"), TO DESIGN, CONSTRUCT, AND INSTALL LANDSCAPING AND ASSOCIATED IMPROVEMENTS ("IMPROVEMENTS") ON THE PROPERTY AND IN CERTAIN PORTIONS OF THE PUBLIC RIGHT-OF-WAY ABUTTING THE PROPERTY, LOCATED AT 4000 COLLINS AVENUE ("PROPERTY"); AND FURTHER AUTHORIZING THE CITY MANAGER TO EXECUTE A DECLARATION OF RESTRICTIVE COVENANTS TO TRANSFER RESPONSIBILITY OF THE LANDSCAPING IMPROVEMENTS AND MAINTENANCE COSTS ASSOCIATED WITH THE MMOA TO THE OWNER, IN CONNECTION WITH THE REDEVELOPMENT OF THE PROPERTY AS A HOTEL DEVELOPMENT.

WHEREAS, the applicant, Sukkah Miami Beach Acquisitions LLC, a Delaware Limited Liability Company, is the owner of the property located at 4000 Collins Avenue, as identified by Miami-Dade County Folio No. 02-3226-001-1930 (the "Continental Hotel"); and

WHEREAS, the owner has obtained certain development approvals from the City in connection with the redevelopment of the property as a hotel development; and

WHEREAS, the City of Miami Beach under Historical Preservation Board File No. HPB17-0097, requested that the proposed development at the Continental Hotel install landscaping in the public right-of-way as part of the enhancements; and

WHEREAS, the City requires that the owner design, construct, and install landscaping and associated improvements on the Property and in certain portions of the public right-of-way abutting the property, substantially in accordance with the Hardscape Plan, Planting Plan, Plant List and Specifications, Irrigation Plan, Irrigation Specifications, and Lighting Plan reviewed and approved by the City; and

WHEREAS, the owner has applied to the City for permission to install the Improvements within the Right-of-Way Area, according to the Plan; and

WHEREAS, the Florida Department of Transportation ("FDOT") has jurisdiction over State Road (SR) 112 West 41st Street, from Indian Creek Drive to Collins Avenue, which is located within the limits; and

WHEREAS, pursuant to this request, FDOT has approved the development's request for work within 41st Street right-of-way; and

WHEREAS, FDOT allows private development to install minimal landscaping along urban corridors as part of a private development project, as long as the municipality involved agrees to execute a Landscape Maintenance Memorandum of Agreement ("MMOA") with FDOT, accepting full maintenance responsibility over the landscaped area, and Miami Beach has executed several similar agreements in the past where minimum landscaping was installed, a copy of the MMOA is attached hereto as Exhibit "1"; and

WHEREAS, the City, in approving the enhanced right-of-way landscaping and sidewalk features and the MMOA, required the Owner to execute a declaration of restrictive covenants (the "Declaration") to require the Owner to take over the obligations and maintenance responsibilities established in the MMOA and reimburse the City of any costs incurred pursuant to the MMOA, a copy of the MMOA is attached hereto as Exhibit "2"; and

WHEREAS, the Administration recommends the Mayor and City Commission approve the MMOA.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, hereby that the Mayor and City Commission hereby approve and authorize the Mayor and the City Clerk to execute a Landscape Maintenance Memorandum of Agreement ("MMOA") between the City of Miami Beach ("City") and Sukkah Miami Beach Acquisitions LLC, a Delaware limited liability company ("Owner"), to design, construct, and install landscaping and associated improvements ("Improvements") on the property and in certain portions of the public right-of-way abutting the property, located at 4000 Collins Avenue ("Property"); and further authorizing the City Manager execute a declaration of restrictive covenants that shall transfer responsibility of the landscaping improvements and maintenance costs associated with the MMOA to the owner, in connection with the redevelopment of the property as a hotel development.

PASSED and ADOPTED this _____ day of _____, 2020.

DAN GELBER, MAYOR

ATTEST:

RAFAEL E. GRANADO, CITY CLERK

**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**

NO for ff 9-14-20
City Attorney Date

**FLORIDA DEPARTMENT OF TRANSPORTATION
LANDSCAPE AND BONDED AGGREGATE SURFACES
MAINTENANCE MEMORANDUM OF AGREEMENT
WITH THE
CITY OF MIAMI BEACH**

This **AGREEMENT**, entered into on _____, 20__, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, an agency of the State of Florida, hereinafter called the **DEPARTMENT**, and the **CITY OF MIAMI BEACH**, a municipal corporation of the State of Florida, hereinafter called the **CITY**, and collectively referred to as the **PARTIES**.

RECITALS:

- A. The **DEPARTMENT** has jurisdiction over **State Road (SR) 112 (West 41st Street)** from Indian Creek Drive to Collins Avenue, which is located within the limits of the **CITY**; and
- B. The **CITY**, pursuant to **Permit Number 2020-L-691-00005**, has drafted design plans for beautification improvements along SR-112 (West 41st Street) from Indian Creek Drive to Collins Avenue, the limits of which are described in the attached Exhibit 'A' (the **PROJECT LIMITS**), which by reference shall become a part of this **AGREEMENT**; and
- C. The **CITY** will install landscape and bonded aggregate surfaces along SR-112 within the **PROJECT LIMITS**, in accordance with the design plans for Permit Number # 2020-L-691-00005 (the "Project"); and
- D. The **PARTIES** to this **AGREEMENT** mutually recognize the need for entering into an agreement designating and setting forth the responsibilities of each party with regards to the maintenance of the landscape and bonded aggregate surfaces installed pursuant to the Project; and
- E. The **CITY**, by Resolution No. _____, dated _____, attached hereto as Exhibit 'B', which by reference shall become a part of this **AGREEMENT**, desires to enter into this **AGREEMENT** and authorizes its officers to do so.

NOW, THEREFORE, for and in consideration of the mutual benefits contained herein and other good and valuable consideration, the **PARTIES** covenant and agree as follows:

Maintenance Memorandum of Agreement between Florida Department of Transportation and City of Miami Beach

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EXHIBIT 1

1. RECITALS

The recitals in this **AGREEMENT** are true and correct, and are incorporated herein by reference and made a part hereof.

2. ASSIGNMENT OF MAINTENANCE RESPONSIBILITIES

The **PARTIES** agree that the execution of this **AGREEMENT** shall constitute an assignment of all maintenance responsibilities pertaining to the landscape and bonded aggregate surfaces (collectively the "**IMPROVEMENTS**") within the **PROJECT LIMITS** to the **CITY** upon the **DEPARTMENT's** issuance of the executed Permit to the **CITY**.

3. CITY'S MAINTENANCE RESPONSIBILITIES

So long as the **IMPROVEMENTS** remain in place, the **CITY** shall be responsible for the maintenance of the same. The **CITY** shall maintain the **IMPROVEMENTS** in accordance with all applicable **DEPARTMENT** guidelines, standards, and procedures, which shall include but shall not be limited to the Maintenance Rating Program Handbook, as may be amended from time to time. Additionally, with respect to the landscape, the **CITY** shall maintain same in accordance with the International Society of Arboriculture standards, guidelines and procedures, the latest edition of the "Maintenance Rating Program", and Index 546 of the latest **DEPARTMENT** Design Standards, as may be amended from time to time. The **CITY** shall further maintain the **IMPROVEMENTS** in accordance with the standards set forth in the Project Plans, and in the Project Specifications and Special Provisions. The **CITY's** maintenance obligations shall include but not be limited to:

3.1 General Requirements:

- a. Removing and disposing of litter from **PROJECT LIMITS** in accordance with all applicable government rules, regulations, policies, procedures, guidelines, and manuals, as amended from time to time.
- b. Removing and disposing of all trimmings, roots, branches, litter, and any other debris resulting from the activities described by 3.2 through 3.3.

- c. Maintaining a service log of all maintenance operations that sets forth the date of the maintenance activity, the location that was maintained, and the work that was performed.
- d. Submitting Lane Closure Requests to the **DEPARTMENT** when maintenance activities will require the closure of a traffic lane in the **DEPARTMENT's** right-of-way. Lane closure requests shall be submitted through the District Six Lane Closure Information System, to the **DEPARTMENT's** area Permit Manager and in accordance with the District Six Lane Closure Policy, as may be amended from time to time.

3.2 Landscape and all associated improvements:

- a. Mowing, cutting and/or trimming and edging the grass and turf within the **PROJECT LIMITS**.
- b. Pruning all plant materials, which include trees, shrubs and ground covers, and parts thereof, including all material from private property encroaching into the **DEPARTMENT'S** Right-of-Way.
- c. All pruning and trimming will follow the Maintenance Rating Program Handbook which specifically requires no encroachment of trees, tree limbs or vegetation in or over travel way (or clear zone) lower than 14.5 feet, or lower than 10 feet over sidewalks.
- d. Removing and properly disposing of dead, diseased or otherwise deteriorated plants in their entirety, and replacing those that fall below the standards set forth in the Project Plans and in the Project Specifications, incorporated herein by reference, and all applicable **DEPARTMENT** guidelines, standards and procedures, as may be amended from time to time. All replacement materials shall be in accordance with the Project Plans and the Project Specifications and Special Provisions.
- e. Mulching all plant beds and tree rings.
- f. Removing and disposing of all undesirable vegetation including but not limited to weeding of plant beds and removal of invasive exotic plant materials.

- g. Watering and fertilizing all plants as needed to maintain the plant materials in a healthy and vigorous growing condition.
- h. Repairing irrigation systems and associated components as needed. Paying for all water use and all costs associated therewith.
- i. Repairing decorative lighting systems as needed. Paying for all electricity and all costs associated therewith.
- j. Removing and disposing of litter from roadside and median strips in accordance with all applicable government rules, regulations, policies, procedures, guidelines, and manuals, as amended from time to time.
- k. Repairing all sidewalks damaged by landscaping found inside and outside the **DEPARTMENT's** Right-of-Way.
- l. Removing and disposing of all trimmings, roots, branches, litter, and any other debris resulting from the activities described by 3.A through 3.K.

3.3 Bonded Aggregate Surfaces:

- a. Performing routine and regular inspections of the bonded aggregate surfaces to ensure that the surface is fully functional; identifying damage and/or malfunctions in the surfaces; and repairing and/or replacing damaged bonded aggregate surfaces to ensure surfaces are maintained in accordance with all applicable **DEPARTMENT** guidelines, standards, and all applicable American with Disabilities Act (ADA) requirements, as amended from time to time.
- b. The **CITY** shall conduct annual condition surveys of the bonded aggregate surfaces for gaps, settlement, drop-offs and other deficiencies described in this **AGREEMENT** for the life of the bonded aggregate. Ensure and document in this survey that the surface friction of the bonded aggregate surface meets or exceeds the surface friction of the existing concrete sidewalk areas.

- c. Gaps within the bonded aggregate surfaces shall not exceed a quarter (1/4) of an inch. Gaps at the interface (perimeter) between the bonded aggregate surfaces and the adjacent concrete sidewalk(s) shall not exceed a quarter (1/4) of an inch. This requirement also applies to adjacent areas of existing concrete sidewalk(s) that have been impacted by the trees planted within the bonded aggregate surfaces.
- d. Differential settlement within the bonded aggregate surfaces shall not exceed a quarter (1/4) of an inch in depth. Differential settlement at the interface (perimeter) between the bonded aggregate surfaces and the adjacent concrete sidewalk(s) shall not exceed a quarter (1/4) of an inch in depth. This requirement also applies to adjacent areas of existing concrete sidewalk(s) that have been impacted by the trees planted within the bonded aggregate surfaces.
- e. When remedial action is required in accordance with the above requirements, the **CITY** at its own expense shall complete all necessary repairs within ninety (90) days of the date the deficiency is identified.

The **CITY** shall submit all services logs, inspections and surveys to the **DEPARTMENT** Warranty Coordinator as required in the above maintenance responsibilities.

The **DEPARTMENT** may, at its sole discretion, perform periodic inspection of the **IMPROVEMENTS** to ensure that the **CITY** is performing its duties pursuant to this **AGREEMENT**. The Department shall share with the **CITY** its inspection findings, and may use those findings as the basis of its decisions regarding maintenance deficiencies, as set forth in Section 4 of this **AGREEMENT**. The **CITY** is responsible for obtaining copies of all applicable rules, regulations, policies, procedures, guidelines, and manuals, and the Project Specification and Special Provisions, as may be amended from time to time.

4. MAINTENANCE DEFICIENCIES

If at any time it shall come to the attention of the **DEPARTMENT** that the **CITY's** responsibilities as established

herein are not being properly accomplished pursuant to the terms of this **AGREEMENT**, the **DEPARTMENT** may, at its option, issue a written notice, in care of the **CITY MANAGER**, to notify the **CITY** of the maintenance deficiencies. From the date of receipt of the notice, the **CITY** shall have a period of thirty (30) calendar days, within which to correct the cited deficiency or deficiencies. Receipt is determined in accordance with Section 5 of this **AGREEMENT**.

If said deficiencies are not corrected within this time period, the **DEPARTMENT** may, at its option, proceed as follows:

- a. Maintain the **IMPROVEMENTS**, or a part thereof and invoice the **CITY** for expenses incurred; or
- b. Terminate this **AGREEMENT** in accordance with Section 7, remove any or all of the **IMPROVEMENTS** located within the **PROJECT LIMITS**, and charge the **CITY** the reasonable cost of such removal.

5. NOTICES

All notices, requests, demands, consents, approvals, and other communication which are required to be served or given hereunder, shall be in writing and shall be sent by certified U.S. mail, return receipt requested, postage prepaid, addressed to the party to receive such notices as follows:

To the DEPARTMENT: Florida Department of Transportation
1000 Northwest 111 Avenue, Room 6205
Miami, Florida 33172-5800
Attn: District Maintenance Engineer

To the CITY: City of Miami Beach
1700 Convention Drive
Miami Beach, Florida 33139
Attention: City Manager

Notices shall be deemed to have been received by the end of five (5) business days from the proper sending thereof unless proof of prior actual receipt is provided.

6. REMOVAL, RELOCATION OR ADJUSTMENT OF THE IMPROVEMENTS

- a. The **PARTIES** agree that the **IMPROVEMENTS** addressed by this **AGREEMENT** may be removed, relocated or adjusted at any time in the future, at the **DEPARTMENT's** sole discretion. In the event that the **DEPARTMENT** relocates or adjusts the **IMPROVEMENTS**, the **CITY's** maintenance responsibilities will survive the relocation or adjustment, as long as the materials remain within the **PROJECT LIMITS**.
- b. In the event that the **DEPARTMENT** is required to replace the sidewalk at any time as part of maintenance activities, a roadway project, or related construction activities, the **DEPARTMENT** shall replace the same as a concrete type sidewalk, and the **CITY's** maintenance obligations under this **AGREEMENT** shall terminate. However, the **CITY** may, with the approval of the **DEPARTMENT**, upgrade the sidewalk type at its sole cost and expense with the understanding that the **CITY** shall assume all maintenance obligations for the upgraded sidewalk, and enter into a new maintenance agreement.

7. TERMINATION

In addition to the provisions of Section 6(b) hereunder, this **AGREEMENT** is subject to termination under any one of the following conditions:

- a. By the **DEPARTMENT**, if the **CITY** fails to perform its duties under Section 3 of this **AGREEMENT**, following the thirty (30) days written notice, as specified in Section 4 of this **AGREEMENT**.
- b. In accordance with Section 287.058(1)(c), Florida Statutes, the **DEPARTMENT** shall reserve the right to unilaterally cancel this **AGREEMENT** if the **CITY** refuses to allow public access to any or all documents, papers, letters, or other materials made or received by the **CITY** pertinent to this **AGREEMENT** unless the records are exempt from Section 24(a) of Article I of the State Constitution and Section 119.07(1), of the Florida Statutes.

c. If mutually agreed to by both parties, upon thirty (30) days written advance notice. An agreement to terminate shall be valid only if made in writing and executed with the same formalities as this **AGREEMENT**.

d. By the **CITY**, upon thirty (30) days advance written notice to the **DEPARTMENT**.

Prior to termination of the **AGREEMENT** under this Section, the **CITY** shall, at its sole cost and expense, remove all the **IMPROVEMENTS** and restore the area to a standard concrete sidewalk, in accordance with the **DEPARTMENT'S** guidelines, standards, and procedures, and to the satisfaction of the **DEPARTMENT**, and shall further any remaining **IMPROVEMENTS**, and restore the area to the same or similar condition as existed prior to the installment of the **IMPROVEMENTS**, in accordance with the **DEPARTMENT'S** guidelines, standards, and procedures, and to the satisfaction of the **DEPARTMENT**.

8. TERMS

a. The effective date of this **AGREEMENT** shall commence upon execution by the **PARTIES** and shall continue so long as the **IMPROVEMENTS** remain in place until termination as set forth in Section 7.

b. E-Verify

The **CITY** shall:

i. Utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Vendor/Contractor during the term of the contract; and

ii. Expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term. **(Executive Order Number 2011-02)**

The **CITY** shall insert the above clause into any contract entered into by the **CITY** with vendors or contractors

hired by the **CITY** for purposes of performing its duties under this **AGREEMENT**.

- c. This writing embodies the entire **AGREEMENT** and understanding between the **PARTIES** hereto and there are no other agreements and understanding, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.
- d. This **AGREEMENT** shall not be transferred or assigned, in whole or in part, without the prior written consent of the **DEPARTMENT**.
- e. This **AGREEMENT** shall be governed by and constructed in accordance with the laws of the State of Florida. Any provisions of this **AGREEMENT** found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions of the **AGREEMENT**.
- f. Venue for any and all actions arising out of or in connection to the interpretation, validity, performance or breach of this **AGREEMENT** shall lie exclusively in a state court of proper jurisdiction in Leon County, Florida.
- g. A modification or waiver of any of the provisions of this **AGREEMENT** shall be effective only if made in writing and executed with the same formality as this **AGREEMENT**.
- i. The section headings contained in this **AGREEMENT** are for reference purposes only and shall not affect the meaning or interpretation hereof.
- j. No term or provision of this **AGREEMENT** shall be interpreted for or against either Party because the Party or its legal representative drafted the provision.
- k. The **DEPARTMENT** is a state agency, self-insured and subject to the provisions of Section 768.28, Florida Statutes, as may be amended from time to time. Nothing in this **AGREEMENT** shall be deemed or otherwise interpreted as waiving the **DEPARTMENT's** sovereign immunity protections, or as increasing the limits of liability as set forth in Section 768.28, Florida Statutes.

9. INDEMNIFICATION

Subject to Section 768.28, Florida Statutes, as may be amended from time to time, the **CITY** shall promptly indemnify, defend, save and hold harmless the **DEPARTMENT**, its officers, agents, representatives and employees from any and all losses, expenses, fines, fees, taxes, assessments, penalties, costs, damages, judgments, claims, demands, liabilities, attorneys fees, (including regulatory and appellate fees), and suits of any nature or kind whatsoever caused by, arising out of, or related to the **CITY's** exercise or attempted exercise of its responsibilities as set out in this **AGREEMENT**, including but not limited to, any act, action, neglect or omission by the **CITY**, its officers, agents, employees or representatives in any way pertaining to this **AGREEMENT**, whether direct or indirect, except that neither the **CITY** nor any of its officers, agents, employees or representatives will be liable under this provision for damages arising out of injury or damages directly caused or resulting from the negligence of the **DEPARTMENT**.

The **CITY's** obligation to indemnify, defend and pay for the defense of the **DEPARTMENT**, or at the **DEPARTMENT's** option, to participate and associate with the **DEPARTMENT** in the defense and trial of any claim and any related settlement negotiations, shall be triggered immediately upon the **CITY's** receipt of the **DEPARTMENT's** notice of claim for indemnification. The notice of claim for indemnification shall be deemed received if the **DEPARTMENT** sends the notice in accordance with the formal notice mailing requirements set forth in Section 5 of this **AGREEMENT**. The **DEPARTMENT's** failure to notify the **CITY** of a claim shall not release the **CITY** of the above duty to defend and indemnify the **DEPARTMENT**.

The **CITY** shall pay all costs and reasonable attorney's fees related to this obligation and its enforcement by the **DEPARTMENT**. The indemnification provisions of this section shall survive termination or expiration of this **AGREEMENT**, but only with respect to those claims that arose from acts or circumstances which occurred prior to termination or expiration of this **AGREEMENT**.

The **CITY's** evaluation of liability or its inability to evaluate liability shall not excuse the **CITY's** duty to defend

and indemnify the **DEPARTMENT** under the provisions of this section. Only an adjudication or judgment, after the highest appeal is exhausted, specifically finding the **DEPARTMENT** was solely negligent shall excuse performance of this provision by the **CITY**.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first above written.

CITY OF MIAMI BEACH:

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION:

BY: _____
CITY Manager

BY: _____
District Director of
Transportation Operations

ATTEST: _____ (SEAL)
CITY Clerk

ATTEST: _____
Executive Secretary

LEGAL REVIEW:

BY: _____
CITY Attorney

BY: _____
District Chief Counsel

EXHIBIT 'A'

PROJECT LIMITS

Below are the limits of the **IMPROVEMENTS** to be maintained by the **CITY** under this **AGREEMENT**.

State Road Number: 112

Local Street Names: West 41st Street

Agreement Limits: Indian Creek Drive to Collins Avenue

County: Miami-Dade

EXHIBIT 'B'

CITY OF MIAMI BEACH RESOLUTION

To be herein incorporated once ratified by the **CITY** Board of Commissioners.

This instrument was prepared by:

Name: Michael W. Larkin, Esq.
Bercow Radell Fernandez
Larkin & Tapanes, PLLC
Address: 200 S. Biscayne Blvd., Suite 850
Miami, Florida 33131

**DECLARATION OF RESTRICTIVE COVENANTS
REGARDING IMPROVEMENTS IN THE PUBLIC RIGHT-OF-WAY**

KNOW ALL BY THESE PRESENTS that the undersigned SUKKAH MIAMI BEACH ACQUISITIONS LLC ("Owner") hereby makes, declares and imposes on the land herein described, covenants running with the title to the land, which shall be binding on Owner, its heirs, successors and assigns, personal representatives, mortgagees, lessees, and against all persons claiming by, through or under them (the "Declaration") and in favor of the City of Miami Beach, Florida, a municipality of the State of Florida ("City").

WHEREAS, Owner holds fee simple title to certain property located at 4000 Collins Avenue, City of Miami Beach Florida, identified by Miami-Dade County Folio No. 02-3226-001-1930, and more particularly described on Exhibit "A" attached ("Property");

WHEREAS, Owner has obtained certain development approvals ("Development Approvals") from the City in connection with the redevelopment of the Property as a hotel development;

WHEREAS, City requires that Owner design, construct, and install landscaping and associated improvements on the Property and in certain portions of the public right-of-way abutting the Property ("Improvements"), in accordance with the Hardscape Plan, Planting Plan, Plant List and Specifications, Irrigation Plan, Irrigation Specifications, and Lighting Plan reviewed and approved by the City and prepared by Charles H. Benson & Associates Architects, P.A. ("Plan") attached hereto as Exhibit "B";

WHEREAS, portions of the roads abutting the Property ("Right-of-Way Area") are subject to a Landscape, Irrigation and Bonded Aggregate Paving Maintenance Memorandum of Agreement with the City of Miami Beach dated __ day _____, 2020, and State of Florida Department of Transportation ("Agreement") attached hereto as Exhibit "C";

WHEREAS, Owner, has applied to the City for permission to install the Improvements within the Right-of-Way Area, according to the Plan, and Owner has

agreed to bear all costs related to the Agreement and the installation, maintenance, and repair of the Improvements; and

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, including consideration of the Development Approvals, Owner voluntarily covenants and agrees that the Property shall be subject to the following restrictions that are intended and shall be deemed to be covenants with the land and binding upon Owner of the Property and its successors in interest and assigns, as follows:

1. **Recitals.** The foregoing recitals and findings set forth in the preamble of this Declaration, together with all capitalized terms defined therein, are hereby adopted by reference thereto and incorporated herein as if fully set forth herein.

2. **Covenants Running with the Land.** Owner covenants and agrees as follows:

- a) To install and maintain the Improvements as depicted in Exhibit "B", at Owner's sole cost and expense;
- b) To replace, restore and/or repair the Improvements, as depicted in Exhibit "B," at Owner's expense, in the event the City must issue an underground utility or right-of-way permit for work in the Right-of-Way Area;
- c) To hereby grant to the City the right to remove, add, repair, maintain, and replace, or require that the Owner remove, add, repair, maintain, and replace, any of the Improvements within the Right-of-Way Area, at Owner's sole expense, in the event the City determines in its reasonable discretion that such action is required;
- d) To add the City as additional named insured on the Certificates of Insurance for Commercial General Liability Insurance, including Products-Completed Operations and Contractual Liability, in an amount not less than \$1,000,000.00 combined single limit per occurrence, and \$2,000,000.00 in the aggregate, for bodily injury and property damage, and Workmen's Compensation as required by law;
- e) In the event Owner fails to perform any work as required under this Declaration, City has the right to remove and repair the Improvements, and/or restore the area within the Right-of-Way Area where the Improvements are located, and charge Owner the direct and actual out of pocket costs associated with all such work. In the event that Owner fails to pay for the work performed by the City within forty-five (45) days of Owner's receipt of invoice, City may impose a lien against the Owner's Property, consistent with applicable law, and/or file a collection action in Circuit Court. If the City elects to impose a lien on Owner's

Property, City will provide prompt written notice to Owner's mortgagee, as shown in the Consent of Mortgage and Subordination of Mortgage attached hereto; and

- f) To be bound by all the City's responsibilities imposed under the Agreement for that portion of the Right-of-Way Area within which the Improvements are located, and to be bound by the City's ordinances and Land Development Regulations. Owner agrees that it shall remain responsible for all costs associated with the Agreement, including the installation, maintenance, and repair responsibilities for the Improvements, and to the extent required, reimburse the City for all the City's costs incurred pursuant to the Agreement.

3. **Term.** This voluntary Declaration shall remain in full force and effect and shall be binding upon the Owner of the Property, and Owner's successors in interest and assigns, for an initial period of thirty (30) years from the date this instrument is recorded in the public records, and shall be automatically extended for successive periods of ten (10) years, unless modified, amended or released prior to the expiration thereof.

4. **Modification.** This Declaration may be modified, amended or released as to any portion of the Property, by a written instrument executed by the then Owner of the fee-simple title to the land to be affected by such modification, amendment or release, providing that same has been approved by the City. In the event this instrument be so modified, amended or released, the City shall execute a written instrument in recordable form effectuating and acknowledging such modification, amendment or release.

5. **Recording.** This Declaration shall be recorded in the Public Records of Miami-Dade County, Florida at the cost of the Owner.

6. **Inspection.** It is understood and agreed that any official inspector of the City may have the right, upon reasonable prior written notice to Owner, at any time during normal working hours, to enter and investigate the use of the Property, to determine whether the conditions of this Declaration are being complied with.

7. **Indemnification.** Owner, and its successors and assigns, hereby agree to indemnify, defend, release and hold harmless the City, its officers, and employees from and against all claims, demands, actions, damages, losses, costs, liabilities, expenses, and judgments of any nature (including, without limitation, attorneys' fees and costs), through all trial and appellate levels, recovered from or asserted against the City that may arise by virtue of, or in connection with, the Improvements, the installation or maintenance of the Improvements, the Agreement, or otherwise by virtue of the City permitting the Owner to install and maintain the Improvements, including the costs of any suits, attorney's fees, and other expenses in connection therewith, including trial and appeals therefrom, except not including for City's willful misconduct or gross negligence. Nothing in this Declaration shall be construed to increase or otherwise waive any limits of liability or immunity afforded to the City under the laws of the State of Florida, including, without

limitation, the limitations of liability and immunities set forth in Section 768.28 of the Florida Statutes.

8. **Obligation.** Owner acknowledges that the City shall have no financial and/or other obligation and/or liability for the maintenance of the Improvements (including, without limitation, any liability for improper or inadequate maintenance by Owner); these are the sole obligations of Owner to maintain. Additionally, it is the intent of the parties hereto that no third party beneficiary rights are created or acknowledged through this Declaration

9. **Notice.** All notices, demands, requests, or other communications which may be or are required to be given, served, or sent by Owner or the City pursuant to this Declaration shall be in writing and addressed as follows:

If to Owner:

SUKKAH MIAMI BEACH ACQUISITIONS LLC
CORPORATE CREATIONS NETWORK INC.
801 US HIGHWAY 1
NORTH PALM BEACH, FL 33408

With copies to:

Bercow, Radell Fernandez Larkin &
Tapanes, PLLC
Attn: Michael W. Larkin, Esq.
200 S. Biscayne Boulevard, Suite 850
Miami, Florida 33131

If to the City:

City of Miami Beach
Attn: City Manager
1700 Convention Center Drive, 4th Floor
Miami Beach, Florida 33139

With copies to:

City of Miami Beach
Attn: Public Works Director
1700 Convention Center Drive, 4th Floor
Miami Beach, Florida 33139

Each Party may designate by notice in writing a new address to which any notice, demand, request or communication may thereafter be so given, served or sent.

10. **Headings.** The section headings of this Declaration are for convenience of reference only and do not form a part of this Declaration and do not in any way modify, interpret, or otherwise affect the intentions of the Parties.

11. **Governing Law.** This Declaration shall be governed by, and constructed in accordance with, the laws of the State of Florida without regard to its conflicts of law principles.

12. Execution. This Declaration may be executed and delivered in counterparts, each of which shall be deemed to be an original and all of which together shall be deemed one and the same instrument.

13. Severability. If any one or more of the provisions of this Declaration shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any of the other provisions of this Declaration, which shall remain in full force and effect and any court of competent jurisdiction may so modify the objectionable provision as to make it valid, reasonable, and enforceable.

14. Miscellaneous.

- a) Effectiveness. This Declaration shall become effective as of and only as of its execution and delivery by each of Owner and City.
- b) This Declaration shall be recorded in the Public Records of Miami-Dade County, Florida, at the cost of Owner.
- c) Complete Understanding. This Declaration represents the complete understanding between Owner and City as to the subject matter hereof, and supersedes all prior negotiations, representation, guarantees, warranties, promises, statements, or agreements, either written or oral, between Owner and City.
- d) Amendment. This Declaration may be amended by and only by an instrument executed and delivered by each of Owner and City.
- e) Waiver. Neither owner or City shall be deemed to have waived any right which they hold hereunder unless the waiver is made expressly and in writing (and, without limiting the generality of the foregoing, no delay or omission by either Owner or City in exercising any such right shall be deemed a waiver of its future exercise). No waiver shall be deemed a waiver as to any other instance or any other right.
- f) Construction. As used herein, (a) the term "person" means a natural person, a trustee, a corporation, a partnership, and any other form of legal entity; and (b) all reference made (i) in the neuter, masculine, or feminine gender shall be deemed to have been made in all genders, (ii) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well, and (iii) to any Section, subsection, paragraph, or subparagraph shall, unless therein expressly indicated to the contrary, be deemed to have been made to such Section, subsection, paragraph, or subparagraph of this Declaration.

- g) Binding Effect. Except as otherwise provided in this Declaration, this Declaration shall be binding upon, inure to the benefit of and be enforceable by the Parties hereto and their heirs, executors, administrators, successors, legal representations and permitted assigns.
- h) This Declaration shall be enforceable in Miami-Dade County, Florida. This Declaration shall be governed by, and construed in accordance with, the laws of the State of Florida, both substantive and remedial, without regard to principles of conflict of laws. The exclusive venue for any litigation arising out of this Declaration shall be Miami Dade County, Florida. BY ENTERING INTO THIS DECLARATION, THE OWNER AND THE CITY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS DECLARATION.
- i) Enforcement Costs. If any civil action, arbitration or other legal proceeding is brought for the enforcement of this Declaration, or because of an alleged dispute, breach, default or misrepresentation in connection with an provision of this Declaration, the successful or prevailing Party or Parties shall be entitled to recover reasonable attorneys' fees, court costs, sales and use taxes and all expenses even if not taxable as court costs (including, without limitation, all such fees, taxes, costs and expenses incident to arbitration, appellate, bankruptcy and post-judgment proceedings), incurred in that proceeding, in addition to any relief to which such Party or Parties may be entitled. Attorneys' fees shall including, without limitation, paralegal fees, investigative fees, administrative costs, sales and use taxes and all other charges billed by the attorney to the prevailing party (including any fees and costs associated with collecting such amounts).

[EXECUTION PAGE(S) FOLLOW]

IN WITNESS WHEREOF, each party has caused this Declaration to be properly executed as of the date identified below its signature.

R D For
City Attorney
City of Miami Beach *ff.*

9-14-20
Date

City Public Works Director
City of Miami Beach

Date

Witnesses:

[Signature]

Name: Todd Benson

[Signature]

Name: Bryan Siegel

SUKKAH MIAMI BEACH ACQUISITIONS LLC,
a Delaware limited liability company

By: *[Signature]*

Todd Rosenbreg, Authorized Signatory
Name, Title

STATE OF FL

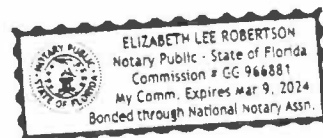
COUNTY OF Palm Beach

BEFORE ME, a Notary Public in and for said County and State, this following instrument was acknowledged by means of X physical presence or online notarizations on this 2 day of September, 2020 by Todd Rosenbreg, as Authorized Signatory of SUKKAH MIAMI BEACH ACQUISITIONS LLC, a Delaware limited liability company on behalf of such company, who is personally known to me or produced _____ as identification, and acknowledged to me that s/he executed same as a free and voluntary act and deed for the uses and purposes therein set forth.

Elizabeth Lee Robertson
(Signature)

Notary Stamp:

Elizabeth Lee Robertson
(Print Name)



My Commission Expires: Mar 9, 2024
Serial No., if any: _____

JOINDER BY MORTGAGEE CORPORATION

The undersigned **IBERIABANK**, a Louisiana state-chartered bank, having its principle place of business at 1315 West Indiantown Road, Jupiter, Florida, and Mortgagee under that certain mortgage from **SUKKAH MIAMI BEACH ACQUISITIONS LLC**, a Delaware limited liability company dated the 7th day of September, 2018, and recorded in Official Records Book 31140, Page 4030 of the Public Records of Miami-Dade County, Florida, as amended by the SECOND MODIFICATION AND CONFIRMATION OF MORTGAGE, NOTE AND LOAN DOCUMENTS AND NOTICE OF FUTURE ADVANCE AGREEMENT, dated the 20th day of December, 2019, and recorded in Official Records Book 31742, Page 3410, of the Public Records of Miami-Dade County, Florida, covering all/or a portion of the property described in the foregoing DECLARATION OF RESTRICTIVE COVENANTS REGARDING IMPROVEMENTS IN THE PUBLIC RIGHT-OF-WAY ("Declaration"), does hereby acknowledge that the terms of this Declaration is and shall be binding upon the undersigned and its successors in title.

IN WITNESS WHEREOF, these presents have been executed this 6th day of August, 2020.

Witnesses:

[Signature]
Signature

Andrew Finkle
Print Name

[Signature]
Signature

Lloyd Plummer
Print Name

IBERIABANK

IBERIABANK
Name of Corporation

Address:

1315 West Indiantown Road

Jupiter, Florida 33458

By: [Signature]
(President, Title) EVP

Print Name: J. Scott McClenaghan

STATE OF Florida
COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this 6th day of August, 2020, by J. Scott McClenaghan as EVP of IBERIABANK, a Louisiana state-chartered bank, on behalf of such company, who is personally known to me or produced as identification.

Aida Rodriguez
(Signature)

Aida Rodriguez
(Print Name)

Notary Stamp:

My Commission Expires: March 10, 2023
Serial No., if any: GG 291725

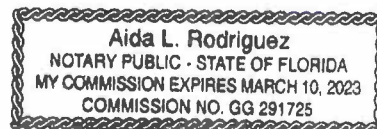


Exhibit "A"

Property

LEGAL DESCRIPTION

Lots 10 thru 15 inclusive, Block 34, LESS a part of lot 13 at the Northeasterly corner thereof, bounded by tangents to an arc of a circular curve having a central angle of 90°00'00", a radius of 20.00 feet, said excepted part of lot 13 recorded in Deed Book 2723, at Page 294, MIAMI-DADE COUNTY, FLORIDA, all shown on the AMENDED MAP OF THE OCEAN FRONT PROPERTY OF THE MIAMI BEACH IMPROVEMENT CO, Plat Book 5, at Page 8, of the Public Records of Miami-Dade County, Florida.

Exhibit “B”

Plan

CLIENT
KURHAMM TECH
1000 N. 10th St., Suite 100
Miami, FL 33136
Tel: 305-375-1100
Fax: 305-375-1101
J.F.S. DESIGN, INC.
11111 NW 11th St., Suite 100
Miami, FL 33150
Tel: 305-555-1111
Fax: 305-555-1112

STRUCTURAL ENGINEER
KURHAMM TECH
1000 N. 10th St., Suite 100
Miami, FL 33136
Tel: 305-375-1100
Fax: 305-375-1101

MECHANICAL ENGINEER
KURHAMM TECH
1000 N. 10th St., Suite 100
Miami, FL 33136
Tel: 305-375-1100
Fax: 305-375-1101

ELECTRICAL ENGINEER
KURHAMM TECH
1000 N. 10th St., Suite 100
Miami, FL 33136
Tel: 305-375-1100
Fax: 305-375-1101

CIVIL ENGINEER
KURHAMM TECH
1000 N. 10th St., Suite 100
Miami, FL 33136
Tel: 305-375-1100
Fax: 305-375-1101

CONTINENTAL
HOTEL ADDITION
4000 COLLINS AVENUE, MIAMI BEACH, FLORIDA 33140

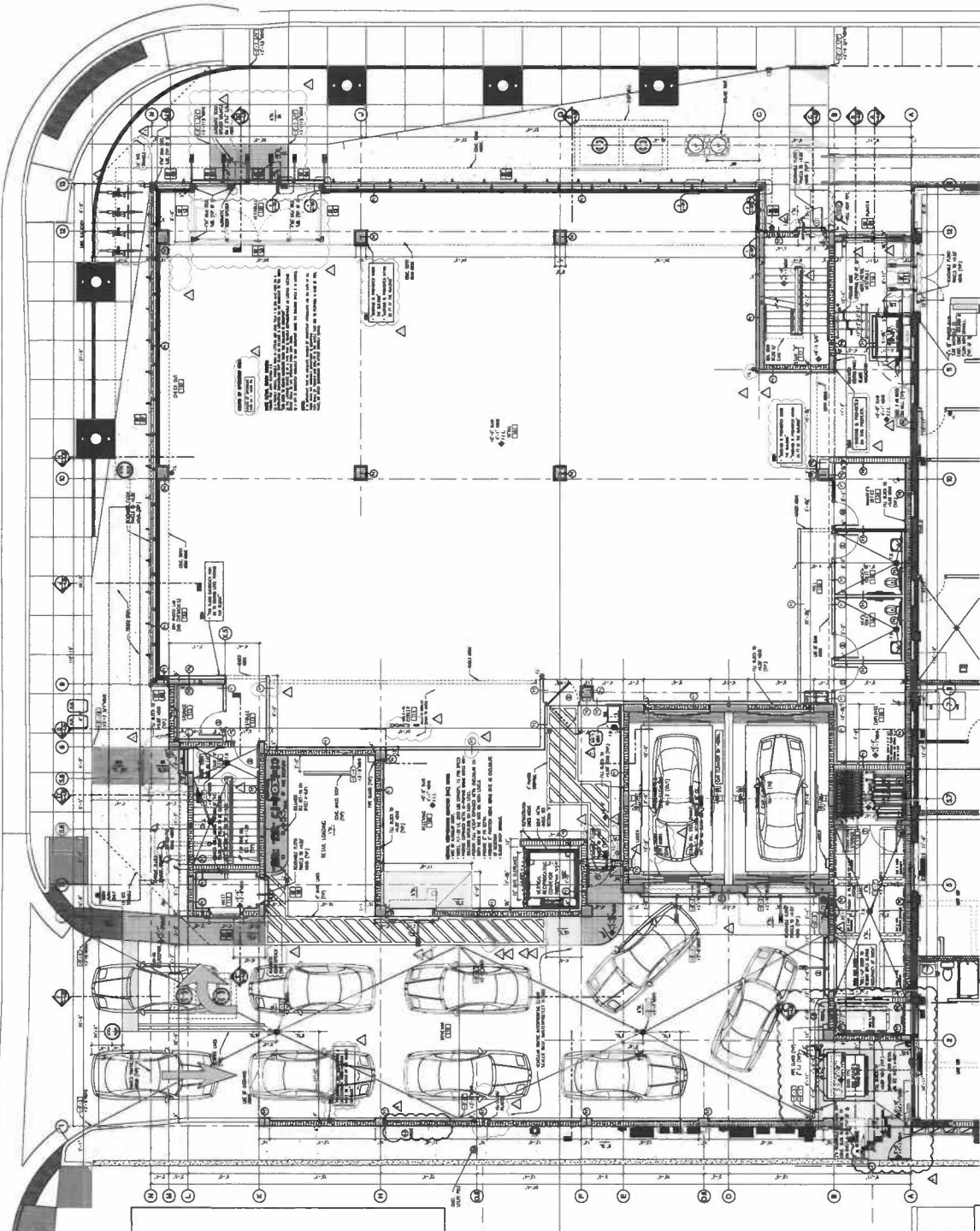
ARCHITECT OF RECORD
CHARLES H. BENSON
& ASSOCIATES ARCHITECTS, P.A.
1865 WASHINGTON AVE., 2ND FLOOR MIAMI BEACH, FLORIDA 33139
TELEPHONE 305-532-6161 / 305-532-6151
FACSIMILE 305-532-6151
ARCHITECTURAL LICENSE NO. A714022
NCARB CERTIFICATE NO. A2136



GROUND LEVEL
FLOOR PLAN
SCALE: 1/4" = 1'-0"

21812 10/16/2017

A-1.01



- LEGEND
- 1.00' - 1.00' WALL
 - 2.00' - 2.00' WALL
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 - 100.00' - 100.00' WALL

NOTES:
1. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
2. ALL WALLS ARE 12" THICK UNLESS OTHERWISE NOTED.
3. ALL FLOORS ARE 4" THICK UNLESS OTHERWISE NOTED.
4. ALL ROOFS ARE 6" THICK UNLESS OTHERWISE NOTED.
5. ALL CEILING ARE 8" THICK UNLESS OTHERWISE NOTED.
6. ALL STAIRS ARE 10" THICK UNLESS OTHERWISE NOTED.
7. ALL ELEVATIONS ARE TO FINISH UNLESS OTHERWISE NOTED.
8. ALL ELEVATIONS ARE TO FINISH UNLESS OTHERWISE NOTED.
9. ALL ELEVATIONS ARE TO FINISH UNLESS OTHERWISE NOTED.
10. ALL ELEVATIONS ARE TO FINISH UNLESS OTHERWISE NOTED.

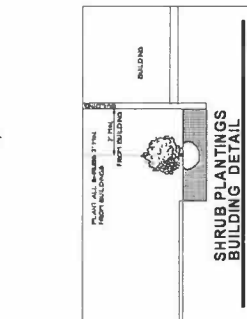
CONTRACTOR SHALL VERIFY ALL DIMENSIONS AND SET DIMENSIONS BEFORE PROCEEDING WITH WORK. IF ANY MISMEASUREMENTS, ERRORS OR OMISSIONS SHOULD BE DISCOVERED, OR PLANS, CONTRACTOR SHALL NOTIFY ARCHITECT BEFORE ANY PART OF THE WORK IS BEGUN, AND MUST FURNISH CORRECTIONS AS SOON. IF ARCHITECT IS NOT NOTIFIED PRIOR TO COMMENCEMENT OF THE WORK, THE CONTRACTOR SHALL BEAR FULL RESPONSIBILITY FOR ANY MISMEASUREMENTS, ERRORS OR OMISSIONS.

CLIENT: CHARLES H. BENSON & ASSOCIATES, INC.
ARCHITECT: CHARLES H. BENSON & ASSOCIATES, INC.
LANDSCAPE ARCHITECT: CHARLES H. BENSON & ASSOCIATES, INC.
DATE: 10/10/2017

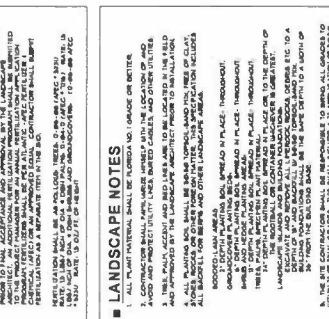
CONTINENTAL
HOTEL ADDITION
4000 COLLINGWOOD BLVD. MIAMI BEACH, FL 33140

ARCHITECT OF RECORD
CHARLES H. BENSON & ASSOCIATES, P.A.
1600 WASHINGTON AVE. SUITE 1000 MIAMI BEACH, FL 33139
TEL: 305.322.1818 FAX: 305.322.6151

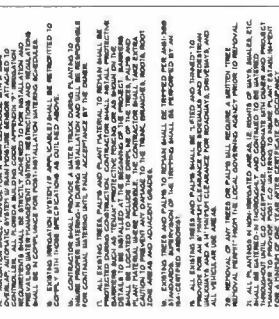
NOTES, DETAILS, SPECIFICATIONS, ETC.
31012 10/10/2017



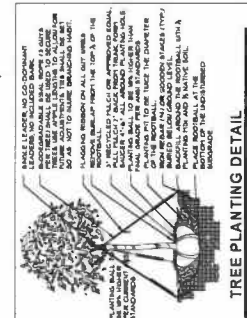
MINIMUM TREE CLEARANCE FROM LIGHT FIXTURES



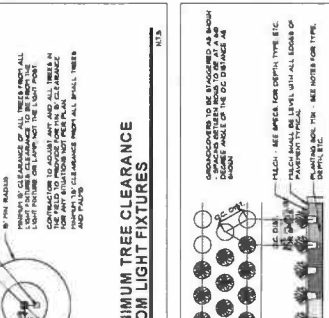
FIRE HYDRANT CLEAR ZONE



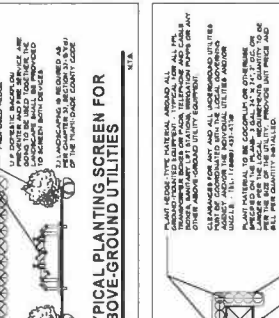
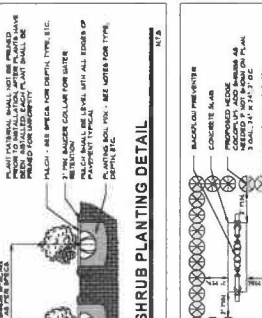
TYPICAL PLANTING SCREEN FOR ABOVE-GROUND UTILITIES



TYP. TREE PLANTING DETAIL



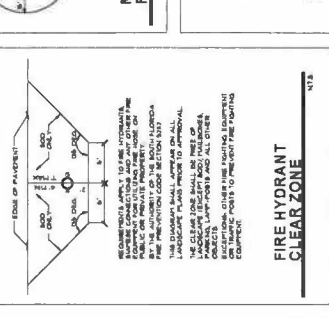
TYP. GROUNDCOVER DETAIL



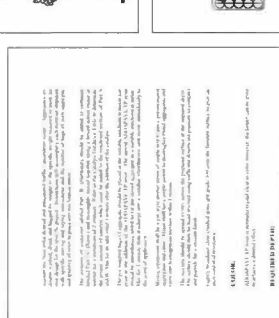
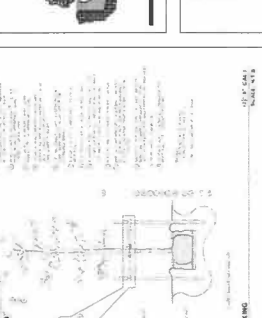
TYPICAL PLANTING SCREEN FOR GROUND-MOUNTED EQUIPMENT



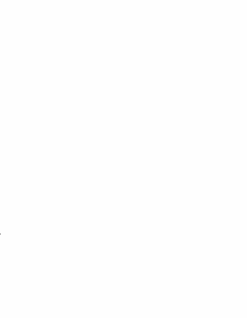
TYP. TREE PLANTING DETAIL



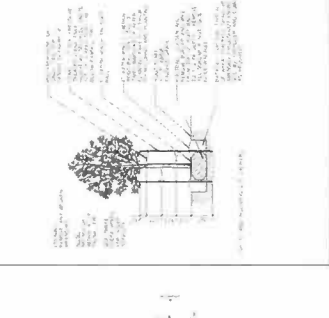
TYP. GROUNDCOVER DETAIL



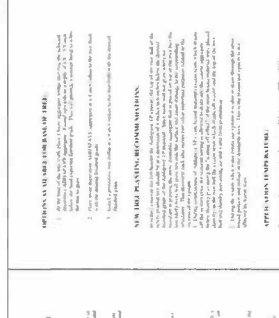
TYPICAL PLANTING SCREEN FOR GROUND-MOUNTED EQUIPMENT



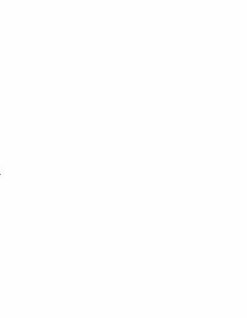
TYP. TREE PLANTING DETAIL



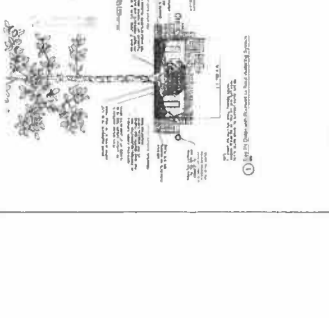
TYP. GROUNDCOVER DETAIL



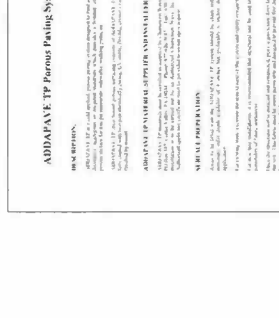
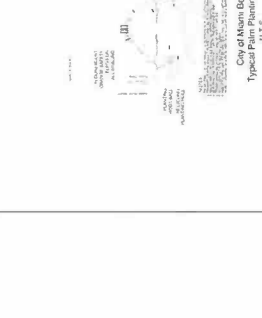
TYPICAL PLANTING SCREEN FOR GROUND-MOUNTED EQUIPMENT



TYP. TREE PLANTING DETAIL



TYP. GROUNDCOVER DETAIL



TYPICAL PLANTING SCREEN FOR GROUND-MOUNTED EQUIPMENT



TYP. TREE PLANTING DETAIL



TYP. GROUNDCOVER DETAIL



TYPICAL PLANTING SCREEN FOR GROUND-MOUNTED EQUIPMENT

Addapave

ADDAPAVE is a high-quality, durable, and aesthetically pleasing aggregate material used for decorative paving and landscaping. It is available in a wide range of colors and textures, including natural stone, recycled glass, and custom blends. Addapave is designed to provide long-lasting performance and enhance the visual appeal of any outdoor space.

CHAMELEONWAYS

CHAMELEONWAYS is a high-quality, durable, and aesthetically pleasing aggregate material used for decorative paving and landscaping. It is available in a wide range of colors and textures, including natural stone, recycled glass, and custom blends. Chameleonways is designed to provide long-lasting performance and enhance the visual appeal of any outdoor space.

Product images showing various colored aggregates, including natural stone, recycled glass, and custom blends. These aggregates are used for decorative paving and landscaping, providing long-lasting performance and enhanced visual appeal.

CHAMELEONWAYS

CHAMELEONWAYS is a high-quality, durable, and aesthetically pleasing aggregate material used for decorative paving and landscaping. It is available in a wide range of colors and textures, including natural stone, recycled glass, and custom blends. Chameleonways is designed to provide long-lasting performance and enhance the visual appeal of any outdoor space.

ADAPTIVE TREE PIT SYSTEM

The Adaptive Tree Pit System is a innovative solution for tree protection and root management. It features a custom-fit, durable pit that allows for the growth of tree roots while preventing soil compaction and damage to the surrounding landscape. This system is ideal for urban environments where trees are planted in confined spaces.

BONDED AGGREGATE

01

SILVA CELL SYSTEM LAYOUT INSTRUCTIONS

This diagram illustrates the layout and installation of the Silva Cell system. It shows the placement of the cells, the depth of the excavation, and the layering of the aggregate and soil. The instructions provide detailed guidance on how to ensure proper installation and optimal performance of the system.

02

SILVA CELL SYSTEM LAYOUT INSTRUCTIONS

This diagram illustrates the layout and installation of the Silva Cell system. It shows the placement of the cells, the depth of the excavation, and the layering of the aggregate and soil. The instructions provide detailed guidance on how to ensure proper installation and optimal performance of the system.

03

SILVA CELL SYSTEM LAYOUT INSTRUCTIONS

This diagram illustrates the layout and installation of the Silva Cell system. It shows the placement of the cells, the depth of the excavation, and the layering of the aggregate and soil. The instructions provide detailed guidance on how to ensure proper installation and optimal performance of the system.

04

SILVA CELL SYSTEM LAYOUT INSTRUCTIONS

This diagram illustrates the layout and installation of the Silva Cell system. It shows the placement of the cells, the depth of the excavation, and the layering of the aggregate and soil. The instructions provide detailed guidance on how to ensure proper installation and optimal performance of the system.

05

SILVA CELL SYSTEM LAYOUT INSTRUCTIONS

This diagram illustrates the layout and installation of the Silva Cell system. It shows the placement of the cells, the depth of the excavation, and the layering of the aggregate and soil. The instructions provide detailed guidance on how to ensure proper installation and optimal performance of the system.

06

SILVA CELL SYSTEM LAYOUT INSTRUCTIONS

This diagram illustrates the layout and installation of the Silva Cell system. It shows the placement of the cells, the depth of the excavation, and the layering of the aggregate and soil. The instructions provide detailed guidance on how to ensure proper installation and optimal performance of the system.

07

SILVA CELL SYSTEM LAYOUT INSTRUCTIONS

This diagram illustrates the layout and installation of the Silva Cell system. It shows the placement of the cells, the depth of the excavation, and the layering of the aggregate and soil. The instructions provide detailed guidance on how to ensure proper installation and optimal performance of the system.

08

SILVA CELL SYSTEM LAYOUT INSTRUCTIONS

This diagram illustrates the layout and installation of the Silva Cell system. It shows the placement of the cells, the depth of the excavation, and the layering of the aggregate and soil. The instructions provide detailed guidance on how to ensure proper installation and optimal performance of the system.

09

SILVA CELL SYSTEM LAYOUT INSTRUCTIONS

This diagram illustrates the layout and installation of the Silva Cell system. It shows the placement of the cells, the depth of the excavation, and the layering of the aggregate and soil. The instructions provide detailed guidance on how to ensure proper installation and optimal performance of the system.

10

SILVA CELL SYSTEM LAYOUT INSTRUCTIONS

This diagram illustrates the layout and installation of the Silva Cell system. It shows the placement of the cells, the depth of the excavation, and the layering of the aggregate and soil. The instructions provide detailed guidance on how to ensure proper installation and optimal performance of the system.

MATERIALS LIST

ITEM	NAME	QTY	UNIT	DESCRIPTION
1	DEEPROOT SILVA CELLS	100	SQ. YD.	2" X 2' X 2' CELLS TO PROVIDE OPTIMUM ROOT GROWTH
2	DEEPROOT SILVA CELLS	100	SQ. YD.	2" X 2' X 2' CELLS TO PROVIDE OPTIMUM ROOT GROWTH
3	DEEPROOT SILVA CELLS	100	SQ. YD.	2" X 2' X 2' CELLS TO PROVIDE OPTIMUM ROOT GROWTH

CONTRACTOR SHALL MAKE PROVISIONS FOR ALL EXISTING AND PROPOSED UTILITIES (ABOVE AND BELOW GROUND) AND SHALL BE RESPONSIBLE TO PROTECT THROUGHOUT THE CONSTRUCTION PROCESS.

DEEPROOT SILVA CELL

DEEPROOT SILVA CELL is a revolutionary product designed to protect and nurture trees during construction. It is made of high-quality, durable materials and is easy to install. The Silva Cell allows for the growth of tree roots while preventing soil compaction and damage to the surrounding landscape. This product is ideal for urban environments where trees are planted in confined spaces.

**DEEPROOT SILVA CELLS
BONDED AGGREGATE
SPECIFICATIONS, ETC.**

ISSUED FOR PERMIT
DATE: 10/10/2017
PROJECT: 10/10/2017

L-5

CLIENT
HAWAIIAN BEACH
ACCOMMODATIONS, LLC
1000 COLLEGE AVENUE, SUITE 100
HAWAIIAN BEACH, FL 32081
TEL: 850.831.1111
FAX: 850.831.1112
WWW.HAWAIIANBEACHACCOMMODATIONS.COM

ARCHITECT
CHARLES H. BENSON
& ASSOCIATES ARCHITECTS, P.A.
1000 COLLEGE AVENUE, SUITE 100
HAWAIIAN BEACH, FL 32081
TEL: 850.831.1111
FAX: 850.831.1112
WWW.CHARLESBENSONARCHITECTS.COM

ENGINEER
OCEAN ENGINEERING, INC.
1000 COLLEGE AVENUE, SUITE 100
HAWAIIAN BEACH, FL 32081
TEL: 850.831.1111
FAX: 850.831.1112
WWW.OCEANENGINEERINGINC.COM

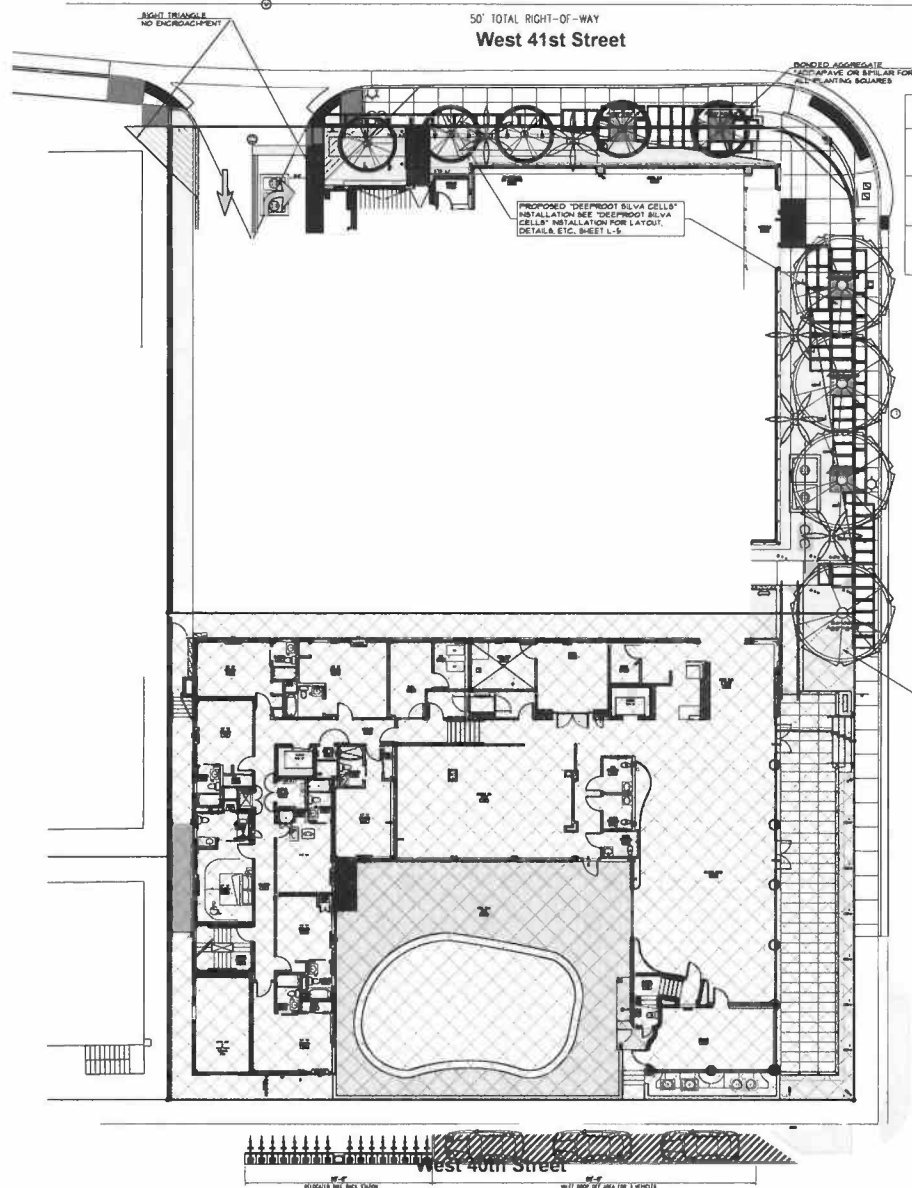
LANDSCAPE ARCHITECT
J.F.S. DESIGN, INC.
1000 COLLEGE AVENUE, SUITE 100
HAWAIIAN BEACH, FL 32081
TEL: 850.831.1111
FAX: 850.831.1112
WWW.JFSDSIGN.COM

**CONTINENTAL
HOTEL ADDITION**

ARCHITECT OF RECORD
CHARLES H. BENSON
& ASSOCIATES ARCHITECTS, P.A.
1000 COLLEGE AVENUE, SUITE 100
HAWAIIAN BEACH, FL 32081
TEL: 850.831.1111
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ENGINEER
OCEAN ENGINEERING, INC.
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LANDSCAPE ARCHITECT
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TREE PITS WITH STANDARD 'BONDED AGGREGATE' (SALT AND PEPPER GRAY COLORS)

UPLIGHT-LTY "8" 4" DIA. W/ BODYSIDE REAR-TOP FINISHES PER TREE-TYPE. PROVIDE ELECTRICAL DRAWINGS AND DIAGRAM PER ALL CODE REQUIREMENTS.

RAISED "ROOT WATERING SYSTEM" INTEGRATED INTO EACH PLANTING PIT. 7 PER PIT AT OPPOSITE SIDES TO LIGHT FINISHES SEE IRRIGATION PLANS, RGS-M-B-1487.

CONTRACTOR TO CONFIRM COMPATIBILITY TO AVAILABLE DEPTH IN RIGHT OF WAY PER CITY OF MIAMI BEACH PUBLIC WORKS DEPARTMENT TYPICAL.

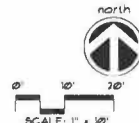
PROPOSED "DEEPROOT SILVA CELLS" INSTALLATION SEE "DEEPROOT SILVA CELLS" INSTALLATION FOR LAYOUT, DETAILS, ETC. SHEET L-5.

17-08-CONTINENTAL HOTEL ADDITION			
4000 COLLINS AVE., MIAMI BEACH, FL 33140			
TREES ROOTING VOLUME CALCULATIONS			
5/28/2019			
WEST 41st ST. - "DEEPROOT" SILVA CELLS	UNITS	SQ.FT.	TOTAL CU.FT.
EXISTING PLANTING AREA		582	
PLANTING AREA SQ.FT. X 3" DEPTH			1,746
PROPOSED SILVA CELLS			
SQ.FT. / SILVA CELL = 2'-5" X 4'-5"			
SILVA CELLS PROPOSED	42	11.25	
TOTAL SILVA CELL SQ.FT. X 3" DEPTH		472.5	1,418
TOTAL ROOTING VOLUME ON W. 41st ST.			3,164
TOTAL ROOTING VOLUME PER TREE			
PROPOSED TREES	5		
ROOTING VOLUME PER TREE			633
COLLINS AVE. - "DEEPROOT" SILVA CELLS	UNITS	SQ.FT.	TOTAL CU.FT.
EXISTING PLANTING AREA		606	
PLANTING AREA SQ.FT. X 3" DEPTH			1,818
PROPOSED SILVA CELLS			
SQ.FT. / SILVA CELL = 2'-5" X 4'-5"			
SILVA CELLS PROPOSED	66	11.25	
TOTAL SILVA CELL SQ.FT. X 3" DEPTH		742.5	2,228
TOTAL ROOTING VOLUME ON W. 41st ST.			4,046
TOTAL ROOTING VOLUME PER TREE			
PROPOSED TREES	4		
ROOTING VOLUME PER TREE			1,011

CONTRACTOR SHALL MAKE PROVISIONS FOR ALL EXISTING AND PROPOSED UTILITIES, (ABOVE AND BELOW GROUND) AND SHALL BE RESPONSIBLE TO PROTECT THROUGHOUT THE CONSTRUCTION PROCESS.

A WRITTEN TREE REMOVAL PERMIT IS REQUIRED FROM THE CITY OF MIAMI BEACH PRIOR TO REMOVAL OF ANY TREES OR PALMS FROM THIS SITE.

SEE RESPECTIVE LANDSCAPE PLANS, SHEETS L-2 TO L-9, FOR PLANTLIST, LANDSCAPE DETAILS, NOTES, SPECIFICATIONS, ETC.



ROOTING VOLUME CALCULATION LANDSCAPE PLAN

21612 10/10/2017

ISSUED FOR PERMIT 3-19-2
ISSUED FOR BIDDING 3-19-2
ISSUED FOR CONSTRUCTION 3-19-2

L-6

CLIENT
SOLAR MIAMI BEACH
ACCOUNTING LLC
1000 N.W. 10th St., Suite 100
MIAMI, FL 33136
TEL: 305.555.1111 FAX: 305.555.1112

LANDSCAPE ARCHITECT
J.F.S. DESIGN INC.
1015 NW 107th Street
MIAMI, FL 33157

STRUCTURAL ENGINEERS
O'DON & COMPANY, INC.
1100 N.W. 10th St., Suite 100
MIAMI, FL 33136
TEL: 305.555.1111 FAX: 305.555.1112

M/E/P ENGINEERS
HENDERSON ENGINEERING
1000 N.W. 10th St., Suite 100
MIAMI, FL 33136
TEL: 305.555.1111 FAX: 305.555.1112

CIVIL ENGINEERS
OCAN ENGINEERING, INC.
1015 NW 107th Street
MIAMI, FL 33157
TEL: 305.555.1111 FAX: 305.555.1112

CONTINENTAL HOTEL ADDITION

Project
ARCHITECT OF RECORD
CHARLES H. BENSON
& ASSOCIATES ARCHITECTS, P.A.
interior planner
1845 WASHINGTON AVE., 2ND FLOOR MIAMI BEACH, FL 33139
TEL: 305.532.8181 FAX: 305.532.8151
ARCHITECTURAL LICENSE NO. 14022
NCARB CERTIFICATE NO. 42136



[illegible]

LOCAL CONTROL OF ALL RESOURCES			
LOCAL	DISPATCH	ACTIVATION GROUP	ACTIVATION GROUP
A	101-1010	B	B
B	102-1020	C	C
C	103-1030	D	D
D	104-1040	E	E
E	105-1050	F	F
F	106-1060	G	G
G	107-1070	H	H
H	108-1080	I	I
I	109-1090	J	J
J	110-1100	K	K
K	111-1110	L	L
L	112-1120	M	M
M	113-1130	N	N
N	114-1140	O	O
O	115-1150	P	P
P	116-1160	Q	Q
Q	117-1170	R	R
R	118-1180	S	S
S	119-1190	T	T
T	120-1200	U	U
U	121-1210	V	V
V	122-1220	W	W
W	123-1230	X	X
X	124-1240	Y	Y
Y	125-1250	Z	Z
Z	126-1260	AA	AA
AA	127-1270	AB	AB
AB	128-1280	AC	AC
AC	129-1290	AD	AD
AD	130-1300	AE	AE
AE	131-1310	AF	AF
AF	132-1320	AG	AG
AG	133-1330	AH	AH
AH	134-1340	AI	AI
AI	135-1350	AJ	AJ
AJ	136-1360	AK	AK
AK	137-1370	AL	AL
AL	138-1380	AM	AM
AM	139-1390	AN	AN
AN	140-1400	AO	AO
AO	141-1410	AP	AP
AP	142-1420	AQ	AQ
AQ	143-1430	AR	AR
AR	144-1440	AS	AS
AS	145-1450	AT	AT
AT	146-1460	AU	AU
AU	147-1470	AV	AV
AV	148-1480	AW	AW
AW	149-1490	AX	AX
AX	150-1500	AY	AY
AY	151-1510	AZ	AZ
AZ	152-1520	BA	BA
BA	153-1530	BB	BB
BB	154-1540	BC	BC
BC	155-1550	BD	BD
BD	156-1560	BE	BE
BE	157-1570	BF	BF
BF	158-1580	BG	BG
BG	159-1590	BH	BH
BH	160-1600	BI	BI
BI	161-1610	BJ	BJ
BJ	162-1620	BK	BK
BK	163-1630	BL	BL
BL	164-1640	BM	BM
BM	165-1650	BN	BN
BN	166-1660	BO	BO
BO	167-1670	BP	BP
BP	168-1680	BQ	BQ
BQ	169-1690	BR	BR
BR	170-1700	BS	BS
BS	171-1710	BT	BT
BT	172-1720	BU	BU
BU	173-1730	BV	BV
BV	174-1740	BW	BW
BW	175-1750	BX	BX
BX	176-1760	BY	BY
BY	177-1770	BZ	BZ
BZ	178-1780	CA	CA
CA	179-1790	CB	CB
CB	180-1800	CC	CC
CC	181-1810	CD	CD
CD	182-1820	CE	CE
CE	183-1830	CF	CF
CF	184-1840	CG	CG
CG	185-1850	CH	CH
CH	186-1860	CI	CI
CI	187-1870	CJ	CJ
CJ	188-1880	CK	CK
CK	189-1890	CL	CL
CL	190-1900	CM	CM
CM	191-1910	CN	CN
CN	192-1920	CO	CO
CO	193-1930	CP	CP
CP	194-1940	CQ	CQ
CQ	195-1950	CR	CR
CR	196-1960	CS	CS
CS	197-1970	CT	CT
CT	198-1980	CU	CU
CU	199-1990	CV	CV
CV	200-2000	CU	CU

FIRE CONTROL				
FALL NAME		FIRE		
LOCATION		SECOND LEVEL		
CONTRACTOR	CRUIT	LOAD CONTROLLED	ZONE	
1	GE-4	ELECTRIC MALL VAV	B	
2	GE-3	SOCLARD LIGHTS	C	
3	GE-4	TUNANT CENTER PLATE ROOM LIGHT	A	
4		SPARE		
5		SPARE		
6		SPARE		
7		SPARE		
8		SPARE		

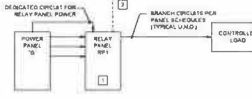
1. LIFTING CONTROL DIAGRAM IS DIAGRAMMATIC AND REPRESENTS THE WORK AND THE LOCATION OF POWER PLANTS AND TO EACH OF THE

- [illegible]

1 STAND-ALONE LIGHTING CONTROL. SEE LAY PAGE INFORMATION

2. PROVIDE PHOTOCELL MOUNTED ON HP-3 ON THE ROOF. REFER TO LIGHTING CONTROL DEVICE SCHEDULE ON THIS SHEET AND TO LIGHTING PLANS FOR ADDITIONAL INFORMATION.

H1		SECOND LEVEL		
GRADING YEAR	COURSE	LEADY COURSE NUMBER		GRADE
1	C-10	ENGLISH 10		A
2	C-12	ENGLISH 12		A
3	C-14	ENGLISH 14		A
4	C-16	ENGLISH 16		A
5	C-18	ENGLISH 18		A
6	C-20	ENGLISH 20		A
7	C-22	ENGLISH 22		A
8	C-24	ENGLISH 24		A

[illegible][illegible]

LANDSCAPE ARCHITECT
J.F.S. DESIGNS Inc.
1001 NW 142nd Ave.
West Miami, FL 33187-1100
Tel: 407/882-7777 Fax: 407/882-7767

**M/E/P ENGINEERS
HENDERSON
ENGINEERS, INC.**
4000 HOLLYWOOD BLVD. FORT LAUDERDALE, FL 33311
(305) 766-3333 FAX (305) 766-3334

TAL ITIC

ANTHONY
EL A
COLINS AVENUE
FLORIDA

Project	I
ARCHITECT OF RECORD	

BENSON ARCHITECTS
11 MIAMI BEACH
305 532 6751
FAX NO. 305 532 6751
P.O. BOX 42136

CHAR
ASSOCI
WASHINGTON A
1 30
ARCHITE
VCA

THIS DOCUMENT IS RELEASED
FOR THE PURPOSE OF
PRELIMINARY SUBMITTAL
KENNETH L. MATHEWSON

THESE DRAWINGS AND COPIES WERE IN HANDS OF THE
DOCTOR AND THE PROPERTY OF SUBJECT A, WHO WAS
NOT TO BE LOANED THE OTHER DRAWINGS TO BE
RETURNED AFTER COMPLETION OF WORK.

11/10/41

ELECTRICAL

E-6.01

PERMIT	3-2
BIDDING	3-2

21612 10/10/2017
E-6.01

SD' TOTAL RIGHT-OF-WAY



Collins Avenue

FLORIDA BUILDING CODE- APPENDIX F PIPE INSTALLATION-DEPTH OF COVER	
VEHICLE TRAFFIC AREAS	
PIPE SIZE (INCHES)	DEPTH OF COVER (INCHES)
1/2" TO 2 1/2"	18" TO 24"
3" TO 5"	24" TO 36"
6" OR GREATER	36 TO 36"
NON-TRAFFIC AND NON-CULTIVATED AREAS	
PIPE SIZE (INCHES)	DEPTH OF COVER (INCHES)
1/2" TO 1 1/4"	0"
1 1/2" TO 3"	0" TO 18"
3" TO 5"	18" TO 24"
6" OR LARGER	24" TO 36"

2° IRRADIATION PATTERN BY WATER DEPT.
 FORCED AT CHIMNEY'S EXTENSION
 3° REDUCED PRESSURE LINE (100%)
 DRAINAGE PREVENTER
 4° MASTER VALVE
 CONNECTION TO CONTROLLER
 PROPOSED 3" PVC Main Supply
 LINE SCHEDULE 40
 REGULATION CONTROLLER
 RANDED EXP-LSX-PPE MODULAR
 RAIN SENSOR- RANDED MBS SERIES
 ADJUSTABLE TO CONTROLLER
 LAMINATION BOX OF
 WATERPROOF CONNECTIONS
 EXISTING ELECTRIC VOLTAGE
 120V ELECTRIC VOLTAGE RANDED PEB
 SERIES OR APPROVED EQUAL
 IN 90 VOLTAGE BOX
 ZONE DESIGNATION
 LATERAL LINE / SCHEDULE 40
 PIPE IN SLEEVE (SEE SIZING CHART)
 PIPE CONNECTION
 PIPE CROSSING
 RANDED MBS STRIP- TYPE
 B (SEE STRIP) IN CAT (CENTER STRIP)
 RANDED MBS "A" SERIES- PPE
 1/2" D. 1/2" D. QUARTER HALF PILL
 3/4" D. 1/2" D. RADIUS AS ABOVE
 RANDED 3/4" SERIES PPE STRIP (SUGGEST)
 NOZZLES - 1/2" RADIUS, LS GPM

BEACH PRIOR TO TRENCH BACKFILLING AND A FINAL INSPECTION SHALL BE REQUIRED PRIOR TO COMPLETION OF RESTORATION WORK.

SOUTH FLORIDA WATER MANAGEMENT DISTRICT WATER RESTRICTIONS - IMAGE II MODIFIED - ARE IN EFFECT. ALL REQUIREMENTS FOR THESE RESTRICTIONS SHALL BE STRICTLY ENFORCED WITH CONTRACTOR AND/OR OWNER TO BE RESPONSIBLE THROUGHOUT THIS PROJECT AND POST CERTIFICATE OF OCCUPANCY.

IRRIGATION / DRINKER SYSTEM AND REEFER FOR SPRAY HEADS SHALL NOT BE INSTALLED WITHIN 10 FEET OF THE BUILDING. IDEALISM IN COMPLIANCE WITH FLORIDA BUILDING CODE, PLUMBING 318.

ALL REQUIREMENTS PER SOUTH FLORIDA BUILDING CODE, APPENDIX F ARE TO BE COMPLIED WITH PER CITY OF MIAMI BEACH.

A WRITTEN TREE REMOVAL PERMIT IS REQUIRED FROM THE CITY OF MIAMI BEACH PRIOR TO REMOVAL OF ANY TREES OR PALMS FROM THIS SITE.

SEE RESPECTIVE IRRIGATION PLANS, SHEETS IRR-2 & IRR-3

SEE LANDSCAPE PLANS FOR LANDSCAPE PLANTINGS, PLANTLIST, LANDSCAPE DETAILS, NOTES, SPECIFICATIONS, ETC.

ISSUED FOR PERMIT _____ 9-28
ISSUED FOR BIDDING _____ 2-28
ISSUED FOR CONSTRUCTION _____

10. 10/10/11 2:22:25 PM 11. 10/10/11 2:22:25 PM

CHARLES
CIATES
tions p
N AVE., 2nd
T 305 532 61
HITECTURAL
CARR CER

55' W 3 CTY CORNER

IRR-1

Series 4000



Advantages of the Series 4000:

- 4 channels
- 4 sensors
- 4 input lines

Technical specifications:

Power supply: 24V DC, 1.5A
 Dimensions: 100x100x100 mm
 Weight: 1.5 kg

Series 4000

Advantages of the Series 4000:

- 4 channels
- 4 sensors
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Technical specifications:

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Series 4000

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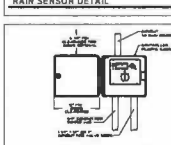
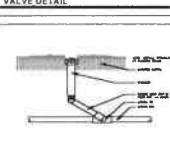
Series 4000

Advantages of the Series 4000:

- 4 channels
- 4 sensors
- 4 input lines

Technical specifications:

Power supply: 24V DC, 1.5A
 Dimensions: 100x100x100 mm
 Weight: 1.5 kg



CONTRACTOR SHALL VERIFY ALL DIMENSIONS AND SET DIMENSIONS BEFORE PROCEEDING WITH WORK. IF ANY DISCREPANCIES, ERRORS OR OMISSIONS SHOULD BE DISCOVERED ON PLANS, CONTRACTOR SHALL NOTIFY ARCHITECT BEFORE ANY PART OF THE WORK IS STARTED. IN THE EVENT DISCREPANCIES BE FOUND, IF ARCHITECT IS NOT IMPARTIAL PRIOR TO COMMENCEMENT OF THE WORK, THE CONTRACTOR SHALL BEAR FULL RESPONSIBILITY FOR ANY DISCREPANCIES, ERRORS OR OMISSIONS.

Exhibit "C"

Agreement

**FLORIDA DEPARTMENT OF TRANSPORTATION
LANDSCAPE AND BONDED AGGREGATE SURFACES
MAINTENANCE MEMORANDUM OF AGREEMENT
WITH THE
CITY OF MIAMI BEACH**

This **AGREEMENT**, entered into on _____, 20__, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, an agency of the State of Florida, hereinafter called the **DEPARTMENT**, and the **CITY OF MIAMI BEACH**, a municipal corporation of the State of Florida, hereinafter called the **CITY**, and collectively referred to as the **PARTIES**.

RECITALS:

- A. The **DEPARTMENT** has jurisdiction over **State Road (SR) 112 (West 41st Street)** from Indian Creek Drive to Collins Avenue, which is located within the limits of the **CITY**; and
- B. The **CITY**, pursuant to **Permit Number 2020-L-691-00005**, has drafted design plans for beautification improvements along SR-112 (West 41st Street) from Indian Creek Drive to Collins Avenue, the limits of which are described in the attached Exhibit 'A' (the **PROJECT LIMITS**), which by reference shall become a part of this **AGREEMENT**; and
- C. The **CITY** will install landscape and bonded aggregate surfaces along SR-112 within the **PROJECT LIMITS**, in accordance with the design plans for Permit Number # 2020-L-691-00005 (the "Project"); and
- D. The **PARTIES** to this **AGREEMENT** mutually recognize the need for entering into an agreement designating and setting forth the responsibilities of each party with regards to the maintenance of the landscape and bonded aggregate surfaces installed pursuant to the Project; and
- E. The **CITY**, by Resolution No. _____, dated _____, attached hereto as Exhibit 'B', which by reference shall become a part of this **AGREEMENT**, desires to enter into this **AGREEMENT** and authorizes its officers to do so.

NOW, THEREFORE, for and in consideration of the mutual benefits contained herein and other good and valuable consideration, the **PARTIES** covenant and agree as follows:

1. RECITALS

The recitals in this **AGREEMENT** are true and correct, and are incorporated herein by reference and made a part hereof.

2. ASSIGNMENT OF MAINTENANCE RESPONSIBILITIES

The **PARTIES** agree that the execution of this **AGREEMENT** shall constitute an assignment of all maintenance responsibilities pertaining to the landscape and bonded aggregate surfaces (collectively the "**IMPROVEMENTS**") within the **PROJECT LIMITS** to the **CITY** upon the **DEPARTMENT's** issuance of the executed Permit to the **CITY**.

3. CITY'S MAINTENANCE RESPONSIBILITIES

So long as the **IMPROVEMENTS** remain in place, the **CITY** shall be responsible for the maintenance of the same. The **CITY** shall maintain the **IMPROVEMENTS** in accordance with all applicable **DEPARTMENT** guidelines, standards, and procedures, which shall include but shall not be limited to the Maintenance Rating Program Handbook, as may be amended from time to time. Additionally, with respect to the landscape, the **CITY** shall maintain same in accordance with the International Society of Arboriculture standards, guidelines and procedures, the latest edition of the "Maintenance Rating Program", and Index 546 of the latest **DEPARTMENT** Design Standards, as may be amended from time to time. The **CITY** shall further maintain the **IMPROVEMENTS** in accordance with the standards set forth in the Project Plans, and in the Project Specifications and Special Provisions. The **CITY's** maintenance obligations shall include but not be limited to:

3.1 General Requirements:

- a. Removing and disposing of litter from **PROJECT LIMITS** in accordance with all applicable government rules, regulations, policies, procedures, guidelines, and manuals, as amended from time to time.
- b. Removing and disposing of all trimmings, roots, branches, litter, and any other debris resulting from the activities described by 3.2 through 3.3.

- c. Maintaining a service log of all maintenance operations that sets forth the date of the maintenance activity, the location that was maintained, and the work that was performed.
- d. Submitting Lane Closure Requests to the **DEPARTMENT** when maintenance activities will require the closure of a traffic lane in the **DEPARTMENT's** right-of-way. Lane closure requests shall be submitted through the District Six Lane Closure Information System, to the **DEPARTMENT's** area Permit Manager and in accordance with the District Six Lane Closure Policy, as may be amended from time to time.

3.2 Landscape and all associated improvements:

- a. Mowing, cutting and/or trimming and edging the grass and turf within the **PROJECT LIMITS**.
- b. Pruning all plant materials, which include trees, shrubs and ground covers, and parts thereof, including all material from private property encroaching into the **DEPARTMENT'S** Right-of-Way.
- c. All pruning and trimming will follow the Maintenance Rating Program Handbook which specifically requires no encroachment of trees, tree limbs or vegetation in or over travel way (or clear zone) lower than 14.5 feet, or lower than 10 feet over sidewalks.
- d. Removing and properly disposing of dead, diseased or otherwise deteriorated plants in their entirety, and replacing those that fall below the standards set forth in the Project Plans and in the Project Specifications, incorporated herein by reference, and all applicable **DEPARTMENT** guidelines, standards and procedures, as may be amended from time to time. All replacement materials shall be in accordance with the Project Plans and the Project Specifications and Special Provisions.
- e. Mulching all plant beds and tree rings.
- f. Removing and disposing of all undesirable vegetation including but not limited to weeding of plant beds and removal of invasive exotic plant materials.

- g. Watering and fertilizing all plants as needed to maintain the plant materials in a healthy and vigorous growing condition.
- h. Repairing irrigation systems and associated components as needed. Paying for all water use and all costs associated therewith.
- i. Repairing decorative lighting systems as needed. Paying for all electricity and all costs associated therewith.
- j. Removing and disposing of litter from roadside and median strips in accordance with all applicable government rules, regulations, policies, procedures, guidelines, and manuals, as amended from time to time.
- k. Repairing all sidewalks damaged by landscaping found inside and outside the **DEPARTMENT's** Right-of-Way.
- l. Removing and disposing of all trimmings, roots, branches, litter, and any other debris resulting from the activities described by 3.A through 3.K.

3.3 Bonded Aggregate Surfaces:

- a. Performing routine and regular inspections of the bonded aggregate surfaces to ensure that the surface is fully functional; identifying damage and/or malfunctions in the surfaces; and repairing and/or replacing damaged bonded aggregate surfaces to ensure surfaces are maintained in accordance with all applicable **DEPARTMENT** guidelines, standards, and all applicable American with Disabilities Act (ADA) requirements, as amended from time to time.
- b. The **CITY** shall conduct annual condition surveys of the bonded aggregate surfaces for gaps, settlement, drop-offs and other deficiencies described in this **AGREEMENT** for the life of the bonded aggregate. Ensure and document in this survey that the surface friction of the bonded aggregate surface meets or exceeds the surface friction of the existing concrete sidewalk areas.

- c. Gaps within the bonded aggregate surfaces shall not exceed a quarter (1/4) of an inch. Gaps at the interface (perimeter) between the bonded aggregate surfaces and the adjacent concrete sidewalk(s) shall not exceed a quarter (1/4) of an inch. This requirement also applies to adjacent areas of existing concrete sidewalk(s) that have been impacted by the trees planted within the bonded aggregate surfaces.
- d. Differential settlement within the bonded aggregate surfaces shall not exceed a quarter (1/4) of an inch in depth. Differential settlement at the interface (perimeter) between the bonded aggregate surfaces and the adjacent concrete sidewalk(s) shall not exceed a quarter (1/4) of an inch in depth. This requirement also applies to adjacent areas of existing concrete sidewalk(s) that have been impacted by the trees planted within the bonded aggregate surfaces.
- e. When remedial action is required in accordance with the above requirements, the **CITY** at its own expense shall complete all necessary repairs within ninety (90) days of the date the deficiency is identified.

The **CITY** shall submit all services logs, inspections and surveys to the **DEPARTMENT** Warranty Coordinator as required in the above maintenance responsibilities.

The **DEPARTMENT** may, at its sole discretion, perform periodic inspection of the **IMPROVEMENTS** to ensure that the **CITY** is performing its duties pursuant to this **AGREEMENT**. The Department shall share with the **CITY** its inspection findings, and may use those findings as the basis of its decisions regarding maintenance deficiencies, as set forth in Section 4 of this **AGREEMENT**. The **CITY** is responsible for obtaining copies of all applicable rules, regulations, policies, procedures, guidelines, and manuals, and the Project Specification and Special Provisions, as may be amended from time to time.

4. MAINTENANCE DEFICIENCIES

If at any time it shall come to the attention of the **DEPARTMENT** that the **CITY's** responsibilities as established

herein are not being properly accomplished pursuant to the terms of this **AGREEMENT**, the **DEPARTMENT** may, at its option, issue a written notice, in care of the **CITY MANAGER**, to notify the **CITY** of the maintenance deficiencies. From the date of receipt of the notice, the **CITY** shall have a period of thirty (30) calendar days, within which to correct the cited deficiency or deficiencies. Receipt is determined in accordance with Section 5 of this **AGREEMENT**.

If said deficiencies are not corrected within this time period, the **DEPARTMENT** may, at its option, proceed as follows:

- a. Maintain the **IMPROVEMENTS**, or a part thereof and invoice the **CITY** for expenses incurred; or
- b. Terminate this **AGREEMENT** in accordance with Section 7, remove any or all of the **IMPROVEMENTS** located within the **PROJECT LIMITS**, and charge the **CITY** the reasonable cost of such removal.

5. NOTICES

All notices, requests, demands, consents, approvals, and other communication which are required to be served or given hereunder, shall be in writing and shall be sent by certified U.S. mail, return receipt requested, postage prepaid, addressed to the party to receive such notices as follows:

To the DEPARTMENT: Florida Department of Transportation
1000 Northwest 111 Avenue, Room 6205
Miami, Florida 33172-5800
Attn: District Maintenance Engineer

To the CITY: City of Miami Beach
1700 Convention Drive
Miami Beach, Florida 33139
Attention: City Manager

Notices shall be deemed to have been received by the end of five (5) business days from the proper sending thereof unless proof of prior actual receipt is provided.

6. REMOVAL, RELOCATION OR ADJUSTMENT OF THE IMPROVEMENTS

- a. The **PARTIES** agree that the **IMPROVEMENTS** addressed by this **AGREEMENT** may be removed, relocated or adjusted at any time in the future, at the **DEPARTMENT's** sole discretion. In the event that the **DEPARTMENT** relocates or adjusts the **IMPROVEMENTS**, the **CITY's** maintenance responsibilities will survive the relocation or adjustment, as long as the materials remain within the **PROJECT LIMITS**.
- b. In the event that the **DEPARTMENT** is required to replace the sidewalk at any time as part of maintenance activities, a roadway project, or related construction activities, the **DEPARTMENT** shall replace the same as a concrete type sidewalk, and the **CITY's** maintenance obligations under this **AGREEMENT** shall terminate. However, the **CITY** may, with the approval of the **DEPARTMENT**, upgrade the sidewalk type at its sole cost and expense with the understanding that the **CITY** shall assume all maintenance obligations for the upgraded sidewalk, and enter into a new maintenance agreement.

7. TERMINATION

In addition to the provisions of Section 6(b) hereunder, this **AGREEMENT** is subject to termination under any one of the following conditions:

- a. By the **DEPARTMENT**, if the **CITY** fails to perform its duties under Section 3 of this **AGREEMENT**, following the thirty (30) days written notice, as specified in Section 4 of this **AGREEMENT**.
- b. In accordance with Section 287.058(1)(c), Florida Statutes, the **DEPARTMENT** shall reserve the right to unilaterally cancel this **AGREEMENT** if the **CITY** refuses to allow public access to any or all documents, papers, letters, or other materials made or received by the **CITY** pertinent to this **AGREEMENT** unless the records are exempt from Section 24(a) of Article I of the State Constitution and Section 119.07(1), of the Florida Statutes.

c. If mutually agreed to by both parties, upon thirty (30) days written advance notice. An agreement to terminate shall be valid only if made in writing and executed with the same formalities as this **AGREEMENT**.

d. By the **CITY**, upon thirty (30) days advance written notice to the **DEPARTMENT**.

Prior to termination of the **AGREEMENT** under this Section, the **CITY** shall, at its sole cost and expense, remove all the **IMPROVEMENTS** and restore the area to a standard concrete sidewalk, in accordance with the **DEPARTMENT'S** guidelines, standards, and procedures, and to the satisfaction of the **DEPARTMENT**, and shall further any remaining **IMPROVEMENTS**, and restore the area to the same or similar condition as existed prior to the installment of the **IMPROVEMENTS**, in accordance with the **DEPARTMENT'S** guidelines, standards, and procedures, and to the satisfaction of the **DEPARTMENT**.

8. TERMS

a. The effective date of this **AGREEMENT** shall commence upon execution by the **PARTIES** and shall continue so long as the **IMPROVEMENTS** remain in place until termination as set forth in Section 7.

b. E-Verify

The **CITY** shall:

- i. Utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Vendor/Contractor during the term of the contract; and
- ii. Expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term. **(Executive Order Number 2011-02)**

The **CITY** shall insert the above clause into any contract entered into by the **CITY** with vendors or contractors

hired by the **CITY** for purposes of performing its duties under this **AGREEMENT**.

- c. This writing embodies the entire **AGREEMENT** and understanding between the **PARTIES** hereto and there are no other agreements and understanding, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.
- d. This **AGREEMENT** shall not be transferred or assigned, in whole or in part, without the prior written consent of the **DEPARTMENT**.
- e. This **AGREEMENT** shall be governed by and constructed in accordance with the laws of the State of Florida. Any provisions of this **AGREEMENT** found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions of the **AGREEMENT**.
- f. Venue for any and all actions arising out of or in connection to the interpretation, validity, performance or breach of this **AGREEMENT** shall lie exclusively in a state court of proper jurisdiction in Leon County, Florida.
- g. A modification or waiver of any of the provisions of this **AGREEMENT** shall be effective only if made in writing and executed with the same formality as this **AGREEMENT**.
- i. The section headings contained in this **AGREEMENT** are for reference purposes only and shall not affect the meaning or interpretation hereof.
- j. No term or provision of this **AGREEMENT** shall be interpreted for or against either Party because the Party or its legal representative drafted the provision.
- k. The **DEPARTMENT** is a state agency, self-insured and subject to the provisions of Section 768.28, Florida Statutes, as may be amended from time to time. Nothing in this **AGREEMENT** shall be deemed or otherwise interpreted as waiving the **DEPARTMENT's** sovereign immunity protections, or as increasing the limits of liability as set forth in Section 768.28, Florida Statutes.

9. INDEMNIFICATION

Subject to Section 768.28, Florida Statutes, as may be amended from time to time, the **CITY** shall promptly indemnify, defend, save and hold harmless the **DEPARTMENT**, its officers, agents, representatives and employees from any and all losses, expenses, fines, fees, taxes, assessments, penalties, costs, damages, judgments, claims, demands, liabilities, attorneys fees, (including regulatory and appellate fees), and suits of any nature or kind whatsoever caused by, arising out of, or related to the **CITY's** exercise or attempted exercise of its responsibilities as set out in this **AGREEMENT**, including but not limited to, any act, action, neglect or omission by the **CITY**, its officers, agents, employees or representatives in any way pertaining to this **AGREEMENT**, whether direct or indirect, except that neither the **CITY** nor any of its officers, agents, employees or representatives will be liable under this provision for damages arising out of injury or damages directly caused or resulting from the negligence of the **DEPARTMENT**.

The **CITY's** obligation to indemnify, defend and pay for the defense of the **DEPARTMENT**, or at the **DEPARTMENT's** option, to participate and associate with the **DEPARTMENT** in the defense and trial of any claim and any related settlement negotiations, shall be triggered immediately upon the **CITY's** receipt of the **DEPARTMENT's** notice of claim for indemnification. The notice of claim for indemnification shall be deemed received if the **DEPARTMENT** sends the notice in accordance with the formal notice mailing requirements set forth in Section 5 of this **AGREEMENT**. The **DEPARTMENT's** failure to notify the **CITY** of a claim shall not release the **CITY** of the above duty to defend and indemnify the **DEPARTMENT**.

The **CITY** shall pay all costs and reasonable attorney's fees related to this obligation and its enforcement by the **DEPARTMENT**. The indemnification provisions of this section shall survive termination or expiration of this **AGREEMENT**, but only with respect to those claims that arose from acts or circumstances which occurred prior to termination or expiration of this **AGREEMENT**.

The **CITY's** evaluation of liability or its inability to evaluate liability shall not excuse the **CITY's** duty to defend

and indemnify the **DEPARTMENT** under the provisions of this section. Only an adjudication or judgment, after the highest appeal is exhausted, specifically finding the **DEPARTMENT** was solely negligent shall excuse performance of this provision by the **CITY**.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first above written.

CITY OF MIAMI BEACH:

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION:

BY: _____
CITY Manager

BY: _____
District Director of
Transportation Operations

ATTEST: _____ (SEAL)
CITY Clerk

ATTEST: _____
Executive Secretary

LEGAL REVIEW:

BY: _____
CITY Attorney

BY: _____
District Chief Counsel

EXHIBIT 'A'

PROJECT LIMITS

Below are the limits of the **IMPROVEMENTS** to be maintained by the **CITY** under this **AGREEMENT**.

State Road Number: 112

Local Street Names: West 41st Street

Agreement Limits: Indian Creek Drive to Collins Avenue

County: Miami-Dade

EXHIBIT 'B'

CITY OF MIAMI BEACH RESOLUTION

To be herein incorporated once ratified by the **CITY** Board of Commissioners.