

EXHIBIT A

**AMENDMENT NO. 2
TO THAT CERTAIN LEASE AGREEMENT BETWEEN
THE CITY OF MIAMI BEACH, FLORIDA AND
THE GREATER MIAMI JEWISH FEDERATION**

This AMENDMENT NO. 2 TO LEASE AGREEMENT (this "**Amendment**") is made effective as of the ____ day of _____, 2021, by and between the CITY OF MIAMI BEACH, FLORIDA, a municipal corporation of the State of Florida (the "**City**" and/or "**Lessor**"), and THE GREATER MIAMI JEWISH FEDERATION, INC., a Florida Non-Profit Corporation (the "**Lessee**").

WITNESSETH

WHEREAS, on January 26, 2000, the Mayor and Commission adopted Resolution No. 2000-23776, approving a Lease Agreement between the City and the Holocaust Memorial Committee, Inc. ("**Original Lessee**") to operate and maintain the Holocaust Memorial (the "**Memorial**"), located at the Southeast Corner of Meridian Avenue and Dade Boulevard, in Miami Beach, Florida, for a term of ninety-nine (99) years, expiring on March 7, 2099 (the "**Original Lease**"); and

WHEREAS, on January 16, 2008, pursuant to Resolution No. 2008-26732, the Mayor and City Commission approved an assignment of the Original Lease from Original Lessee to The Greater Miami Jewish Federation, Inc., a Florida Non-Profit Corporation (the "**Assignment**"); and

WHEREAS, on July 20, 2010, the City and Lessee entered into that certain Amendment No. 1 ("**Amendment No. 1**" and together with the Assignment and the Original Lease, collectively, the "**Lease**") granting Lessee the use of five (5) free dedicated parking spaces as further described therein (the "**Dedicated Spaces**"); and

WHEREAS, the City and Lessee desire to amend the Lease to expand the premises leased thereunder to include a portion of the surface parking lot located at 775 19th Street, Miami Beach, Florida consisting approximately twelve thousand (12,000) square feet as further described herein and on **Exhibit A-1** attached hereto, which is adjacent and contiguous to the Memorial, for purposes of developing, operating and maintaining the Project (as defined herein) and to extend the term of the Lease for an additional period of approximately twenty-one (21) years for a total term of ninety-nine (99) years from the Effective Date; and

WHEREAS, the City, after having fully considered this Amendment at two duly noticed public meetings, in compliance with Section 82-____ of the City Code of Ordinances (the "**City Code**"), and having further determined that it is in the City's best interest to address the issues covered by this Amendment in a comprehensive manner, in compliance with all applicable laws, ordinances, plans, rules and regulations of the City, the City has agreed to enter into this Amendment with Lessee, subject to the terms and conditions herein; and

WHEREAS, on _____, 2021, pursuant to Resolution No. 2021-_____, the Mayor and City Commission approved the execution of this Amendment.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and conditions contained in this Amendment, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Amendment, intending to be legally bound, agree as follows:

1. **Recitals; Capitalized Terms.** The above recitals are true and correct and are incorporated herein as if set forth in full. Capitalized terms used and not defined herein have the same meaning given to such terms in the Lease, unless otherwise specifically indicated or unless the context clearly indicates to the contrary.

2. **Voter Referendum.** The parties acknowledge and agree that, pursuant to Section 1.03(b)(3) of the City Code, this Amendment and the rights and obligations herein are subject to and contingent upon the approval of this Lease by vote of sixty percent (60%) of the voters voting thereon in a City-wide referendum on November 2, 2021 (the “**2021 Referendum**”) or such later date in 2022 as further described in this Section (each, a “**2022 Referendum**” and together with the 2021 Referendum, each, a “**Referendum**”). In the event that the 2021 Referendum is not successful, or if the ballot question is removed or election results are invalidated by a court of competent jurisdiction, then Lessee may, within 90 days after the date on which it is determined that the 2021 Referendum was not successful, request that the City Commission consider adopting a resolution calling for a special election for approval of this Amendment in a 2022 Referendum. If (a) the City Commission declines to adopt a resolution calling for approval of this Amendment in a 2022 Referendum or (b) within such 90 day period, Lessee either fails to so notify the City or notifies the City that it wishes to terminate this Amendment, then in any such event, this Amendment shall be deemed null and void and the parties shall have no obligations or liabilities of any kind or nature whatsoever hereunder except as set forth below. In the event that, following Lessee’s request, the City Commission adopts a resolution calling for a 2022 Referendum and the 2022 Referendum is not successful, or if the ballot question is removed or election results are invalidated by a court of competent jurisdiction, in each case following the last date on which a 2022 Referendum occurred, this Amendment shall be deemed null and void and the parties shall have no obligations or liabilities of any kind or nature whatsoever hereunder.

3. **Effective Date.** If a Referendum is successful and all requirements of the City Code and applicable law are satisfied, this Amendment shall be effective upon the City Commission’s adoption of a resolution accepting the certification of the official results of the applicable election with respect to the applicable Referendum (the “**Effective Date**”).

4. **Definitions; Interpretation.**

(a) All capitalized terms used in this Amendment shall have the definitions set forth in this Section 4(a).

“**2021 Referendum**” has the meaning set forth in Section 2.

“**2022 Referendum**” has the meaning set forth in Section 2.

“**Additional Premises**” has the meaning set forth in Section 5.

“**Amendment**” has the meaning set forth in the Preamble.

“**Approval,**” “**Approve**” or “**Approved**” means the written approval or consent of a Party, which unless otherwise specified herein by reference to “sole discretion” or words of similar effect, shall be commercially reasonable and made in good faith and with due diligence.

“Approved D&D Plans” has the meaning set forth in 9(c)(i).

“Approved Plans” has the meaning set forth in Section 9(c)(iii).

“Architect” means Arquitectonica International Corporation, a Florida corporation.

“Assignment” has the meaning set forth in the Recitals.

“Budgeted Improvement Costs” means the estimated costs, fees and expenses incurred or to be incurred in connection with the design, permitting, development and construction of the Project, as of the estimated date of Commencement of Construction through the date of Completion of Construction.

“Building Permit” means the building permit issued by the Building Department of the City of Miami Beach in its governmental and regulatory capacity permitting construction of the Project in accordance with applicable Governmental Requirements.

“Certificate of Occupancy” means a certificate of occupancy or certificate of completion, as applicable, for the Project and shall include any such certificate designated as “temporary” in nature, provided such temporary Certificate of Occupancy permits beneficial use and occupancy of the Additional Premises for their intended and permitted uses.

“City” means the City of Miami Beach, a Florida municipal corporation, having its principal offices at 1700 Convention Center Drive, Miami Beach, Florida 33139. In all respects hereunder, City’s obligations and performance is pursuant to City’s position as the owner of the Additional Premises acting in its proprietary capacity. In the event City exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any rules, regulations, laws and ordinances (including through the exercise of the City’s building, fire, code enforcement, police department or otherwise) shall be deemed to have occurred pursuant to City’s regulatory authority as a governmental body and shall not be attributable in any manner to City as a party to this Amendment or in any way be deemed in conflict with, or a default under, the City’s obligations hereunder.

“City Commission” shall mean the governing and legislative body of the City.

“City Delays” means the number of days in which the City performs any obligation under Section 9(c) in excess of the number of days set forth for such performance therein.

“City’s Representative” has the meaning set forth in Section 9(l)(ii).

“Claims” means all claims, demands, actions, suits, causes of actions, proceedings, charges, complaints, orders, liabilities, actual damages, losses, fees, reasonable, out-of-pocket costs and expenses of every kind and nature (including any reasonable attorneys’ fees and costs of litigation).

“Commencement of Construction” or **“Commence Construction”** or words of similar import means commencement of any work for construction of the Project, other than preliminary site work, such as demolition, in accordance with the Approved Plans and

pursuant to the Building Permit.

“Completion of Construction” or **“Complete Construction”** or words of similar import means the date on which Lessee has completed the Project substantially in accordance with the requirements of the Approved Plans for the Project and this Amendment and all conditions of permits and regulatory agencies to obtain a Certificate of Occupancy have been satisfied and all applicable governmental authorities have issued a Certificate of Occupancy.

“Commencement of Construction Conditions” has the meaning set forth in Section 9(i).

“Concept Plan” has the meaning set forth in Section 9(b).

“D&D Plans” has the meaning set forth in Section 9(b).

“Dedicated Spaces” has the meaning set forth in the Recitals.

“DRB” means the City’s Design Review Board.

“DRB Approval” means the final, non-appealable approval of DRB of the Approved D&D Plans.

“Effective Date” has the meaning set forth in Section 3.

“General Construction Contract” means the construction contract between Lessee and the General Contractor for the construction of the Project in accordance with the Approved Plans for the Project, within the contract time specified therein for completion of the Work, for a guaranteed maximum price that as of the date of Commencement of Construction will not exceed the sum allocated for construction of the Work as reflected in the Budgeted Improvement Costs, and that includes provisions requiring a Performance Bond and Payment Bond and all other terms or conditions required under this Amendment.

“General Contractor” means the duly licensed general contractor or design builder engaged by Lessee for the construction of the Project and completion of the Work in accordance herewith.

“Governmental Approvals” means all permits, approvals, certificates of occupancy, notifications, certifications, registrations, authorizations and other rights and privileges that are required by any Governmental Authority. Notwithstanding anything to the contrary in this Amendment, Lessee retains its rights in accordance with applicable Governmental Requirements to challenge or appeal any denial of Governmental Approvals.

“Governmental Authority” means any federal, state, county, municipal or other governmental department, entity, authority, commission, board, bureau, court, agency, or any instrumentality of any of them, with jurisdiction over the Additional Premises, the Project, or the Work.

“Governmental Requirements” means any law, enactment, statute, code, order, ordinance, rule, regulation, judgment, decree, writ, injunction, franchise, permit, certificate, license, or other similar requirement of any Governmental Authority, now existing or

hereafter enacted, adopted, promulgated, entered, or issued, affecting the Additional Premises or the construction and operation of the Project.

“Lawsuit” means any lawsuit, action, proceeding, appeal or petition for writ of certiorari challenging the validity, legal propriety, issuance or execution, as applicable, of this Amendment or any Governmental Approvals of the Project or any such challenge relating to any approval required under the City Code and/or City Charter.

“Lease” has the meaning set forth in the Recitals.

“Lessee” has the meaning set forth in the Preamble.

“Lessor” has the meaning set forth in the Preamble.

“Memorial” has the meaning set forth in the Recitals.

“Original Lease” has the meaning set forth in the Recitals.

“Original Lessee” has the meaning set forth in the Recitals.

“Outside Commencement of Construction Date” means the deadline for issuance of the final building permit for the Project and Commencement of Construction of the Project, which shall be no later than twenty-four (24) months after DRB Approval.

“Outside Completion of Construction Date” means the deadline for Completion of Construction of the Project and issuance of the Certificate of Occupancy, which shall be no later than thirty-six (36) months after Commencement of Construction.

“Outside Dates” means any or all of the Outside Commencement of Construction Date and Outside Completion of Construction Date, as the context may require.

“Parties” means City and Lessee, and **“Party”** is a reference to either City or Lessee, as the context may indicate or require.

“Performance Bond and Payment Bond” means a performance bond and a payment bond with regard to the General Construction Contract in the full amount of the guaranteed maximum price thereof, with a good and sufficient surety, in compliance with all applicable Governmental Requirements, in compliance with Florida Statutes Section 713.23 and otherwise in form and content Approved by the City Manager, or such other security as is reasonably acceptable to the City Manager, after consultation with the City Attorney. Any Approval by the City Manager is for the City’s own benefit in its proprietary capacity as the owner of the Additional Premises and shall not be construed as being, or relied upon as a determination that such bond complies with Florida Statutes Section 713.23.

“Permit Plans” has the meaning set forth in Section 9(d)(i).

“Plans and Specifications” means the plans and specifications for the design, development and construction of the Project at the final design completion stage, which shall include fully detailed drawings showing the location, character, dimensions and details of the Work to be done, and specifications relating to the Project, comprising all of

the written directions, provisions and requirements for the Project and describing the Work required to be performed, including detailed technical requirements as to labor, materials, supplies, equipment and standards to which such Work is to be performed, prepared by the Architect and consistent with the Approved Plans.

“Project” has the meaning set forth in Section 9(a).

“Project Improvements” means any and all permanent buildings, improvements, structures, machinery, equipment and fixtures, which are to be erected or located on the Additional Premises, and as further described in Section 9(a).

“Referendum” has the meaning set forth in Section 2.

“Section,” “Subsection,” “Paragraph,” “Subparagraph,” “Clause,” or “Subclause” followed by a number or letter means the section, subsection, paragraph, subparagraph, clause or subclause of this Amendment so designated.

“Target Building Permit Date” means the date targeted for issuance of the Building Permit, which is twenty-one (21) months after DRB Approval, as such Target Building Permit Date shall be reasonably extended for (a) Unavoidable Delay, (b) City Delays and/or (c) during the pendency of any Lawsuit in accordance with this Amendment.

“Target Commencement of Construction Date” means the date targeted for Commencement of Construction, which is twenty-four (24) months after DRB Approval, as such Target Commencement of Construction Date shall be reasonably extended for (a) Unavoidable Delay, (b) City Delays and/or (c) during the pendency of any Lawsuit in accordance with this Amendment.

“Target Completion of Construction Date” means the date targeted for Completion of Construction, which is thirty-six (36) months after DRB Approval, as such Target Completion of Construction Date shall be reasonably extended for (a) Unavoidable Delay, (b) City Delays and/or (c) during the pendency of any Lawsuit in accordance with this Amendment.

“Target DRB Approval Date” means the date targeted for DRB Approval, which is twenty-four (24) months after the Effective Date (plus one month to exhaust all appeals), as such Target DRB Approval Date shall be reasonably extended for (a) Unavoidable Delay, (b) City Delays and/or (c) during the pendency of any Lawsuit in accordance with this Amendment.

“Target Dates” means any or all of the Target Building Permit Date, Target Commencement of Construction Date, Target Completion of Construction Date and Target DRB Approval Date, as the context may require.

“Unavoidable Delay” means a delay that (a) if occurring after Commencement of Construction, directly impacts the progress of the Work, (b) is beyond the reasonable control of such Party incurring the delay, and (c) is not due to a negligent or intentional act, error or omission of such Party; provided that the Party claiming such Unavoidable Delay shall deliver written notice to the other Party of such Unavoidable Delay within 14 days after first becoming aware of the commencement of such Unavoidable Delay, which

notice shall describe in reasonable detail the events giving rise to the Unavoidable Delay. Time is of the essence with respect to Unavoidable Delays and any failure by a Party to timely deliver such notice of an Unavoidable Delay shall be deemed a waiver of such Party's right to delay performance as a result of such Unavoidable Delay. Subject to the foregoing criteria, "**Unavoidable Delay**" includes any Force Majeure Event which prevents or actually delays performance. "**Unavoidable Delay**" shall not include technological impossibility, failure of equipment supplied by Lessee or General Contractor, receipt of and incorporation of defective materials into the Work, shortage of funds, failure of suppliers to deliver equipment and materials except where such failure is itself the result of an Unavoidable Delay, or failure of Lessee or General Contractor to secure the required permits for prosecution of the Work. If two or more separate events of Unavoidable Delay are concurrent with each other, Lessee shall only be entitled to an extension of time for each day of such concurrent critical path delay, and Lessee shall not be entitled to double recovery thereon. For illustration purposes only, if two events of Unavoidable Delay are concurrent for two days, Lessee shall only receive an extension of time, if at all, of a total of two days, and not four days. In no event shall (i) any Party's financial condition constitute an "Unavoidable Delay" with respect to such Party, (ii) nor shall any delay arising from a Party's default under this Amendment, the General Construction Contract or any other construction agreements, constitute an "Unavoidable Delay" with respect to such Party's obligations hereunder.

"**Work**" means the design, permitting, development and construction of the Project in accordance with the Approved Plans, including all design, architectural, engineering and other professional services, demolition and construction services, supervision, administration and coordination services and the provision of all drawings, specifications, labor, materials, equipment, supplies, tools, machinery, utilities, fabrication, transportation, storage, insurance, bonds, permits and conditions thereof, zoning approvals, changes required to comply with building codes and Governmental Approvals, licenses, tests, inspections, surveys, studies, and other items, work and services that are necessary or appropriate for the demolition of existing structures and other preparatory or remediation work on the Additional Premises, as applicable; utility relocations, installations, hook-ups or other infrastructure as may be required in connection with the Project and to obtain the Certificate of Occupancy; total design, construction, installation, and functioning of the Project to the extent necessary to obtain the Certificate of Occupancy, and together with all additional, collateral and incidental items, work and services required for Completion of Construction.

(b) Interpretation. The words "hereof," "herein" and "hereunder" and words of similar import when used in this Amendment shall refer to this Amendment as a whole and not to any particular provision of this Amendment. References herein to Sections, subsections, Schedules, Exhibits and the like are to Sections and subsections of, or Schedules or Exhibits attached to, this Amendment unless otherwise expressly provided. The words "include," "includes" and "including" and words of similar import when used in this Amendment shall be deemed to be followed by the phrase "without limitation." References herein to "days" shall mean calendar days unless otherwise expressly provided. Unless the context in which used herein otherwise clearly requires, "or" has the inclusive meaning represented by the phrase "and/or." Defined terms include in the singular number, the plural, and in the plural number, the singular.

5. Additional Premises. The City hereby leases to Lessee, and Lessee hereby leases from the City, for the purposes and upon the terms and conditions set forth in this

Amendment and in the Lease, that certain real property located in the City of Miami Beach and legally described on **Exhibit A-1** attached hereto (the “**Additional Premises**”). From and after the Effective Date, for all purposes of the Lease and this Amendment, the Additional Premises are and shall be part of the Demised Premises, the Premises and/or the Property, as each such term is defined in the Lease and shall be subject to all terms of the Lease, except to the extent expressly modified pursuant to this Amendment.

6. **Amount of Rent.** Lessee covenants and agrees to pay to Lessor an annual rental of Ten Dollars (\$10.00) for the entire Premises, payable annually in advance, the first such annual payment for the entire Premises being due and payable on January 1, 2022, and thereafter, on the first day of January each and every year thereafter during the entire term of the Lease. There will be no proration or adjustment of annual rental previously paid by Lessee for 2021.

7. **Use.** Following Completion of Construction of the Project in accordance herewith, the Additional Premises shall be used by Lessee solely and exclusively as an educational center to provide educational and cultural exhibits, events and programming compatible with and complementing the Memorial, including expanding the education of the public on issues of fundamental human rights and tolerance. The permitted ancillary uses shall be limited to a gift pavilion for the sale of commemoratives, pictures and other like items of personal property and a café/concession not to exceed one thousand (1,000) square feet serving light fare. Except as set forth in this Section 7, no other uses or purposes of the Additional Premises shall be permitted.

8. **Extension of Term.** The term of the Lease shall be extended for an additional period of approximately twenty-one (21) years and shall have a total term of ninety-nine (99) years from the Effective Date.

9. **Development of the Project.**

(a) **Description of the Project.** The project shall be a community learning center consisting of approximately 7,000 square feet of enclosed, “under air” space for learning and educational space, exhibition space (both temporary and permanent), performance space and outdoor areas all located primarily within the Additional Premises (collectively, the “**Project**”) for the uses described in Section 7 above.

(b) **Approved Concept Plan.** An approved concept plan for the Project is attached hereto as **Exhibit B** (the “**Concept Plan**”). The Concept Plan shall not be modified or amended without the prior written consent of the City which may be granted or withheld in the City’s sole discretion. Promptly following the Effective Date, Lessee shall cause the Architect to prepare detailed design development plans (the “**D&D Plans**”) for the Project in accordance with the Concept Plan and submit the same to the City Manager for Approval.

(c) **Design Development Plans.** The D&D Plans shall consist of a detailed site plan, elevations, floor plans and landscape plan, all with site specific data required for review by the DRB.

(i) Lessee shall submit the D&D Plans to the City Manager for its Approval. The City Manager shall notify Lessee in writing within 30 days after receipt thereof of any comments to the D&D Plans, including, to the extent inconsistent with the Concept Plan, a detailed description of any inconsistencies. Lessee, at Lessee’s sole cost and expense, shall within 30 days after receipt of such written notice from the City, cause the Architect

to revise the proposed D&D Plans to be consistent with the Concept Plan and otherwise to reflect the City Manager's comments, and resubmit same to the City Manager pursuant to the foregoing process until such D&D Plans are Approved by the City Manager (the "**Approved D&D Plans**").

(ii) The City's approval of the Approved D&D Plans is for the City's benefit in its proprietary capacity as the owner of the Additional Premises and shall not be construed as being, or relied upon as a determination that such plans and specifications comply with any other Governmental Requirements providing for review and approval of such plans and specifications by any Governmental Authority (in its regulatory or governmental capacity as opposed to its proprietary capacity).

(iii) Promptly following the City Manager's Approval of the Approved D&D Plans, Lessee shall submit same to the DRB and diligently pursue DRB Approval. In the event that the DRB requires material revisions to the Approved D&D Plans as a condition to the Approval, Lessee shall submit same to the City Manager, for review and Approval, which shall not be unreasonably withheld provided that such changes are consistent with the Concept Plan, as determined by the City Manager in its sole and reasonable discretion. The DRB Approved D&D Plans, as Approved by the City in accordance with this clause (iii), are referred to as the "**Approved Plans**."

(iv) Any proposed changes to the Approved D&D Plans and/or Approved Plans that are not consistent with the Concept Plan shall be subject to the City Commission's review and approval in its sole and absolute discretion.

(v) Modifications to the Approved D&D Plans and/or Approved Plans shall be indicated by "ballooning," "highlighting," blacklining or describing such modifications in writing in reasonable detail in an accompanying memorandum. The City shall not be responsible for, and shall not be deemed to have approved, any modifications to the Approved D&D Plans or Approved Plans that are not indicated as required by this Section 9(c)(v).

(d) Permit Plans and Specifications.

(i) Promptly following DRB Approval of the Approved Plans, Lessee will prepare permit plans and specifications consistent with the Approved Plans and the Concept Plan (the "Permit Plans"), and initiate and diligently pursue in good faith the required Building Permit for the Project. Lessee shall be solely responsible for obtaining the Building Permit and all related development permits for the Project. Lessee shall cause the Permit Plans to comply with City Code, the Florida Building Code and all other applicable Governmental Requirements. No extension of any time period herein, if any, shall be deemed to be an extension of any time periods contained within the Building Permit. Lessee shall be solely responsible for obtaining the Building Permit and to the extent any such approvals result in any proposed changes to the Approved Plans, such changes shall be submitted to the City Manager for its review and approval, which shall not be unreasonable withheld so long as such changes are consistent with the Concept Plan as determined by the City in its sole and reasonable discretion.

(e) Offsite Improvements. The Project includes certain off-site improvements to the dedicated right-of-way (19th Street), which improvements include modification to the existing

median to allow for parallel parking along the street and which improvements are intended to replace as many of the surface parking spaces previously existing on the Additional Premises as reasonably practicable. These improvements are shown on the Concept Plan and will be shown in the D&D Plans, and are subject to approval and permitting by the City's Parking and Public Works Departments, as well as the Approval by the City Manager. The Lessee shall have the sole obligation and responsibility for obtaining said approvals and permits and shall construct all off-site improvements in accordance therewith. For the avoidance of doubt, the parallel parking constructed by Lessee shall not be exclusive to the Memorial; however, the Lessee may apply to the City's Parking Department for posting of restricted hours and drop-off activities.

(f) Lessee's Project Obligations and Payment of Costs. Lessee, at its sole cost and expense, shall:

(i) Design, permit, construct and complete, in a good and workmanlike manner, the Project in accordance with and subject to all of the terms and provisions of this Amendment, and pay all costs and expenses in connection therewith, including demolition of any existing improvements on the Additional Premises, including asphalt paving, construction bonding and insurance, the cost of Lessee's consultants, accountants, financing charges, legal fees, furnishings, equipment, and other personal property of the Lessee and all other Lessee direct or indirect costs associated with the approvals, design and construction of the Project Improvements, and the subsequent use and maintenance of the Project and the Additional Premises;

(ii) Be exclusively responsible for all matters relating to and required for underground utility lines and facilities, including locating, grounding, installing, relocating and removing within the Additional Premises, as applicable: all necessary connections between the Project Improvements, and the water, sanitary and storm drain mains and mechanical and electrical conduits whether or not owned by the City; new facilities for sewer, water, electrical, and other utilities as needed to service the Project; and install or cause to be installed inside the property line of the Additional Premises, any and all necessary utility lines, with adequate capacity and the sizing of utility lines for the Project, as contemplated on the Permit Plans and all in compliance with all Governmental Approvals and Governmental Requirements; provided that Lessee shall not remove, disturb, or relocate any existing utilities on the Additional Premises, except as shown on the Permit Plans;

(iii) Secure all Governmental Approvals for the Work and pay any and all fees and charges due to and collected by the City or any other Governmental Authority connected with issuing such Governmental Approvals, if any;

(iv) Obtain a certificate of the LEED Status in accordance with Section 133-6 of the City Code and provide reasonable evidence of such certification to City within a reasonable period following the Outside Completion of Construction Date; and

(v) Following Completion of Construction, maintain, use, repair and reconstruct, as applicable, the Project and the Additional Premises in accordance with and subject to all of the terms and provisions of the Lease and this Amendment.

Lessee acknowledges that the City shall have no maintenance responsibility for any of the Additional Premises, the Project, the utilities and infrastructure to be constructed by Lessee, and

the City shall have no responsibility for paying the cost of, or otherwise reimbursing Lessee for, relocation, removal, or payment of charges to utility companies for, any utility lines or facilities lying on, under, or around the Additional Premises. City shall provide reasonable cooperation and assistance to Lessee, at Lessee's cost, in the resolution of issues associated with existing underground utilities.

(g) Financing Matters. Lessee shall not enter into or incur any financing in connection with the Project. The City is not and shall not be required to provide any funding or financing for the Project, including any tax credits or subsidies.

(h) Pre-Commencement of Construction Obligations.

(i) Prior to Commencement of Construction, Lessee shall deliver to the City (i) a Performance Bond and Payment Bond, with all premiums paid, in favor of Lessee with an obligee rider in favor of the City and (ii) a demolition bond or other form of financial instrument reasonably acceptable to City to assure the availability of funds for demolition or removal of any uncompleted facility in the event Lessee, after receipt of a written demand from City after a termination of this Amendment in accordance herewith, fails to demolish and remove any uncompleted Project Improvements following Lessee's failure to substantially complete the Project as required herein.

(ii) Lessee's selection of the General Contractor for the Project shall be subject to the prior written Approval of the City Manager, after consultation with the City Attorney, as to the qualifications and responsibility of such proposed General Contractor to perform the contract, based on such General Contractor's licensure, bonding capacity, financial capacity, history of compliance with laws, and satisfactory past performance on similar projects. Provided that the General Contractor proposed by Lessee does not have a significant history of material non-compliance with the law, City agrees to Approve the General Contractor proposed by Lessee that satisfies each of the following:

- (A) Has a State of Florida Building and Business License;
- (B) Has completed at least two projects of similar size and scope to the project within the last five (5) years; and
- (C) as total bonding capacity in excess of \$25,000,000.00;

(i) Conditions Precedent to Commencement of Construction. Lessee's possession of the Additional Premises and Commencement of Construction, shall be subject to satisfaction of the following conditions precedent (the "**Commencement of Construction Conditions**"):

(i) Lessee shall have delivered the Performance Bond and Payment Bond in accordance with Section 9(h)(i).

(ii) Lessee shall have delivered to the City, and received the City Manager's approval of, the Approved Plans in accordance with Section 9(c).

(iii) Lessee shall have entered into, and delivered to the City a duly executed copy of, the General Construction Contract (and all then existing change orders thereto) with a General Contractor Approved by the City Manager in accordance with Section

9(h)(ii) and reflecting a guaranteed maximum price for completion of the Project that does not exceed the Budgeted Improvement Costs;

(iv) Lessee shall have delivered to the City a budget reflecting the Budgeted Improvement Costs;

(v) Lessee shall have delivered to City written evidence reasonably satisfactory to the City of the existence and availability of sufficient funds to Complete Construction of the Project in accordance herewith and with the budget reflecting the Budgeted Improvement Costs;

(vi) Lessee shall have obtained, and shall have delivered to City a copy of, all Governmental Approvals, including the building permit for the Project and DRB Approval, necessary for the Commencement of Construction and for the demolition of any existing improvements on the Additional Premises, including asphalt paving;

(vii) Lessee shall have presented evidence reasonably acceptable to the City that all insurance coverages required under this Amendment and the Lease are in place;

(viii) the representations and warranties made by the Lessee in this Amendment pursuant to Section 16(a) remain true and correct on and as of the date of Commencement of Construction;

(ix) Lessee shall have obtained any and all required Governmental Approvals with respect to maintenance of traffic for the staging of the Work during the construction period;

(x) Lessee shall have obtained any and all required Governmental Approvals with respect to a parking and transportation plan for the off-site parking and transportation; and

(xi) Lessee shall have delivered written notice to the City certifying that all Commencement of Construction Conditions have been satisfied.

At all times prior to Commencement of Construction, the City and the public shall have the right to use the Additional Premises as a surface parking lot.

(j) Prosecution of the Work.

(i) Promptly following Lessee's satisfaction of the Commencement of Construction Conditions, Lessee shall promptly Commence Construction of the Project and prosecute completion of the Work substantially in accordance with the Approved Plans (with only such changes as have been approved by the City in accordance herewith) with all commercially reasonable diligence and in good-faith, in good and workmanlike manner and in compliance with all Governmental Requirements.

(ii) Lessee shall endeavor, through the use of diligent, good-faith efforts, to cause the prosecution of the Work in accordance with the Target Dates and the Outside Dates, but failure to meet any Target Date shall not be a default under this Amendment.

(iii) Lessee shall Commence Construction on or before the Outside Commencement of Construction Date.

(iv) Lessee shall Complete Construction on or before the Outside Completion of Construction Date.

(k) Construction Obligations. From and after Commencement of Construction and until Completion of Construction, Lessee shall, or shall cause its General Contractor to:

(i) Select the means and methods of construction. Only adequate and safe procedures, methods, structures and equipment shall be used;

(ii) Furnish, erect, maintain and remove such construction plant and such temporary work as may be required; and be responsible for the safety, efficiency and adequacy of the plant, appliance and methods used and any damage which may result from failure, improper construction, maintenance or operation of such plant, appliances and methods;

(iii) Provide all architectural and engineering services, scaffolding, hoists, or any temporary structures, light, heat, power, toilets and temporary connections, as well as all equipment, tools and materials and whatever else may be required for the proper performance of the Work;

(iv) Order and have delivered all materials required for the Work and shall be responsible for all materials so delivered to remain in good condition;

(v) Maintain the Additional Premises in a clean and orderly manner at all times, and remove all paper, cartons and other debris from the Additional Premises;

(vi) Protect all Work prior to its completion and acceptance;

(vii) Restore and repair any properties adjacent and leading to the Additional Premises damaged as a result of construction of the Project, whether such properties are publicly or privately owned;

(viii) Implement, and maintain in place at all times, a comprehensive hurricane and flood plan for the Additional Premises and the Work, and provide a copy of same to the City;

(ix) Upon the issuance of a Certificate of Occupancy for the Project, deliver a copy thereof to the City;

(x) Promptly after Completion of Construction, deliver to the City as-built survey and drawings of and plans and specifications for the Project;

(xi) Upon Completion of Construction, deliver to the City a certification of the Architect (certified to the City on the standard AIA certification form), that it has examined the Approved Plans and that, in its professional judgment, after diligent inquiry, Construction of the Project has been substantially Completed in accordance with the Approved Plans applicable thereto, and as constructed, the Project Improvements comply

with all applicable Governmental Requirements;

(xii) Upon Completion of Construction, ensure that the Additional Premises are free of all liens and encumbrances for all work performed or materials supplied in connection with construction of the Project; and

(xiii) Lessee shall carry on any construction, maintenance or repair activity with diligence and dispatch and shall use diligent, good-faith efforts to complete the same in accordance with this Amendment.

(l) Progress of Construction/City's Representative.

(i) Lessee shall keep the City apprised of Lessee's progress regarding the Work, including Lessee's progress towards meeting the Target Dates and Outside Dates. After Commencement of Construction, Lessee shall keep the City reasonably apprised, not less frequently than monthly, of the progress of construction;

(ii) Prior to Completion of Construction, the City may, from time-to-time, designate one or more employees or agents to be the City's representative ("**City's Representative**"), who may, during normal business hours, in a commercially reasonable manner, visit, inspect and monitor the Project, the materials to be used thereon or therein, contracts, records, plans, specifications and shop drawings relating thereto, whether kept at Lessee's offices in Miami-Dade County, or at the Additional Premises, as often as may be reasonably requested. Lessee will provide safe access to the Project, and reasonably cooperate with the City to enable City's Representative to conduct such visits, inspections and monitoring. Lessee shall make available to City's Representative for inspection, with commercially reasonable notice, daily log sheets covering the period since the immediately preceding inspection showing the date, weather, subcontractors on the job, number of workers and status of construction. To the fullest extent permitted by law, City shall protect from disclosure any records that are confidential and exempt from disclosure under Florida law, provided, however, that nothing herein shall preclude the City or its employees from complying with the disclosure requirements of the Public Records Act, and any such compliance shall not be deemed an event of default by the City under this Amendment. City shall use its good-faith, diligent efforts to provide timely written notice to Lessee of any public records request seeking any records of Lessee that may be within the City's custody, possession or control, to permit Lessee the opportunity to seek to protect such information from disclosure. Nothing contained herein shall or is deemed to limit the City's inspection rights in its governmental and/or regulatory capacity.

(m) City and Lessee to Join in Certain Actions. Upon receipt of written request from Lessee that is consistent with all Governmental Requirements, the City, at Lessee's sole cost and expense (including City's reasonable attorneys' fees in reviewing any agreements), shall join Lessee when required by law in any and all applications and agreements for Governmental Approvals as may be commercially reasonably necessary for developing and constructing the Project, which applications and agreements are necessary because City is the fee owner of the Additional Premises and/or the properties surrounding the Additional Premises, and which applications and agreements may include easement agreements and demolition permits and applications for DRB Approval.

(n) Compliance with Laws. Lessee will comply with all Governmental Requirements

in constructing and operating the Project.

(o) Art in Public Places. Lessee may seek a waiver by the City Commission of any requirements of the Lessee to comply with the City's Art In Public Places (AIPP) program requirements under Section 82-536 through 82-612 of the City Code, as applicable. As a condition to such waiver, Lessee agrees to install a decorative architectural screening or wrap around the [existing generator located immediately east of the Additional Premises], and Lessee shall incorporate such screening or wrap into the plans to be approved by the City pursuant to Section 9 above.

10. Parking. From and after the date of Commencement of Construction and for the remainder of the term of the Lease, Lessee hereby waives and releases any and all rights to the Dedicated Spaces.

11. Access Easement. The City hereby grants Lessee a non-exclusive easement for pedestrian and vehicular ingress and egress on, over and across the easement area legally described on **Exhibit A-2** attached hereto (the "**Access Easement Area**"). The City reserves for itself and the Miami Beach Botanical Gardens and their respective agents, employees and invitees all rights with respect to the Access Easement Area, including without limitation, rights of ingress and egress on, over and across the Access Easement Area to access, maintain, repair and replace the existing generator [located adjacent thereto]. The City agrees to maintain the Access Easement Area in good condition and repair and unobstructed; provided that the City shall have the right to temporarily close portions of the Access Easement Area upon reasonable prior notice to Lessee (except in the case of emergencies) for purposes of performing maintenance and repair of the Access Easement Area. [Moreover, the City agrees to allow for the Easement Area to be improved by Lessee with a decorative paving material approved by the City in its sole and absolute discretion, all at the Lessee's sole cost and expense, including without limitation in connection with repair and restoration.] Notwithstanding the foregoing, at such time as the City designates all or a portion of the Access Easement Area as a public right of way, which the City may elect to do in its sole and absolute discretion, the access easement granted hereunder shall terminate with respect to such designated public right of way and the Lessee shall have the same rights of ingress and egress over such public right of way as all other members of the public.

12. Naming Rights. Naming rights for the exterior of the Additional Premises and any significant interior areas within the Project Improvements shall require City Commission approval, which shall not be unreasonably withheld.

13. Risk of Loss. The risk of loss to any of the Work and to any goods, materials and equipment provided or to be provided under this Amendment, shall remain with the Lessee. Should any of the Work, or any such goods, materials and equipment be destroyed, mutilated, defaced or otherwise damaged prior to Completion of Construction, Lessee shall repair or replace the same at its sole cost. The Performance Bond and Payment Bond or other security or insurance protection required by this Amendment or otherwise provided by the Lessee or the General Contractor shall in no way limit the responsibility of the Lessee under this Section 13.

14. Insurance.

(a) Insurance Requirements. After the Effective Date and prior to any activity by Lessee on the Additional Premises, Lessee, at its sole cost and expense, shall procure and maintain all insurance coverage and otherwise satisfy the requirements of **Exhibit C** attached

hereto. Prior to entering the Additional Premises and Commencement of Construction, Lessee shall furnish the City at the City's Department of Procurement Management, City of Miami Beach, 1700 Convention Center Drive, 3rd Floor, Miami Beach, Florida 33139, certificate(s) of insurance evidencing that Lessee has obtained all insurance coverage satisfying the requirements of **Exhibit C**. At the request of the City, Lessee shall provide copies of such insurance policies.

(b) **General Contractor Insurance**. In addition, Lessee shall require any General Contractor to maintain the insurance coverages set forth on **Exhibit C** attached hereto (excluding property insurance but including builder's risk insurance). All policies must be executable in the State of Florida. All insurers must maintain an AM Best rating of A- or better. The terms and conditions of all policies must be equivalent to the policy forms issued by the Insurance Services Office (ISO) or the National Council on Compensation Insurance (NCCI). Said insurance policies shall be primary over any and all insurance available to the City whether purchased or not and shall be non-contributory. Lessee and any General Contractor shall be solely responsible for all deductibles contained in their respective policies. All policies procured pursuant to this Section 14 shall be subject to maximum deductibles reasonably acceptable to the City. The City of Miami Beach will be included as an "additional insured" on the commercial general liability and automobile liability (to the extent available), and as loss payee on the builder's risk policy.

15. **No Liens; Discharging and Contesting Liens; Indemnification**.

(a) **No Liens**.

(i) Lessee shall not create, or cause to be created, or, with respect to work performed by or on behalf of Lessee, suffer to exist any lien, encumbrance or charge upon the right, title and interest of the City in the Additional Premises or any part thereof or appurtenance thereto, or, in connection therewith, any lien, encumbrance or charge upon any assets of, or funds to be appropriated to, the City. Nothing contained in this Amendment shall be deemed or construed to constitute the consent or request of the City, express or by implication or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement of, alteration to, or repair of the Project, or any part thereof, nor as giving Lessee or any other Person any right, power or authority to contract for, or permit the rendering of, any services or the furnishing of materials that would give rise to the filing of any lien, mortgage or other encumbrance against City's interest in the Additional Premises, or any part thereof, or against assets of the City, or City's interest in any monetary obligations of Lessee as set forth in this Amendment.

(ii) Notice is hereby given, and Lessee shall cause all construction agreements entered into between Lessee and the General Contractor or other contractor in privity with Lessee or subcontractor in privity with the General Contractor or any other subcontractor to provide that (A) the City shall not be liable for any work performed or to be performed at the Project or any part thereof for or on behalf of the Lessee or any other Person or for any materials furnished or to be furnished to the Project, or any part thereof, for any of the foregoing, and (B) no mechanic's, laborer's, vendor's, materialman's or other similar statutory lien for such work or materials shall be attached to or affect City's interest in the Additional Premises, or any part thereof, or any assets of, or funds to be appropriated to, the City.

(b) **Discharging and Contesting Liens**.

(i) If any such lien as described in Section 15(a) is filed against the City's interest in the Premises, or any part thereof, including the Additional Premises, or if any public improvement lien created, or caused or, with respect to work performed by or on behalf of Lessee, suffered to be created by Lessee shall be filed against any assets of, or funds appropriated to, the City, Lessee shall, within 30 days after Lessee receives notice of the filing of such mechanic's, laborer's, vendor's, materialman's or similar statutory lien or public improvement lien, cause it to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise.

(ii) If Lessee desires to contest any such lien, it shall notify the City of its intention to do so within 30 days after Lessee has notice of the filing of such lien. In such case, Lessee, at Lessee's sole cost and expense, shall furnish a cash deposit or surety bond in an amount sufficient to pay such lien and any cost (including interest and penalties), liability or damage arising out of such contest. The lien, if Lessee timely provides the bond described above, shall not be an Event of Default hereunder until 30 days after the final determination of the validity thereof provided that, within that time, Lessee shall satisfy and discharge such lien to the extent held valid; provided, however, that the satisfaction and discharge of any such lien shall not, in any case, be delayed until execution is had on any judgment rendered thereon, or else such delay shall be considered an "Event of Default" hereunder. In the event of any such contest, Lessee shall protect and indemnify the City and its officers, employees and agents against any Claims resulting therefrom as provided in Section 15(c). Notwithstanding anything to the contrary contained in this Section 15(b), in the case of a public improvement lien which provides for installment payments as a means of satisfying such lien, Lessee shall be required only to pay, on a timely basis, all installments when due. In the event of any such contest, Lessee shall protect and indemnify the City and the City and its officers, employees and agents against all Claims resulting therefrom as provided in Section 15(c).

(c) Indemnification.

(i) Lessee acknowledges and agrees that this Amendment is not an agreement between City and any architect, engineer, general contractor, subcontractor, sub-subcontractor, or materialman or any combination thereof for the construction, alteration, repair, or demolition of a building, structure, appurtenance, or appliance on the Additional Premises, and therefore that the limitations on indemnity provisions in Section 725.06, Florida Statutes, as such statute may be amended from time to time, do not apply to this Amendment. Accordingly, to the fullest extent permitted by law, Lessee shall and does hereby indemnify and hold harmless the City and its officers, employees and agents, from any and all Claims arising out of, relating to or resulting from any of the following occurrences or events, whether by Lessee or its employees, agents, directors, or contractors: (i) the development, construction, use and operation of the Project or any part thereof which is not in compliance with the terms of this Amendment; or (ii) the negligent acts or omissions of Lessee or its employees, agents, directors or contractors, except to the extent any liabilities, losses or damages are caused by the gross negligence or willful misconduct of the City or its officers, employees or agents, each acting in their official capacities, and as instrumentalities of the City. Lessee covenants and agrees that any contracts entered into by Lessee and the General Contractor for the Work shall include the indemnities required by this Section 15(c)(i) from the General Contractor in favor of Lessee and the City.

(ii) In the event of any Lawsuit, Lessee shall defend any such Lawsuit at its sole cost and expense using legal counsel reasonably acceptable to the City. Lessee shall further indemnify and hold the City and its officers, employees and agents harmless from and against all Claims of any and every kind arising out of, relating to or resulting from any Lawsuit.

(iii) Lessee shall investigate and defend all Claims of any kind or nature in the name of the City which are covered by this indemnity obligation, where applicable, including appellate proceedings, and shall pay reasonable costs, judgments, and reasonable attorney's fees which may issue thereon. Lessee expressly understands and agrees that any insurance protection required by this Amendment or otherwise provided by Lessee shall in no way limit the responsibility to indemnify, keep and save harmless and defend the City and its officers, employees and agents as herein provided. The City shall give to Lessee reasonable notice of any such Claims.

(iv) The provisions of this Section 15 shall survive the expiration or early termination of this Amendment.

16. **Representations.**

(a) **Lessee's Representations.** Lessee represents to the City that has consulted with advisors who are experienced in the development, construction and operation of projects similar to the Project, and that Lessee has independently determined the merits and risks of electing to proceed with the development of the Project, and that Lessee is not and, will not be relying upon any information that may have been or hereafter be provided to Lessee by the City. Lessee further represents and warrants that Lessee has not made, created or suffered any assignment, transfer, sublease, subconcession, or license of the Premises or the Lease, or any transfer or other change in structure of Lessee (each, a "**Transfer**") as of the date of this Agreement. No Transfer may or shall be made, created or suffered by Lessee, its successors, assigns or transferees without complying with the terms of Article XIII of the Lease. Any Transfer in violation of this Amendment or the Lease shall be null and void and of no force and effect.

(b) **No Representation or Warranties By the City.** Lessee acknowledges and agrees that it has been given the opportunity to perform all inspections and investigations concerning the Additional Premises, and (i) the City is not making and has not made any representations or warranties, express or implied, of any kind whatsoever with respect to the Additional Premises, including any representation or warranty of any kind with respect to title, survey, physical condition, suitability or fitness for any particular purpose, the financial performance or financial prospects of the Project, its value, or any other economic benefit that can be realized or expected therefrom, the presence or absence of Hazardous Substances, the zoning or other Governmental Requirements applicable thereto, taxes, the use that may be made of the Additional Premises, or any other matters with respect to this Amendment); (ii) Lessee has relied on no such representations, statements or warranties, and (iii) City will in no event whatsoever be liable for any latent or patent defects in the Additional Premises (including any subsurface conditions).

(c) **"AS IS" Condition of Additional Premises.** Lessee acknowledges it has relied solely on Lessee's own inspections, tests, evaluations and investigations of and related to this Amendment and the Additional Premises in its determination of whether to proceed with this Amendment and the Project. As a material part of the consideration of this Amendment, Lessee agrees to accept the Additional Premises in their "AS IS" and "WHERE IS" condition "WITH ALL

FAULTS” and latent or patent defects, and without representations and warranties of any kind, express or implied, or arising by operation of law.

(d) Survival. The provisions of this Section 16 shall survive the termination of this Amendment.

17. **Termination by Lessee**. Notwithstanding anything to the contrary set forth in this Amendment, Lessee shall have the right to terminate this Amendment and all rights and obligations of the parties hereunder, by written notice delivered to the City at any time prior to the issuance of the building permit for the Project.

18. **Events of Default; Remedies**.

(a) Events of Default. Each of the following occurrences shall constitute an “**Event of Default**” of Lessee that shall entitle the City to exercise its remedies as set forth in Section 18(b):

(i) if Lessee takes possession of the Additional Premises or Commences Construction prior to satisfying all of the Commencement of Construction Conditions and such action continues for a period of 30 days after written notice thereof by the City to Lessee, following which the City has the right to institute a “stop work” order for all construction on the Additional Premises until such time as all Commencement of Construction Conditions are satisfied;

(ii) if Lessee fails to Commence Construction on or before the Outside Commencement of Construction Date;

(iii) if Lessee fails to Complete Construction on or before the Outside Completion of Construction Date;

(iv) if Lessee fails to maintain or provide evidence of all insurance in compliance in all material respects with Section 14 and **Exhibit C** hereof (any lapse in required coverage shall be deemed a failure to comply with Section 14 and **Exhibit C** hereof) and such failure continues for a period of ten days from the date of written notice thereof from City;

(v) if Lessee discontinues the prosecution of the Work for more than 30 consecutive days other than as a result of an Unavoidable Delay;

(vi) If Lessee makes, creates or suffers to exist any Assignment (as defined in the Lease) in violation of the Lease or any Transfer in violation of this Amendment;

(vii) if Lessee fails to observe or perform one or more of the other terms, conditions, covenants or agreements of this Amendment not otherwise addressed in this Section 18(a) and such failure continues for a period of 30 days after written notice thereof by City to Lessee specifying such failure, unless such failure requires work to be performed, acts to be done, or conditions to be removed which cannot by their nature reasonably be performed, done or removed, as the case may be, within such 30 day period, in which case no Event of Default will be deemed to exist as long as Lessee (i) commences curing the same within such 30 day period, (ii) advises the City of the steps being taken by Lessee to remedy such failure (which steps shall be reasonably designed

to effectuate the cure of such failure in a professional manner) and thereafter, from time to time, upon the City's request, updates the City as to the status of such cure, and (iii) diligently prosecutes such cure to completion; or

(viii) an event of default shall occur under the Lease after the expiration of any applicable notice and/or cure period.

(b) Remedies.

(i) If an Event of Default occurs hereunder, without prejudice to any other rights or remedies of the City, whether provided by this Amendment, the Lease or otherwise provided at law or in equity, the City may elect any one or more of the following remedies, without limitation:

(A) Terminate this Amendment and take possession of the Additional Premises;

(B) Maintain an action for specific performance and injunctive relief to enforce the terms, covenants, conditions and other provisions of this Amendment against Lessee as a result of or arising out of such Event of Default;

(C) Recover damages for Lessee's breach of this Amendment;
or

(D) In the case of an Event of Default under Section 18(a)(ii) for failure to Commence Construction on or before the Outside Commencement of Construction Date, Lessee may request in writing that the City forbear from immediately terminating this Lease and in the City's sole and absolute discretion on such conditions as the City may determine, accept liquidated damages from Lessee through the actual date of Commencement of Construction. If the City so elects, Lessee shall pay to the City liquidated damages of \$250.00 per calendar day from the Outside Commencement of Construction Date through the actual date on which Lessee Commences Construction, as compensation to the City for Lessee's failure to Commence Construction by the Outside Commencement of Construction Date and not as a penalty, which liquidated damages shall be paid on or before Commencement of Construction and as a condition to the issuance of the Building Permit; and

(E) In the case of an Event of Default under Section 18(a)(iii) for failure to Complete Construction on or before the Outside Completion of Construction Date, Lessee may request in writing that the City forbear from immediately terminating this Lease and in the City's sole and absolute discretion on such conditions as the City may determine, accept liquidated damages from Lessee through the date of actual Completion of Construction. If the City so elects, Lessee shall pay to the City liquidated damages of \$250.00 per calendar day from the Outside Completion of Construction Date through the actual date on which Lessee Completes Construction, as compensation to the City for Lessee's failure to Complete

Construction by the Outside Completion of Construction Date and not as a penalty, which liquidated damages shall be paid on or before Commencement of Construction and as a condition to the issuance of the Certificate of Occupancy.

(ii) The parties hereby agree and acknowledge that the liquidated damages described in clauses (D) and (E) above are not a penalty and are reasonable in the light of the anticipated or actual losses to be incurred by the City due to Lessee's failure to meet the milestones provided herein. In the event a court of competent jurisdiction determines that any liquidated damages herein are unenforceable, notwithstanding Lessee's agreement herein that such amounts are fair and reasonable, Lessee shall not be relieved of its obligations to the City for the actual damages resulting from Lessee's failure to meet the milestones provided herein. The City's election of a right or remedy hereunder with respect to any one or more Events of Default shall not limit or otherwise affect the City's right at any time to terminate this Agreement or elect any of the other remedies available to it hereunder or as provided by law and/or in equity with respect to that or any other Event of Default.

(iii) Upon termination of this Amendment after an Event of Default, the City shall have all rights and remedies hereunder, and Lessee shall quit and peaceably surrender the Additional Premises (which includes all improvements thereon, subject to the City's right to require Lessee to demolish any such improvements as provided herein) and all property related thereto in its possession to the City, and all rights and interests of Lessee created under this Amendment in and to the Additional Premises and the Project (which includes all improvements thereon, subject to the City's right to require Lessee to demolish any such improvements as provided herein) and every part thereof shall cease and terminate.

(iv) In connection with any termination by the City after Commencement of Construction, Lessee shall restore the Additional Premises to the condition existing prior to the execution of this Amendment so that the Additional Premises may be fully utilized by the City as a surface parking lot, and Lessee shall reimburse the City for any and all liabilities, losses or damages suffered as a result of Lessee's failure to Complete Construction in accordance with this Amendment.

(v) If Lessee fails to surrender the Additional Premises in accordance herewith the City, without notice, may re-enter and repossess the Additional Premises, as applicable, without process of law, subject to applicable Governmental Requirements.

19. **City Manager's Delegated Authority.** Notwithstanding any provision to the contrary in this Amendment, nothing herein shall preclude the City Manager from seeking direction from or electing to have the City Commission determine any matter arising out of or related to the Project, including any approval contemplated under this Amendment (within the timeframe specified therefor as if the Approval was being determined by the City Manager).

20. **Miscellaneous.**

(a) **Counterparts.** This Amendment may be executed in counterparts, each of which shall be considered an original and all of which taken together shall constitute one document. This Amendment may be executed and delivered via facsimile, PDF, or other electronic transmission, and any facsimile, PDF or electronic signature shall have the same force as an original.

(b) **Ratification.** City and Lessee hereby ratify and affirm the Lease, as modified by this Amendment, and except as expressly modified by this Amendment, all terms and conditions of the Lease shall remain unmodified and in full force and effect. In the event of any conflict between the terms of the Lease and the terms of this Amendment, the terms of this Amendment shall control.

(c) **Severability.** If any clause or provision of this Amendment is illegal, invalid or unenforceable under present or future laws, then and in that event, it is the intention of the parties hereto that the remainder of this Amendment shall not be affected thereby. It is also the intention of the parties to this Amendment that in lieu of each clause or provision of this Amendment that is illegal, invalid or unenforceable, there be added, as a part of this Amendment, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

(d) **Entire Agreement.** This Amendment and the Lease constitute the complete agreement of the City and Lessee with respect to the subject matter hereof and thereof. No representations, inducements, promises or agreements, oral or written, have been made by the City or Lessee, or anyone acting on behalf of the City or Lessee, which are not contained herein, and any prior agreements, promises, negotiations, or representations are superseded by this Amendment and the Lease.

(e) **Amendment and Modification.** The Lease, as modified by this Amendment, may not be modified, supplemented or amended, except in writing signed by all parties hereto.

(f) **Benefit and Binding Effect.** This Amendment shall be binding upon and inure to the benefit of the Parties to this Amendment, their legal representatives, successors and permitted assigns.

[Signatures on following page]

IN WITNESS WHEREOF, Lessee has caused this Amendment to be duly signed in its name, and the City has caused this Amendment to be signed in its name by the Mayor, and duly attested by the City Clerk, and approved as to form and sufficiency by the City Attorney, on the day and year first above written.

WITNESSES:

CITY:

CITY OF MIAMI BEACH, FLORIDA,
a municipal corporation of the State of
Florida

Print name:

By: _____

Name: _____

Title: _____

Print name:

ATTEST:

By: _____

Name: _____

Title: _____

Approved as to form and language and for
execution

By: _____

Name: _____

Title: _____

LESSEE:

THE GREATER MIAMI JEWISH
FEDERATION,
a Florida Non-Profit corporation

Print name:

By: _____

Name: _____

Title: _____

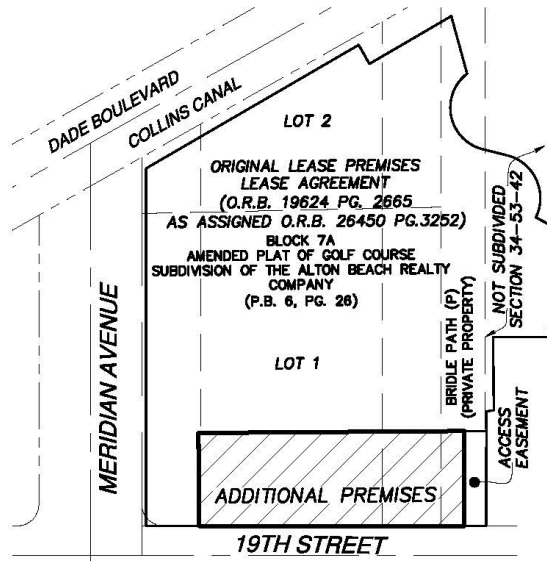
Print name:

EXHIBIT A-1

Legal Description of the Additional Premises

[see attached]

**SKETCH TO ACCOMPANY
LEGAL DESCRIPTION
EXHIBIT "A"**



SURVEYOR'S NOTES:

- LEGAL DESCRIPTION LIMITS WERE DETERMINED BY INSTRUCTIONS PROVIDED BY THE CLIENT.
- THIS IS NOT A SURVEY.
- THIS SITE LIES IN SECTION 34, TOWNSHIP 53 SOUTH, RANGE 42 EAST, MIAMI-DADE COUNTY, FLORIDA.
- BEARINGS SHOWN HEREON ARE BASED ON LEGAL DESCRIPTION OF THE ORIGINAL LEASE PREMISES RECORDED IN O.R.B. 19624, PG. 2665, ASSIGNED O.R.B. 26450, PG. 3252, AND ARE REFERENCED TO THE NORTH RIGHT OF WAY LINE OF 19TH STREET, HAVING AN ASSUMED BEARING OF N89°59'40"E.
- THE PURPOSE OF THIS SKETCH TO ACCOMPANY LEGAL DESCRIPTION IS TO DESCRIBE THE AREA SOUTH OF AND ADJACENT TO "THE ORIGINAL LEASE PREMISES" AT THE HOLOCAUST MEMORIAL ("THE ADDITIONAL PREMISES"), BEING A PORTION OF THE LANDS, IDENTIFIED AS FOLIO: 02-3234-007-0040,
- THE HEREIN DESCRIBED LANDS CONTAIN AN AREA OF 11,549 SQUARE FEET (0.265 ACRES) MORE OR LESS.

THIS SKETCH TO ACCOMPANY LEGAL DESCRIPTION IS VALID ONLY WHEN ALL SHEETS ARE COMBINED, FORMING THE COMPLETE DOCUMENT.

SURVEYOR'S CERTIFICATE:

I HEREBY CERTIFY THAT THE ATTACHED "SKETCH TO ACCOMPANY LEGAL DESCRIPTION" WAS PREPARED UNDER MY RESPONSIBLE CHARGE AND COMPLIES WITH THE STANDARDS OF PRACTICE FOR SURVEYING AND MAPPING AS SET FORTH BY THE STATE OF FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER 5J-17, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO CHAPTER 472.027, FLORIDA STATUTES.

NOT VALID WITHOUT THE ORIGINAL SIGNATURE AND SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

THIS IS NOT A SURVEY.

BISCAYNE ENGINEERING COMPANY, INC.
529 WEST FLAGLER STREET, MIAMI, FL. 33130
(305)-324-7671
STATE OF FLORIDA DEPARTMENT OF AGRICULTURE
LB-0000129
DATE: 05-24-2021

WOLFGANG S. HUECK, PSM, FOR THE FIRM
PROFESSIONAL SURVEYOR AND MAPPER NO. 6519
STATE OF FLORIDA

DATE: Jun 08, 2021 - 9:57am EST FILE: F:\SURVEY\PROJECTS\87000\87057 GREATER MIAMI JEWISH FEDERATION\2. CAD\2. DWG\87057 - Holocaust Memorial Additional Premises- Sketch & Legal.dwg

DRAWING No. 2325-SS-13 BY WH/AJR FIELD BOOK: N/A THIS IS NOT A SURVEY

PROJECT: "ADDITIONAL PREMISES" AT THE HOLOCAUST MEMORIAL

DATE: 05-24-21 REV DATE: BEC ORDER # 03-87057 SHEET 1 OF 3 DRAWN BY CLIENT WH/AJR GREATER MIAMI JEWISH FEDERATION



**SURVEYORS
ENGINEERS
PLANNERS**
• SINCE 1898 •

529 W. FLAGLER ST, MIAMI, FL 33130
TEL. (305) 324-7671

449 NW 35TH ST, BOCA RATON, FL 33431
TEL. (561) 609-2329

E-MAIL: INFO@BISCAYNEENGINEERING.COM • WEBSITE: WWW.BISCAYNEENGINEERING.COM

**SKETCH TO ACCOMPANY
LEGAL DESCRIPTION**

EXHIBIT "A"

LEGAL DESCRIPTION (ADDITIONAL PREMISES):

A portion of Lot 1, Block 7A, together with a portion of the 30 foot wide BRIDLE PATH (PRIVATE PROPERTY) lying east of and adjacent thereto, all as shown on AMENDED PLAT OF GOLF COURSE SUBDIVISION, according to the plat thereof, as recorded in Plat Book 6, at Page 26, of the Public Records of Miami-Dade County, Florida, being more particularly described as follows:

Commence at the intersection of the centerlines of 19th Street and Meridian Avenue; thence South 89°59'40" East along the centerline of 19th Street a distance of 35.00 feet; thence North 00°00'00" East, departing said centerline a distance of 20.00 feet to the intersection of the southerly prolongation of the West line of said Lot 1 with the westerly prolongation of the South line of said Lot 1; thence South 89°59'40" East along the westerly prolongation of said South line, a distance of 3.00 feet to a point on the East Right-of-Way line of Meridian Avenue, according to the Deed Book 4349, Pages 439, 440, 442, and 443 of the Public Records of Dade County (now Miami-Dade County), Florida; thence continue South 89°59'40" East along said westerly prolongation and along the South line of said Lot 1, a distance of 36.05 feet to the POINT OF BEGINNING of the herein described parcel of land; the following two courses are along the Limits of the Original Lease Premises: (1) thence North 00°25'00" West, a distance of 63.26 feet; (2) thence North 89°35'00" East, across a portion of said Lot 1 and a portion of said BRIDLE PATH (PRIVATE PROPERTY), a distance of 180.95 feet to a point being 15.00 feet west of the most southeasterly corner of said Original Lease Premises; thence South 00°05'22" West, across said BRIDLE PATH a distance of 64.59 feet; thence North 89°59'40" West, along the South line of said Lot 1 and the easterly prolongation thereof, a distance of 180.38 feet to the POINT OF BEGINNING.

Said LANDS located, lying and being in the CITY OF MIAMI BEACH, FLORIDA, and containing an area of 11,549 square feet (0.265 acres) more or less.

THIS SKETCH TO ACCOMPANY LEGAL DESCRIPTION IS VALID ONLY WHEN ALL SHEETS ARE COMBINED, FORMING THE COMPLETE DOCUMENT.

DATE: Jun 08, 2021 - 9:57am EST FILE: F:\SURVEY\PROJECTS\87000\87057 GREATER MIAMI JEWISH FEDERATION\2 CAD\2. DWG\87057 - Holocaust Memorial Additional Premises- Sketch & Legal.dwg

DRAWING No. 2325-SS-13 BY WH/AJR FIELD BOOK: N/A THIS IS NOT A SURVEY

PROJECT: **"ADDITIONAL PREMISES" AT THE HOLOCAUST MEMORIAL**

DATE: 05-24-21 REV DATE: BEC ORDER # 03-87057 SHEET 2 OF 3 DRAWN BY WH/AJR CLIENT GREATER MIAMI JEWISH FEDERATION



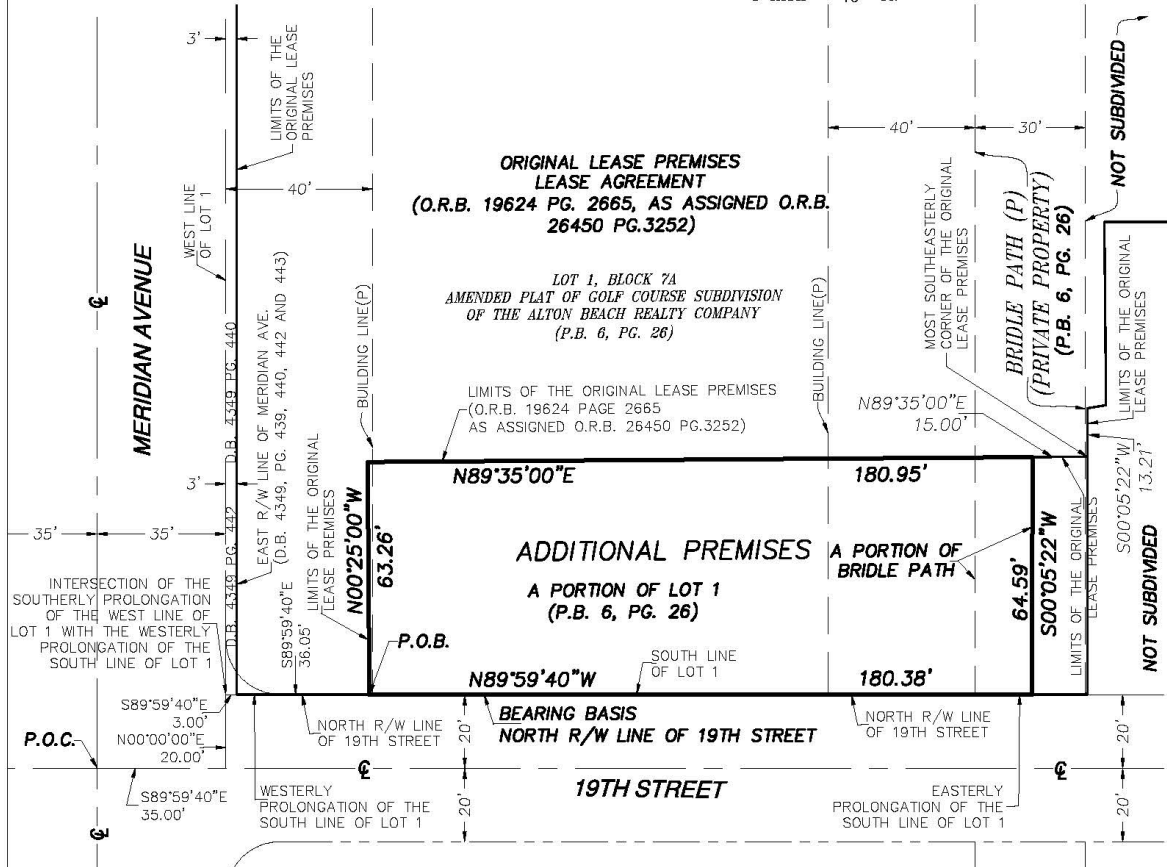
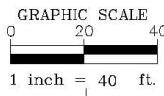
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TEL. (305) 324-7671

449 NW 35TH ST, BOCA RATON, FL 33431
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SKETCH TO ACCOMPANY LEGAL DESCRIPTION EXHIBIT "A"



LEGEND & ABBREVIATIONS

- | | |
|--------------------------------|--------------------------------|
| ⊕ = CENTER LINE | D.B. = DEED BOOK |
| PG. = PAGE | O.R.B. = OFFICIAL RECORDS BOOK |
| P.B. = PLAT BOOK | R/W = EXISTING RIGHT OF WAY |
| P.O.B. = POINT OF BEGINNING | (P) = PER PLAT |
| P.O.C. = POINT OF COMMENCEMENT | LB = LICENSED BUSINESS |

LINE TYPES:

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| LIMITS OF LEGAL DESCRIPTION = | ————— |
| R/W LINE = | - - - - - |
| CENTER LINE = | ————— |
| LOT LINE = | ————— |

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DRAWING No. 2325-SS-13 BY WH/AJR FIELD BOOK: N/A THIS IS NOT A SURVEY

PROJECT: "ADDITIONAL PREMISES" AT THE HOLOCAUST MEMORIAL

DATE: 05-24-21 REV DATE: BEC ORDER # 03-87057 SHEET 3 OF 3 DRAWN BY WH/AJR CLIENT GREATER MIAMI JEWISH FEDERATION



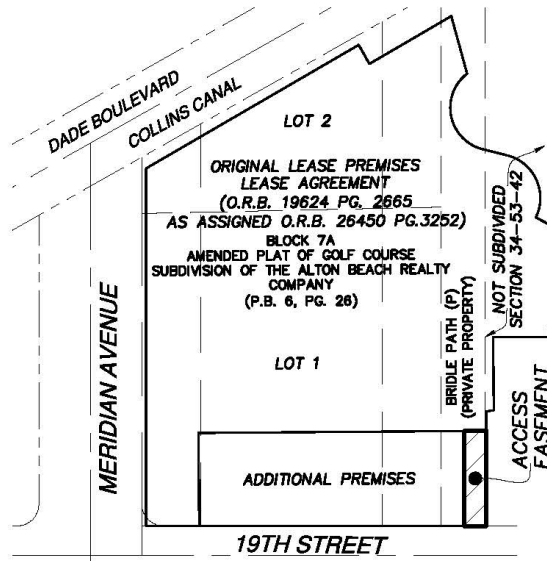
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EXHIBIT A-2

Legal Description of the Access Easement Area

[see attached]

**SKETCH TO ACCOMPANY
LEGAL DESCRIPTION
EXHIBIT "A"**



SURVEYOR'S NOTES:

- LEGAL DESCRIPTION LIMITS WERE DETERMINED BY INSTRUCTIONS PROVIDED BY THE CLIENT.
- THIS IS NOT A SURVEY.
- THIS SITE LIES IN SECTION 34, TOWNSHIP 53 SOUTH, RANGE 42 EAST, MIAMI-DADE COUNTY, FLORIDA.
- BEARINGS SHOWN HEREON ARE BASED ON LEGAL DESCRIPTION OF THE ORIGINAL LEASE PREMISES RECORDED IN O.R.B. 19624, PG. 2665, ASSIGNED O.R.B. 26450, PG. 3252, AND ARE REFERENCED TO THE NORTH RIGHT OF WAY LINE OF 19TH STREET, HAVING AN ASSUMED BEARING OF N89°59'40"E.
- THE PURPOSE OF THIS SKETCH TO ACCOMPANY LEGAL DESCRIPTION IS TO DESCRIBE THE AREA ADJACENT TO "THE ORIGINAL LEASE PREMISES" AND "THE ADDITIONAL PREMISES" AT THE HOLOCAUST MEMORIAL ("THE ACCESS EASEMENT"), BEING A PORTION OF THE LANDS, IDENTIFIED AS FOLIO: 02-3234-007-0040,
- THE HEREIN DESCRIBED LANDS CONTAIN AN AREA OF 970 SQUARE FEET (0.022 ACRES) MORE OR LESS.

THIS SKETCH TO ACCOMPANY LEGAL DESCRIPTION IS VALID ONLY WHEN ALL SHEETS ARE COMBINED, FORMING THE COMPLETE DOCUMENT.

SURVEYOR'S CERTIFICATE:

I HEREBY CERTIFY THAT THE ATTACHED "SKETCH TO ACCOMPANY LEGAL DESCRIPTION" WAS PREPARED UNDER MY RESPONSIBLE CHARGE AND COMPLIES WITH THE STANDARDS OF PRACTICE FOR SURVEYING AND MAPPING AS SET FORTH BY THE STATE OF FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER 5J-17, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO CHAPTER 472.027, FLORIDA STATUTES.

NOT VALID WITHOUT THE ORIGINAL SIGNATURE AND SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

THIS IS NOT A SURVEY.

BISCAYNE ENGINEERING COMPANY, INC.
529 WEST FLAGLER STREET, MIAMI, FL. 33130
(305)-324-7671
STATE OF FLORIDA DEPARTMENT OF AGRICULTURE
LB-0000129
DATE: 05-24-2021

WOLFGANG S. HUECK, PSM, FOR THE FIRM
PROFESSIONAL SURVEYOR AND MAPPER NO. 6519
STATE OF FLORIDA

DATE: Jun 08, 2021 - 10:29am EST FILE: F:\SURVEY\PROJECTS\87000\87057 GREATER MIAMI JEWISH FEDERATION\2. CAD\2. DWG\87057 - Holocaust Memorial Access Easement- Sketch & Legal.dwg

DRAWING No. 2325-SS-18 BY WH/AJR FIELD BOOK: N/A THIS IS NOT A SURVEY

PROJECT: "ACCESS EASEMENT" AT THE HOLOCAUST MEMORIAL

DATE: 05-24-21 REV DATE: BEC ORDER # 03-87057 SHEET 1 OF 3 DRAWN BY CLIENT WH/AJR GREATER MIAMI JEWISH FEDERATION

BISCAYNE ENGINEERING <small>SINCE 1898</small>	SURVEYORS ENGINEERS PLANNERS <small>SINCE 1898</small>	529 W. FLAGLER ST, MIAMI, FL 33130 TEL. (305) 324-7671	449 NW 35TH ST, BOCA RATON, FL 33431 TEL. (561) 609-2329
	E-MAIL: INFO@BISCAYNEENGINEERING.COM • WEBSITE: WWW.BISCAYNEENGINEERING.COM		

**SKETCH TO ACCOMPANY
LEGAL DESCRIPTION**

EXHIBIT "A"

LEGAL DESCRIPTION (ACCESS EASEMENT):

A portion of the 30 foot wide BRIDLE PATH (PRIVATE PROPERTY) as shown on AMENDED PLAT OF GOLF COURSE SUBDIVISION, according to the plat thereof, as recorded in Plat Book 6, at Page 26, of the Public Records of Miami-Dade County, Florida, together with a portion of Section 34, Township 53 South, Range 42 East, Miami-Dade County, Florida, lying east of and adjacent thereto, being more particularly described as follows:

Commence at the intersection of the centerlines of 19th Street and Meridian Avenue; thence South 89°59'40" East along the centerline of 19th Street a distance of 35.00 feet; thence North 00°00'00" East, departing said centerline a distance of 20.00 feet to the intersection of the southerly prolongation of the West line of said Lot 1 with the westerly prolongation of the South line of said Lot 1; thence South 89°59'40" East along the westerly prolongation of said South line, a distance of 3.00 feet to a point on the East Right-of-Way line of Meridian Avenue, according to the Deed Book 4349, Pages 439, 440, 442, and 443 of the Public Records of Dade County (now Miami-Dade County), Florida; thence continue South 89°59'40" East along said westerly prolongation and along the South line of said Lot 1 and along the easterly prolongation thereof, a distance of 216.43 feet to the POINT OF BEGINNING of the herein described parcel of land; thence North 00°05'22" East, a distance of 64.59 feet; thence North 89°35'00" East, along the Limits of the Original Lease Premises, across a portion of said BRIDLE PATH (PRIVATE PROPERTY) and across a portion of said Section 34, a distance of 15.00 feet, to the most southeasterly corner of said Original Lease Premises; thence South 00°05'22" West, across said Section 34, a distance of 64.70 feet; thence North 89°59'40" West, along the easterly prolongation of the South line of said Lot 1, a distance of 15.00 feet to the POINT OF BEGINNING.

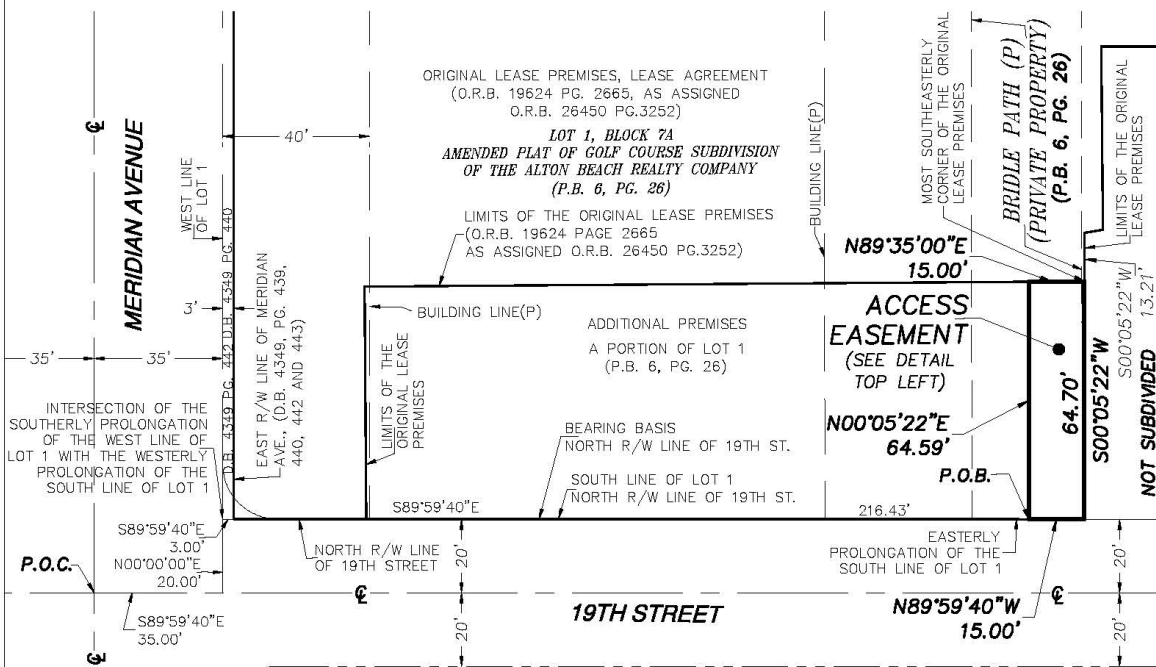
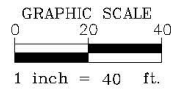
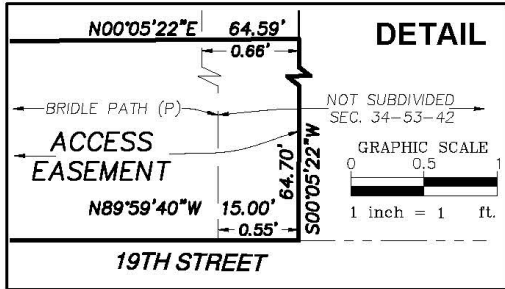
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DRAWING No. 2325-SS-18		BY WH/AJR	FIELD BOOK: N/A THIS IS NOT A SURVEY	
PROJECT: "ACCESS EASEMENT" AT THE HOLOCAUST MEMORIAL				
DATE: 05-24-21	REV DATE:	BEC ORDER # 03-87057	SHEET 2 OF 3	DRAWN BY WH/AJR
CLIENT: GREATER MIAMI JEWISH FEDERATION				
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SKETCH TO ACCOMPANY LEGAL DESCRIPTION EXHIBIT "A"



LEGEND & ABBREVIATIONS

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LINE TYPES:

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|-------------------------------|-------|
| LIMITS OF LEGAL DESCRIPTION = | ————— |
| R/W LINE = | ----- |
| CENTER LINE = | ----- |
| LOT LINE = | ----- |
| BUILDING LINE = | ----- |

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DATE: 05-24-21 REV DATE: BEC ORDER # 03-87057 SHEET 3 OF 3 DRAWN BY WH/AJR CLIENT GREATER MIAMI JEWISH FEDERATION



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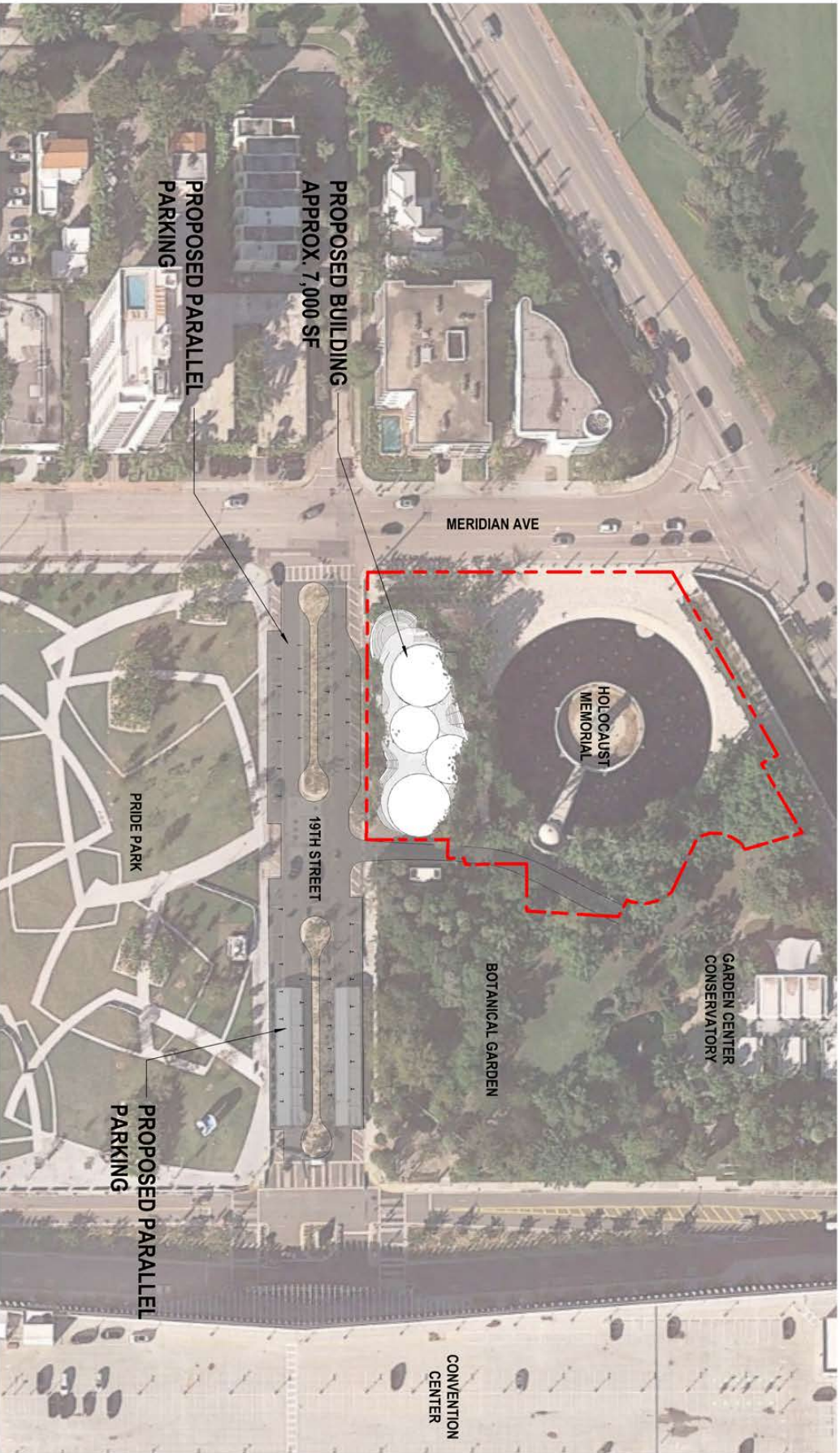
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EXHIBIT B

Concept Plan

[see attached]



ARQUITECTONICA / H³

PROJECT: **HOLOCAUST MEMORIAL CENTER**
 1933-1945 Meridian Ave, Miami Beach, FL 33139

DATE: **A-002C**

CONCEPT PLAN

SCALE: 1" = 40'-0"
 DATE: 08/15/21

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EXHIBIT C

Insurance Requirements

1. **Evidence of Insurance.** After the Effective Date and prior to any activity by Lessee on the Additional Premises, and thereafter promptly following the City's request, Lessee shall deliver satisfactory evidence of the required insurance to the City. Satisfactory evidence shall be: (a) a certificate of insurance for all required coverage; and (b) a copy of the actual insurance policy for builder's risk coverage. The City, at its sole option, may request a certified copy of any or all insurance policies required by this Amendment. All insurance policies must specify they are not subject to cancellation or non-renewal without a minimum of 30 days notification by the insurer to the City and the City's Risk Management Division, with a minimum of ten days' notification by the insurer to the City and the City's Risk Management Division prior to cancellation or non-renewal for non-payment of premium. Lessee will deliver to the City, at least 30 days prior to the date of expiration of any insurance policy, a renewal policy replacing any policies expiring during the Term of the Lease, or a certificate thereof, together with evidence that the full premiums have been paid. Premiums may be paid in annual installments. All certificates of insurance shall (i) be in a form acceptable to the City, (ii) name the types of policies provided, (iii) refer specifically to the Lease and this amendment; (iv) evidence the waiver of subrogation in favor of the City as required by Section 9 below; and (v) evidence that coverage shall be primary and noncontributory, and that each policy includes a Cross Liability or Severability of Interests provision, with no requirement of premium payment by the City. Lessee shall deliver, together with each certificate of insurance, a letter from the agent or broker placing such insurance, certifying to the City that the coverage provided meets the coverage required under this Amendment. The official title of the certificate holder is "City of Miami Beach, Florida." Additional insured certificates for the City shall read "City of Miami Beach, Florida", and shall be addressed to 1700 Convention Center Drive, Miami Beach, FL, 33139, Attn: Risk Management, 3rd Floor.

2. **Required Coverages.** After Effective Date and prior to any activity by Lessee on the Additional Premises, and thereafter, at all times during the Term, in addition to such insurance as may be required by law, the Lessee shall procure and maintain, or cause others to procure and maintain, without lapse or material change, the following insurance, which may be provided through master blanket insurance policies:
 - (a) **Commercial General Liability Insurance** on a comprehensive basis, including contractual liability, to cover the Additional Premises and Lessee's operations and indemnity obligations, in an amount not less than \$5,000,000 combined single limit per occurrence for bodily injury and property damage. Such insurance may be provided through a combination of primary and excess/umbrella liability policies.

 - (b) **Automobile Liability Insurance** covering all owned, non-owned and hired vehicles used by Lessee in connection with its operations under the Lease and this Amendment in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage. Coverage must be afforded equivalent to the latest edition of the Business Automobile Liability policy, as filed by the Insurance Services Office (ISO).

- (c) Builders Risk Insurance during the course of construction, issued in the name of Lessee, the General Contractor and the City as their interests may appear, in amount(s) not less than 100% of the insurable value of the Project completed structure(s), covering perils on an "All Risk" basis, including flood, earthquake, and windstorm. Policy(s) must clearly indicate that underground structures (if applicable) and materials being installed are covered. Any deductibles are the sole responsibility of Lessee.
 - (d) Workers' Compensation and Employers Liability Insurance with limits sufficient to respond to Florida Statute §440. In addition, Lessee shall obtain Employers' Liability Insurance with limits of not less than: (i) \$500,000 Bodily Injury by Accident, (ii) \$500,000 Bodily Injury by Disease and (iii) \$500,000 Bodily Injury by Disease, each employee.
 - (e) Professional Liability. Lessee shall cause any architects or engineers to maintain architects and engineers errors and omissions liability insurance specific to the activities or scope of work such consultants will perform. If coverage is provided on a "claims made" basis, the policy shall provide for the reporting of claims for a period of five (5) years following the completion of all construction activities. The minimum limits acceptable shall be \$1,000,000 per occurrence and \$3,000,000 in the annual aggregate.
3. **Premiums and Renewals.** Lessee shall pay as the same become due all premiums for the insurance required by this Exhibit C, shall renew or replace each such policy and deliver to the City evidence of the payment of the full premium thereof prior to the expiration date of such policy, and shall promptly deliver to the City all original certificates of insurance and copies of all such renewal or replacement policies.
 4. **Adequacy Of Insurance Coverage.** The adequacy of the insurance coverage required by this Exhibit C may be reviewed periodically by the City in its sole discretion. Except with respect to "CCIP" and "OCIP" policies, the City reserves the right, but not the obligation, to review and reasonably revise the insurance requirements every three (3) years, (including but not limited to deductibles, limits, coverages and endorsements) provided such revisions are commercially reasonable, customary and commonly available regarding properties similar in type, size, use and location to the Additional Premises and the Project Improvements and further provided that such coverage is available at commercially reasonable rates (including fiduciary liability and directors and officers liability insurance). Lessee agrees that City may, if it so elects, at City's expense, have the Project Improvements and Additional Premises appraised for purposes of obtaining the proper amount of insurance hereunder. Any review by the City shall not constitute an approval or acceptance of the amount of insurance coverage.
 5. **City May Procure Insurance if Lessee Fails To Do So.** If Lessee refuses, neglects or fails to secure and maintain in full force and effect any or all of the insurance required pursuant to this Amendment within 30 days after written notice from the City to Lessee, the City, at its option, may procure or renew such insurance. In that event, all commercially reasonable amounts of money paid therefor by the City shall be paid by Lessee, together with interest thereon at the rate of four percent (4%) per annum above the above the highest annual prime rate of interest published from time to time in the Wall Street Journal "Money Rates" section or any successor

publication reasonably selected by the City, from the date the same were paid by the City to the date of payment thereof by Lessee. Such amounts, together with all interest accrued thereon, shall be paid by Lessee to the City within ten days of written notice thereof.

6. **Effect of Loss or Damage.** Any loss or damage by fire or other casualty of or to any of the Project Improvements on the Additional Premises at any time shall not operate to terminate the Lease or this Amendment or to relieve or discharge Lessee from the performance and fulfillment of any of Lessee's obligations pursuant to the Lease and this Amendment. No acceptance or approval of any insurance agreement or agreements by the City shall relieve or release or be construed to relieve or release Lessee from any liability, duty or obligation assumed by, or imposed upon it by the provisions of the Lease and this Amendment.
7. **Proof of Loss.** Whenever any Project Improvements, or any part thereof, constructed on the Additional Premises shall have been damaged or destroyed, Lessee shall promptly make proof of loss in accordance with the terms of the insurance policies and shall proceed promptly to collect or cause to be collected all valid claims which may have arisen against insurers or others based upon any such damage or destruction.
8. **Insurance Proceeds.** All sums payable for loss and damage arising out of the casualties covered by the property insurance policies shall be payable to Lessee for restoration of the Project. **Waiver of Subrogation.** Where permitted by law, each Party hereby waives all rights of recovery by subrogation or otherwise (including claims related to deductible or self-insured retention clauses, inadequacy of limits of any insurance policy, insolvency of any insurer, limitations or exclusions of coverage), against the other Party and its respective officers, agents or employees.
9. **Inadequacy of Insurance Proceeds.** Lessee's obligations hereunder with respect to Completion of Construction shall be absolute, irrespective of whether insurance proceeds received, if any, are adequate to pay for said restoration.
10. **No City Obligation to Provide Property Insurance.** Lessee acknowledges and agrees that the City shall have no obligation to provide any property insurance on any Project Improvements or property of Lessee located on the Additional Premises. If the City does maintain any property insurance coverage, Lessee acknowledges that such insurance shall be for the sole benefit of the City and Lessee shall have no right or claim to such proceeds.
11. **Compliance.** Lessee's compliance with the requirements of this Exhibit C shall not relieve Lessee of its liability, or be construed to relieve or limit, Lessee of any responsibility, liability or obligation imposed under any other portion of this Amendment, the Lease, or by law, including, any indemnification obligations which Lessee owes to the City.
12. **Right to Examine.** The City reserves the right, upon reasonable notice, to examine the original or true copies of policies of insurance (including binders, amendments, exclusions, riders and applications), or applicable portions of any master insurance policy, to determine the true extent of coverage. Lessee agrees to permit such inspections and make available such policies or portions thereof at the offices of the

City.

13. **Personal Property.** Any personal property of Lessee or of others placed on the Additional Premises shall be at the sole risk of Lessee or the owners thereof, and the City shall not be liable for any loss or damage thereto for any cause except as a result of the gross negligence or willful misconduct of the City or its employees, agents or contractors.