

May 20, 2021

By Email to [rogeliomadan@miamibeachfl.gov](mailto:rogeliomadan@miamibeachfl.gov)

Rogelio Madan, Chief of Community Planning and Sustainability  
City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, Florida 33139

Re: Submissions to be provided to Planning Board Members for the May 25, 2021 hearing on the Application for Conditional Use Permit Approval for the property located at 1501 Collins Avenue, Miami Beach, Florida (Planning Board File No. 20-0416)

Dear Mr. Madan,

I represent Albert Lepage, the owner of the properties located at 1500 Ocean Drive, Units 801, 802 and 909, Miami Beach, Florida ("Lepage") concerning the above referenced matter.

I am enclosing the following materials for submission in the above file and distribution to the members of the Planning Board in preparation for the May 25, 2021 hearing on PB File No. 20-0416:

1. Traffic Review dated May 20, 2021 by Ralph Aronberg of Aronberg and Associates Consulting Engineers, Inc. of Applicant's site plans and TrafTech Engineering, Inc's May 14, 2021 Traffic Study.
2. Curriculum Vitae of Ralph Aronberg of Aronberg and Associates Consulting Engineers, Inc.
3. Declaration of Restrictions and Reciprocal Easement Agreement dated March 1, 1995.
4. Reciprocal Access, Use, Development and Easement Agreement dated October 21, 1997.
5. Conditional Use Permit for Meats on the Beach, LLC dated February 8, 2015.

6. Modified Conditional Use Permit for the Royal Palm Hotel dated May 14, 2019.

Sincerely,

*Kent Harrison Robbins*

Kent Harrison Robbins  
Attorney for Albert Lepage

Enclosures

cc: Tom Mooney, Planning Director: [ThomasMooney@miamibeachfl.gov](mailto:ThomasMooney@miamibeachfl.gov)  
Graham Penn, Attorney for Applicant: [gpenn@brzoninglaw.com](mailto:gpenn@brzoninglaw.com)  
Tucker Gibbs, Attorney for 1500 Ocean Drive Condominium Association, Inc.:  
[ticker@wtgibbs.com](mailto:ticker@wtgibbs.com)

**Traffic Review dated May 20, 2021 by Ralph Aronberg of Aronberg and Associates Consulting Engineers, Inc. of Applicant's site plans and TrafTech Engineering, Inc's May 14, 2021 Traffic Study.**

ARONBERG AND ASSOCIATES

*Consulting Engineers, Inc.*  
13762 W. State Road 84, Suite 424  
Ft. Lauderdale, FL 33325  
(954) 236-6605

May 20, 2021

Kent Harrison Robbins, Esquire  
Law offices of Kent Harrison Robbins, P.A  
242 Northeast 27th Street  
Miami, Florida 33137

**RE: 1501 Collins Ave.-Traffic review, AAA#2603**

Dear Mr. Robbins:

I am preparing this report based upon the information reviewed and my work performed on this matter to date.

**Background, Qualifications and Methodology:**

My Curriculum Vitae outlining my qualifications is attached. In preparing my opinions in this case, I followed reliable traffic engineering methodology that included the following:

- (1) Review of site plans and of the May 14, 2021 Traffic Study prepared by TrafTech Engineering, Inc.
- (2) Inspection of the site and surrounding area.

**Data Considered:**

- ◆ The information contained on page A0.01 of the plans with data with regard to square footage and seating.
- ◆ The 35 page aforementioned traffic Study.
- ◆ My observation of vehicles using the most north side of the property, as an area of angle parking.
- ◆ The May 25, 2021 Planning Board Staff Report and Recommendations, including the attached 13 page Draft Conditional Use Permit.

**Analysis and opinions:**

There are three main areas that my review has encompassed, (1) the traffic generation contained in the traffic study, (2) the valet parking queueing analysis contained in the traffic study and the staff's recommendation in regard to other valet parking, and (3) loading area geometrics shown in the traffic study.

I will address the traffic generation first, because of major discrepancies between the square footage of property uses as shown and documented in the plans, as compared to that square footage that was used by TrafTech. As can be seen in Table 1 of their report on page 3, TrafTech based their trip generation on 35,022 Square feet of office use and 16,601 square feet of Restaurant use. However, the Loading Calculations on page A0.01 of the site plans show 35,022 square feet of Office Venues use and 34,617 square feet of Food & Beverage Venues use. It appears that TrafTech is incorrectly not using the restaurant exterior seating square footage in their analysis and in addition has overlooked some of the restaurant uses within the plans.

So, the trip generation has been under estimated by approximately fifty percent. In addition, as can be seen in the aforementioned Table 1, TrafTech is showing the great majority of inbound trips during the p.m. peak are from the Restaurant as opposed to the office use, and that is correct. However, TrafTech has not even projected the Saturday Restaurant use trip generation, which would be expected to exceed the weekday peak hours that they have analyzed.

In regard to the queuing analysis, TrafTech is showing that there is just enough room within the garage to accommodate the traffic que within the garage based on the trip analysis that they performed. As explained above the actual number of vehicles that should be expected on weekdays will far exceed the que storage area within the garage, and on Saturdays, it should be expected to have even more cars. I would also like to point out that in the queueing analysis they performed, TrafTech used a parking and unparking time of 30 seconds which seems ambitious and not likely considering that the parking garage is using stacked (tandem) parking (i.e., the earlier parked vehicles are then blocked in by later parked vehicles. So that more than one vehicle needs to be moved to retrieve many of the vehicles).

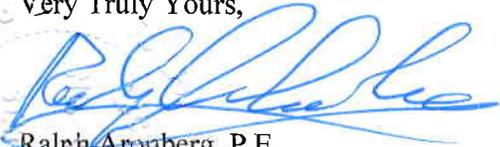
In regard to the staff's suggestion of valet parking on 15 street, that is even more problematic for a variety of reasons as I will explain. Every car that valets on 15 street would still require the valet driver to use the same ramp to the parking garage as the general public drivers' so that the vehicles would still back out onto Collins Ave. An even more disadvantageous condition is that when retrieving cars for 15 Street valet patrons, the valet driver himself is now creating one additional outbound and inbound trip to the property and thus to the roadway system, so that there would now be even more trip generation. The worst of it is that after retrieving a vehicle from the garage the valet driver has to go around the block until he is headed south on Washington Avenue, with the need to make a left turn to get back to Collins Avenue. However, Washington Avenue has only one Southbound lane that must serve through traffic as well as left turning traffic. So every vehicle that makes a left turn will have to wait until there is a sufficient gap in Northbound traffic to do so, and will halt the Southbound traffic until that left turn can be accomplished. This would create a traffic nightmare.

In regard to the loading geometrics, I observed that the very north side of the property is currently being used for angle parking. This angle parking will have to be eliminated completely to accommodate the maneuvering area of loading vehicles as well as trash trucks. The report assumes that the trucks using the loading space will not exceed 22'-6" x 7"-8" as specified on Attachment E, A2.00B Loading Truck Operation Plan.

**Conclusion:**

The proposed parking arrangement will be a failure if the project is constructed as currently planned and can be expected to have a very negative impact on Collins Avenue traffic. If a valet station is permitted on 15 Street, the problems will be exacerbated with an additional very negative impact on Washington Avenue.

Very Truly Yours,



Ralph Aronberg, P.E.

President 5/20/21

Attachment

**Curriculum Vitae of Ralph Aronberg of  
Aronberg and Associates Consulting  
Engineers, Inc.**

# CURRICULUM VITAE

RALPH ARONBERG, P.E.  
President  
Aronberg & Associates Consulting Engineers, Inc.  
13762 W. State Road 84, Suite 424  
Fort Lauderdale, FL 33325  
(954) 236-6605

## **RESPONSIBILITIES:** (Since founding firm in 1983)

Traffic accident reconstruction and expert witness service for private parties, insurance companies and governmental agencies. Expert witness services provided in the areas of:

- ◆ Traffic accident reconstruction (cars, trucks, motorcycles and pedestrians).
- ◆ Vehicle occupant kinematics (seatbelts).
- ◆ Biomechanics.
- ◆ Traffic engineering design (geometrics, signing, markings, signals and lighting).
- ◆ Sight distance analysis.
- ◆ Traffic impacts.
- ◆ Hazardous roadway conditions.
- ◆ Work Zone Traffic Control evaluation.
- ◆ Evaluation of roadway curvature.
- ◆ Traffic signal operations.
- ◆ Pedestrian safety and premises liability (includes slip/trip and fall analysis).
- ◆ Computerized accident reconstruction and simulation.
- ◆ Vehicle “black box” data retrieval (certified).

All avenues of transportation and traffic studies, planning, design and analysis.

Coordination and management of full service land development projects, Development of Regional Impact studies and Traffic Action Plans.

## **PROFESSIONAL REGISTRATION:**

Registered Professional Engineer with the Florida Board of Professional Engineers, PE #33069.  
Firm Certificate of Authorization #7306.

## **PROFESSIONAL MEMBERSHIPS AND ACTIVITIES:**

**National Academy of Forensic Engineers** – (Fellow member) Certified by NAFE as a Diplomat in Forensic Engineering in accordance with the guidelines of the Council of Engineering Specialty Boards (CESB). Serve on Accident Reconstruction Committee.

**Florida Engineering Society** – Past President of Broward Chapter.

**Institute of Transportation Engineers** – (Fellow member) Serve on Expert Witness Counsel.

**Society of Automotive Engineers** – Serve on Data Collection and Archiving Standards Committee

**American Society of Civil Engineers**

**National Society of Professional Engineers**

**National Association of Professional Accident Reconstruction Specialists**

**American Society of Testing and Materials** – Serve on Committee on Pedestrian/Walkway Safety and Footwear.

## **AWARDS:**

Young Engineer of The Year award received February 21, 1987 from the Broward Chapter of the Florida Engineering Society.

**PRIOR EXPERIENCE:**

**Traffic Systems Engineer Intern  
September 1981–November 1982**

**Mid South Engineering Company  
Fort Lauderdale, Florida**

Assistant Project Manager for development of the Broward County Computerized Traffic Signal System, which was a \$500,000 contract. Responsible for all related engineering services, including design work and timing plans for 250 traffic signals and master plan development for expansion to 1,500 traffic signals, utilizing all state-of-the-art aspects of Urban Traffic Control Systems (UTCS).

Project Manager for numerous traffic studies, including traffic impact studies, traffic signal justification studies, traffic systems operation studies and various transportation related engineering projects.

Engineer in charge of traffic signal, signing, pavement markings, and roadway lighting plans on many large scale projects.

Expert witness on traffic accident cases.

**Signal Design Engineer  
March 1980 – September 1981**

**Broward County Transportation Dept.  
Fort Lauderdale, Florida**

Responsible for the design of Broward County traffic signals and preparation of construction contracts.

Design and development of timing plans for signal systems.

Review of consultant plans, all facets of traffic engineering.

Meetings with local governments and special interest groups to discuss transportation needs, plans and impacts.

**Engineer II  
November 1978 – March 1980**

**Florida Department of Transportation  
Fort Lauderdale, Florida**

Responsible for conceptual design and justification reports based on accident analysis, capacity analysis and cost benefit studies for transportation improvement and traffic safety projects.

Design of signalization, signing and pavement marking plans.

**EDUCATION:**

**University of Virginia:**

Bachelor of Science, Civil Engineering 1978, with graduate level courses in Traffic Engineering, Traffic Flow Theory and Urban Transportation.

**University of Florida: (1979-1982)**

Post-College Professional Traffic Engineering Enhancement Program, seminars on Traffic Safety Considerations, Traffic Operations Computer Models, Traffic Signal Control Systems, Traffic Signal Workshops and use of the Arterial Analysis Package.

**Nova University: Fort Lauderdale, FL**

Master of Science in Engineering Management, (1984), includes development of a traffic accident reconstruction computer program with graphic features, as part of course work.

**The Traffic Institute, Northwestern University: (1984)**

Roadway Resurfacing, Restoration and Rehabilitation workshop.

**Accident Litigation Seminar: Orlando, FL (1984)**

Forensics, Slip and Fall, Seatbelt Occupant Kinematics, Human Factors.

**Institute of Transportation Engineers Educational Foundation: (1983-1989)**

Seminar on Traffic Control Devices Handbook. Seminar on Trip Generation Manual. Seminar on Access and Site Circulation Design. Seminar on the Engineer as a Court Witness.

**Stapp Car Crash Conference:**

1985 Twenty-Ninth, 1988 Thirty-Second, 1989 Thirty-Third, 1991 Thirty-Fifth, 1994 Thirty-Eighth.

**Workshops on Human Subjects for Biomechanical Research: (1985, 1988, 1989, 1991, 1994)**

**Society of Automotive Engineers International Congresses:** Detroit, MI

Each congress includes one week of seminars on state-of-the-art techniques in accident reconstruction and occupant kinematics. Attended in 1987, 1989, 1990, 1991, 1992, 1995, 1997, 1998, 1999, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2011, 2012, 2013, 2014, 2015, 2016, and 2017. Speaker in 1990 and 1992, presenting published papers.

**Annual Conferences of the Association for the Advancement of Automotive Medicine:** 1987 Thirty-First, 1989 Thirty-Third, 1997 Forty-First, 1998 Forty-Second.

**Florida Department of Transportation:**

Project Managers Conference (1987).  
Site Impact Handbook Workshop (1998).

**Symposium on Head Injury Mechanisms, An Angular Acceleration Criterion:** Washington, DC (1989)

**60th Annual Meeting of Institute of Transportation Engineers:** (1990)

Featured speaker on Geometric Design, Traffic Safety Engineering.

**Institute of Police Technology and Management:** Jacksonville, FL

1990, 1992 (as speaker), and 2002 annual updates of "Special Problems in Traffic Accident Reconstruction".  
1993 "Concept of Night Visibility for Traffic Accident Investigators".  
1998 "Inspection/Investigation of Commercial Vehicle Accidents".  
2014 "Advanced Event Data Recorder Use in Traffic Crash Reconstruction".  
2015 "Motorcycle Crash Investigation".

**Florida Institute of Consulting Engineers:** (1990)

Work Zone Traffic Control.

**University of California, San Diego:** (1991)

Accidental Injury: Biomechanics & Prevention.

**Society of Automotive Engineers:**

Vehicle Rollovers Workshop (Phoenix, AZ, 1992).  
Low Speed Rear Impact Collision Workshop (Los Angeles, CA, 1994).  
Applied Vehicle Dynamics (BeaveRun Motorsports Complex, PA, 2006).  
Highway Event Data Recorder Symposium (Washington, D.C., 2007).

**Bob Bondurant School of High Performance Driving:** Phoenix, AZ (1992)

Advanced Highway Driving.

**Association for the Advancement of Automotive Medicine:** Philadelphia, PA (1994)

Biomechanics of Impact and Current Occupant Restraint Issues.

**Transportation Research Center, Inc.:** East Liberty, OH (1995)

Pole side Impact Testing.  
Heavy Vehicle Braking Performance Seminar.  
Truck and Bus Emergency Braking Testing.

**Association for the Advancement of Automotive Medicine and University of Miami School of Medicine William****Lehman Injury Research Center:** Miami, FL (2000)

Car Crashes and Occupant Injuries: A Team Approach to Crash Investigation.

**World Reconstruction Exposition, WREX 2000:** College Station, TX (2000)

Instrumented and documented crashes of 17 motorcycles; sponsor and contributor.

**Vericom Computers, Inc.:** Miramar, FL (2001)

Acceleration and VC2000 familiarization.  
VC2000PC Advanced training.

**Steensland Center for Professional Development:** (2003)

Americans with Disabilities Act (ADA): Impact on Design Professionals.

**Collision Safety Institute:**

Crash Data Retrieval System Operator's Certification Course (2004)  
CDR Users Conference (2008).

**Macinnis Engineering Associates:**

PC Crash Training Workshop (2004).  
PC Crash Expert Skills Workshop (2012).

**Florida State University** (online): (2005)

Florida Building Code Core Course.

**National Academy of Forensic Engineers:**

Featured speaker on Truck Accident Simulation and Animation (Orlando, FL 2010).  
Forensic Engineering Seminar (Hollywood, FL 2015).  
Featured speaker on Federal Appellate Court case law and Daubert Hearings (Zoom 2020).

**National Crash Analysis Center; Federal Outdoor Impact Laboratory:** George Washington Univ., VA (2010)  
High Speed Instrumented Testing. Advanced Topics in Automotive Safety and Accident Reconstruction.

**Aras 360 Technologies Inc.:** (2011)

Advanced 3D Computer Diagramming.

**New York Statewide Traffic Accident Reconstruction Society & National Association of Professional Accident Reconstruction Specialists, Inc.:**

Investigating Motorcycle Collisions (Fishkill, NY, 2012).  
Advanced Topics in Collision Investigation and Reconstruction (Portland, ME, 2014).

**Clearly Visible Presentations, LLC:** Portland, ME (2014)

Motor Vehicle Headlamp Performance and Mapping.

**Transportation Research Board:**

Application of Human Factors Guideline for Road Systems (2016)

**American Society of Testing and Materials:** Philadelphia, PA (2017)

Workshop on the Multifactorial Analysis of Slip and Fall Event: Implications for Forensic and Safety Professionals

**Florida Highway Administration:**

Low-Cost Treatments for Horizontal Curve Safety (2017)

**PUBLICATIONS:**

Served for Society of Automotive Engineers as peer reviewer for publication of **Accident Reconstruction** 1993, 1995, 2004, 2008, 2010, 2013, 2014, 2015, 2016, 2017, 2018, 2019, and 2020.

Served for National Academy of Forensic Engineers as peer reviewer for automotive biomechanics papers 2014, & 2016.

“**Seventeen Motorcycle Crash Tests into Vehicles and a Barrier**”, Society of Automotive Engineers Technical Paper #2002-01-0551, contained within **Accident Reconstruction 2002.**

“**Reconstruction of Automobile/Pedestrian Accidents Using CATAPULT**”, Society of Automotive Engineers Technical Paper #940924, contained within **Accident Reconstruction: Technology and Animation IV.**

“**PC Based Accident Reconstruction Animation using Autodesk 3D Studio**”, Society of Automotive Engineers Technical Paper #920756, contained within **Accident Reconstruction: Technology and Animation II.**

“**Airborne Trajectory Analysis Derivation for use in Accident Reconstruction**”, Society of Automotive Engineers Technology Paper #900367, contained within **Accident Reconstruction: Human, Vehicle and Environmental Factors.**

“**Motivating and Managing Engineers**”, American Society of Civil Engineers, **Journal of Professional Issues In Engineering**, January, 1985.

**OTHER FIRM ACTIVITIES:**

3-D Computer Animations.  
Computer-aided Design, preparation of trial exhibit graphics.  
Coordination of aerial photography.  
Coordination of land surveying.  
Video photography.  
Illumination evaluation and analysis.  
Vehicular mechanical systems analysis.

**Declaration of Restrictions and Reciprocal  
Easement Agreement dated March 1, 1995.**

95R088071 1995 MAR 06 16:11

This instrument prepared by and after  
recording return to:  
John C. Sumberg, Esq.  
Rubin Baum Levin Constant Friedman & Bilzin  
2500 First Union Financial Center  
Miami, Florida 33131

**DECLARATION OF RESTRICTIONS AND  
RECIPROCAL EASEMENT AGREEMENT**

THIS DECLARATION OF RESTRICTIONS AND RECIPROCAL EASEMENT AGREEMENT (the "Agreement") is made and entered into as of the 1st day of March, 1995 by JEFFERSON PLAZA, LTD., a Florida limited partnership, whose address is 2665 So. Bayshore Drive, Suite 302, Miami, Florida 33133, hereinafter referred to as "Declarant".

WHEREAS, Declarant is the owner of a certain parcel of real property located in Dade County, Florida, legally described as and shown on Exhibit "A" attached hereto ("Parcel A" or the "Residential Parcel"); and

WHEREAS, Declarant is also the owner of that certain parcel of real property located in Dade County, Florida, legally described and shown on Exhibit "B" attached hereto ("Parcel B" or the "Commercial Parcel"); and

WHEREAS, Declarant anticipates subjecting Parcel A to a condominium regime, developing Parcel A as a residential condominium and developing Parcel B as a commercial project, which may or may not in the future become subject to a separate condominium regime; and

WHEREAS, Declarant is desirous of (i) establishing certain easements in, to, over, across and through portions of Parcel A for the benefit of both Parcel A and Parcel B and in, to, over, across and through portions of Parcel B for the benefit of both Parcel A and Parcel B and (ii) imposing certain restrictions in connection with the development of Parcel A and Parcel B, all as more particularly provided for herein and for the purpose of facilitating the implementation of a unified development plan for Parcel A and Parcel B; and

WHEREAS, the City of Miami Beach requires that Parcel A and Parcel B remain one development site for purposes of zoning and in order to meet all pertinent setbacks, floor-area ratios and all other development regulations.

NOW, THEREFORE, for valuable consideration, Declarant does hereby declare as follows:

1. Declarant does hereby establish, create and grant a perpetual easement in, to, over, across and through those portions of Parcel A ("Easement Area A") described below to be used from time to time for the purposes designated in this paragraph 1 below, for the use and benefit of the respective owners and tenants of Parcel B, and portions thereof, and their employees, agents, customers, guests, licensees, invitees, mortgagees, successors and assigns. The easements in Easement Area A shall be non-exclusive, for use in common with the Declarant, except for the easements in paragraphs 1(a), 1(b), 1(c), 1(g) and 1(h), which shall be exclusive. The grant of easements in Easement Area A shall include the right to ingress and egress to the extent necessitated by an emergency involving risks to persons or damage to property. Easement Area A shall include the following property and easement rights with respect thereto:

(a) The parking spaces and roadways, driveways, traffic lanes and other areas for vehicular ingress, egress and traffic flow within the portion of the Commercial Parking Garage (defined below) located on Parcel A, for vehicular parking and ingress and egress to and from the parking spaces, with a right to reconfigure the parking spaces, ingress and egress and traffic lanes within the Commercial Parking Garage, provided same remains within the area initially used for vehicular parking, ingress, egress and traffic flow. The commercial parking garage ("Commercial Parking Garage") is legally described on Exhibit C attached hereto.

(b) The stairwell between the southeast corner of the Commercial Parking Garage in Parcel A and ground level, and any other stairwells between the portion of the Commercial Parking Garage located on Parcel A and the ground level, for pedestrian access to and from the Commercial Parking Garage.

(c) Those portions of Parcel A adjacent to Parcel B for minor, unintentional encroachments of buildings or other structures, footings and support members.

(d) Those portions of Parcel A on which utilities serving Parcel B are initially located (and subsequently located, as provided herein), for the location of utilities, provided that

the owner of Parcel B shall have the right to relocate and add to such utilities as necessary, provided that the prior consent of the owner of Parcel A shall be required with respect to utilities located or to be located outside of the Commercial Parking Garage, and such consent shall not be unreasonably withheld.

(e) The land in and improvements on Parcel A for entry upon, and passage through, with and by men, material and equipment for maintenance (including but not limited to, painting and other decorating), operation, inspection, testing, repair, construction, alteration (as and to the extent permitted pursuant to paragraph 1(d) hereof), replacement, addition to (as and to the extent permitted pursuant to paragraph 1(d) hereof), and cleaning of all or any part of the utilities, improvements or equipment of the owner of Parcel B, located in Parcel A, to enable the use by the owner of Parcel B of the rights granted hereby. Such operations shall be performed in a manner that will not unreasonably interfere with the operation or use of the residential facility on Parcel A. The rights granted in this subparagraph shall not impose any affirmative obligation on the owner of Parcel B except as expressly provided elsewhere in this Agreement.

(f) Other areas on the land in Parcel A or within the portion of the Commercial Parking Garage on Parcel A as designated by Declarant by a supplemental declaration recorded in the Public Records of Dade County, Florida, while Declarant owns Parcel A and, thereafter, at locations determined by the owner of Parcel B, subject to the approval of the owner of Parcel A, which approval shall not be denied or withheld if such use does not unreasonably interfere with the use and operation of the residential facility in Parcel A, for plumbing, drainage, mechanical, electrical, telephone, storage, water, heating, ventilating, air cooling, gas, steam, exhaust, cable television and other utilities, piping, lines, ducts, shafts and equipment, appurtenant to or supportive of the improvements which may lawfully be constructed (or reconstructed) within Parcel B or with respect to which the owner of Parcel B is granted a right hereunder, and any activities conducted as permitted herein.

(g) Any architectural features or other structures overhanging Parcel A as initially constructed by Declarant, with no right to move, add to or expand same.

(h) The western exterior facade of the residential condominium building to be constructed on Parcel A (which western facade should be approximately on the western border of Parcel A) below the bottom of the lowest balcony on the building on Parcel A to attach a trellis and any other fixtures and other structures or items hereafter constructed or attached by the owner of Parcel

B, provided that the owner of Parcel B will not leave any open holes on the exterior of the building on Parcel A.

2. Declarant does hereby also establish, create and grant a perpetual easement in, to, over, across and through those portions of Parcel B ("Easement Area B") described below to be used from time to time for the purposes designated in this paragraph 2 below, for the use and benefit of the respective owners and tenants of Parcel A, and portions thereof, and their employees, agents, customers, guests, licensees, invitees, mortgagees, successors and assigns. The easements in Easement Area B shall be non-exclusive, for use in common with the Declarant, except for the easements in paragraphs 2(b) and 2(f), which shall be exclusive. The grant of easements in Easement Area B shall include the right to ingress and egress to the extent necessitated by an emergency involving risks to persons or damage to property. Easement Area B shall include the following property and easement rights with respect thereto:

(a) The ramp on the north portion of Parcel B shown on the Site Plan attached hereto as Exhibit D, extending westward from the exit from the Commercial Parking Garage to Collins Avenue, for ingress and egress of motor vehicles between adjacent public streets and highways and Parcel A and transportation of trash from the residential building(s) on Parcel A to the commercial loading dock or trash area shown on the Site Plan attached as Exhibit D. Parcel B shall provide a trash area near its commercial loading dock for Parcel A's trash compactors. The owner of Parcel A shall be responsible to maintain and clean up around its trash compactors.

(b) Those portions of Parcel B adjacent to Parcel A, for minor, unintentional encroachments of buildings or other structures, footings or support members.

(c) Those portions of Parcel B on which utilities serving Parcel A are initially located (and subsequently located as provided herein), for the location of utilities, provided that the owner of Parcel A shall have the right to relocate and add to such utilities as necessary, subject to the prior consent of the owner of Parcel B, which consent shall not be unreasonably withheld.

(d) The land in and improvements on Parcel B and the easement areas described in paragraph 1(a) and 1(b) above, for entry upon, and passage through, with and by men, material and equipment for maintenance (including but not limited to, painting and other decorating), operation, inspection, testing, repair, construction, alteration (as and to the extent permitted pursuant to paragraph 2(c) hereof), replacement, addition to (as and to

the extent provided pursuant to paragraph 2(c) hereof), and cleaning of all or any part of the utilities, improvements or equipment of the owner of Parcel A, located in Parcel B or in the easement areas described in paragraph 1(a) and 1(b), to enable the use by the owner of Parcel A of the rights granted hereby. Such operations shall be performed in a manner that will not unreasonably interfere with the operation or use of the Commercial Parking Garage or the commercial facility on Parcel B or the easement areas described in paragraph 1(a) and 1(b). The rights granted in this subparagraph shall not impose any affirmative obligation on the owner of Parcel A except as expressly provided elsewhere in this Agreement.

(e) Other areas on the land in Parcel B or within the portion of the Commercial Parking Garage in Parcel B as designated by Declarant by a supplemental declaration recorded in the Public Records of Dade County, Florida, while Declarant owns Parcel B and, thereafter, at locations determined by the owner of Parcel A subject to the approval of the owner of Parcel B, which approval shall not be denied or withheld if such use does not diminish the parking capacity of the Commercial Parking Garage or unreasonably interfere with the parking operations conducted therein or the use and operation of the commercial facility in Parcel B, for plumbing, drainage, mechanical, electrical, telephone, storage, water, heating, ventilating, air cooling, gas, steam, exhaust, cable television and other utilities, piping, lines, ducts, shafts and equipment, appurtenant to or supportive of the improvements which may lawfully be constructed (or reconstructed) within Parcel A or with respect to which the owner of Parcel A is granted a right hereunder, and any activities conducted as permitted herein.

(f) Balconies, roof overhanging the balconies, other architectural features or other structures overhanging Parcel B as initially constructed by Declarant, with no right to move, add to or expand same.

3. (a) After the initial construction of improvements on Parcel A, no barriers will be erected on any portion of Parcel A which would have the effect of limiting or restricting the easement rights granted hereinabove with respect to the Commercial Parking Garage.

(b) It is understood that this Agreement is being executed prior to the construction of the improvements on Parcel A and Parcel B. It is intended that the dividing line between Parcel A and Parcel B be the expansion joint delineating the boundary between the residential building on Parcel A and the commercial building on Parcel B. The legal descriptions attached hereto for Parcel A and Parcel B are the best estimate of where

the expansion joint will be located, but the actual location is likely to vary somewhat after construction has been completed. Therefore, Declarant reserves the right, power and authority by itself, without the joinder of any person or entity whatsoever other than its mortgagee, to modify the legal descriptions of Parcel A and Parcel B to conform to the "as built" improvements after completion of construction by recording a supplemental declaration in the Public Records of Dade County, Florida, in which event the legal descriptions for Parcel A and Parcel B set forth in or attached to the supplemental declaration shall supersede those attached hereto.

4. (a) Parcel A (excluding the portion of the Commercial Parking Garage located thereon which is subject to the easement in favor of Parcel B pursuant to Paragraph 1(a) above) and Parcel B (plus the easement area created pursuant to Paragraph 1(a) above) each shall at all times contain sufficient parking to comply with applicable zoning codes, unless such requirement is waived by the Planning & Zoning Director of the City of Miami Beach. In any event, no cross parking easement is hereby granted except to the extent provided in Paragraph 1(a).

(b) If Parcel A is subjected to the condominium form of ownership, Parcel B shall not have more than one owner (other than as joint tenants), unless and until it is subjected to the condominium form of ownership. If Parcel A or Parcel B has been subjected to the condominium form of ownership, the benefits of the easements herein shall run in favor of the unit owners; however, notwithstanding anything to the contrary herein, the "owner" for all purposes under this Agreement shall be deemed to be the applicable condominium association, and no owner or mortgagee of any unit of the condominium (except for a mortgagee of the entire condominium less any condominium units which have been released from such mortgage) shall be required or entitled to join or have input with respect to any matters herein which require the owner's consent.

(c) Subjecting Parcel A to the condominium form of ownership without also subjecting Parcel B to the condominium form of ownership merely changes the form of ownership and does not constitute a lot split, as Parcel A and Parcel B remain one single development site. Declarant covenants and agrees that Parcel A and Parcel B will together be considered as one development parcel by the City of Miami Beach for all zoning related purposes, including, without limitation, setback and floor area ratio purposes. In addition, in the event all or a portion of any building on Parcel A or Parcel B becomes nonconforming, the whole project (including Parcel A and Parcel B and all buildings thereon) will be considered as one unified

project for purposes of determining building valuation requirements for rebuilding after damage or destruction.

5. In connection with any development or further development of Parcel A or Parcel B or any portion thereof, the following guidelines shall be observed: (i) sufficient parking will be included to service the improvements to be developed pursuant to applicable zoning regulations and other governmental requirements, (ii) all work performed shall be accomplished so as to not interrupt any existing services to the existing improvements on Parcel A and Parcel B and in a manner so as to minimize inconvenience to the owners and occupants of then existing improvements on Parcel A and Parcel B, and (iii) if any work is performed by any owner on a portion of Easement Area A or Easement Area B that is not owned by such owner, such area shall, after completion of such work, be restored to its pre-existing condition by the owner performing the work.

6. The owners of Parcel A and Parcel B shall each maintain the landscaping on their respective property, and they shall make reasonable good faith efforts to coordinate the plants and flowers in the planters so that they are consistent with each other.

7. (a) If the owner of Parcel A needs or if the owner of Parcel B needs or desires from time to time to relocate or add to any of the then existing utility facilities serving said owner and located on the property (including easement areas) of the other party (which will require compliance with paragraphs 1(d) or 2(c), as applicable), the owner so adding to, changing, rearranging, altering, modifying, relocating or building upon said facilities shall be responsible, at its cost, for adding to, changing, rearranging, altering, modifying, relocating or building upon such utility facilities, and same shall be accomplished without interruption of service and in a manner so as to minimize inconvenience to the owners and occupants of the remaining portions of Parcel A and Parcel B, and provided that in no event will any such activity by the owner of Parcel A reduce the number of parking spaces in the Commercial Parking Garage (which is located on Parcel A and Parcel B) or unreasonably interfere with the traffic flow within the Commercial Parking Garage.

(b) Subject to the provisions in this Agreement, each owner from time to time of Parcel B, or any portion thereof, reserves the right at any time and from time to time, without the need for obtaining consent or approval from the owner(s) of any portions of Parcel A, to change, rearrange, alter, modify or otherwise reduce Easement Area A created hereby, provided same does not adversely affect any owner (including condominium unit

owners) of Parcel A. Any other changes, alterations, modifications or reductions of any easement area shall be only with the prior consent of the owner of the parcel being affected, which consent shall not be unreasonably withheld, and provided further that any change, alteration, modification or reduction requested by the owner of Parcel A shall not reduce the number of parking spaces in the Commercial Parking Garage or unreasonably interfere with the traffic flow within the Commercial Parking Garage or the use and operation of the commercial facility on Parcel B. In the event any of same are accomplished with respect to the easement area located on any owner's property, same shall automatically release the area which is so changed, rearranged, altered, modified, or otherwise reduced, from this Agreement.

8. (a) Except as provided in this paragraph 8(a), the easement areas (whether exclusive or nonexclusive) shall be maintained, repaired and, when necessary, replaced, by the grantee of the easement at its cost and expense so that same are at all times in good working order, condition and repair. In connection with the easement described in paragraph 1(a), all walls and ceilings in the Commercial Parking Garage shall be maintained, repaired and, as necessary, replaced by the owner of Parcel B at its cost and expense so that same are at all times in good working order, condition and repair, and the owner of Parcel B shall be responsible to maintain, service and pay for all utilities serving the Commercial Parking Garage at its sole cost and expense. Notwithstanding the foregoing, the easement areas provided in paragraphs 1(e), 2(a) and 2(d) shall be maintained by the owner of the property on which the easement is located (and not by the grantee). The party who is responsible for the maintenance of each easement area shall also maintain with respect to such easement area comprehensive public liability insurance throughout the term of this Agreement in an amount no less than \$1,000,000, combined single limit, which names the owner of the other parcel (and its mortgagee(s), if so requested) as additional insured(s), and shall furnish the other owner written proof thereof promptly upon request.

(b) If the owner of any portion of Parcel A or Parcel B shall fail to maintain, repair and, when necessary, replace the easement areas created hereby with respect to which it has the obligation as aforesaid as required hereunder, the owner(s) of any other portion of Parcel A or Parcel B may send written notice to such defaulting party and, if such obligations are not performed by the defaulting party within 30 days from receipt of such notice, then the party or parties giving notice shall have the right (without limiting any other rights that may be available) to perform such obligations and bill the defaulting party for the costs of such performance. If the defaulting party shall not pay such bill within 30 days of receipt, then interest

shall accrue on the unpaid amount from the time it was expended until paid at the lower of 18% per annum or the highest lawful rate permitted by law.

(c) Each owner from time to time of Parcel A and Parcel B, or any portion thereof, agrees to fully maintain, repair and, when necessary, replace, at its cost and expense, the exterior of all buildings and all public areas owned by it so that same are at all times in good condition, order and repair. In the event of a violation of this paragraph 8(c), the sole and exclusive remedies shall be specific performance and/or injunctive relief, which are the only reasonable and adequate remedies for such a violation, as actual damages would be difficult to ascertain and prove, and would be an inadequate remedy in any event.

(d) Each owner from time to time of Parcel A and Parcel B, or any portion thereof, hereby indemnifies and saves harmless all other owners (including condominium unit owners) of portions of Parcel A and Parcel B from any and all liability, damage, expense, causes of action, suits, claims or judgments arising from the portion of Parcel A or Parcel B that is owned by it or with respect to which it has exclusive easement rights, except to the extent caused by the act or negligence of another owner (including condominium unit owners) and in such event only as to such other owner (including condominium unit owners) whose act or negligence is excepted.

9. (a) Anything to the contrary contained in this Agreement notwithstanding, in the event of a violation or breach of any of the provisions contained in this Agreement, specific performance and/or injunctive relief shall specifically be available, it being agreed that damages would, at best, be difficult to ascertain and would be an inadequate remedy in any event. The City of Miami Beach is hereby specifically given the right to enforce the provisions of paragraphs 4(a), 4(b), 4(c) and 5(i).

(b) The prevailing party in any action in connection with this Agreement (whether in tort, contract or otherwise) shall be entitled to the award of court costs and reasonable attorneys' and paralegals' fees at all tribunal levels and in connection with all proceedings, whether or not suit is instituted.

10. Each owner from time to time of Parcel A or Parcel B, or any portion thereof, agrees, promptly upon request, to furnish from time to time to any other such owner in writing such truthful estoppel information and/or one or more confirmatory easements (confirmatory of the general easements granted hereby) as may be reasonably requested. All costs associated with the

preparation and delivery of this material shall be borne by the requesting party.

11. In the event any portion of Parcel A or Parcel B is condemned or taken through eminent domain, the owner of the property so taken shall be entitled to the full award therefor as if this Agreement were not in existence and the other owner(s) shall not be entitled to share in any portion of the award as a result of the existence of this Agreement; provided, however, that the foregoing shall not prevent an award to any other owner(s) for the diminution in value of the property of the other owner(s), provided same does not reduce the award payable to the owner whose property was condemned or taken.

12. Nothing contained herein shall be construed as a dedication of the easements granted herein to the general public.

13. It is important to the owner of Parcel B that the buildings on Parcel A not be modified in such a way as to adversely affect the owner of Parcel B. Therefore it is understood and agreed that, after initial construction, the improvements on Parcel A shall not be altered to: (a) materially increase the size or volume, (b) materially change the configuration, or (c) increase the square footage, height or setbacks without, in any such case, the consent of the owner of the other parcel and any mortgagee of the entire other parcel or the entire condominium less any condominium units that have been released from such mortgage ("Parcel Mortgage") (but not by any mortgagee of individual condominium units that have been released from the Parcel Mortgage), which consent will not be unreasonably withheld. In addition, the exterior of the improvements on Parcel A shall be maintained so that they are aesthetically consistent with the exterior of the improvements on Parcel B, and no other change in or to the exterior (such as the color or finishes) of the improvements on Parcel A shall be permitted without the prior consent of the owner of Parcel B, and the holder of any Parcel Mortgage on Parcel B (but not by any mortgagee of individual condominium units that have been released from such Parcel Mortgage), which consent will not be unreasonably withheld. Notwithstanding the foregoing, if the exterior of the improvements on Parcel B are aesthetically changed from the structure as initially built, the owner(s) of Parcel A need not change the improvements on Parcel A to conform aesthetically, but any changes to the exterior of the improvements on Parcel A thereafter must be, to the extent possible, aesthetically consistent with the altered or changed exterior of the improvements on Parcel B.

14. Parcel B is restricted so that any use is prohibited therein which includes amplified music: (a) other than music

which is incidental to another use and amplified low volume background music which does not interfere with conversation or (b) unless the sound of the music is contained within the demised premises in which the music is being played.

15. In the event that the emergency generator and firepump for Parcel A and Parcel B are located on Parcel B, the provisions of this paragraph shall be applicable. The owner of Parcel B shall be responsible for the maintenance and operation of the emergency generator and firepump, and the cost shall be shared equally between the owner of Parcel B and the owner of the Parcel A. Notwithstanding the foregoing, the owner of Parcel B shall have no liability whatsoever with respect to the maintenance, repair or proper functioning of the emergency generator or firepump, including, without limitation, arising from its negligence, excepting for a malfunction arising from its gross negligence or willful misconduct.

16. This Agreement shall be a covenant running with the land and shall be binding upon and inure to the benefit of the owners from time to time of every portion of Parcel A and Parcel B, their successors, assigns, employees, agents, customers, tenants, guests, licenses, invitees and mortgagees. Notwithstanding the foregoing, this Agreement may be: (a) terminated, rescinded or abrogated by the owner of Parcel A, the owner of Parcel B and the holder of any Parcel Mortgage on Parcel A and/or Parcel B (but not by any mortgagee of individual condominium units released from either or both of such Parcel Mortgages) with the consent of the Planning and Zoning Director of the City of Miami Beach, which consent will be merely a formality and will be promptly given so long as Parcel A and Parcel B are both owned by one entity or the subdivision requirements of the City of Miami Beach are otherwise complied with, and/or (b) modified or amended in whole or in part by an instrument executed by the then owners of all portions (other than individual condominium units) of Parcel A and Parcel B, joined by their respective mortgagees (but only if such mortgagees hold a Parcel Mortgage, and not a mortgage on individual units released from a Parcel Mortgage) and with the consent of the Planning and Zoning Director of the City of Miami Beach; and the joinder of any tenants, guests, licensees or invitees of any such owner (or anyone else) shall specifically not be required in connection with any of the foregoing. With respect to any consent by the Planning and Zoning Director of the City of Miami Beach required pursuant to this paragraph 16, if the proposed termination, rescission, abrogation, modification or amendment does not affect the zoning or development regulations of the Zoning Code of the City of Miami Beach, the City of Miami Beach shall promptly provide its consent, which consent shall be merely a formality, and, if its consent is not promptly provided,

Declarant will have the right to compel such consent. The supplemental declarations contemplated hereby shall be binding on all portions of Parcel A and Parcel B.

17. Any notices required to be given hereunder shall be given by certified mail, return receipt requested, by hand delivery, by facsimile machine or by Federal Express or similar overnight courier service, postage prepaid, to the address specified in the introductory paragraph of this Agreement. Except as and to the extent expressly provided for below with respect to notices of change of address, notices that are given in the manner aforesaid shall be effective (regardless of whether or not they are actually received) upon mailing or depositing with Federal Express or similar overnight courier service, if mailed or deposited with Federal Express or similar overnight courier service, upon transmission if sent by facsimile machine or upon receipt if hand delivered. Any party hereto may change its address for notice by notifying the other parties hereto in the manner provided for above; provided, however, that notices of change of address shall not be effective unless and until they are actually received, delivery is refused or they are returned because the address to which they were sent is no longer a current address and the party sending such notice was not properly furnished a notification of change of address. Copies of any notices required to be given to another party hereto shall also be given to the holder of any mortgage encumbering the property owned by such party if the holder of any such mortgage has notified (in the manner provided for above for giving notice of change of address) the party giving notice of such holder's address and requested that notices be furnished to such holder. Notice given by the attorney for any party shall be as effective as if given by that party.

18. This Agreement shall be governed by the laws of the State of Florida. If any portion of this Agreement shall be or become illegal or unenforceable for any reason, the remaining portions shall remain in full force and effect and shall be enforceable to the fullest extent permitted by law. Upon sale of any portion of Parcel A or Parcel B, the transferor thereof shall be relieved of personal liability hereunder related to the time period subsequent to such transfer with respect to the portion so transferred.

19. Declarant may assign its rights (either wholly or partially, and either exclusively or non-exclusively) hereunder, but only by an instrument in writing that is recorded in the Public Records of Dade County, Florida. Any such assignee shall be a successor Declarant and shall have all the rights and benefits of Declarant hereunder.



## 1500 OCEAN DRIVE, A CONDOMINIUM

**LEGAL DESCRIPTION: (OF CONDOMINIUM REAL PROPERTY)**

A portion of Lots 1, 2, 3 and 4 in Block 56 of "FISHERS FIRST SUBDIVISION of ALTON BEACH", according to the Plat thereof, as recorded in Plat Book 2, Page 77 of the Public Records of Dade County, Florida,

TOGETHER WITH, The adjacent lands lying between the East Line of Block 56 and the Erosion Control Line, all being more particularly described as follows:

COMMENCE at the Northwest Corner of Lot 17 in said Block 56; thence S.07°35'50"W., along the West Line of said Block 56, for 25.36 feet; thence N.88°00'35"E., along the North Line of the South 1/2 of Lots 17 and 4, in said Block 56, for 293.64 feet to the POINT of BEGINNING of the following described Parcel of Land; thence continue N.88°00'35"E., along said North Line and its Easterly projection thereof, for 301.63 feet; thence S.03°27'28"W., along the "EROSION CONTROL LINE", as recorded in Plat Book 105, Page 62 of the Public Records of Dade County, Florida, for 175.83 feet; thence S.88°00'35"W., along the South Line of said Block 56, for 284.94 feet; thence N.01°59'25"W., along the centerline of a proposed building expansion joint, for 175.04 feet to the POINT of BEGINNING. Said lands containing 1.178 acres more or less.

A portion of the above lying in fractional Section 34, Township 53 South Range 42 East.

**NOTES:**

- 1.) See File No. L-1320, Page 3 of 23, Dated 1-26-95, by this FIRM, for a detailed Sketch of the Legal Description described hereon.
- 2.) Bearings shown hereon are based upon the "FLORIDA STATE PLANE COORDINATE SYSTEM- EAST ZONE", as referenced to D.E.P. Monuments 87-91-DA-24 and 87-91-DA-25, and as shown on the Plat of the "COASTAL CONSTRUCTION CONTROL LINE" map as recorded in Plat Book 74, Page 25 of the Public Records of Dade County, Florida.
- 3.) This Legal Description and Sketch of Legal Description does not constitute a Boundary Survey.
- 4.) Land Location: Section 34, Township 53 South Range 42 East.

THIS LEGAL DESCRIPTION WAS PREPARED UNDER MY SUPERVISION.

BY:

  
Thomas R. Palbicka, Vice President-Registered Land Surveyor No. 5081 State of Florida

LEITER & ASSOCIATES, INC.

DATE: 1-26-95

Exhibit A

PAGE 1 of 2

PAGE 1 OF 2

OFF. REC. 16703 P. 1185

GRAPHIC SCALE:

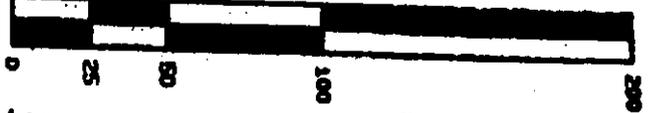
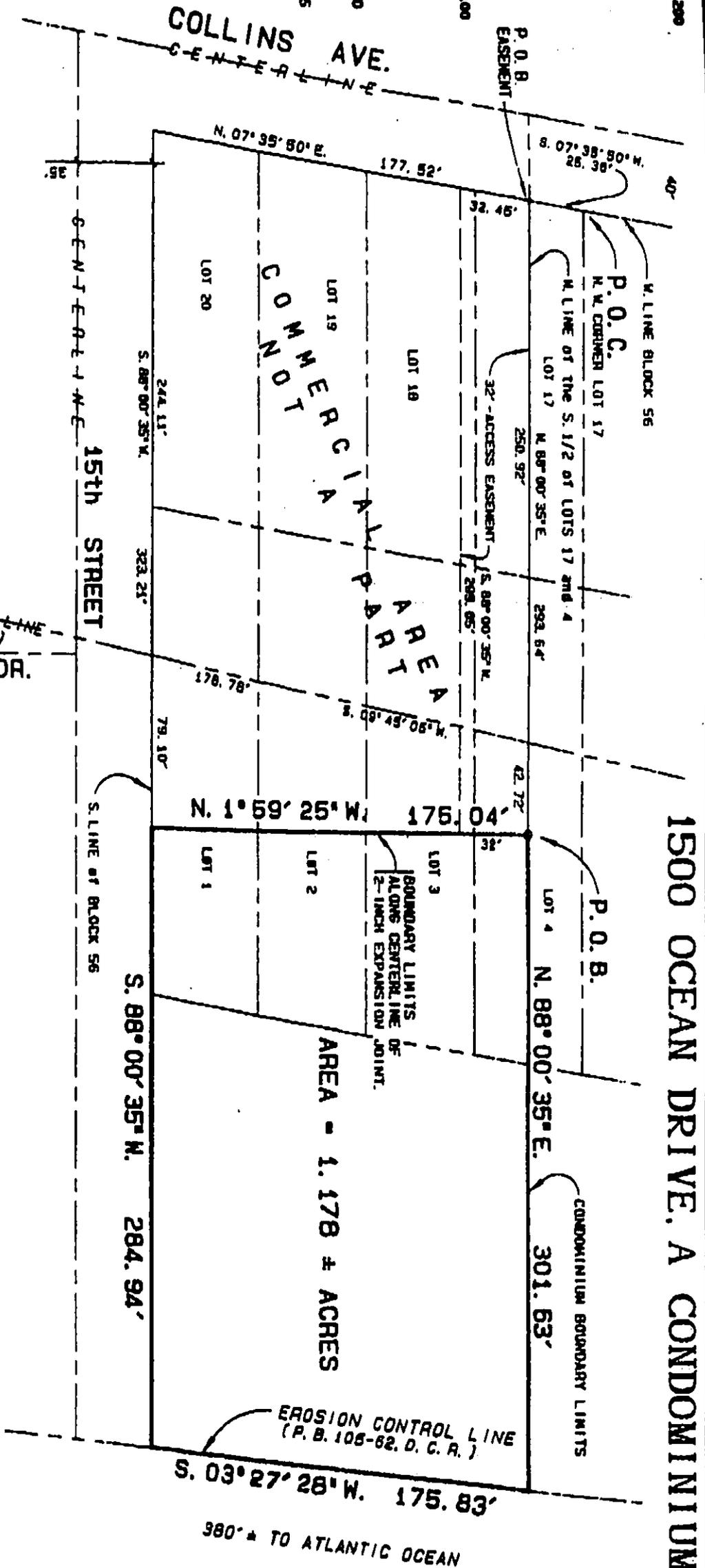
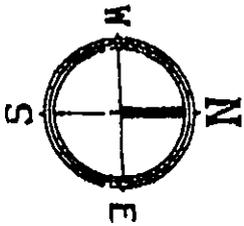


EXHIBIT "2"

REVISIONS:  
ALL FEES - SERVICE FEES, RECORDING FEES, PERMITS, CHANGES MADE, CHANGE FEES, TO LATEST ARCHITECTURAL, CIVIL & ELECTRICAL, LATEST ARCHITECTURAL AND FLUSH-UP, NAME EXHIBIT NO.  
1-68-15 - BRIDGE EXP. LINE



1500 OCEAN DRIVE, A CONDOMINIUM

AREA = 1.178 ± ACRES

- LEGEND:
- C.E. - COMMON ELEMENT.
  - D.C.R. - DADE COUNTY RECORDS.
  - L.C.E. - LIMITED COMMON ELEMENT.
  - P.O.B. - POINT OF BEGINNING.
  - P.O.C. - POINT OF COMMENCEMENT.
  - P.B. - PLAT BOOK & PAGE.

SKETCH OF LEGAL DESCRIPTION:  
CONDOMINIUM PROPERTY PAGE 3 OF 23

LEITER & ASSOCIATES, INC.  
LAND DEVELOPMENT CONSULTANTS  
CIVIL ENGINEERS - LAND SURVEYORS  
LAND PLANNERS - ENVIRONMENTAL

169 N.E. 176TH ST., SUITE 402, MIAMI, FLORIDA 33169  
PHONE: DADE (305) 652-5133 BROWARD (305) 524-2282

DATE: 11-7-94 JOB NO.: 94-252 FILE NO.: L-1320

**JEFFERSON PLAZA COMMERCIAL-RETAIL AREA****LEGAL DESCRIPTION: (OF COMMERCIAL-RETAIL AREA PROPERTY)**

A portion of Lots 1, 2, 3, 4, 17, 18, 19 and 20 in Block 56 of "FISHERS FIRST SUBDIVISION of ALTON BEACH", according to the Plat thereof, as recorded in Plat Book 2, Page 77 of the Public Records of Dade County, Florida, being more particularly described as follows:

**COMMENCE** at the Northwest Corner of Lot 17 in said Block 56; thence S.07°35'50"W., along the West Line of said Block 56, for 25.36 feet to the **POINT of BEGINNING** of the following described Parcel of Land; thence N.88°00'35"E., along the North Line of the South 1/2 of Lots 17 and 4, in said Block 56, for 293.64 feet; thence S.01°59'25"W., along the centerline of a proposed building expansion joint, for 175.04 feet; thence S.88°00'35"W., along the South Line of said Block 56, for 323.21 feet; thence N.07°35'50"E., along the West Line of said Block 56, for 177.52 feet to the **POINT of BEGINNING**. Said lands containing 1.239 acres more or less.

A portion of the above lying in fractional Section 34, Township 53 South Range 42 East.

**NOTES:**

1.) See File No L-1320 B, Page 2 of 2, Dated 11-14-94, by this FIRM, for a detailed Sketch of the Legal Description described hereon.

2.) Bearings shown hereon are based upon the "FLORIDA STATE PLANE COORDINATE SYSTEM- EAST ZONE", as referenced to D.E.P. Monuments 87-91-DA-24 and 87-91-DA-25, and as shown on the Plat of the "COASTAL CONSTRUCTION CONTROL LINE" map as recorded in Plat Book 74, Page 25 of the Public Records of Dade County, Florida.

3.) This Legal Description and Sketch of Legal Description does not constitute a Boundary Survey

THIS LEGAL DESCRIPTION WAS PREPARED UNDER MY SUPERVISION.

LEITER & ASSOCIATES, INC.

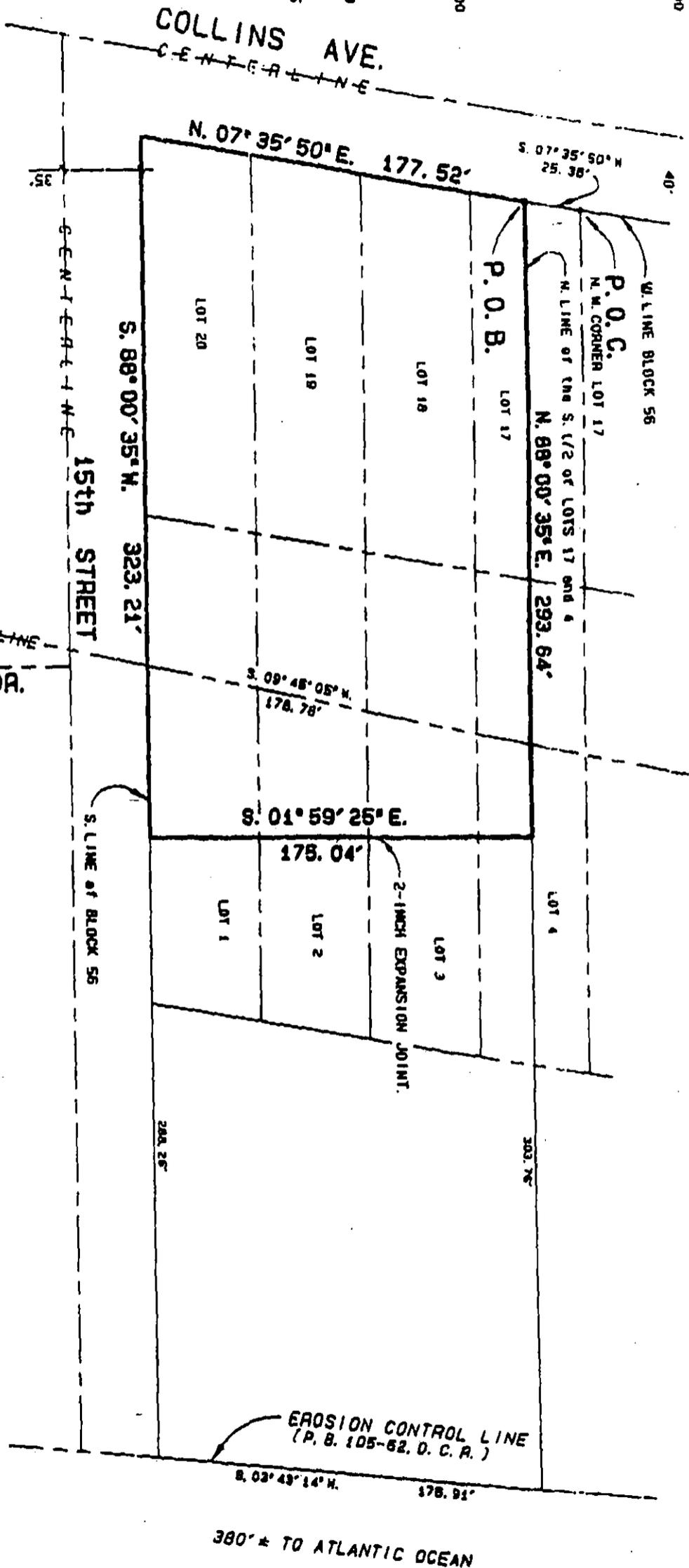
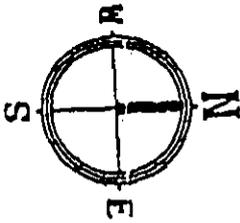
BY: \_\_\_\_\_ DATE: 11-14-94  
Thomas R. Palbicke, Vice President Registered Land Surveyor No. 5051 State of Florida

Exhibit B

PAGE 1 OF 2

page 1 of 2

GRAPHIC SCALE:



- LEGEND:
- C.E. - COMMON ELEMENT.
  - D.C.R. - DRAINAGE CONTROL RECORDS.
  - ELEV. - ELEVATION.
  - L.C.E. - LIMITED COMMON ELEMENT.
  - P.O.B. - POINT OF BEGINNING.
  - P.O.C. - POINT OF COMMENCEMENT.
  - P.B. - PLAT BOOK & PAGE.

SCALE: 1" = 60'

SKETCH OF LEGAL DESCRIPTION:  
COMMERCIAL AREA PAGE 2 OF 2

**LEITER & ASSOCIATES, INC.**  
LAND DEVELOPMENT CONSULTANTS  
CIVIL ENGINEERS - LAND SURVEYORS  
LAND PLANNERS - ENVIRONMENTAL

180 N.W. 17TH ST., SUITE 403, MIAMI, FLORIDA 33139  
PHONE: DADE (305) 962-5133 BROWARD (305) 524-2202

DATE: 11-14-94 JOB NO.: 94-252 FILE NO.: L-1320 B

Exhibit B, 42

OFF. REC. 16703 PG. 1188

**JEFFERSON PLAZA UNDERGROUND PARKING AREA****LEGAL DESCRIPTION: (OF UNDERGROUND PARKING GARAGE AREA)**

A portion of Lots 1, 2, 3, 4, 17, 18, 19 and 20 in Block 56 of "FISHERS FIRST SUBDIVISION of ALTON BEACH", according to the Plat thereof, as recorded in Plat Book 2, Page 77 of the Public Records of Dade County, Florida,

**TOGETHER WITH.**

The adjacent lands lying between the East Line of Block 56 and the Erosion Control Line, all being more particularly described as follows:

**COMMENCE** at the Northwest Corner of Lot 17 in said Block 56; thence S.07°36'50"W., along the West Line of said Block 56, for 34.53 feet; thence N.88°00'35"E. for 96.76 feet to the **POINT of BEGINNING** of the following described Parcel; thence continue N.88°00'35"E. for 424.24 feet; thence S.01°59'25"E. for 144.00 feet; thence S.88°00'35"W. for 39.25 feet; thence S.01°59'25"E. for 17.00 feet; thence S.88°00'35"W. for 358.30 feet; thence N.01°59'25"W. for 26.07 feet; thence S.88°00'35"W. for 1.61 feet; thence N.01°59'25"W. for 9.71 feet; thence S.88°00'35"W. for 48.94 feet; thence N.01°59'25"W. for 0.83 feet; thence S.88°00'35"W. for 11.27 feet; thence N.01°59'25"W. for 2.96 feet; thence N.88°00'35"E. for 1.00 feet; thence N.01°59'25"W. for 11.79 feet; thence S.88°00'35"W. for 2.39 feet; thence N.01°59'25"W. for 8.67 feet; thence N.88°00'35"E. for 1.39 feet; thence N.01°59'25"W. for 58.96 feet; thence S.88°00'35"W. for 7.47 feet; thence N.01°59'25"W. for 16.00 feet; thence N.88°00'35"E. for 39.39 feet; thence N.01°59'25"W. for 26.00 feet to the **POINT of BEGINNING**. Subject to an upper Limit of +11.00 N.G.V.D. (being - more or less the bottom of the First Floor slab and/or structural beams).

Said lands containing 1.606 acres more or less, a portion of the above lying in fractional Section 34, Township 53 South Range 42 East.

**NOTES:**

1.) See File No. L-1320 A, Page 2 of 2, Dated 11-14-94, by this FIRM, for a detailed Sketch of the Legal Description described hereon.

2.) Bearings shown hereon are based upon the "FLORIDA STATE PLANE COORDINATE SYSTEM- EAST ZONE", as referenced to D.E.P. Monuments 87-91-DA-24 and 87-91-DA-25, and as shown on the Plat of the "COASTAL CONSTRUCTION CONTROL LINE" map as recorded in Plat Book 74, Page 25 of the Public Records of Dade County, Florida.

3.) This Legal Description and Sketch of Legal Description does not constitute a Boundary Survey.

4.) Elevations refer to the National Geodetic Vertical Datum (N.G.V.D.) of 1929.

THIS LEGAL DESCRIPTION WAS PREPARED UNDER MY SUPERVISION.

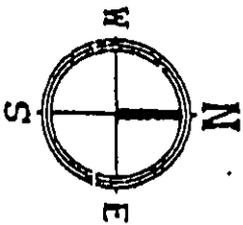
LEITER & ASSOCIATES, INC.

BY

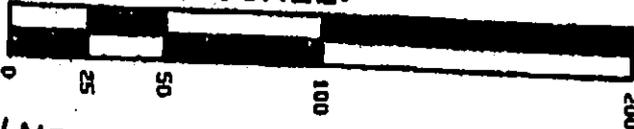
Thomas R. Palbicke, Vice President Registered Land Surveyor No. 5081 State of Florida

DATE: 11-14-94

Exhibit C  
page 1 of 2



GRAPHIC SCALE:



COLLINS AVE.  
CENTERLINE

15th STREET  
CENTERLINE

WEST-CONST. CONTROL LINE  
(P. B. 74-25, D. C. R.)

OCEAN DR.

- LEGEND:**
- C.E. - COMMON ELEMENT.
  - D.C.R. - DADE COUNTY RECORDS.
  - ELEV. - ELEVATION.
  - L.C.E. - LIMITED COMMON ELEMENT.
  - P.O.B. - POINT OF BEGINNING.
  - P.O.C. - POINT OF COMMENCEMENT.
  - P.B. - PLAT BOOK & PAGE.

SCALE: 1" = 60'

SKETCH OF LEGAL DESCRIPTION:  
UNDERGROUND PARKING PAGE 2 OF 2

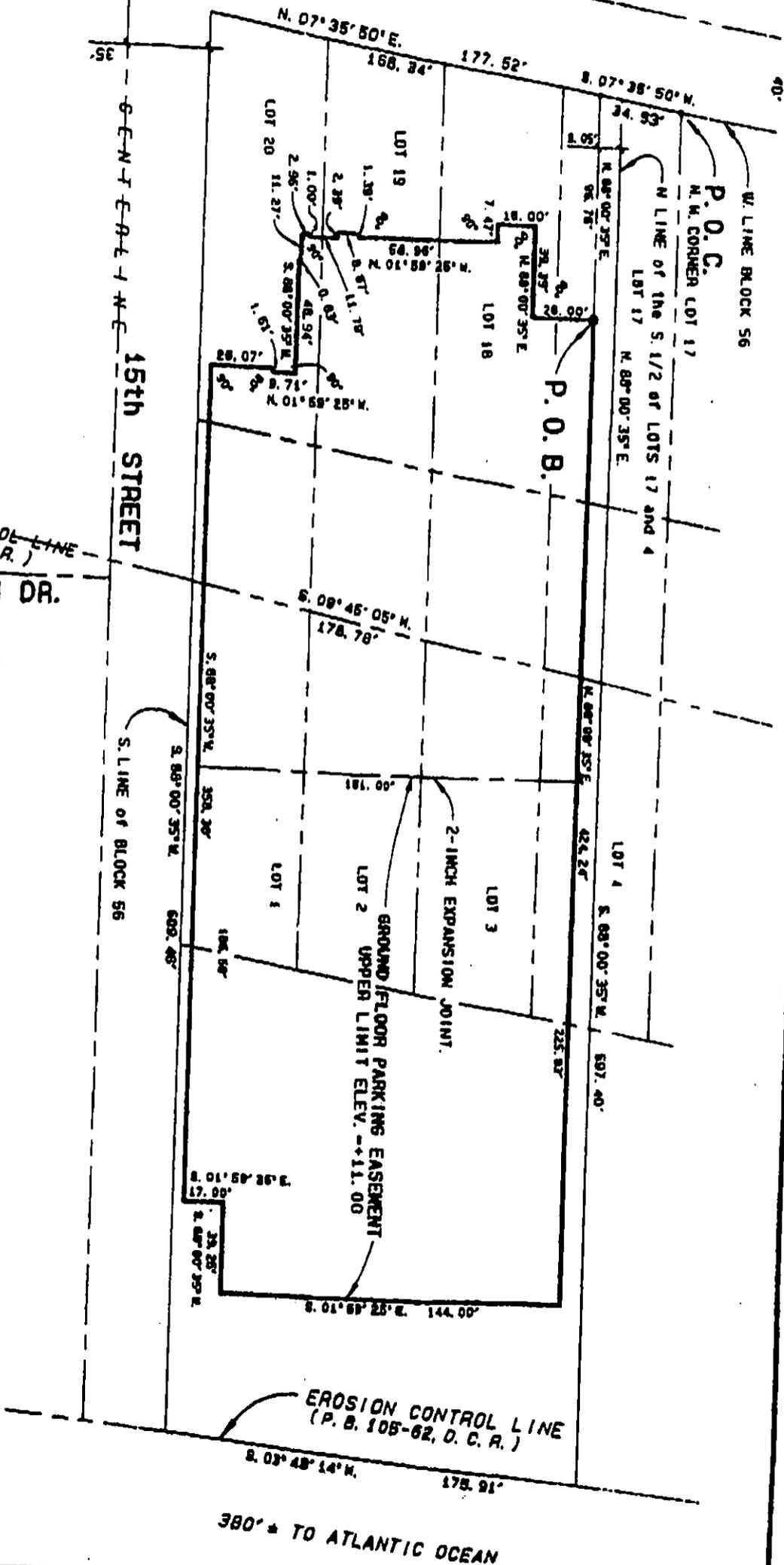
**LEITER & ASSOCIATES, INC.**  
LAND DEVELOPMENT CONSULTANTS  
CIVIL ENGINEERS - LAND SURVEYORS  
LAND PLANNERS - ENVIRONMENTAL

160 N. W. 17th ST., SUITE 403 MIAMI, FLORIDA 33169  
PHONE: DADE (305) 652-5133 BROWARD (305) 524-2202

DATE: 11-14-94

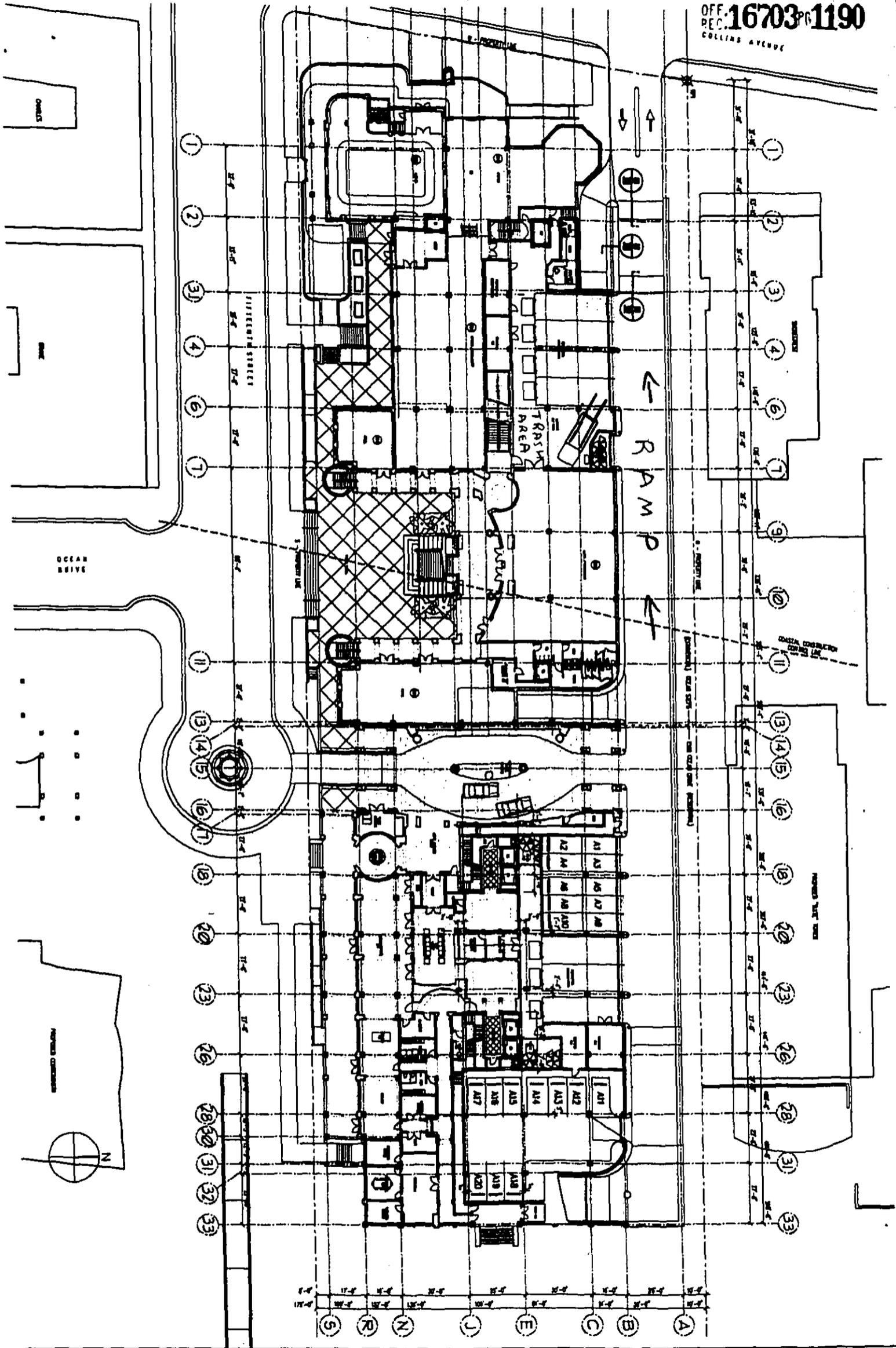
JOB NO.: 94-252

FILE NO.: L-1320 A



380' TO ATLANTIC OCEAN

Exhibit C - 42



RECORDED IN OFFICIAL RECORDS BOOK  
OF DADE COUNTY, FLORIDA.  
RECORD VERIFIED  
HARVEY RUVIN,  
Clerk of Circuit & County  
Courts

Exhibit "D"

**Reciprocal Access, Use, Development and  
Easement Agreement dated October 21, 1997**

RECORDABLE RETURN TO:  
HOLLANDS HEIGHT  
PROPERTY ASSOCIATION  
701 BRICKELL ROAD, #3000  
MIAMI, FLORIDA 33131

OFF. REC. 18170PG1156

RECIPROCAL ACCESS, USE, DEVELOPMENT  
AND EASEMENT AGREEMENT

THIS RECIPROCAL ACCESS, USE, DEVELOPMENT AND EASEMENT AGREEMENT ("Agreement") is made this 21<sup>ST</sup> day of OCTOBER, 1997, by and between RDP ROYAL PALM HOTEL LIMITED PARTNERSHIP, a Florida limited partnership ("RDP"), JEFFERSON PLAZA, LTD., a Florida limited partnership ("Jefferson"), THE CITY OF MIAMI BEACH, FLORIDA, a municipality of the State of Florida (the "City of Miami Beach"), and the MIAMI BEACH REDEVELOPMENT AGENCY, a public body corporate and politic (the "Agency") (the City of Miami Beach and the Agency are referred to herein collectively, and jointly and severally, as the context requires or permits, as the "City").

98K317188 1998 JUL 01 13:37

WITNESSETH:

WHEREAS, RDP has entered into a letter of intent with the City ("City") to lease from the City certain property ("RDP Property") located in the City of Miami Beach, County of Dade, State of Florida, which is more particularly described on Exhibit "A" attached hereto, and which is being developed into a 422 room full service hotel and related amenities (the "Hotel");

WHEREAS, Jefferson owns certain property ("Jefferson Property") located adjacent to the RDP Property in the City of Miami Beach, County of Dade, State of Florida, which is more particularly described on Exhibit "B" attached hereto, and which is being developed into a 113 unit residential condominium ("Condominium"), together with retail space ("Retail").

WHEREAS, RDP, City and Jefferson desire to enter into this Agreement in order to provide for the joint development of portions of the RDP Property and Jefferson Property, and for the use by condominium owners of certain amenities available to guests of the Hotel, all in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, RDP, City and Jefferson agree as follows:

1. Design and Location. The design of the Hotel and its placement and location on the RDP Property as indicated on the site plans attached as Exhibit "C" (the "Site Plan") attached hereto, including, but not limited to, the design of the glazed drum as the terminus to the northerly Ocean Drive vista, the number of rooms, amenities, layout and location, is hereby accepted and approved by Jefferson subject to its approval of final plans (the "Plans") which confirm that the terminus (tower) has been moved west sufficiently so that neither the tower nor any building (including the tower) will protrude eastward of a 45 degree line originating from the centerline of the balcony of the "B North" unit on the Jefferson Property, except for the encroachment shown on attached Exhibit "C" which shall not exceed eight (8) feet. Prior to commencing construction, RDP will provide an architect's certificate and, upon completion of construction, RDP will provide a certified survey of this point to confirm the requirement of the 45 degree line has been met (subject to the eight (8) foot permitted encroachment

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shown on Exhibit "C"). RDP will submit the Plans to Jefferson for its approval, which shall not be unreasonably withheld or delayed, and will not build the Accessway or the Hotel without Jefferson's approval of the Plans. RDP agrees to develop the Hotel in substantial compliance with the Plans, provided however, in no event shall any portion of any building (including the tower), be farther east than the ° line, except for the eight (8) foot permitted tower encroachment, or as shown on Exhibit "C." RDP, the City of Miami Beach and the Agency agree to Jefferson's 45 degree sight line and further agree that no portion of any building whatsoever shall ever be built or shall ever protrude eastward of the 45 degree line (except for the permitted tower encroachment as shown on Exhibit "C"). After the Plans are approved by Jefferson, no other approvals or consents from Jefferson shall be required or necessary for RDP to build the Hotel in substantial compliance with the Plans, provided, with respect to the Accessway construction, the requirements of this Agreement must be met, including without limitation, the Letter of Credit. Notwithstanding anything herein to the contrary, the provisions of this Paragraph are presently vested rights in favor of Jefferson upon execution of this Agreement and shall not be terminated for any reason whatsoever, shall be binding upon the successors and assigns of the parties hereto in perpetuity, regardless of whether the Accessway is ever built.

2. Hotel Services.

A. RDP intends to provide the following amenities and services at the Hotel: pools, cabana and beach service, health club, room service and laundry service (collectively "Amenities and Services"). RDP agrees to make the Amenities and Services available to "Owners," as defined below, of residential condominium units in the Condominium, at the same cost that guests ("Guests") of the Hotel pay or are charged for such Amenities and Services, and at no cost if included in the base room rate, provided, however, that an Owner shall be required to pay cash or use a credit card accepted by the Hotel as and when any such Amenities and Services are used by the Owner and shall not be entitled to "room charging" privileges. RDP will issue appropriate identification cards for each residential unit in the Condominium. The Owners shall present the identification cards any time they desire to use the Amenities and Services and they must otherwise comply with all security and use requirements established by RDP and/or the Hotel operator for all users of the Amenities and Services. RDP may require that each of the Owners sign a reasonable release in connection with their use of the Amenities and Services. Notwithstanding the foregoing, the operator of the Hotel may temporarily suspend the availability to the Owners of all or any portion of the Amenities and Services, except for room service and laundry, for up to three (3) consecutive days at any one time (but not more than thirty-six (36) days in the aggregate during any calendar year), provided that: (i) the projected occupancy of the Hotel on any such day is at least 90%; and (ii) notice of the suspension of such services is provided to the Owners listed on the most recent roster furnished to RDP pursuant to subparagraph D hereof, at least 24 hours in advance of such time.

B Neither Jefferson nor any Owner shall have any right to participate in RDP's decision (or the decision of any hotel manager) to offer (or continue to offer) any Amenities and Services, to charge fees for the Amenities and Services or the

amount of any such fees. Furthermore, nothing contained herein shall create any obligation on RDP to construct, operate and maintain any or all of the Amenities and Services, which shall be in RDP's sole discretion. Notwithstanding anything to the contrary herein, (1) any of the Amenities and services which are offered to the general public will be offered in at least an equal manner to Owners, and no fees or charges will be imposed on Owners in excess of those imposed on Hotel guests; and (2) no Owner shall be entitled to maid service or to free or discounted meals (which are not included in the "room service" portion of the Amenities and Services), parking, transportation or any other services and amenities commonly made available to guests at the Hotel (inasmuch as they may be included in, or taken into consideration when determining, the room rate and not separately charged) other than the Amenities and Services, unless they are also made available on the same basis to other members of the general public (in which event they shall also be provided on a no less favorable basis to the Owners.).

C. At all times while using the Amenities and Services, each Owner shall abide by all the rules and regulations governing the use of the Amenities and Services as they may be determined from time to time by Hotel. Failure on the part of any Owner to pay all fees, assessments and charges, or to follow the rules and regulations, shall result in the immediate suspension of the privileges outlined herein of such Owner until the Owner's payment or compliance. A second violation of the rules and regulations shall forever terminate the current Owner's privileges outlined herein provided, however, that such privileges will be reinstated for subsequent Owners.

D. For purposes of this paragraph 2, "Owner" shall mean (1) the individual owner(s) of a residential unit in the Condominium; (2) the Owner's tenants and temporary guests; (3) stockholders, partners or fiduciaries of a corporation, partnership or trust, as the case may be, that owns a residential unit in the Condominium; and (4) any such person's spouse, children, parents and grandchildren. In no event, however, shall the term "Owner" be deemed to exceed two (2) persons per bedroom per unit (excluding dens, living rooms, dining rooms, family rooms and the like). Jefferson shall provide a roster of its Owners to RDP, which shall be updated as required to reflect any and all changes of Owners, at a minimum on an annual basis, commencing on the date the Hotel begins accepting guests and on July 1 of each year thereafter.

3. Joint Accessway.

A. RDP agrees to pay for the cost to construct an accessway ("Accessway") substantially in accordance with the plans attached hereto as Exhibit "D". RDP will commence construction of the Accessway by no later than November 1, 1999, will diligently continue with construction thereof without interruption, and will complete construction of the Accessway within nine (9) months from the date of commencement. If RDP has not commenced construction or completed construction within the timeframes set forth herein, Jefferson's sole remedy shall be to draw upon the letter of credit provided under subparagraph 10G and, RDP, City and any successors-in-interest thereto, shall at all times continue to have the right in perpetuity to commence and

complete construction of the Accessway in the manner provided for and subject to the conditions, approvals and requirements (including, without limitation, the Letter of Credit) provided in this Agreement, which right shall continue to exist notwithstanding any defaults hereunder or otherwise. The rights of RDP, City and any successors-in-interest thereto to construct the Accessway in the manner provided for and subject to the conditions, approvals and requirements (including, without limitation, the Letter of Credit) provided in this Agreement is a presently vested right in favor of RDP and the City upon execution of this Agreement which shall not be terminated for any reason whatsoever and shall be binding upon the successors and assigns of the parties hereto in perpetuity. The Accessway will be approximately fourteen (14') feet wide and will join a proposed ramp ("Ramp") being built by Jefferson on the northern side of the Jefferson Property with the southern side of the Hotel. RDP also agrees to design and construct the Accessway in coordination with Jefferson. In this regard, RDP and Jefferson will cause their design consultants to coordinate with each other their respective designs. The Plans for the Accessway shall be approved by Jefferson, which approval shall not be unreasonably withheld or delayed. All costs incurred for maintenance, repair, replacement and reconstruction of the Accessway, including any personal property related thereto, shall be paid by RDP unless proceeds of insurance are collected related thereto as provided below. Costs incurred for maintenance, repair, replacement and reconstruction of the Ramp, including any personal property related thereto, shall be paid by Jefferson, unless proceeds of insurance are collected related thereto as provided below. RDP shall be responsible for all permits and approvals and anything whatsoever related to or required in connection with the Accessway and modifications to the Ramp related thereto, including without limitation, all governmental approvals and all costs and expenses related thereto, and reimbursement of Jefferson's out-of-pocket costs, including legal, architectural and other fees. Jefferson has the right of approval, which shall not be unreasonably withheld, of the Accessway's location, design and construction and Plans and any applications for permits relating to the Accessway, and any other matters on Jefferson's Property. Provided Jefferson consents and approves the applications for the permits, Jefferson agrees, at no cost or liability to Jefferson, to reasonably cooperate, and if necessary join in, with the filing of the applications. RDP will indemnify, defend and hold harmless Jefferson with respect to claims, causes, liabilities, costs and expenses, including attorneys fees, related to the Accessway, and any applications Jefferson joins in in connection therewith or as required hereunder. Each party will indemnify, defend and hold harmless the other party with respect to claims, causes, liabilities, costs and expenses, including attorneys' and other professional fees, relating to the use of the Ramp by any truck or in connection with any deliveries to or from, or trash removal from, the indemnitor's property.

B. Each party grants to the other, and its guests, invitees, licensees, employees, contractors, subcontractors and vendors (collectively "Permittees") a perpetual, non-exclusive easement for vehicular traffic over and across the Accessway. Jefferson also grants to RDP, City and their Permittees a perpetual non-exclusive easement for vehicular traffic over and across that portion of the Ramp which is necessary for, and which leads to the entrance to, the Accessway. Furthermore, each party grants to the other and their Permittees such perpetual non-exclusive easements of ingress and egress over and across the private roads, streets, accessways, loading

areas and driveways on the RDP Property and the Jefferson Property, as the case may be, as may be necessary or required to reach and utilize the Ramp and the Accessway from the public roads serving the Hotel, and Condominium and Retail portions of the Jefferson Property, unless otherwise specifically stated elsewhere herein. Jefferson hereby grants RDP and City a perpetual non-exclusive easement to permit the existence, location and use of the Accessway as and to the extent contemplated herein and subject to compliance with all requirements and approvals provided herein. The easements arising under this subparagraph shall not become operative until a final Certificate of Occupancy (or other evidence of completion) has been issued for the Accessway.

C. Jefferson will grant limited reasonable access to its property for the construction of the Accessway only. RDP must submit a written request for Jefferson's reasonable approval at least seven (7) business days in advance of the proposed commencement date, including but not limited to, a schedule of operations to take place and the time each activity will start and finish. Jefferson will be allowed seven days to review and respond. If Jefferson fails to respond within seven (7) business days of receipt of written request, it will be deemed to have approved such request. In no event shall the construction of the Accessway be allowed to impede, stop or interfere with the construction or permanent operations of the Jefferson Property and most specifically the Ramp.

D. Maintenance of the Accessway and the Ramp shall be performed by Jefferson and RDP so as not to impede operations of each respective facility. In the event of the failure of either party to maintain or repair the Ramp or the Accessway as required herein, impedes the operation of the other party's property, and if the party obligated to perform such maintenance or repair fails to commence such maintenance or repair within 7 days of receipt of written notice from the other party, or fails to continue such maintenance and repair with due diligence until completion, the other party may perform such maintenance or repair at the cost of the non-performing party, with the cost thereof to be reimbursed within 30 days of receipt of a bill with a copy of supporting invoices. In the event the failure to maintain or repair constitutes an emergency, the 7-day period set forth above will be shortened to 3 business days.

E. RDP will not place or permit any items whatsoever, including without limitation, equipment, trash, refuse or unsightly items, on the Accessway or the Ramp.

4. Consents. Jefferson and RDP have each obtained the consents to this Agreement from their respective mortgage lenders, which have agreed to join herein. RDP and Jefferson represent to each other that there are no other parties required to consent to or join into this Agreement for it become fully effective.

5. Insurance.

A. Each party will, at its sole cost and expense, maintain comprehensive general public liability insurance against claims for personal injury or

death and property damage occasioned by accident occurring upon, in or about the Accessway and the Ramp such insurance in each case to afford protection to the limit of not less than \$5,000,000 in respect of injury or death to any number of persons arising out of any one (1) accident. RDP will also at all times keep the Accessway insured, at its sole expense, against loss or damage by fire, windstorm, flood, explosion, damage from vehicles, vandalism and malicious mischief, and such other risks as are from time to time included in "extended coverage" endorsements available in Dade County, Florida, and in an amount not less than ninety percent (90%) of its actual full replacement cost. Jefferson will at all times keep the Ramp insured, at its sole expense, against loss of damage by fire, windstorm, flood, explosion, damage from vehicles, vandalism and malicious mischief, and such other risks as are from time to time included in "extended coverage" endorsements available in Dade County, Florida, and in an amount not less than 90% of the actual full replacement cost of the Ramp.

B. Except as provided in subparagraph C, below, each party will indemnify and save the other party harmless from and against any and all claims, actions, damages, liabilities and expense in with loss of life, personal injury or damage to property, or any of them, occasioned wholly or in part by any act or omission of such indemnitor and its employees and affiliates, unless the other party is found to be legally responsible for the injury, loss or damage.

C. No party shall be liable to the other party or to any insurance company (by way of subrogation or otherwise) insuring the other party for any loss or damage even though such loss or damage might have been occasioned by the negligence of such party or its Permittees. However, if by reason of the foregoing waiver, either party is unable to obtain any such insurance without the payment of an additional premium therefor, such waiver shall be deemed not to have been made by such party.

6. Binding Effect. The restrictions, obligations and easements contained within this Agreement shall be deemed covenants running with the land and shall be binding upon, and shall inure to the benefit of all parties to this Agreement and their respective successors in title. In the case of Jefferson, after recordation of a Declaration of Condominium affecting the Condominium, its successor in title with respect to the Condominium shall be deemed to be the Condominium Association. This Agreement may be modified, amended, changed or altered only by a written instrument signed and approved by the parties hereto, their successors in title. Notwithstanding the foregoing, all rights granted herein to RDP shall immediately inure to the City, provided however, that the City shall not exercise any such rights during any period when RDP is doing so and shall withdraw any prior exercise thereof upon the exercise of such rights by RDP.

7. Recording. This Agreement shall be recorded in the Public Records of Dade County, Florida.

8. Default. In the event of a default under this Agreement, and if such default continues for 30 days after written notice from the non-defaulting party (or in the event

of an emergency, then such lesser period of time as may be reasonable under the circumstances) or if the default is of such a nature that it cannot be cured within 30 days and the defaulting party fails to in good faith commence and diligently pursue, without interruption until completion, the curing of the default within 30 days, then the non-defaulting party may exercise any legal and/or equitable remedies (other than termination of this Agreement), including specific performance, afforded under Florida law. Notwithstanding the foregoing, in the event of a default by RDP under this Agreement, Jefferson shall not exercise any of its remedies hereunder unless such default remains uncured for 60 days after the City has been provided with written notice from Jefferson setting forth the nature of such default, or if the default is of such a nature that it cannot be cured within 60 days, unless the City fails to in good faith commence within sixty (60) days to diligently pursue, without interruption until completion, the curing of the default. The non-defaulting party shall send a copy of any notices under this Paragraph to any mortgagee of the defaulting party for which said party has provided it the mortgagee(s) its name and address, in the manner provided in paragraph 9. Any such mortgagee shall have the same notice period and opportunity to cure defaults as is provided to the City. Notwithstanding the foregoing, in the event of an emergency, any party to this Agreement may take such corrective actions as may be reasonably necessary, without regard to the above notice and cure provisions, provided that such party shall notify the other parties thereof as soon thereafter as reasonably possible.

9. Notices. Any notices required or permitted to be given under this Agreement shall be delivered by hand, mailed by certified or registered mail, return receipt requested, in a postage prepaid envelope, or delivered by a nationally recognized overnight delivery service, and addressed as described below (or such other address as may be provided by either party by written notice as provided herein); notices shall be deemed effective only upon receipt or refusal of delivery.

Notices to RDP

RDP Royal Palm Hotel Limited  
701 Brickell Avenue, Suite 2040  
Miami, FL 33131  
Attention: S.P. "Chip" Newell  
Telephone: (305) 530-3140  
Facsimile: (305) 530-3145

Copy to

Berman Wolfe & Rennert, P.A.  
100 S.E. 2<sup>nd</sup> Street, Suite 3500  
Miami, FL 33131  
Attention: Leon J. Wolfe, Esq.  
Telephone: (305) 577-4177  
Facsimile: (305) 373-6036

*No longer  
to be used*

Notices to Jefferson

Jefferson Plaza Ltd.  
2665 S. Bayshore Drive  
Suite 302  
Coconut Grove, FL 33133  
Attn: Jean-Marc Meunier  
Ph: (305)858-7749  
Fax: (305)859-7579

Copy to

Rubin Baum Levin  
2500 1st Union Financial Center  
Miami, FL 33131  
Attn: John C. Sumberg  
Ph: (305)350-2364  
Fax: (305)374-7593

*Out of town  
left m59*

Notices to the City:

City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, FL 33139  
Attn: City Manager  
Fax: (305)673-7782

Notices to the Agency:

1700 Convention Center Drive  
Miami Beach, Florida 33139  
Attn: Executive Director  
Fax: (305)673-7782

Copy to:

Bloom & Minsker  
800 Brickell Avenue, Suite 1100  
Miami, Florida 33131  
Attn: Joel N. Minsker, P.A.  
Ph: (305)371-6800  
Fax: (305)371-5760

10. Miscellaneous Provisions.

A. In the event any term or provision of this Agreement is determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed as deleted as such authority determined, and the remainder of this Agreement shall be construed to be in full force and effect.

B. Each party has participated fully in the negotiation and preparation of this Agreement with full benefit of counsel. Accordingly, this Agreement shall be not more strictly construed against either party.

C. The captions in this Agreement are for the convenience of reference only and shall not be deemed to alter any provision of this Agreement.

D. Any time period provided for in this Agreement which shall end on a Saturday, Sunday or legal holiday shall extend to 5:00 p.m. of the next full business day.

E. This Agreement constitutes the entire Agreement and the full and complete understanding of the parties hereto. All prior agreements and understandings, whether written or oral, are superseded, terminated and of no further force and effect. No modification of this Agreement shall be effective unless and until executed by the parties hereto and joined in by the holder(s) of any mortgages of the Jefferson Property and the RDP Property, which consents shall not be unreasonably withheld.

F. In the event of any litigation hereunder, the prevailing party shall be entitled to recover all costs, expenses and fees, including attorneys fees through all appeals.

G. Notwithstanding anything herein to the contrary, and regardless of whether the Accessway is ever built, RDP will be responsible for all "Reconstruction Costs", as hereafter defined. "Reconstruction Costs" shall consist of all reasonable construction costs, including without limitation soft costs, and fees of consultants such as architects, attorneys and others related to (1) modification to the Ramp to accommodate the Accessway prior to the commencement of construction or (2) reconstructing the Ramp back to its originally designed state and (3) any work related to the Accessway in connection therewith (throughout this Agreement, this work regarding the Accessway shall be deemed to be included in any reference to the design or construction work relating to reconstruction of the Ramp)(all of the foregoing are collectively referred to as "Reconstructive Work"). RDP shall deliver to Jefferson a sight draft irrevocable letter of credit (the "Letter of Credit"), issued by an institution reasonably acceptable to Jefferson by October 24, 1997. The Letter of Credit shall be in the amount of \$100,000, which shall be subject to adjustment as hereafter provided, shall name Jefferson as the beneficiary and shall provide for draws to be made in Dade County, Florida, which shall be used in the event that Reconstructive Work is necessary. The Letter of Credit shall remain outstanding and shall be renewed until 30 days after the Accessway is completed and a final certificate of completion (or other appropriate evidence of completion reasonably acceptable to Jefferson) therefor is obtained. Jefferson shall have the right to draw on the Letter of Credit: (1) if the Accessway is not commenced by November 1, 1999, or if a final certificate of completion (or other appropriate evidence of final completion reasonably acceptable to Jefferson) is not issued within nine (9) months after commencement of construction; or (2) if at any time the Letter of Credit has less than 30 days remaining prior to its expiration; or (3) if any governmental rule, regulation order or request or agency requires Jefferson to perform Reconstructive Work (including if failure to do so would violate any governmental rule, regulation, request, order or citation) or (4) if RDP fails to pay any invoice for Reconstructive Work within fifteen (15) days after it is submitted by Jefferson. In the event Jefferson draws upon the Letter of Credit, any sums in excess of the Reconstruction Costs shall be promptly returned to RDP, or its successor, as applicable, and RDP and its successors shall be liable for any such expenses which exceed the amount of the Letter of Credit. In the event RDP or its successor desires to

commence construction of the Accessway, after the Letter of Credit has been drawn down, such party shall furnish a new letter of credit to Jefferson, which shall be the same in form and substance as the Letter of Credit, and which may be drawn upon if any of the conditions in subparagraphs (1), (2), (3) or (4) above occur. The Accessway shall be built at the location shown and in accordance with the Plans, and any revision, including without limitation, with respect to location, angle, direction, or construction from that shown in the Plans shall be subject to the prior written consent of Jefferson, which shall not be unreasonably withheld or delayed. Upon completion of the Accessway, the Letter of Credit, or any replacement thereof (if not drawn), shall be returned to party providing such instrument, and in all events such parties shall be responsible for any excess costs of the Reconstructive Work. The failure of RDP, or any successor thereof, to deliver the Letter of Credit (or any subsequent letter of credit) within the time required hereunder shall constitute a default under paragraph 8 hereof, provided however, notwithstanding anything to the contrary in this Agreement, including without limitation, in Section 8, that the time period for curing such default shall be limited to fifteen (15) days, which time period shall run concurrently for all parties entitled to cure such default including the City and Mortgagee. In no event shall the failure to furnish any letter of credit required hereunder allow Jefferson to terminate the right to construct the Accessway, and Jefferson's sole remedy shall be to construct the Ramp or restore it to its originally designed state. Notwithstanding anything to the contrary herein, Jefferson shall not be obligated to join in any applications for permits, and no construction shall be commenced with respect to the Accessway, prior to delivery to Jefferson of the Letter of Credit (or any subsequent letter of credit) (even if during RDP's, the City's or a lender's cure period). RDP shall furnish Jefferson RDP's application for a set-back variance along the south boundary and Jefferson shall have the right to consent, which consent shall not be unreasonably withheld or delayed, and upon its consent shall join in RDP's application for a set-back variance along its southern boundary regardless of whether the Letter of Credit has been delivered to Jefferson if Jefferson has been furnished the set-back application and RDP has requested Jefferson's to consent thereto prior to the time the Letter of Credit (or any subsequent letter of credit) is due hereunder. RDP shall increase the amount of the Letter of Credit, or provide an additional letter of credit, in form identical to the Letter of Credit, within fifteen (15) days after receipt from RDP of a revised estimate of the cost of the Reconstructive Work. Jefferson's revised estimate of the cost of the Reconstructive Work shall be the total of the following (1) the actual invoices submitted to Jefferson for the initial redesign of the Ramp to accommodate the Accessway pursuant to this Agreement; (2) the reasonable estimates from Jefferson's contractor of the cost of the modifications to the Ramp to accommodate the Accessway pursuant to this Agreement; (3) the reasonable estimates of Jefferson of the cost of any future redesign of the Ramp to its originally designed state; (4) the reasonable estimates of Jefferson of the Reconstruction Costs required to construct the Ramp to its originally designed state and work relating to the Accessway in connection therewith.

H. The Accessway shall be designed and constructed by RDP so as to collect, route and process all storm water runoff from the Accessway including but not limited to the water run off that will come from the Ramp over the point where the concrete slabs of the Ramp and Accessway are joined or abut together. The storm

water runoff on the Accessway shall not discharge into the Ramp. RDP and Jefferson agree to coordinate and cooperate to obtain the necessary calculations from Coastal Systems International to confirm that the additional water runoff from the Ramp can be accommodated by the Accessway and the costs for any new engineering by Coastal Systems International will be borne by RDP.

I. Jefferson's structural engineer has designed the Ramp to accommodate a 250 pounds per square foot live load. RDP must design and construct the Accessway as mutually agreed to by RDP's and Jefferson's consultants, without use of the support "haunches" in the Ramp. RDP will be responsible for any costs relating to redesign, construction, reconstruction or modification of the Ramp if the 250 P.S.F. live load is not sufficient for the Accessway. Jefferson is not obligated to change the live load requirements of the Ramp to accommodate the Accessway.

J. RDP and Jefferson agree to coordinate striping and vehicular signage on the Ramp and Accessway and each party shall install and maintain (and bear the cost of) such striping and signage on such party's respective property as required by law.

K. RDP and Jefferson agree to coordinate with each other, and if necessary, adopt such rules and regulations regarding the use of the Ramp and Accessway as shall be necessary to ensure the continued and unimpeded use of the Ramp and Accessway for their respective intended purposes, including, but not limited to the following: (1) hotel employees shall not walk on the Ramp for access to the employee entrance; and (2) delivery vehicles to the Hotel shall not block or park or stand on the Ramp or residential garage entrance of the Condominium and delivery vehicles to the Condominium shall not block or park or stand on the Accessway or the Hotel's loading or trash dock entrance. With respect to (2), above, RDP shall have an initial forty-five day move-in period after the Hotel has received a certificate of occupancy within which oversized delivery vehicles may drive over but not park on the Ramp, provided same do not unreasonably or significantly interfere with the use of the Ramp for its intended purpose by Jefferson, condominium owners, retail tenants or the guests, invitees, licensees, employees, contractors or subcontractors and vendors of any of the foregoing for its intended purpose. RDP will have deliveries only at the times permitted pursuant to the delivery schedule attached (as Exhibit "E"). RDP agrees to reasonably cooperate with Jefferson in amending the schedule in the future when the most efficient schedule of delivery times is determined by the manager's of the Condominium and Retail portions of the Jefferson Property.

L. Notwithstanding any of the terms of this Agreement to the contrary, in the event the ability of any party hereto to perform any of its obligations hereunder is prevented or delayed by reason of strikes, lockouts, sit-downs, material or labor restrictions by any governmental authority, unusual transportation delays, riots, floods, washouts, explosions, earthquakes, fire, storms, unusual weather (including wet grounds or inclement weather which prevents construction), acts of the public enemy, wars, insurrections and any other cause not reasonably within the control of such party, and which by the exercise of due diligence such party is unable, wholly or in part, to prevent or overcome such delay (any of which is deemed a "Force Majeure Event"), then the deadline by which such party must perform such obligation shall be extended

for a number of days equal to the number of days of delay in performance caused by the Force Majeure Event.

M. Each party agrees to provide the other party an estoppel letter certifying whether or not any money is owed hereunder pursuant to Paragraph 3.D. and whether or not, to the best of the certifying party's knowledge, the other party is in breach of any of its obligations hereunder.

N. Each party agrees to execute any documents reasonably necessary to carry out the purposes of this Agreement provided same shall be at no cost or liability to said party.

IN WITNESS WHEREOF, RDP and Jefferson have executed this Agreement as of the date indicated above.

WITNESS:

RDP ROYAL PALM HOTEL LIMITED PARTNERSHIP, a Florida limited partnership

Lawrence A. Levy  
Print Name: LAWRENCE A. LEVY

By: PADC Hospitality Corporation I, a Florida corporation

Alexander F. Tachmes  
Print Name: ALEXANDER F. TACHMES

By: [Signature]  
Its: [Signature]  
Print Name

JEFFERSON PLAZA, LTD., a Florida limited partnership,

John C. Sumbly  
Print Name: John C. Sumbly

By: Jefferson Plaza Management L.C., a Florida limited liability company

APPROVED AS TO FORM & LANGUAGE & FOR EXECUTION  
Patricia Grayshaw

By: [Signature]  
Its: Manager

10/21/97  
Redevelopment Agency  
General Counsel

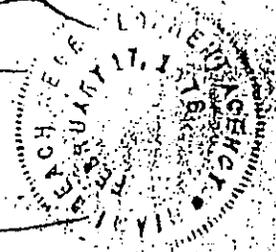
MIAMI BEACH REDEVELOPMENT AGENCY

Lawrence A. Levy  
Print Name: LAWRENCE A. LEVY

By: [Signature]  
Seymour Gelber, Chairman

Alexander F. Tachmes  
Print Name: ALEXANDER F. TACHMES

ATTEST  
By: Robert Parcher  
Robert Parcher, Secretary



for a number of days equal to the number of days of delay in performance caused by the Force Majeure Event.

M. Each party agrees to provide the other party an estoppel letter certifying whether or not any money is owed hereunder pursuant to Paragraph 3.D. and whether or not, to the best of the certifying party's knowledge, the other party is in breach of any of its obligations hereunder.

N. Each party agrees to execute any documents reasonably necessary to carry out the purposes of this Agreement provided same shall be at no cost or liability to said party.

IN WITNESS WHEREOF, RDP and Jefferson have executed this Agreement as of the date indicated above.

WITNESS:

RDP ROYAL PALM HOTEL LIMITED  
PARTNERSHIP, a Florida limited partnership

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: PADC Hospitality Corporation I, a Florida corporation

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By \_\_\_\_\_  
Its: \_\_\_\_\_  
Print Name

JEFFERSON PLAZA, LTD., a Florida limited partnership,

*[Signature]*  
Print Name: John C. Santog

By: Jefferson Plaza Management L.C.,  
a Florida limited liability company

*[Signature]*  
Print Name: Peter G. Beausseau

By *[Signature]*  
Its: Manager

MIAMI BEACH REDEVELOPMENT AGENCY

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Seymour Gelber, Chairman

ATTEST:

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Robert Parcher, Secretary





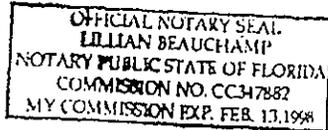


STATE OF FLORIDA )  
 ) SS:  
COUNTY OF DADE )

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of October, 1997, by Seymour Gelber, as Mayor and Robert Parcher, as City Clerk of THE CITY OF MIAMI BEACH, a municipal corporation of the State of Florida, on behalf of such municipal corporation. They are personally known to me or have produced a State of Florida driver's license as identification.

Sign Name: Lillian Beauchamp  
Print Name: Lillian Beauchamp  
NOTARY PUBLIC

My Commission Expires:  
Serial Number, if any:



[NOTARIAL SEAL]

CONSENTS AND JOINDERS

The undersigned, as mortgage lenders to JEFFERSON and RDP, respectively, hereby consent to and join in the foregoing Reciprocal Access, Use, Development and Easement Agreement.

Jefferson's Mortgage Lender:

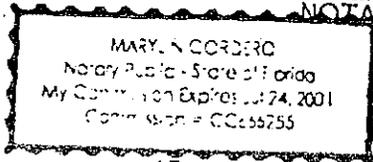
OCEAN BANK <sup>vae</sup>  
  
By: JORGE L. ALVAREZ  
Its: VICE PRESIDENT

STATE OF FLORIDA )  
 ) SS:  
COUNTY OF DADE )

The foregoing instrument was acknowledged before me this 20 day of October, 1997, by JORGE L. ALVAREZ, as VICE PRESIDENT of OCEAN BANK, a \_\_\_\_\_, on behalf of said \_\_\_\_\_. He/She is personally known to me or has produced a State of \_\_\_\_\_ driver's license as identification.

Sign Name: Marylen Cordero  
Print Name: MARYLEN CORDERO  
NOTARY PUBLIC

My Commission Expires:  
Serial Number, if any:



[NOTARIAL SEAL]

OFF. REC. 18170PG1173

EXHIBIT LIST

Exhibit "A"	Legal Description of RDP Property (First Whereas Clause)
Exhibit "B"	Legal Description of Jefferson Property (Second Whereas Clause)
Exhibit "C"	Plans for RDP's Development (Paragraph 1)
Exhibit "D"	Accessway Plans (Paragraph 3.A.)
Exhibit "E"	Delivery Schedule (Paragraph 10.K.)

OFF.  
REC. 18170PG1174

## *Legal Description*

### *Parcel 1 (Royal Palm Hotel site)*

*The South 12.65 feet of Lots 7 and 14, all of Lots 6 and 15, and the North 10 feet of Lots 5 and 16, all in Block 56, FISHER'S FIRST SUBDIVISION OF ALTON BEACH, according to the Plat thereof, as recorded in Plat Book 2, Page 77, Public Records of Dade County, Florida, together with that certain parcel of land lying East and adjacent to the above described parcel, said parcel bounded on the South by the South line of the above described parcel extended Easterly; bounded on the North by the North line of the above described parcel extended Easterly; bounded on the East by the Erosion Control Line of the Atlantic Ocean and bounded on the West by the East line of the above mentioned Block 56; said lands containing 0.9941 acres more or less.*

EXHIBIT "A"

Parcel 2 (Shorecrest Hotel site)

The South 40.00 feet (measured along the lot line) of Lots 5 and 16, and the North one-half of Lots 4 and 17, all in Block 56, FISHER'S FIRST SUBDIVISION OF ALTON BEACH, according to the plat thereof, as recorded in Plat Book 2, Page 77 of the Public Records of Dade County, Florida, together with that certain parcel of land lying East and adjacent to the above described parcel, said parcel bounded by the South line of the above described parcel extended Easterly, bounded on the North by the North line of the above described parcel extended Easterly, bounded on the East by the Erosion Control Line of the Atlantic Ocean, and bounded on the West by the East line of the above mentioned Block 56; Said lands containing 0.8849 acres more or less.

All lands described above located, lying and being in Section 34 Township 33 South, Range 42 East, City of Miami Beach, Florida.

EXHIBIT B

OFF. REC. 18170PG1176

All of Lots 1, 2, 3, 18, 19, 20; and the South 1/2 of Lots 4 and 17, all in Block 56, of FISHER'S FIRST SUBDIVISION OF ALTON BEACH, according to the plat thereof, as recorded in Plat Book 3, at Page 77, of the Public Records of Dade County, Florida.

-AND-

A parcel of land adjacent to and immediately East of the above described lands and more particularly described as follows:

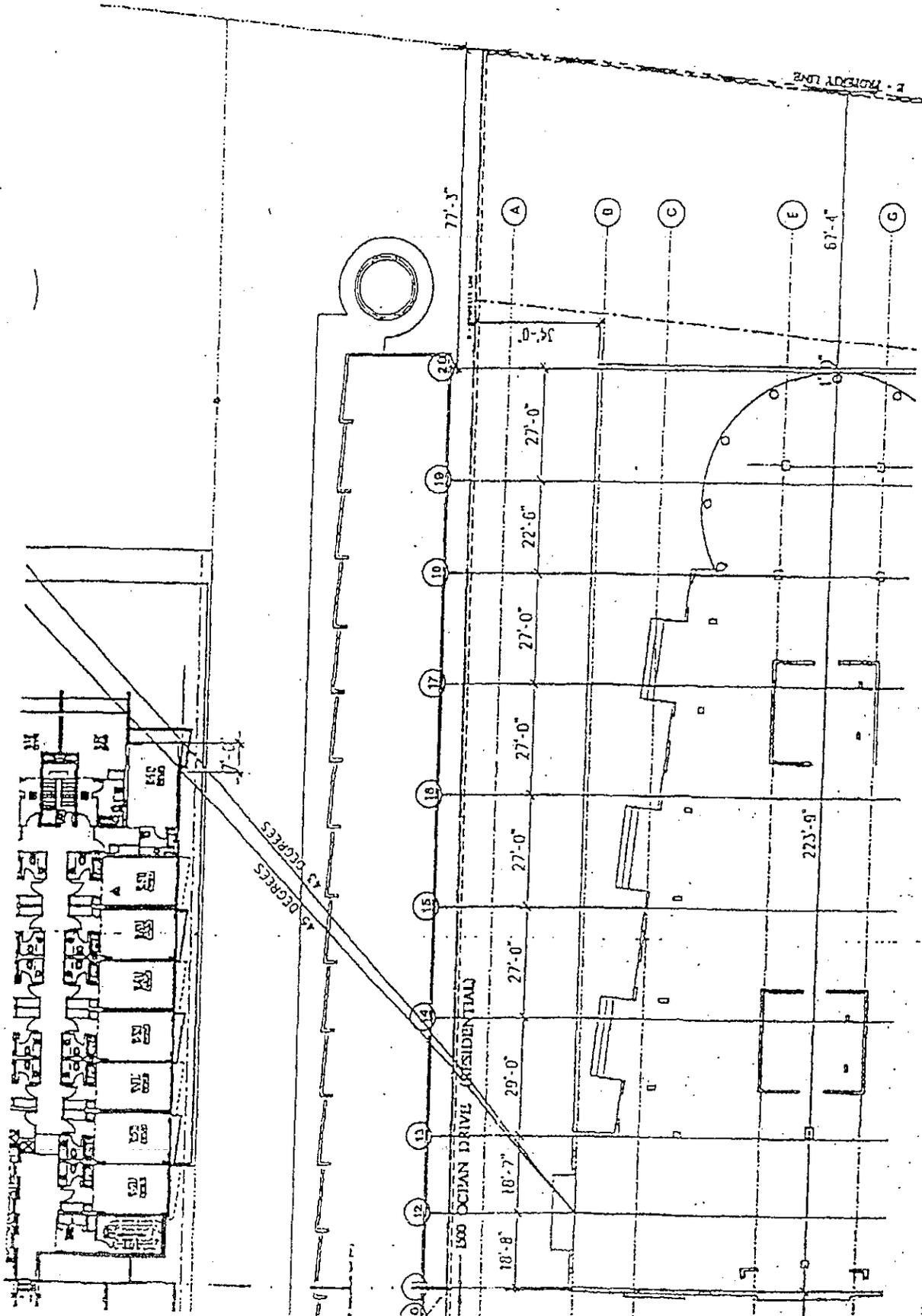
Beginning at the S.E. corner of said Lot 1, Block 56, of "FISHER'S SUBDIVISION OF ALTON BEACH"; thence North  $7^{\circ} 35' 20''$  East along the Easterly line of said Block 56 for a distance of 177.47 feet to the Northeast corner of the South 1/2 of said Lot 4, Block 56; thence North  $88^{\circ} 00' 23''$  East along the Easterly extension of the North line of said South 1/2 of Lot 4 for a distance of 195.26 feet to a point on a line known as the erosion Control Line as recorded in Plat Book 105, at Page 82, of the Public Records of Dade County, Florida; thence South  $3^{\circ} 26' 45''$  West along said Erosion Control Line also known as the Bulkhead line as described in Ordinance No. 856, Section 1, of the City of Miami Beach, recorded in Plat Book 74 at Page 4, of the Public Records of Dade County, Florida; for a distance of 175.78 feet; thence South  $88^{\circ} 00' 21''$  West along the Easterly extension of the South line of said Lot 1, Block 56, for 208.14 feet to the Point of Beginning, lying and being in the City of Miami Beach, Dade County, Florida.

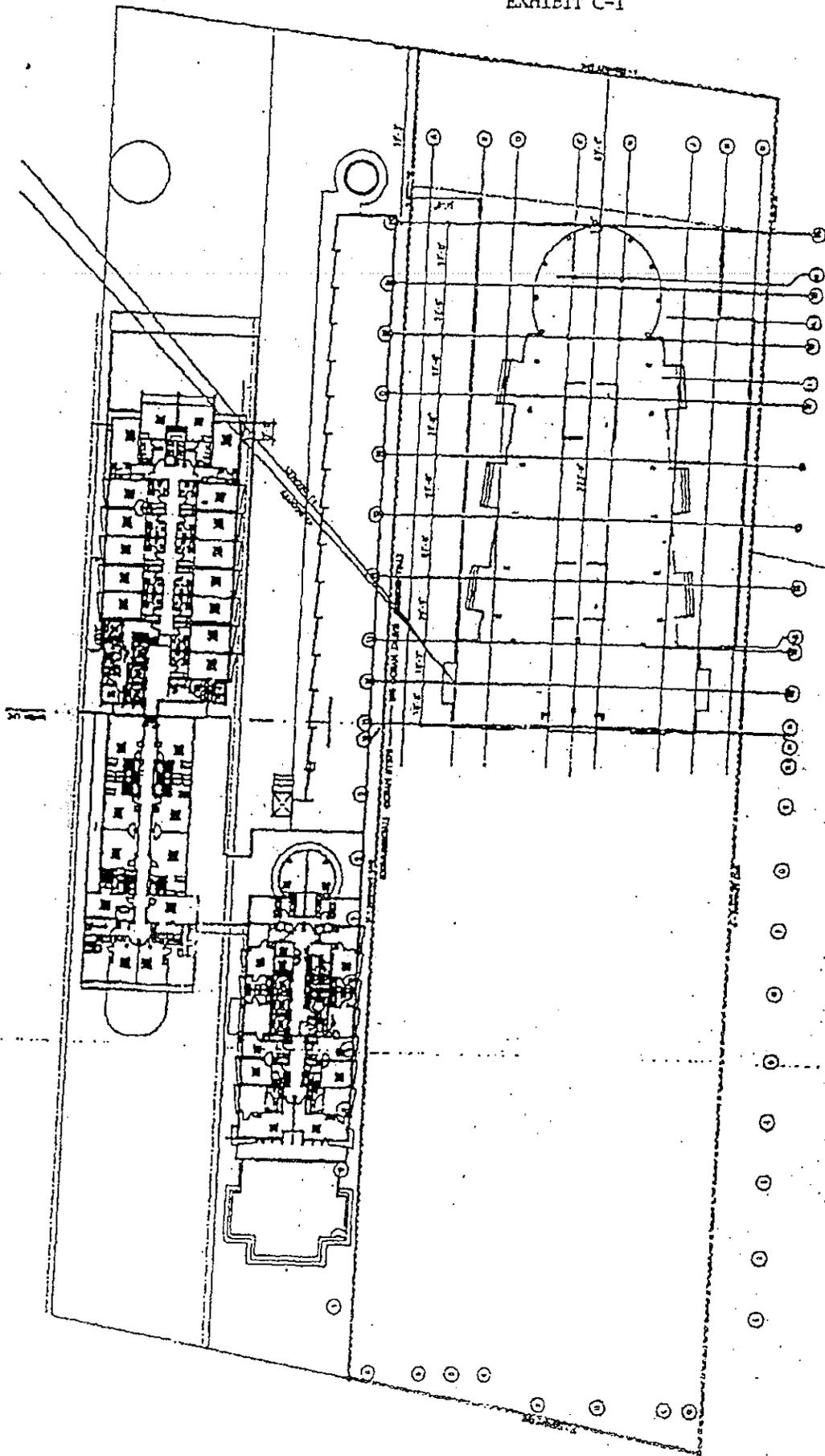
EXHIBIT C

PLANS

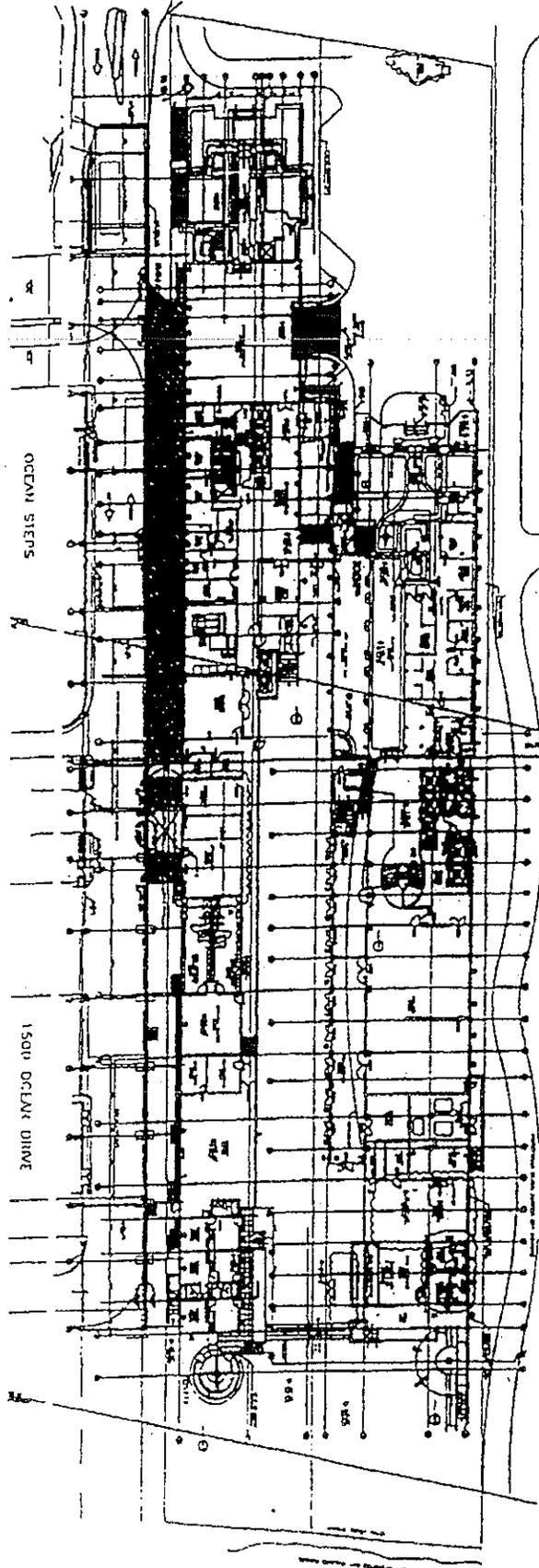
<u>Dwg. No.</u>	<u>Title</u>	<u>Latest Date</u>
C-01	Grading and Drainage Plan	6/26/97
C-02	Utility Services Plan	6/26/97
LI-1	Irrigation Plan and Details	8/25/97
LP-1	Planting Plan	8/25/97
LL-1	Lighting Plan	8/25/97
LH-1	Paving Plan	8/25/97
A0.10	Site Plan	8/25/97
A1.01	Parking Level	8/25/97
A1.02	Ground Level	8/25/97
A1.03	Second Level	8/25/97
A1.04	Third Level	8/25/97
A1.05	Fourth Level	8/25/97
A5.01	Building Elevations	8/25/97
A5.02	Shorecrest North Elevation	8/25/97
A5.03	Shorecrest South Elevation	8/25/97
A5.04	Royal Palm North Elevation	8/25/97
A5.05	Royal Palm South Elevation	8/25/97

EXHIBIT C-2





NOTE: THE RELATIONSHIP BETWEEN THE 100 OCEAN DRIVE RESIDENTIAL TOWER AND THE EAST PROPERTY LINES WILL NEED TO BE CONFIRMED WITH AN AS BUILT SURVEY IN ORDER TO IMPROVE THE PRECISION OF THIS DOCUMENT. THE SAME PROCESS WILL BE APPLIED TO THE ROYAL PALM HOTEL TOWER ONCE CONSTRUCTION IS INITIATED TO CONFIRM THIS AS BUILT CONDITION. THIS DOCUMENT REPRESENTS THE MOST ACCURATE BUILDING LOCATION REFERENCES AS OF SEPTEMBER 1997.



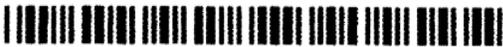
OFF. REC. 18170PG1181

EXHIBIT "E"  
DELIVERY SCHEDULE

TO BE AGREED UPON BY JEFFERSON, RDP AND THE CITY

RECORDED IN OFFICIAL RECORDS 11/2/74  
OF DADE COUNTY, FLORIDA  
RECORD VERIFIED  
HARVEY RUVIN  
CLERK BIRTHDAY 11/11/74

**Conditional Use Permit for Meats on the  
Beach, LLC dated February 8, 2015.**

  
**CFN 2015R0107124**  
 OR Bk 29506 Pgs 1574 - 1580; (7pgs)  
 RECORDED 02/19/2015 09:12:47  
 HARVEY RUVIN, CLERK OF COURT  
 MIAMI-DADE COUNTY, FLORIDA

**PLANNING BOARD**  
**CITY OF MIAMI BEACH, FLORIDA**

**PROPERTY:** 1501 Collins Avenue – Meats on the Beach, LLC

**FILE NO.** 2219

**IN RE:** The applicant, Meats on the Beach, LLC, is requesting Conditional Use approval for a Neighborhood Impact Establishment with an occupant content in excess of 300 persons, pursuant to Section 142, Article V.

**LEGAL DESCRIPTION:** See “Exhibit A” attached

**MEETING DATE:** January 28, 2015

**CONDITIONAL USE PERMIT**

The applicant, Meats on the Beach, LLC, is requesting a Conditional Use Permit pursuant Chapter 118, Article IV, “Conditional Use Procedure,” of the Land Development Regulations of the Code of the City of Miami Beach, Florida. Notice of the request for a Conditional Use Permit was given as required by law and mailed out to owners of property within a distance of 375 feet of the exterior limits of the property, upon which the application was made.

The Planning Board of the City of Miami Beach makes the following FINDINGS OF FACT, based upon the evidence, information, testimony and materials presented at the public hearing and which are part of the of the record for this matter:

That the property in question is located in the MXE, Mixed Use Entertainment zoning district;

That the Use is consistent with the Comprehensive Plan for the area in which the property is located;

That the intended Use or construction will not result in an impact that will exceed the thresholds for the levels of service as set forth in the Comprehensive Plan;

That structures and Uses associated with the request are consistent with the Ordinance;

That the public health, safety, morals, and general welfare will not be adversely affected;

That necessary safeguards will be provided for the protection of surrounding property, persons, and neighborhood values.

**IT IS THEREFORE ORDERED**, based upon the foregoing findings of fact, the evidence, information, testimony and materials presented at the public hearing, which are part of the record for this matter, and the staff report and analysis, which is adopted herein, including the staff recommendation, that a Conditional Use Permit as requested and set forth above be **GRANTED**, subject to the conditions below, which have been accepted by the applicants:



1. The Planning Board shall maintain jurisdiction of this Conditional Use Permit. The applicant shall appear before the Planning Board for a progress report within 60 days from the issuance of the BTR. The Board reserves the right to modify the Conditional Use approval at the time of a progress report in a non-substantive manner, to impose additional conditions to address possible problems and to determine the timing and need for future progress reports. This Conditional Use is also subject to modification or revocation under City Code Sec. 118-194 (c).
2. This Conditional Use Permit is issued to Meats on the Beach, LLC, as owner of Quality Meats, for a Neighborhood Impact Establishment consisting of restaurant without entertainment. Any change of operator or ownership shall require review and approval by the Planning Board as a modification to this Conditional Use Permit.
3. The conditions of approval for this Conditional Use Permit are binding on the applicant, the property owners, operators, and all successors in interest and assigns.
4. Substantial modifications to the plans submitted and approved as part of the application, as determined by the Planning Director or designee, may require the applicant to return to the Board for approval.
5. The applicant, now and in the future, shall abide by all the documents and statements submitted with this application.
6. The Applicant agrees to the following operational conditions for all permitted and accessory uses and shall bind itself, lessees, permittees, concessionaires, renters, guests, users, and successors and assigns and all successors in interest in whole or in part to comply with the following operational and noise attenuation requirements and/or limitations. The applicant shall ensure through appropriate contracts, assignments and management rules that these restrictions are enforced and the applicant agrees to include the rules and regulations set forth in these conditions in any contract or assignment:
  - a. As proposed by the applicant, the project authorized by this Conditional Use Permit includes the creation and operation of the proposed 322 seat restaurant with the criteria listed below:
    - i. The restaurant shall have a maximum occupant content of 425 persons or any lesser such occupant content as determined by the Fire Marshal.
    - ii. The indoor portion and the entire patio area of the restaurant shall close by 12:00 AM Sundays thru Wednesday and by 1:00 AM Thursdays thru Saturdays.
    - iii. On the south patio area, alcohol may only be served with meals.
    - iv. The indoor and outdoor areas associated with this venue shall not have music, whether live or recorded, whether amplified or non-amplified, which is played at a volume that is defined as entertainment, i.e., louder than ambient



background music (defined as a sound level that does not interfere with normal conversation).

- v. The house sound system shall be installed and set in such a manner as to contain sound levels completely within the facility at all times. The equipment and installation plan for the sound system, including the location of all speakers and sound level controls shall be submitted for the review and approval of the Planning Department. Ninety days after opening, the sound systems in the facility shall be tested by a qualified acoustic professional, and a report shall be submitted to the Planning Department for review.
- b. Delivery trucks shall only be permitted to park within the loading area on the north side of the building within the ground floor parking area. The loading area shall be clearly marked and shall not include the alleyway north of the building's north elevation line. All deliveries are permitted only between 9:00 am and 3:00 pm, Monday through Saturday.
- c. Delivery trucks shall not be allowed to idle in the loading zone area.
- d. Equipment and supplies shall not be stored in areas visible from streets, alleys or nearby buildings.
- e. Trash collections may occur daily between 9:00 AM and 6:00 PM.
- a. All trash containers shall utilize rubber wheels, or the path for the trash containers shall consist of a surface finish that reduces noise, in a manner to be reviewed and approved by staff.
- f. Adequate trash room space, air conditioned and noise baffled, shall be provided, in a manner to be approved by the Planning and Public Works Departments. Sufficient interior space must be provided so that doors can remain closed while trash and trash bags are being deposited in dumpsters. Doors shall remain closed and secured when not in active use.
- g. Trash room(s)/garbage room(s) shall be large enough, or sufficient in number to accommodate enough dumpsters so that more than one pick up of garbage per day will not be necessary. A high-level trash/garbage compacting device shall be located in an air-conditioned trash/garbage holding room within the facility.
- h. Garbage dumpster covers shall be closed at all times except when in active use.
- i. Restaurant personnel shall take measures to enforce the Patron Age Restriction of the City Code during the hours of operation of all alcoholic beverage establishments.
- j. No patrons shall be allowed to queue on public rights-of-way, or anywhere on the exterior premises of the subject property.
- k. The number of valet runners shall be sufficient to ensure that there is not any double parking of vehicles or any other queuing of vehicles in the right of way on 15th

Street, and this operation will be further evaluated at the time of the 60 day progress report. Quality Meats shall secure 50 parking spaces within the parking garage at 1501 Collins Avenue for the exclusive use of their patrons and at least 30 spaces in the Il Villaggio commercial parking garage for valet parking.

- i. The owner/operator shall be responsible for maintaining the areas adjacent to the facility, including the sidewalk, and all areas around the perimeter of the property. These areas shall be kept free of trash, debris and odor, and shall be swept and hosed down at the end of each business day
  - m. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
  - n. Special Events may occur on the premises, subject to City ordinances, rules or regulations existing at the time, and may exceed the hours of operation and occupancy loads specified herein, if permitted by the Fire Marshal, subject to the review and approval of staff. Simultaneous with the submission of an application for such special event to the appropriate department of the City of Miami Beach, the applicant shall send a copy of such application with a notice of the time and purpose of such special event to management office of 1500 Ocean Drive Condominium, Il Villaggio Condominium and The Drake.
  - o. The applicant will take such action as may be necessary to prevent the parking of vehicles by its patrons, employees, suppliers, and independent contractors in the east-west driveway which is located north of the building where the restaurant is located. The applicant will arrange for the prompt and expeditious removal of any such vehicle associated with the applicant's business which is parked in said driveway.
7. The final details of all exterior umbrellas, drapes, curtains, and any other treatments, including materials, dimensions and finishes, shall be subject to the review and approval of staff.
8. The applicant shall address the following Concurrency and Parking requirements, as applicable:
  - a. A Method of Transportation (MOT) shall be submitted to Public Works Department staff for review and approval prior to the issuance of a building permit. The MOT shall address any traffic flow disruption due to construction activity on the site.
  - b. Prior to the issuance of a building permit, the applicant shall participate in a Transportation Concurrency Management Area Plan (TCMA Plan), if deemed necessary, by paying its fair share cost, as may be determined as determined by the Concurrency Management Division.
  - c. A final concurrency determination shall be conducted prior to the issuance of a Building Permit. Mitigation fees and concurrency administrative costs, if required, shall be paid prior to the issuance of any Building Permit.



9. A bicycle parking plan shall be submitted for staff review and approval prior to the issuance of a Building Permit.
10. The applicant shall satisfy outstanding liens and past due City bills, if any, to the satisfaction of the City prior to the issuance of an occupational license to operate this entertainment establishment.
11. The applicant shall obtain a full building permit within 18 months from the date of the meeting, and the work shall proceed in accordance with the Florida Building Code. Extensions of time for good cause, not to exceed a total of one year for all extensions, may be granted by the Planning Board.
12. The Planning Board shall retain the right to call the owner or operator back before them and modify the hours of operation or the occupant load should there be valid complaints about loud, excessive, unnecessary, or unusual noise. Nothing in this provision shall be deemed to limit the right of the Planning Board to call back the owner or operator for other reasons and for other modifications of this Conditional Use Permit.
13. A violation of Chapter 46, Article IV, "Noise," of the Code of the City of Miami Beach, Florida (a/k/a "noise ordinance"), as may be amended from time to time, shall be deemed a violation of this Conditional Use Permit and subject to the remedies as described in section 118-194, Code of the City of Miami Beach, Florida.
14. This order is not severable, and if any provision or condition hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the order shall be returned to the Board for reconsideration as to whether the order meets the criteria for approval absent the stricken provision or condition, and/or it is appropriate to modify the remaining conditions or impose new conditions.
15. The executed Conditional Use Permit shall be recorded in the Public Records of Miami-Dade County, Florida, at the expense of the applicant and returned to the Planning Department. No building permit, certificate of occupancy, or certificate of completion shall be issued until this requirement has been satisfied.
16. The establishment and operation of this Conditional Use shall comply with all the aforementioned conditions of approval; non-compliance shall constitute a violation of the Code of the City of Miami Beach, Florida, and shall be subject to enforcement procedures set forth in Section 114-8 of said Code and such enforcement procedures as are otherwise available. Any failure by the applicant to comply with the conditions of this Order shall also constitute a basis for consideration by the Planning Board for a revocation of this Conditional Use.
17. Nothing in this order authorizes a violation of the City Code or other applicable law, nor allows a relaxation of any requirement or standard set forth in the City Code.

MB

PB No. 2219 – 1501 Collins Ave  
Page 6 of 7

Dated this 18<sup>th</sup> day of February, 2015

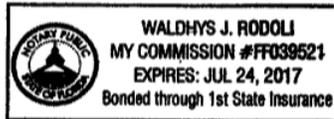
PLANNING BOARD OF THE  
CITY OF MIAMI BEACH, FLORIDA

BY: Michael Belush  
Michael Belush, Planning and Zoning  
Manager  
For Chairman

STATE OF FLORIDA )  
COUNTY OF MIAMI-DADE )

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of February, 2015, by Michael Belush, Planning and Zoning Manager of the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.

[NOTARIAL SEAL]



Waldhys J. Rodoli  
Notary:  
Print Name: Waldhys J. Rodoli  
Notary Public, State of Florida  
My Commission Expires: 7-24-17  
Commission Number: FF039521

Approved As To Form:  
Legal Department [Signature] ) 2/18/2015

Filed with the Clerk of the Planning Board on 2/18/2015 ( [Signature] )

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MB

OR BK 29506 PG 1580  
LAST PAGE

PB No. 2219 – 1501 Collins Ave  
Page 7 of 7

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EXHIBIT "A"

1501 OCEAN STEPS CONDO, ALTON BEACH 1ST SUB PB 2-77, LOTS 18 THRU 20 & S1/2 OF LOT 17, & S1/2 OF LOT 4 & LOTS 1 THRU 3, LESS PORT DESC INOR 18368-1130, AS DESC IN DEC OR 22895-2861.

Units CU-100, CU-201 and CU-202 as described in that certain Declaration of Condominium of 1501 Ocean Steps Condominium, recorded on December 10, 2004 in Official Records Book 22895 at Page 2861, as amended.

7MB

Book29506/Page1580    CFN#20150107124

Page 7 of 7

**Modified Conditional Use Permit for the  
Royal Palm Hotel dated May 14, 2019.**

**PLANNING BOARD  
CITY OF MIAMI BEACH, FLORIDA**

**PROPERTY:** 1545 Collins Avenue. The Royal Palm Hotel

**FILE NO.** PB 17-0108 f/k/a PB 2032

**IN RE:** As a result of a public hearing to consider a revocation or modification of an approved Conditional Use permit, as an enforcement action, the Planning Board modified the conditions of the original Planning Board order for the Conditional Use for RP Hotel Holding, LLC, to operate an aggregate of uses - a full service restaurant, a specialty restaurant and lounge, and hotel bar - open to the general public, as a Neighborhood Impact Establishment located in the renovated Royal Palm/Shorecrest Hotel property.

**LEGAL DESCRIPTION:** See Attachment 'Exhibit A'

**MEETING DATE:** April 25, 2017, April 30, 2019

**MODIFIED CONDITIONAL USE PERMIT**

As a result of a public hearing to consider a revocation or modification of an approved Conditional Use permit, as an enforcement action, the Planning Board modified the conditions of the original Planning Board order for the Conditional Use for RP Hotel Holding, LLC, to operate an aggregate of uses - a full service restaurant, a specialty restaurant and lounge, and hotel bar - open to the general public, as a Neighborhood Impact Establishment located in the renovated Royal Palm/Shorecrest Hotel property pursuant Chapter 118, Article IV, "Conditional Use Procedure," of the Land Development Regulations of the Code of the City of Miami Beach, Florida. Notice of the request for a Conditional Use Permit was given as required by law and mailed out to owners of property within a distance of 375 feet of the exterior limits of the property, upon which the application was made.

The Planning Board of the City of Miami Beach makes the following FINDINGS OF FACT, based upon the evidence, information, testimony and materials presented at the public hearing and which are part of the of the record for this matter:

That the property in question is located in the RM-3, Residential multifamily high Intensity zoning district;

That the Use is consistent with the Comprehensive Plan for the area in which the property is located;

That the intended Use or construction will not result in an impact that will exceed the thresholds for the levels of service as set forth in the Comprehensive Plan;

That structures and Uses associated with the request are consistent with the Ordinance;

MB

*PB 17-0108 fka PB 2032 –1545 Collins Avenue - CUP*

*Page 2 of 13*

That the public health, safety, morals, and general welfare will not be adversely affected;

That necessary safeguards will be provided for the protection of surrounding property, persons, and neighborhood values.

**IT IS THEREFORE ORDERED**, based upon the foregoing findings of fact, the evidence, information, testimony and materials presented at the public hearing, which are part of the record for this matter, and the staff report and analysis, which is adopted herein, including the staff recommendation, that a Conditional Use Permit as requested and set forth above be GRANTED, subject to the conditions below, which have been accepted by the applicants. (~~Strikethrough~~ signifies deletions; Underlining signifies new language):

1. The Planning Board shall maintain jurisdiction of this Conditional Use Permit. Ninety days after the issuance of the Business Tax Receipt or after general commencement of operations, whichever comes later, the applicant shall provide a progress report to the Planning Board. The Board reserves the right to modify the Conditional Use approval at the time of a progress report in a non-substantive manner, to impose additional conditions to address possible problems and to determine the timing and need for future progress reports. This Conditional Use is also subject to modification or revocation under City Code Sec. 118-194 (c).
2. This Conditional Use Permit is issued to RP Hotel Holding, LLC as owner of the property. In the event of any change in the owner and/or operator, the new owner and/or operator shall appear before the Board to affirm their understanding of the conditions listed herein at the earliest Board meeting for which the Planning Department can lawfully include this item on the Board's agenda.
3. The conditions of approval for this Conditional Use Permit are binding on the applicant, the property owners, operators, and all successors in interest and assigns.
4. Substantial modifications to the plans submitted and approved as part of the application, as determined by the Planning Director or designee, may require the applicant to return to the Board for approval.
5. The applicant, now and in the future, shall abide by all the documents and statements submitted with this application for a Neighborhood Impact Establishment Conditional Use Permit.
6. As proposed by the applicant, the project authorized by this Conditional Use Permit includes the creation and operation of the following three (3) venues, with their respective approximate maximum occupant loads or such respective lower maximum occupant loads as the Fire Marshal may determine, resulting in an approximate aggregate maximum occupant load of 774 persons or such lower aggregate maximum occupant load as the Fire Marshal may determine:
  - (A) the lobby lounge and bar, presently intended to be named James Club, to be located wholly in the inside of the first floor of the north building – 70 persons;
  - (B) the full-service "destination" restaurant, lounge, and nightclub, presently unnamed,

*MBS*

*PB 17-0108 fka PB 2032 – 1545 Collins Avenue - CUP*

*Page 3 of 13*

- to be located at the front of the first and second floors of the south building, with a total occupant load of 543 persons, and generally consisting of:
- (i) 54 outdoor dining seats to be located on the existing first-floor terrace located on the west side of and wrapping around the north side of the south building;
  - (ii) 233 indoor dining seats to be located on the first and second floors of the south building; and
  - (iii) 256 persons in the lounge and nightclub to be located in the rear of the first floor of the south building;
- (C) the three-meal restaurant (which also offers room service), presently intended to be named Jimmy's Restaurant, to be located wholly outside on the south side of the first floor of the north building (presently occupied in part by exercise equipment) and wrapping around to the pool deck on the east side of the north building (presently occupied in part by a bar) – 146 seats;
7. The three (3) above-described venues shall have the following respective hours and operations:
- (A) the lobby lounge and bar will close at 5 AM – entertainment is authorized, a dance hall is not authorized;
  - (B) the full-service "destination" restaurant, lounge, and nightclub:
    - (i) The outdoor dining area will close at 2 AM (inclusive of all clean-up and other staff operations) – Neither entertainment nor a dance hall is authorized; and
    - (ii) The indoor area will close at 5 AM – Subject to compliance with applicable requirements, entertainment and a dance hall are authorized;
  - (C) the three-meal restaurant (Jimmy's) will close at 2 AM
8. An operation plan for the restaurants and commercial uses shall be submitted to Planning Department staff for review and approval prior to the issuance of a Certificate of Occupancy, Certificate of Completion or Business Tax Receipt, whichever occurs first.
9. None of the rooftops of the present buildings or any future buildings shall have any guest, invitee, or public usage or facilities of any kind, and there shall be no access to any such rooftop except for
- (A) emergency evacuations as required by the Fire Code and Fire Marshal, and
  - (B) the hotel's operating, maintenance, and construction personnel and contractors.
10. Applicant will install and maintain a safe, secure, and locked rear gate which can be opened only by registered hotel guests using their magnetic room key cards or other secure devices,

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hotel personnel, and public safety personnel.

11. Applicant will repair or install, and will thereafter maintain, a fire alarm system which reduces false alarms to a generally accepted minimum number, and which complies in all other respects with all applicable requirements.
12. Applicant will adopt and, on a 24-hour basis will apply, such practices and procedures as are reasonably likely to remedy inappropriate guest and invitee conduct. Without limiting the generality of the foregoing, applicant's personnel will, on a 24-hour basis, regularly inspect:
  - (A) all outdoor areas in order to determine whether there is any yelling, screaming, or other inappropriate sounds being made by guests or invitees who are on any terrace, balcony, pool deck, breezeway, or any other outdoor area, and will promptly take such action as may be reasonably necessary to terminate the yelling, screaming, and other inappropriate sounds and to prevent a recurrence; and
  - (B) all terraces, balconies, and other outdoor areas in order to determine whether any railings are being used to hang or dry towels, swim suits, beach toys, and other items, such inspection to be made from the ground or any other reasonable vantage point, and will promptly take such action as may be reasonable necessary to terminate such practices and to prevent their recurrence.

Applicant will arrange for hotel management on duty to be available by telephone, on 24-hour basis, to receive and act promptly upon complaints of inappropriate guest or invitee conduct.

13. No outdoor bar counters shall be permitted except that the bar at Jimmy's Restaurant shall be part of a full service restaurant at all times. No outdoor bar counter shall be placed on any roof, terraces, private decks, or balconies at any time. Temporary outdoor bar counters, including temporary outdoor bar counters on the 2<sup>nd</sup> floor pool deck, will be permitted during customary hotel events (not open to the general public) which shall be removed on:
 

Sunday through Thursday: 11:00 p.m.  
Friday and Saturday: Midnight

14. Calculations for required parking for the project shall be determined by the Planning Department prior to approval of a building permit. Such parking calculations shall be based upon both the number of hotel rooms, residential units, and additionally, the intensity of the proposed accessory uses as measured by the number of seats in dining areas, and by the square footage of the liquor service areas not included in the areas for which seats are calculated. A final determination for the required parking shall be conducted at the time of the Building Permit and any deficiency may be paid by a fee in lieu of providing the required parking, which shall be paid before the building permit is issued.
15. A queuing analysis relating to the valet parking processing rate shall be revised to determine whether additional attendants will need to be added to the valet operation. The revised queuing analysis shall be submitted to Planning Department staff for review and approval prior to the issuance of a Certificate of Occupancy, Certificate of Completion, or Business Tax Receipt, whichever occurs first.

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proposed in the application, that change must be presented and approved by the HPB in a subsequent application, and not by staff review, unless such change is approved in writing by 1500 Ocean Drive.

- (F) The applicant will establish rules that prohibit guests from bringing electronic amplification devices on the decks and balconies that may disturb the residents of 1500 Collins Avenue.
  - (G) The rooftops of the lanai building shall not be used as habitable areas.
  - (H) Owner agrees to install an exhaust system, if required by code, for the kitchen that will substantially reduce grease and smoke that would otherwise escape to the surrounding area. This may include the installation of a fan in connection with the kitchen exhaust system within the interior of the building in order to reduce noise levels at the exhaust outlet.
19. Hotel security personnel and other hotel staff shall take measures to enforce the Patron Age Restriction of the City Code during the hours of operation of all alcoholic beverage establishments.
  20. The Applicant will provide supervisory training to senior staff personnel to ensure that at all times there are trained staff members on site to monitor and control guest behavior in the outdoor areas, in particular open spaces at Jimmy's and pool deck areas. Senior staff will ensure that all conditions stipulated in the Conditional Use Permit are followed by hotel guests and invitees. In addition, the Applicant will purchase a two-way radio system so personnel can maintain contact with the general manager and/or the senior manager on duty. Additionally, security cameras will be utilized and off duty police or security personnel will be hired on an as needed basis.
  21. If any outdoor venue has doors which open upon any indoor venue which is authorized by this Conditional Use Permit to remain open later than its connected outdoor venue, then, at and after the time specified in this Conditional Use Permit for that outdoor venue to close, the indoor venue must either (A) close those connecting doors, or (B) reduce the volume of the music to the level specified in the noise ordinance. Background ambient music will be turned off around the pool area:
    - Sunday through Thursday: 11:00 p.m.
    - Friday and Saturday: Midnight
    - Jimmy's Restaurant (three-meal restaurant): 2:00 a.m.
  22. No outside sound systems shall be permitted; only house sound systems shall be used. At all times, each of the house sound systems shall be under the control only of the general manager, the manager on duty, or the hotel manager on duty. Following installation and testing, each sound system shall be locked and password-protected, so that its volume cannot be changed
    - (A) by any one other than one of those individuals, or

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- (B) to a volume which would violate the City's Noise Ordinance. Each sound system shall, in all respects, be installed, tested, and operated so that it complies with the specifications and requirements of the Noise Study prepared by The Audio Bug, Inc. and dated July 25, 2011 ("Sound Study"). The Audio Bug, Inc. will prepared an updated letter from its report addressing directional noise transfer issues that may exist in the direction of the 1500 Ocean property.
23. Special Events may exceed restrictions except for the noise ordinance and any other Ordinances, rules or regulations existing at the time, and shall be noticed by the applicant in advance of filing an application for special events, proof of which shall be filed with the application, to abutting residential condominium associations for suggestions and objections. If a Special Event Permit is issued, a specific condition of the event shall be that no live music or entertainment shall be permitted after 2:00 a.m. except for New Year's Eve and July 4<sup>th</sup>.
24. The installation plan for each proposed new sound system and for each proposed material modification of an existing sound system, including the location of all the speakers and sound system controls shall be submitted to staff for review and approval prior to obtaining a building permit. Speakers shall not be installed above ground (walls, etc.)
25. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
26. The following shall apply to all deliveries, loading, and garbage and trash pickups which shall be conducted:
- (A) from the private driveway which is located to the south of the property ~~Shorecrest~~ and to which applicant has access through agreements with the driveway's owners located to the south of the private driveway; and
- (B) directly within the structures or private driveway and not on Collins Avenue; and
- (C) ~~be conducted, to the greatest extent possible, within the northern 15 feet of the shared driveway adjacent to the hotel's southern wall so as to minimize disruption of traffic within the shared driveway between 9:00 AM and 5:30 PM only; and~~
- (D) within the 15-foot-wide strip, running east-west approximately 179 feet, and located between, on the north, the hotel's southern wall, and on the south, a clear and brightly-painted continuous yellow stripe, running in an east-west direction, which shall be placed, maintained, and periodically repainted in a location approximately 15 feet south of the Royal Palm Shorecrest Hotel structure;
- or within the loading areas located south of the shared driveway, provided the loading docks of the buildings located on the south side of the shared driveway are not blocked; and
- (E) not within the shared driveway, which is located in-between the loading area to the north and the loading area to the south, both of which are delineated by yellow striping running east-west along the shared driveway.

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27. Deliveries, loading, garbage and trash pickups shall adhere to the following operational standards:

(A) At the top of the ramp of the shared driveway, an arm gate, or two arm gates, one for each lane, but in either case, extending the entire width of the shared driveway, shall, within sixty days of the modification of the CUP, be installed in a sound and workmanlike manner, using materials and equipment which are generally recognized as appropriate for high-quality commercial or residential buildings. Thereafter, the arm gate(s) shall, promptly and in the same manner, be maintained, repaired, periodically serviced, and replaced (all or in part) as may reasonably be needed from time to time.

(B) Parking in the 15-foot-wide strip, described in Condition 26 (D) above, shall be prohibited between 9:00 AM and 5:30 PM 365 days a year, except for vehicles engaged in delivery and pickup operations. The applicant shall not block or obstruct in any manner any part of the 15-foot-wide strip, except for vehicles engaged in delivery and pickup operations. Between 9:00 AM and 5:30 PM 365 days a year, applicant shall engage personnel to manage the shared driveway and promptly take action to remove any such vehicle and/or to remove any such blockage or obstruction.

Notwithstanding the foregoing, the applicant shall be permitted to provide five (5) delineated parking spaces located on the western end of the shared driveway, and located north of the shared driveway (north of the northerly yellow strip).

(C) ~~Trash/garbage containers shall have rubber wheels and be maintained in a clean and fully operable condition. Trash/garbage containers shall be kept in the trash room except during trash pick-up, after which the containers shall be promptly returned to the trash room. Deliveries and pickups shall be handled and managed by a dock master supervisor who shall be on duty between 9:00 AM and 5:30 PM 365 days a year, and who shall be stationed at a location where the entire shared driveway and the 15-foot-wide-strip can be observed and immediately accessed. The dock master supervisor shall be responsible for:~~

i. controlling hotel related deliveries and refuse pick up traffic in order to minimize disruption of traffic on Collins Avenue and in order to minimize interference with the business and resident traffic of the respective shared driveway's respective owners, and

ii. enforcing the provisions of this conditions No. 26 and 27 relating to Deliveries and Pick-Ups.

(D) Trash/garbage containers shall have rubber wheels and be maintained in a clean and fully operable condition. Trash/garbage containers shall be kept in the trash room, with its door completely closed except during trash and garbage pickups, after which the containers shall be promptly returned to the trash room, its door completely closed, and all trash, debris, and garbage shall be removed from the area

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in front of the door.

- (E) A high-level trash/garbage compacting device shall be located in an air-conditioned trash/garbage holding room located on the south side of the south building; time of service for deliveries and best efforts used to have garbage and trash pickups shall be restricted to not before 9 A.M. and not after 6 5:30 P.M. ~~On a 24-hour basis, applicant's management personnel shall regularly inspect the private driveway in order to determine whether it is being used for parking by any hotel guest, employee, or contractor, and shall promptly take appropriate action to remove any such vehicle.~~
- (F) All garbage and trash from hotel rooms, restaurants, bars, meeting rooms, and any other facilities or activities on or attributable to the property will be disposed of on a daily basis and will be consolidated in an air-conditioned trash/garbage holding room located on the south side of the south building. Applicant will enter into a contract with an appropriate waste removal operator, and at that time a more detailed sanitation plan shall be provided to Planning Department staff for review and approval, such plan to include a copy of the fully-signed contract with the waste removal operator.
28. All variances, as may be necessary for the entire project shall be applied for and obtained prior to applying for a building permit.
29. The applicant shall submit an MOT (Method of Transportation) to Public Works Department staff for review and approval prior to the issuance of a building permit. The MOT shall address any traffic flow disruption due to construction activity on the site.
30. In accordance with Chapter 122 of the Code of the City of Miami Beach, the Transportation and Concurrency Management Division shall conduct a final concurrency determination that will meet the City's concurrency requirements and level-of-service standards prior to the issuance of a Building Permit. Mitigation fees and concurrency administrative costs shall be paid prior to the project receiving any Building Permit. The applicant shall participate in a Transportation Concurrency Management Area Plan (TCMA Plan), by paying its fair share cost, as may be determined by the Concurrency Management Division. Without exception, all concurrency fees shall be paid prior to the issuance of a Temporary Certificate of Occupancy or Certificate of Occupancy.
31. The applicant shall obtain a full building permit within 18 months from the date of the meeting, and the work shall proceed in accordance with the Florida Building Code. Extensions of time for good cause, not to exceed a total of one year for all extensions, may be granted by the Planning Board.
32. The applicant shall resolve outstanding violations and fines, if any, prior to the issuance of a building permit for the structure.
33. The Planning Board shall retain the right to call the owner or operator back before them and modify the hours of operation or the occupant load of the accessory uses proposed for the project should there be valid complaints about loud, excessive, unnecessary, or unusual late night noise, or amend other conditions or add new conditions. Nothing in this provision shall

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be deemed to limit the right of the Planning Board to call back the owner or operator for other reasons and for other modifications of this Conditional Use Permit.

34. Applicant agrees to replace the garage exhaust fans and install new fans per building code requirements that are state of the art Quiet Technology within 60 days of the issuance of a Temporary Certificate of Occupancy for the new destination restaurant located in the Shorecrest hotel.
35. A violation of Chapter 46, Article IV, "Noise," of the Code of the City of Miami Beach, Florida (a/k/a "noise ordinance"), as may be amended from time to time, shall be deemed a violation of this Conditional Use Permit and subject to the remedies as described in section 118-194, Code of the City of Miami Beach, Florida.
36. This order is not severable, and if any provision or condition hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the order shall be returned to the Board for reconsideration as to whether the order meets the criteria for approval absent the stricken provision or condition, and/or it is appropriate to modify the remaining conditions or impose new conditions.
37. This Conditional Use Permit shall be recorded in the Public Records of Miami-Dade County within a reasonable time after receipt at the expense of the applicant. No building permit, certificate of use, certificate of occupancy, certificate of completion or business tax receipt shall be issued until this requirement has been satisfied.
38. The establishment and operation of this Conditional Use shall comply with all the aforementioned conditions of approval; non-compliance shall constitute a violation of the Code of the City of Miami Beach, Florida, and shall be subject to enforcement procedures set forth in Section 114-8 of said Code and such enforcement procedures as are otherwise available. Any failure by the applicant to comply with the conditions of this Order shall also constitute a basis for consideration by the Planning Board for a revocation of this Conditional Use.
39. Nothing in this order authorizes a violation of the City Code or other applicable law, nor allows a relaxation of any requirement or standard set forth in the City Code.

Dated this 14<sup>th</sup> day of MAY, 2019.

PLANNING BOARD OF THE  
CITY OF MIAMI BEACH, FLORIDA

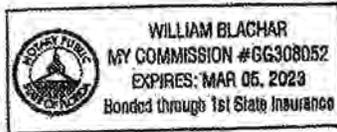
BY: Michael Belush  
 Michael Belush, AICP  
 Chief of Planning and Zoning  
 For Chairman

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STATE OF FLORIDA     )  
COUNTY OF MIAMI-DADE )

The foregoing instrument was acknowledged before me this 14 day of May, 2019, by Michael Belush, AICP, Chief of Planning and Zoning of the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.

[NOTARIAL SEAL]



William Blachar  
Notary:  
Print Name:  
Notary Public, State of Florida  
My Commission Expires: March 6<sup>th</sup>, 2023  
Commission Number:

Approved As To Form:  
Legal Department Dick Tallegio, 5/13/2019

Filed with the Clerk of the Planning Board on Jessie G. Kelly, 5/14/19

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EXHIBIT "A"

LEGAL DESCRIPTION

**Parcel 1 (Royal Palm Hotel site)**

The South 12.65 feet (measured along the lot line) of Lots 7 and 14, all of Lots 6 and 15, and the North 10.0 feet (measured along the lot line) of Lots 5 and 16, all in Block 56, FISHER'S FIRST SUBDIVISION OF ALTON BEACH, according to the Plat thereof, as recorded in Plat Book 2, Page 77, Public Records of Dade County, Florida, together with that certain parcel of land lying East and adjacent to the above described parcel, said parcel bounded on the South by the South line of the above described parcel extended Easterly, bounded on the North by the North line of the above described parcel extended Easterly, bounded on the East by the Erosion Control Line of the Atlantic Ocean, and bounded on the West by the East line of the above mentioned Block 56; said lands containing 0.9941 acres more or less.

**Parcel 2 (Shorecrest Hotel site)**

The South 40.00 feet (measured along the lot line) of Lots 5 and 16, and the North one-half of Lots 4 and 17, all in Block 56, FISHER'S FIRST SUBDIVISION OF ALTON BEACH, according to the Plat thereof, as recorded in Plat Book 2, Page 77 of the Public Records of Dade County, Florida, together with that certain parcel of land lying East and adjacent to the above described parcel, said parcel bounded on the South by the South line of the above described parcel extended Easterly, bounded on the North by the North line of the above described parcel extended Easterly, bounded on the East by the Erosion Control Line of the Atlantic Ocean, and bounded on the West by the East line of the above mentioned Block 56; Said lands containing 0.8849 acres more or less.

All lands described above located, lying and being in Section 34 Township 53 South, Range 42 East, City of Miami Beach, Florida.

**Parcel 3**

Easement for the benefit of Parcels I and II as contained in that Garage Easement Agreement dated May 28, 1998, recorded July 1, 1998, in Official Records Book 18170, page 1082 of the Public Records of Dade County, Florida, over and across the following described lands:

Lots 8, 9, 10, 11, 12 and 13, Block 57, FISHER'S FIRST SUBDIVISION OF ALTON BEACH, according to the plat thereof, recorded in Plat Book 2, page 77 of the Public Records of Dade County, Florida, together with that portion of 16<sup>th</sup> Street (Avenue "C") lying West of the West Right of way line of Collins Avenue, as shown on said Plat, LESS AND EXCEPT the following described parcel:

BEGINNING at the Southwest corner of Block 54 of said FISHER'S FIRST SUBDIVISION OF ALTON BEACH plat, thence N88°00'53"E, along the South line of said Block 54, a distance of 443.08 feet to the Southeast corner of said Block 54, thence S07°35'04"W, a distance of 96.26 feet to a point of cusp with a tangent curve concave to the Southwest, thence along the arc of said curve to the left, having a radius of 25.00 feet and a central angle of 90°00'00" an arc distance of 39.27 feet to a point of tangency; thence N82°24'52"W, a distance of 24.75 feet; thence

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S88°00'53"W, along a line 8.00 feet North of and parallel with, as measured at right angles to the North line of Block 57 of said plat, a distance of 382.18 feet to a point on the Easterly right of way line of Washington Avenue, thence N01°59'11"W along said Easterly right of way line, a distance of 62.00 feet to the Southwest corner of said Block 54 and the POINT OF BEGINNING. Said lands lying and being in the City of Miami Beach, Dade County, Florida.

**Parcel 4**

Easement for the benefit of Parcels I and II as contained in that Reciprocal Access, Use, Development and Easement Agreement dated October 21, 1997, recorded July 1, 1998, in Official Records Book 18170, page 1156 of the Public Records of Dade County, Florida, over and across the following described lands:

All of Lots 1, 2, 3, 18, 19, 20 and the South Half of Lots 4 and 17, all in Block 56 of FISHER'S FIRST SUBDIVISION OF ALTON BEACH, according to the Plat thereof recorded in Plat Book 2, page 77 of the Public Records of Dade County, Florida.

AND

A parcel of land adjacent to and immediately East of the above described lands and more particularly described as follows:

BEGINNING at the Southeast corner of said Lot 1, Block 56, of FISHER'S FIRST SUBDIVISION OF ALTON BEACH, thence N7°35'20"E, along the Easterly line of said Block 56 for a distance of 177.47 feet to the Northeast corner of the South Half of said Lot 4, Block 56; thence N88°00'23"E along the Easterly extension of the North line of said South Half of Lot 4 for a distance of 195.26 feet to a point on a line known as the Erosion Control Line as recorded in Plat Book 105 at page 82 of the Public Records of Dade County, Florida; thence S3°26'45"W, along said Erosion Control Line also known as the Bulkhead line as described in Ordinance No. 856 Section 1 of the City of Miami Beach, recorded in Plat Book 74 at page 4 of the Public Records of Dade County, Florida for a distance of 175.78 feet; thence S88°00'21"W, along the Easterly extension of the South line of said Lot 1, Block 56 for 208.14 feet to the POINT OF BEGINNING, lying and being in the City of Miami Beach, Dade County, Florida.

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