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MIAMI-DADE COUNTY, FLORIDA

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Document Title:

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CITY OF MIAMI BEACH RESOLUTION

Return Document To / Prepared By:

MATT ANDERSON / AKERMAN LLP
90 SE 7th STREET, SUITE 1100
MIAMI FL 33131

Rule 2.520 (d) On all ... documents prepared ... which are to be recorded in the public records of any county ... a 3 - inch by 3 - inch space at the top right-hand corner on the first page and a 1 - inch by 3 - inch space at the top right-hand corner on each subsequent page shall be left blank and reserved for use by the clerk of court.

52.50
8.00

RESOLUTION NO.

2019-30927

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING, ON SECOND READING/PUBLIC HEARING OF THIS RESOLUTION, THE VACATION OF THAT PORTION OF (1) OCEAN TERRACE, BETWEEN THE CENTERLINE OF 74th STREET AND THE NORTHERN RIGHT-OF-WAY LINE OF 75th STREET, WHICH CONSISTS OF A 60-FOOT WIDE RIGHT-OF-WAY CONTAINING APPROXIMATELY 25,200 SQUARE FEET IN TOTAL LOT AREA; (2) THE NORTH HALF OF 74th STREET, BETWEEN OCEAN TERRACE AND COLLINS AVENUE, WHICH CONSISTS OF A 30-FOOT WIDE RIGHT-OF-WAY CONTAINING APPROXIMATELY 8,880 SQUARE FEET IN TOTAL LOT AREA; AND (3) A PORTION OF 75th STREET, BETWEEN OCEAN TERRACE AND COLLINS AVENUE, WHICH CONSISTS OF A 40-FOOT WIDE RIGHT-OF-WAY CONTAINING APPROXIMATELY 11,840 SQUARE FEET IN TOTAL LOT AREA (COLLECTIVELY, THE "CITY RIGHT-OF-WAY AREAS"), IN FAVOR OF THE ABUTTING PROPERTY OWNERS, 7400 OCEAN TERRACE, LLC, 7410 OCEAN TERRACE, LLC, 7420 OCEAN TERRACE INVESTMENT, LLC, 7436 OCEAN TERRACE, LLC, 7450 OCEAN TERRACE, LLC, AND 7441 COLLINS AVENUE INVESTMENT, LLC (COLLECTIVELY, THE "DEVELOPER") AND G & V REALTY, LLC, THE OWNER OF 7401 COLLINS AVENUE; CONDITIONING THE VACATION UPON THE CITY COMMISSION'S APPROVAL OF, AND DEVELOPER'S SATISFACTION OF, CERTAIN TERMS AND CONDITIONS, TO BE SET FORTH IN A DEVELOPMENT AGREEMENT BETWEEN THE CITY AND DEVELOPER, WHICH CONDITIONS SHALL, AMONG OTHER TERMS, REQUIRE THE DEVELOPER TO (1) GRANT TO THE CITY A PERPETUAL EASEMENT OVER, ACROSS AND UNDER THE CITY RIGHT-OF-WAY AREAS FOR UTILITIES AND PUBLIC VEHICULAR, PEDRESTRIAN AND RECREATIONAL USE AND ACCESS; AND (2) DEVELOP, DESIGN, AND CONSTRUCT, AT THE DEVELOPER'S SOLE COST AND EXPENSE (EXCEPT FOR PAYMENT OF CERTAIN CITY FEES), CERTAIN PUBLIC PARK AND STREETScape IMPROVEMENTS IN THE VICINITY OF OCEAN TERRACE, BETWEEN 73RD STREET AND 75TH STREET, WITH SUCH PUBLIC IMPROVEMENTS HAVING A VALUE OF APPROXIMATELY FOURTEEN MILLION EIGHT HUNDRED THOUSAND DOLLARS (\$14,800,000); AND FURTHER, WAIVING, BY 5/7THS VOTE, THE COMPETITIVE BIDDING REQUIREMENT, PURSUANT TO SECTION 82-38 OF THE CITY CODE, FINDING SUCH WAIVER TO BE IN THE BEST INTEREST OF THE CITY.

WHEREAS, the City holds a right-of-way dedication to the following right-of-way areas:

(1) a portion of Ocean Terrace, running from the centerline of 74th Street and the northern right-of-way line of 75th Street, consisting of a sixty (60) foot wide right-of-way, and containing approximately 25,200 square feet in total lot area; as shown on as shown on the Plat of the Townsite of Harding, recorded in Plat Book 34, Page 4 of the Public Records of Miami-Dade County (the "Harding Townsite Plat");

(2) the north half of 74th Street, between Ocean Terrace and Collins Avenue, which consists of a 30-foot wide right-of-way containing approximately 8,880 square feet in total lot area; and

(3) a portion of 75th Street, between Ocean Terrace and Collins Avenue, which consists of a 40-foot wide right-of-way containing approximately 11,840 square feet in total lot area (collectively, (1) through (3) above, the "City Right-of-Way Areas"), each as shown on the Harding Townsite Plat, and depicted in the sketch attached as Exhibit "A" to the Commission Memorandum accompanying this Resolution; and

WHEREAS, various entities controlled by and affiliated with the principals of Ocean Terrace Holdings, LLC, namely, 7400 Ocean Terrace, LLC, 7410 Ocean Terrace, LLC, 7420 Ocean Terrace Investment, LLC, 7436 Ocean Terrace, LLC, 7450 Ocean Terrace, LLC, and 7441 Collins Avenue Investment, LLC (collectively, the "Developer"), and G&V Realty, LLC (the owner of 7401 Collins Avenue), own the properties abutting or in the vicinity of the City Right-of-Way Areas; which parcels are known as 7401, 7409, 7421, 7433, 7435, 7437, 7439, 7441, and 7449 Collins Avenue, and 7400, 7410, 7420, 7430, 7436, and 7450 Ocean Terrace (collectively, the "Property"); and

WHEREAS, the Developer intends to develop the Property as a mixed-use residential and commercial development (collectively, the "Proposed Development") pursuant to a Florida Statute Chapter 163 development agreement entered into between the City and the Developer (the "Development Agreement"), and to develop, design and construct, at the Developer's sole cost and expense, certain public park and streetscape improvements in the vicinity of Ocean Terrace, between 73rd Street and 75th Street; and

WHEREAS, the Proposed Development shall be developed as a unified development site; and

WHEREAS, in conjunction with Proposed Development, the Developer is requesting that the City vacate the City Right-of-Way Areas abutting 7401, 7441, and 7449 Collins Avenue and 7400, 7410, 7420, 7430, 7436, and 7450 Ocean Terrace, and has submitted its application to the City's Public Works Department with respect thereto, to permit Developer to utilize the F.A.R. associated with the City Right-of-Way Areas within the Developer's Project (but with the City Right-of-Way Areas to continue to be used for pedestrian and vehicular access and travel); and

WHEREAS, with respect to the proposed vacation of the 4,380 square feet of City right-of-way abutting 7401 Collins Avenue, the proposed vacation shall be subject to and contingent on Developer's agreement with the property owner to include the vacated right-of-way area as part of the unified development site for the Project; and

WHEREAS, the vacation of City streets, alleys, and/or rights of way, require compliance with Article II, Sections 82-36 through 82-40, of the City Code (which establish the procedures governing the sale or lease of public property);

WHEREAS, prior to approving a request for vacation, the following requirements must be satisfied: (1) the title of the Resolution approving the proposed vacation shall be heard by the City Commission on two separate meeting dates, with the second reading to be accompanied by a duly noticed public hearing; (2) the proposed vacation shall be transmitted to the Finance and Citywide Projects Committee (the "Finance Committee") for its review; (3) the City's Planning Department shall prepare a written planning analysis, to be submitted to the City Commission concurrent with its consideration of the proposed vacation; and (4) the City shall obtain an independent appraisal of the fair market value of the property proposed to be vacated; and

WHEREAS, the Finance Committee reviewed the proposed vacation at its March 22, 2019 meeting, which recommendations were accepted by the City Commission in Resolution No. 2019-30771; and

WHEREAS, the Planning Department analysis of the vacation, pursuant to Section 82-38 of the City Code, is attached as Exhibit "B" to the Commission Memorandum accompanying this Resolution; and

WHEREAS, the July 3, 2019 appraisal of the City Right-of-Way Areas, which appraisal is attached as Exhibit "C" to the Commission Memorandum accompanying this Resolution, valued the City Right-of-Way Areas at \$12,400,000; and

WHEREAS, on December 12, 2018, the City Commission unanimously adopted the Ocean Terrace Neighborhood Urban Design Plan, a concept plan for proposed public streetscape and park improvements to the Ocean Terrace area ("Concept Plan"), prepared by The Corradino Group and Garcia-Pons + Associates; and

WHEREAS, on March 22, 2019, the Finance Committee recommended proceeding with the vacation process, subject to the following public benefits being memorialized in the Development Agreement:

1. Developer would develop, design, permit and construct, at its sole cost and expense, certain public park and streetscape improvements in the vicinity of Ocean Terrace, between 73rd Street and 75th Street, based on the Concept Plan approved by the City Commission; and

2. Developer would grant a perpetual, non-revocable utility, roadway and pedestrian access easement in favor of the City against the City Right-of-Way Areas, for public vehicular and pedestrian use and access, as modified by the public improvements, which will pedestrianize portions of Ocean Terrace; and

WHEREAS, Section 82-39(a) of the City Code provides that the lease or sale of public property also requires an advertised public bidding process, which requirement may be waived by 5/7th vote of the City Commission; and

WHEREAS, Florida law, requires, upon vacation, a right-of-way reverts to the abutting property owners and/or the holders of any interest in any reversionary rights to the vacated area; and

WHEREAS, as the abutting property owners and holders of the appropriate reversionary interests are the only persons entitled to the vacation, the City Administration recommends that the Mayor and City Commission waive the competitive bidding requirement, finding that the public interest is served by waiving such condition; and

WHEREAS, pursuant to the requirements of Section 1.03(b)(4) of the City Charter, the Planning Board at its May 21, 2019 meeting, unanimously approved the proposed vacation; and

WHEREAS, Section 1.03 (b)(4) of the City Charter also requires that the vacation be approved by 6/7^{ths} vote of the City Commission; and

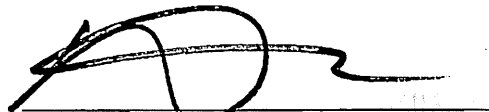
WHEREAS, on June 26, 2019, the Mayor and City Commission held the first reading of this Resolution and the companion agenda items (for the proposed Development Agreement and amendments to the City's Land Development Regulations), and read the title of the vacation Resolution into the record as required by Section 82-37 of the City Code; and

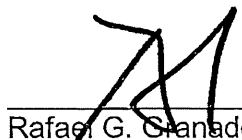
WHEREAS, the Administration, recommends approval of the vacation at second reading, subject to the Developer's satisfaction of the terms and conditions set forth in the Development Agreement.

NOW THEREFORE BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby approve, on second reading of this Resolution, the vacation of that portion of (1) Ocean Terrace, between the centerline of 74th Street and the northern right-of-way line of 75th Street, which consists of a 60-foot wide right of way containing approximately 25,200 square feet in total lot area; (2) the north half of 74th Street, between Ocean Terrace and Collins Avenue, which consists of a 30-foot wide right of way containing approximately 8,880 square feet in total lot area; and (3) a portion of 75th Street, between Ocean Terrace and Collins Avenue, which consists of a 40-foot wide right-of-way containing approximately 11,840 square feet in total lot area (collectively, the "City Right-of-Way Areas"), in favor of the abutting property owners, 7400 Ocean Terrace, LLC, 7410 Ocean Terrace, LLC, 7420 Ocean Terrace Investment, LLC, 7436 Ocean Terrace, LLC, 7450 Ocean Terrace, LLC, and 7441 Collins Avenue Investment, LLC (collectively, the "Developer") and G & V Realty, LLC, the owner of 7401 Collins Avenue; conditioning the vacation upon the City Commission's approval of, and Developer's satisfaction of, certain terms and conditions, to be set forth in a development agreement between the City and Developer, which conditions shall, among other terms, require the Developer to (1) grant to the City a perpetual easement over, across and under the City Right-of-Way Areas for utilities and public vehicular, pedestrian, and recreational use and access; and (2) develop, design, and construct, at the Developer's sole cost and expense (except for the payment of certain City fees), certain public park and streetscape improvements in the vicinity of Ocean Terrace, between 73rd Street and 75th Street, with such public improvements having a value of approximately Fourteen Million Eight Hundred Thousand Dollars (\$14,800,000); and further, waive, by 5/7ths vote, the competitive bidding requirement, pursuant to Section 82-38 of the City Code, finding such waiver to be in the best interest of the City.

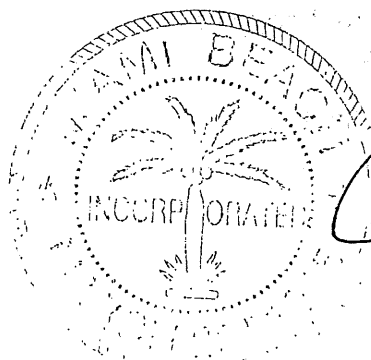
PASSED and ADOPTED this 31 day of July, 2019.

ATTEST:


Dan Gelber, Mayor


Rafael G. Granado, City Clerk

AUG 8, 2019



APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION


City Attorney

7/24/19
Date

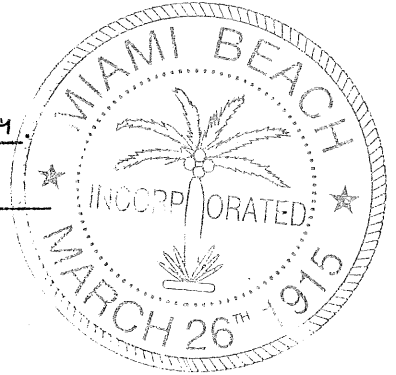
STATE OF FLORIDA
COUNTY OF MIAMI-DADE

I, RAFAEL E. GRANADO, City Clerk of the City of Miami Beach, Florida, do hereby certify that the above and foregoing is a true and correct copy of the original thereof on file in this office.

WITNESS my hand and seal of said City this
21 day of November, 2019

Rafael E. Granado

City Clerk of the City of Miami Beach, Florida



25NE

NEIGHBORS

**CITY OF MIAMI BEACH
NOTICE OF PUBLIC HEARING**

July 31, 2019

NOTICE IS HEREBY given that a Second Reading/Public Hearing will be heard by the Mayor and City Commission of the City of Miami Beach, Florida, in the Commission Chambers, 3rd Floor, City Hall, 1700 Convention Center Drive, Miami Beach, Florida, on **Wednesday, July 31, 2019 at 11:40 a.m.**, or as soon thereafter as the matter can be heard, to consider:

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING, FOLLOWING SECOND READING/PUBLIC HEARING OF THIS RESOLUTION, THE VACATION OF THAT PORTION OF (1) OCEAN TERRACE, BETWEEN THE CENTERLINE OF 74TH STREET AND THE NORTHERN RIGHT-OF-WAY LINE OF 75TH STREET, WHICH CONSISTS OF A 60-FOOT WIDE RIGHT-OF-WAY CONTAINING APPROXIMATELY 25,200 SQUARE FEET IN TOTAL LOT AREA; (2) THE NORTH HALF OF 74TH STREET, BETWEEN OCEAN TERRACE AND COLLINS AVENUE, WHICH CONSISTS OF A 30-FOOT WIDE RIGHT-OF-WAY CONTAINING APPROXIMATELY 8,880 SQUARE FEET IN TOTAL LOT AREA; AND (3) A PORTION OF 75TH STREET, BETWEEN OCEAN TERRACE AND COLLINS AVENUE, WHICH CONSISTS OF A 40-FOOT WIDE RIGHT-OF-WAY CONTAINING APPROXIMATELY 11,840 SQUARE FEET IN TOTAL LOT AREA (COLLECTIVELY, THE "CITY RIGHT-OF-WAY AREAS"), IN FAVOR OF THE ABUTTING PROPERTY OWNERS, 7400 OCEAN TERRACE, LLC, 7410 OCEAN TERRACE, LLC, 7420 OCEAN TERRACE INVESTMENT, LLC, 7436 OCEAN TERRACE, LLC, 7450 OCEAN TERRACE, LLC, AND 7441 COLLINS AVENUE INVESTMENT, LLC (COLLECTIVELY, THE "DEVELOPER") AND G & V REALTY, LLC, THE OWNER OF 7401 COLLINS AVENUE; CONDITIONING THE VACATION UPON THE CITY COMMISSION'S APPROVAL OF, AND DEVELOPER'S SATISFACTION OF, CERTAIN TERMS AND CONDITIONS, TO BE SET FORTH IN A DEVELOPMENT AGREEMENT BETWEEN THE CITY AND DEVELOPER, WHICH CONDITIONS SHALL, AMONG OTHER TERMS, REQUIRE THE DEVELOPER TO (1) GRANT TO THE CITY A PERPETUAL UTILITY, ROADWAY AND PEDESTRIAN ACCESS EASEMENT OVER, ACROSS AND UNDER THE CITY RIGHT-OF-WAY AREAS; AND (2) OBLIGATE THE DEVELOPER TO DEVELOP, DESIGN, AND CONSTRUCT, AT THE DEVELOPER'S SOLE COST AND EXPENSE (EXCEPT FOR PAYMENT OF CERTAIN CITY FEES), CERTAIN PUBLIC PARK AND STREETSCAPE IMPROVEMENTS IN THE VICINITY OF OCEAN TERRACE, BETWEEN 73RD STREET AND 75TH STREET, WITH SUCH PUBLIC IMPROVEMENTS HAVING A VALUE OF APPROXIMATELY FIFTEEN MILLION DOLLARS (\$15,000,000); FURTHER, WAIVING, BY 5/7TH VOTE, THE COMPETITIVE BIDDING REQUIREMENT, PURSUANT TO SECTION 82-38 OF THE CITY CODE, FINDING SUCH WAIVER TO BE IN THE BEST INTEREST OF THE CITY.

This Resolution is being heard pursuant to Section 82-37 of the City of Miami Beach Code or Ordinances, and Section 1.03(b)(4) of the City Charter.

A copy of the proposed Development Agreement that is related to this item is available for public inspection during normal business hours in the Office of the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139.

INTERESTED PARTIES are invited to appear at this meeting, or be represented by an agent, or to express their views in writing addressed to the City Commission, c/o the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. This item is available for public inspection during normal business hours in the City Clerk's Office, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. This meeting, or any item herein, may be continued, and under such circumstances, additional legal notice need not be provided. Pursuant to Section 286.0105, Fla. Stat., the City hereby advises the public that if a person decides to appeal any decision made by the City Commission with respect to any matter considered at its meeting or its hearing, such person must ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

To request this material in alternate format, sign language interpreter (five-day notice required), information on access for persons with disabilities, and/or any accommodation to review any document or participate in any City-sponsored proceedings, call 305.604.2489 and select option 6; TTY users may call via 711 (Florida Relay Service).

Rafael E. Granado, City Clerk
City of Miami Beach

Ad 073119-02

OCEAN TERRACE HOLDINGS, LLC

1035 N. Miami Avenue, Suite 201

Miami, Florida 33136

December 10, 2019

Via Electronic Mail

Honorable Dan Gelber
Mayor
City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139

Re: Letter Agreement regarding that certain Development Agreement by and among the City of Miami Beach, a Florida municipal corporation (the “City”), and 7450 Ocean Terrace LLC, 7436 Ocean Terrace LLC, 7420 Ocean Terrace Investment, LLC, 7410 Ocean Terrace LLC, 7400 Ocean Terrace, LLC, 7409 Collins Ave Investment, LLC, 7421 Collins Ave Investment, LLC, 7433 Collins Ave Investment, LLC, 7439 Collins Ave Investment LLC, and 7441 Collins Ave Investment, LLC (collectively, “Developer”), dated as of July 31, 2019, a copy of which is recorded in Official Records Book 31563, at Page 1201 of the Public Records of Miami-Dade County, Florida (the “Development Agreement”)

Dear Mayor Gelber:

This letter agreement (“Letter Agreement”) memorializes the understanding between the Developer and the City of the means for securing the Developer’s performance of certain commitments required by the Development Agreement. Capitalized terms used in this Letter Agreement without definition have the meanings assigned to them in the Development Agreement.

Specifically, the Developer and the City agree as follows:

1. Letter of Credit. Pursuant to Section 5(d) of the Development Agreement, the Developer agreed to deliver to the City at the Closing a Recognition Agreement or a Surety Bond to secure the Developer’s commitment to complete the Park/Streetscape Improvements. As an alternative to the Recognition Agreement or Surety Bond, the City hereby agrees to accept from the Developer at the Closing, in satisfaction of the requirements of Section 5(d) of the Development Agreement, an irrevocable letter of credit (the “Letter of Credit”) from a financial institution acceptable to the City in its reasonable discretion in an amount equal to the guaranteed maximum price set forth in the Construction Agreements for the then-remaining design and construction of the Park/Streetscape Improvements, plus City’s estimated oversight/inspection costs, or, if the Developer has not executed the Construction Agreements as of the Closing, then in an amount equal to the City’s estimate to complete the then-remaining work for the design and construction of the Park/Streetscape Improvements, but provided that in no event shall the amount of the Letter of Credit exceed Fourteen Million Eight Hundred Thousand Dollars (\$14,800,000.00). The Letter

of Credit shall name the City as the beneficiary thereunder, and shall be delivered substantially in the form attached as **Exhibit "A"** to this Letter Agreement.

2. Reductions. Consistent with Section 5(d) of the Development Agreement, Developer shall have the right to request a reduction in the amount of the Letter of Credit on a monthly basis to reflect the then-remaining cost of Substantially Completing the Park/Streetscape Improvements, which request shall be accompanied by supporting documentation reasonably acceptable to the City, including without limitation, a completion certificate by the general contractor certifying the percentage completion based on the City-approved schedule of values. The City hereby agrees to provide to the Developer, no later than three (3) business days after the City has approved the Developer's request for such reduction, an original instruction letter, in the form attached as **Exhibit "B"** to this Letter Agreement, duly signed by the City Manager (or his or her deputy or designee), authorizing the applicable financial institution to reduce the amount of the Letter of Credit when and as requested by the Developer consistent with this Section 2.

3. Extensions. The Letter of Credit shall provide that it shall be automatically extended without amendment for an additional period of one (1) year from the expiration date thereof or any future expiration date, unless at least sixty (60) days prior to any expiration date, the applicable financial institution notifies the City of its election not to extend the Letter of Credit for any such additional period. However, in the event such notice is given, and the Developer fails to secure a replacement Letter of Credit by a financial institution acceptable to the City in its reasonable discretion no later than thirty (30) days prior to the scheduled expiration date, the City may draw the then full available amount of the Letter of Credit in accordance with the terms of the Letter of Credit any time within the thirty (30) days prior to the scheduled expiration date.

4. Termination. The Letter of Credit shall terminate and become null and void immediately upon the issuing bank's receipt of a joint written instruction by the Developer and the City that either of the following has occurred: (i) the expiration or termination of the Development Agreement (including, without limitation, pursuant to Section 45(a) thereof) other than termination by the City for an uncured Developer "Event of Default," as defined in the Development Agreement; or (ii) the Substantial Completion of the Park/Streetscape Improvements in accordance with the Development Agreement.

5. Sole and Exclusive Remedy. Consistent with Section 5(d) of the Development Agreement, if Developer fails to Substantially Complete the Park/Streetscape Improvements in accordance with the Development Agreement and such failure continues uncured past applicable notice and cure periods, then, as the City's sole and exclusive remedy for such default (subject to City's exercise of its rights pursuant to Section 44(b) of the Development Agreement), the City shall have the right to present a draft for payment at the applicable financial institution, in accordance with the terms of the Letter of Credit, to cover the City's estimated expenses to be incurred in Substantially Completing the Park/Streetscape Improvements, up to the amount of the Letter of Credit remaining when the draft is presented; provided, however, if following Substantial Completion of the Park/Streetscape Improvements the City's actual, out-of-pocket expenses incurred in Substantially Completing the Park/Streetscape Improvements are less than the amount drawn by the City on the Letter of Credit, the difference shall be refunded by the City to the Developer.

6. Certificates of Occupancy and Completion. Consistent with Sections 5(d) and 25 of the Development Agreement, if the City draws or receives any funds pursuant to the Letter of Credit, then all conditions precedent to the issuance of all certificates of occupancy and/or certificates of completion for the Project and the Park/Streetscape Improvements shall be deemed satisfied, and the Developer shall have the right to apply for, and the City shall have an obligation to issue (when and as required by the City Code),

all such approvals, whether or not construction of the Park/Streetscape Improvements has been completed by the City.

7. Temporary Construction and Access Easement. Pursuant to Section 5(h) of the Development Agreement, the Developer and the City agreed to record at the Closing a certain temporary construction and access easement agreement that would burden certain City-controlled portions of the Park/Streetscape Site for the benefit of the Project and the Park/Streetscape Improvements (the "Temporary Construction and Access Easement"). The Developer and the City hereby waive this condition of Closing and agree to record the Temporary Construction and Access Easement on the date the Developer obtains Final Approval of the Park/Streetscape Zoning Approval, or on such sooner or later date as the Developer designates, in its discretion, with prior notice to the City.

8. Ratification; Governing Law. The provisions of this Letter Agreement shall supersede any contrary or conflicting provisions of the Development Agreement. Except as specifically set forth in this Letter Agreement, the Development Agreement is hereby ratified and confirmed. This Letter Agreement shall be governed by, and shall be construed and enforced in accordance with, the laws of the state of Florida.

9. Entire Agreement; Amendment. This Letter Agreement and the Development Agreement, together with their respective exhibits and all other documents referenced herein and therein, constitute the entire agreement and understanding among the parties with respect to the subject matter hereof, and there are no other agreements, representations or warranties other than as set forth herein and therein. Neither party shall be bound by any agreement, condition, warranty or representation other than as expressly stated in this Letter Agreement or the Development Agreement. This Letter Agreement may not be changed, altered or modified except by an instrument in writing signed by both parties hereto.

[Signatures follow]

Very truly yours,

DEVELOPER

7450 OCEAN TERRACE LLC,
7436 OCEAN TERRACE LLC,
7420 OCEAN TERRACE INVESTMENT, LLC,
7410 OCEAN TERRACE LLC,
7400 OCEAN TERRACE, LLC,
7409 COLLINS AVE INVESTMENT, LLC,
7421 COLLINS AVE INVESTMENT, LLC,
7433 COLLINS AVE INVESTMENT, LLC,
7439 COLLINS AVE INVESTMENT LLC, and
7441 COLLINS AVE INVESTMENT, LLC

By: OCEAN TERRACE HOLDINGS, LLC,
a Delaware limited liability company,
their sole member

By: 

Sandor Scher
Managing Director

**ACCEPTED AND AGREED TO IN ALL RESPECTS
AS OF THE DATE FIRST ABOVE WRITTEN**

CITY OF MIAMI BEACH,
a Florida municipal corporation

By: _____
Dan Gelber
Mayor

Very truly yours,

DEVELOPER

7450 OCEAN TERRACE LLC,
7436 OCEAN TERRACE LLC,
7420 OCEAN TERRACE INVESTMENT, LLC,
7410 OCEAN TERRACE LLC,
7400 OCEAN TERRACE, LLC,
7409 COLLINS AVE INVESTMENT, LLC,
7421 COLLINS AVE INVESTMENT, LLC,
7433 COLLINS AVE INVESTMENT, LLC,
7439 COLLINS AVE INVESTMENT LLC, and
7441 COLLINS AVE INVESTMENT, LLC

By: OCEAN TERRACE HOLDINGS, LLC,
a Delaware limited liability company,
their sole member

By: _____
Sandor Scher
Managing Director

**ACCEPTED AND AGREED TO IN ALL RESPECTS
AS OF THE DATE FIRST ABOVE WRITTEN**

CITY OF MIAMI BEACH,
a Florida municipal corporation

By: _____
Dan Gelber
Mayor

ATTEST:

RA 12/10/19
Rafael E. Granado, City Clerk

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

Rafael E. Granado
City Attorney

12-9-19
Date



Exhibit "A"
Form of Letter of Credit

[Attached]

BANK'S ADDRESS:
100 S.E. 2nd STREET, 14TH FLOOR
Miami, Florida 33131 - Attention: International Department
Telephone: 305-577-7440 or 786-539-2111



IRREVOCABLE STANDBY LETTER OF CREDIT NO. 12000

Date of issuance: December 10, 2019

Beneficiary:

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

With copy to:

City of Miami Beach
1700 Convention Center Drive, 4th Floor
Miami Beach, Florida 33139
Attention: City Attorney

Applicant:

7450 Ocean Terrace LLC
7436 Ocean Terrace LLC
7420 Ocean Terrace Investment, LLC
7410 Ocean Terrace LLC
7400 Ocean Terrace, LLC
7409 Collins Ave Investment, LLC
7421 Collins Ave Investment, LLC
7433 Collins Ave Investment, LLC
7439 Collins Ave Investment, LLC
7441 Collins Ave Investment, LLC
(collectively, "Applicant")
c/o Ocean Terrace Holdings, LLC
1035 North Miami Avenue, Suite 201
Miami, Florida 33136

Expiration Date: DECEMBER 10, 2020

Expiration Place: At our counters located at
100 S.E. 2ND Street, 14TH Floor
Miami, Florida 33131 – Attn: International Department

Amount: **USD14,800,000.00** (Fourteen Million Eight Hundred Thousand and 00/100 U. S. Dollars)

To the Beneficiary:

1. We hereby establish our irrevocable Standby Letter of Credit No. 12000 in favor of the City of Miami Beach, a Florida Municipal Corporation (the "Beneficiary"), for the account of the above mentioned Applicant, for an amount not to exceed in the aggregate of **\$14,800,000.00** (Fourteen Million Eight Hundred Thousand and 00/100 United States Dollars).
2. Funds under this Standby Letter of Credit are available to you, upon presentation of your draft at sight, drawn on City National Bank of Florida, 100 S.E. 2nd Street, 14th Floor, International Department, Miami, Florida 33131, or such other office that we may designate by prior written notice to the Beneficiary and the Applicant. Drafts must indicate the reference number and date of this Standby Letter of Credit and must be accompanied by a written statement signed by the City Manager of the City of Miami Beach or his/her successor or designee stating:

PO Box 025620
Miami, FL 33102-5620
citynational.com
Member FDIC | Equal Housing Lender



Continued on Page 2

- (a) either: (i) that the Applicant has defaulted under the terms of Section 5(d) of that certain Development Agreement by and between the Beneficiary and the Applicant dated July 31, 2019 (the "Development Agreement"), as modified by that certain Letter Agreement by and between the Beneficiary and the Applicant dated 12/10/19 (insert date) (the "Letter Agreement"), by failing to "Substantially Complete" the "Park/Streetscape Improvements" in accordance with Sections 42(c) or 42(d) of the Development Agreement, and such default has continued uncured past all applicable notice and cure periods; or (ii) the Beneficiary has been notified in writing that the Standby Letter of Credit will not be renewed and the Beneficiary has the right under the Letter Agreement to draw the then full available amount of the Standby Letter of Credit; and
- (b) the total amount then due to the Beneficiary under the Development Agreement, as modified by the Letter Agreement, for such uncured default.
3. The amount of this Standby Letter of Credit is subject to reductions in accordance with the Development Agreement, as modified by the Letter Agreement. The amount of this Standby Letter of Credit shall be reduced upon receipt by City National Bank of Florida, at the above address, of an instruction letter referring to this Standby Letter of Credit, purportedly signed by an authorized representative of the Beneficiary, on the Beneficiary's letterhead, authorizing such reduction.
4. It is a condition of this Standby Letter of Credit that it shall be automatically extended without amendment for an additional period of one (1) year from the Expiration Date hereof or any future Expiration Date, unless at least sixty (60) days prior to any Expiration Date, we shall notify the Beneficiary and the Applicant by overnight courier service at the above addresses, that we elect not to extend this Standby Letter of Credit for any such additional period. However, in the event such notice is given, and the Applicant fails to secure a replacement Irrevocable Letter of Credit no later than thirty (30) days prior to the scheduled Expiration Date, the Beneficiary may draw the then full available amount of this Standby Letter of Credit in accordance with the terms herein at any time within the thirty (30) days prior to the scheduled Expiration Date.
5. This Standby Letter of Credit shall terminate and become null and void immediately following receipt by us of a joint written instruction by the Beneficiary and the Applicant that either of the following has occurred: (a) the expiration or termination of the Development Agreement (including, without limitation, pursuant to Section 45(a) thereof) other than termination of the Development Agreement by the Beneficiary for an uncured Developer "Event of Default," as defined in the Development Agreement; or (b) the "Substantial Completion" of the "Park/Streetscape Improvements" in accordance with the Development Agreement.
6. Partial Drawings are permitted hereunder. Payment of any amount drawn under this Standby Letter of Credit will be made in immediately available funds by wire transfer to such account as the Beneficiary specifies or in such other manner as Beneficiary specifies in the sight draft presented to us with respect to such payment.

Continued on Page 3

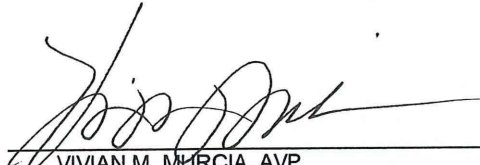


We hereby agree with the Beneficiary that all drafts drawn in compliance with the terms of this Standby Letter of Credit shall be duly honored when presented at this office as aforementioned on or before the Expiration Date.

This credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision), International Chamber of Commerce, Publication Number 600.

CITY NATIONAL BANK OF FLORIDA

Signed: December 10, 2019


VIVIAN M. MURCIA, AVP
INTERNATIONAL BANKING OFFICER


MILDREY GUTIERREZ, 1ST VP
LOAN SERVICING MANAGER



Exhibit "B"
Form of Instruction Letter

[City of Miami Beach Letterhead]

[Date]

*[Name and Address of
Applicable Financial Institution]*

7450 Ocean Terrace LLC
7436 Ocean Terrace LLC
7420 Ocean Terrace Investment, LLC
7410 Ocean Terrace LLC
7400 Ocean Terrace, LLC
7409 Collins Ave Investment, LLC
7421 Collins Ave Investment, LLC
7433 Collins Ave Investment, LLC
7439 Collins Ave Investment LLC
7441 Collins Ave Investment, LLC
c/o Ocean Terrace Holdings, LLC
1035 N. Miami Avenue, Suite 201
Miami, Florida 33136
Attention: Sandor Scher

Re: Letter of Credit No. _____, dated _____, 2019 (the "Letter of Credit"), delivered pursuant to that certain Development Agreement by and among the City of Miami Beach, a Florida municipal corporation (the "City"), and 7450 Ocean Terrace LLC, 7436 Ocean Terrace LLC, 7420 Ocean Terrace Investment, LLC, 7410 Ocean Terrace LLC, 7400 Ocean Terrace, LLC, 7409 Collins Ave Investment, LLC, 7421 Collins Ave Investment, LLC, 7433 Collins Ave Investment, LLC, 7439 Collins Ave Investment LLC, and 7441 Collins Ave Investment, LLC (collectively, "Developer"), dated as of July 31, 2019, a copy of which is recorded in Official Records Book 31563, at Page 1201 of the Public Records of Miami-Dade County, Florida (the "Development Agreement"), as modified by that certain Letter Agreement between the City and the Developer dated December ____, 2019 (the "Letter Agreement")

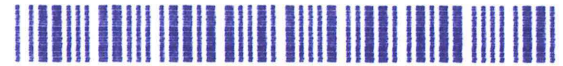
Ladies and Gentlemen:

In response to the Developer's reduction request pursuant to Section 5(d) of the Development Agreement and Section 2 of the Letter Agreement, the City hereby authorizes you to reduce the amount of the Letter of Credit to \$_____ (_____ Dollars), effective immediately.

Sincerely,

Jimmy L. Morales
City Manager

120.50
16'



CFN 20190765283
OR BK 31721 Pgs 46-59 (14Pgs)
RECORDED 12/10/2019 15:43:44
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

This instrument was prepared by:

Name: Raul J. Aguila, City Attorney
Address: City of Miami Beach
1700 Convention Center Drive, 4th Floor
Miami Beach, Florida 33139

EASEMENT AGREEMENT
(Ocean Terrace, 74th Street and 75th Street Easement)

THIS EASEMENT AGREEMENT (the "**Agreement**"), is made this 10th day of December 2019, by OTH STREETSCAPE, LLC, a Delaware limited liability company, having an address of 1035 North Miami Avenue, Suite 201, Miami, Florida 33136 (together with its successors and permitted assigns, the "**Owner**"), in favor of the CITY OF MIAMI BEACH, a Florida municipal corporation (together with its successors and permitted assigns, the "**City**").

WITNESSETH:

WHEREAS, the Owner holds fee simple title to that certain real property more specifically described on **Exhibit "A"** attached hereto and incorporated herein by this reference (the "**Easement Area**");

WHEREAS, 7450 Ocean Terrace LLC, 7436 Ocean Terrace LLC, 7420 Ocean Terrace Investment, LLC, 7410 Ocean Terrace LLC, 7400 Ocean Terrace, LLC, 7409 Collins Ave Investment, LLC, 7421 Collins Ave Investment, LLC, 7433 Collins Ave Investment, LLC, 7439 Collins Ave Investment LLC, and 7441 Collins Ave Investment, LLC hold fee simple title to that certain real property more specifically described on **Exhibit "B"** attached hereto and incorporated herein by this reference (the "**Benefited Parcels**") (the Easement Area and the Benefited Parcels are herein collectively referred to as the "**Property**"); and

WHEREAS, the Owner seeks to grant a perpetual non-exclusive easement in, upon, under and through the Easement Area in favor of the City for the "Easement Purposes" (as hereinafter defined).

NOW THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto intending to be legally bound hereby agree as follows:

1. Recitals. The above recitals are true and correct and by this reference are hereby incorporated into the body of this Agreement as if fully set forth herein.

2. Grant of Easement. The Owner hereby grants to the City a perpetual, non-exclusive and irrevocable easement in, upon, under and through the Easement Area for the purposes of:

(a) providing to the general public, and to the City and its invitees, agents, employees, contractors, and licensees (including, without limitation, (i) Owner, (ii) the owners of the Benefited Parcels, and (iii) the owner of Lot 14 in Block 1, of TOWNSITE OF HARDING, according to the Plat thereof, as recorded in Plat Book 34 at Page 4, of the Public Records of Miami-Dade County, Florida, and each of their officers,

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employees, agents, contractors, subcontractors, invitees, and licensees), an unrestricted way of passage, right of ingress and egress, access to, and reasonable use of, the Easement Area, including, without limitation, for public recreational purposes, and pedestrian and vehicular access over and across the Easement Area;

(b) constructing, installing, operating, using, maintaining, repairing and replacing landscaping, sidewalks, pedestrian or bicycle paths, walkways, decks, street lighting, traffic or directional signage, underground utilities, drainage, roadways, parks, and streetscape-related infrastructure, or any other improvements which City, in its reasonable discretion, deems necessary for the protection of the health, safety or welfare of the general public (collectively, the **"Improvements"**) within the Easement Area;

(c) authorizing the City to grant third parties providing utility services (the **"City Grantees"**) the right to use and occupy the Easement Area for the sole purpose of providing any such utilities, without any need for Owner approval of any City Grantee; and

(d) taking all other actions as may be reasonably necessary, without any need for Owner approval thereof, to develop and install Improvements within the Easement Area, or to operate the Easement Area, solely for public purposes, in the same manner as otherwise applicable to any public right of way areas of the City pursuant to the Code of Ordinances of the City of Miami Beach, Florida, as the same may be amended from time to time (the **"City Code"**), including, without limitation, the issuance by the City of temporary special event permits for cultural, recreational or other programming, sidewalk café permits, or any other actions as may be lawfully undertaken by the City on public right of way areas of the City (collectively, the **"Easement Purposes"**). The term **"utilities"** shall include, but not be limited to, water, sewer, stormwater, electrical, gas, telecommunications, telephone and cable.

3. Maintenance, Casualty, and Condemnation. Prior to the commencement of the Park/Streetscape Improvements by Owner, the City shall, at the City's sole cost and expense, continue to maintain the roadway and side walk improvements located within the Easement Area as they exist on the date this Agreement is executed by the parties. From and after Owner's **"Substantial Completion"** of the **"Park/Streetscape Improvements,"** as such terms are defined under that certain Development Agreement between the City and 7450 Ocean Terrace LLC, 7436 Ocean Terrace LLC, 7420 Ocean Terrace Investment, LLC, 7410 Ocean Terrace LLC, 7400 Ocean Terrace, LLC, 7409 Collins Ave Investment, LLC, 7421 Collins Ave Investment, LLC, 7433 Collins Ave Investment, LLC, 7439 Collins Ave Investment LLC, and 7441 Collins Ave Investment, LLC, dated July 31, 2019, a copy of which is recorded in Official Records Book 31563, at Page 1201 of the Public Records of Miami-Dade County (the **"Ocean Terrace Development Agreement"**), City shall be responsible, at City's sole cost and expense, for maintaining the Easement Area and the Park/Streetscape Improvements, including all landscaping and vegetation therein, in accordance with those standards and criteria contained in the final approved plans and specifications for the Park/Streetscape Improvements. In the event that any portion of the Easement Area and/or the Park/Streetscape Improvements is damaged or destroyed by fire, flood, storm, or other casualty or by the act or omission of the City, any of the City's agents, employees, contractors, vendors, operators, representatives, licensees, or any other party retained by the City or for whom the City is legally responsible, or by the general public, City shall be solely responsible for any repair or restoration of the Easement Area, subject to an appropriation of funds by the City Commission, if any is required, in the same manner as applicable to other public right of way areas of the City. In addition, if any portion of the Easement Area is taken or condemned in any manner as a result of the exercise of the power of eminent domain by any governmental authority for any public or quasi-public use, including, without limitation, a conveyance or assignment in lieu of condemnation or taking, then this Agreement shall immediately terminate as to any portion of the Easement Area so taken, and the parties hereto shall be released automatically from all further obligations under this Agreement with respect to area taken, except for those obligations that expressly survive the termination of this Agreement. The Owner, its successors and assigns, will be entitled to receive the entire amount of any award made for any partial or complete taking of the Easement Area.

4. Construction in Easement Area.

A. If the City elects to construct and/or install any Improvements within the Easement Area, the City hereby acknowledges and agrees that: (a) all fees, costs and expenses associated with the Improvements (including, without limitation, the design, permitting, construction, installation, operation, use, maintenance, repair and replacement thereof) shall be paid in full by the City; (b) the design and construction of all Improvements shall be performed and completed by the City (i) in a good and workmanlike manner, (ii) free from liens and defects, and (iii) in full compliance with all laws, rules, regulations, ordinances, codes and other requirements of governmental and quasi-governmental authorities having jurisdiction; and (c) upon final completion of the Improvements, the City shall (i) remove all debris, equipment and materials from the Easement Area, (ii) fill, compact, grade and otherwise restore the Easement Area to substantially the same condition as existed prior to commencement of the Improvements, including harmonizing the soil levels within the Easement Area and the lands adjacent thereto, and (iii) keep and maintain the Improvements (and all parts and components thereof) in good condition, repair and working order at all times.

B. Following the Owner's Substantial Completion and delivery to the City of the Park/Streetscape Improvements, if the Owner elects to construct and/or install any infrastructure or other improvements within or above the Easement Area for Owner's use (the "**Owner Improvements**"), the Owner hereby acknowledges and agrees that any such Owner Improvements shall be subject to and contingent upon the prior approval of the City in accordance with Section 5.9, and further agrees that: (a) all fees, costs and expenses associated with the Owner Improvements (including, without limitation, the design, permitting, construction, installation, operation, use, maintenance, repair and replacement thereof) shall be paid in full by the Owner; (b) the design and construction of all Owner Improvements shall be performed and completed by the Owner (i) in a good and workmanlike manner, (ii) free from liens and defects, and (iii) in full compliance with all laws, rules, regulations, ordinances, codes and other requirements of governmental and quasi-governmental authorities having jurisdiction; and (c) upon final completion of the Owner Improvements, the Owner shall (i) remove all debris, equipment and materials from the Easement Area, (ii) fill, compact, grade and otherwise restore the Easement Area to substantially the same condition as existed prior to commencement of the Owner Improvements, including harmonizing the soil levels within the Easement Area and the lands adjacent thereto, and (iii) keep and maintain the Owner Improvements (and all parts and components thereof) in good condition, repair and working order at all times.

5. Miscellaneous.

5.1 This Agreement shall be governed by, enforced and construed under the laws of the State of Florida. Venue for all actions, litigation and/or other proceedings arising out of this Agreement shall be exclusively in Miami-Dade County, Florida. BY ENTERING INTO THIS AGREEMENT, OWNER AND CITY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT. The prevailing party in any action, litigation or other proceeding that is based on any claim, controversy or other disputed matter arising under, out of or in connection with this Agreement shall recover from the non-prevailing party all fees, costs and expenses (including, without limitation, reasonable attorneys' fees and costs through all trial, appellate and post-judgment levels and proceedings) incurred by the prevailing party in such action, litigation or other proceeding. As used herein, the term "Prevailing Party" means the party who receives substantially the relief sought upon final, non-appealable judgment, order, or other disposition of a court of competent jurisdiction. The provisions of this Section shall survive the termination or expiration of this Agreement.

5.2 The parties hereby acknowledge and agree that each has had an opportunity to be represented by or consult with independent legal counsel and that any rule of construction which provides

that ambiguities are to be construed against the drafter shall not apply in the interpretation or construction of this Agreement. If any term, provision or portion of this Agreement is for any reason held to be invalid, illegal or unenforceable by a court of competent jurisdiction, then such term, provision or portion of this Agreement shall be given it nearest valid, legal and enforceable meaning, or construed as deleted, whichever such court may determine, and the same shall not invalidate the remaining terms, provisions and/or portions of this Agreement, which remaining terms, provisions and portions of this Agreement will remain in full force and effect.

5.3 This Agreement includes all exhibits attached hereto. This Agreement, together with all such exhibits, contains the entire agreement and understanding between the parties relating to the subject matter of this Agreement, and all prior or contemporaneous terms, covenants, conditions, representations, warranties, statements, agreements and understandings made by or on behalf of the parties, whether oral or written, are merged herein.

5.4 This Agreement may not be amended, modified or terminated except by a written instrument executed by the Owner and the City through its City Manager, or his designee, or the successor administrative officer with jurisdiction over the matter, and which is recorded in the Public Records of Miami-Dade County, Florida. All provisions of this Agreement, including the benefits and burdens of the same, are covenants that run with the land, are not intended to be executory in nature, and shall be binding upon, and shall inure to the benefit of, the parties and their respective, heirs, legal representatives, successors and assigns. The rights and privileges of the Owner under this Agreement shall also inure to the benefit of the owners of the Benefitted Parcels and their successors and assigns.

5.5 The failure of any party to insist in any one or more instances upon strict performance of any term, covenant, condition or other provision of this Agreement will not be construed as a waiver or relinquishment of the future enforcement of such term, covenant, condition or other provision of this Agreement.

5.6 Wherever appropriate in this Agreement, the singular shall be deemed to refer to the plural and the plural to the singular, and pronouns of each gender shall be deemed to comprehend either or both of the other genders. The section and paragraph headings in this Agreement are for convenience only and shall not affect the meaning, interpretation or scope of the terms or provisions set forth therein.

5.7 This Agreement may be executed in multiple counterparts, each of which individually shall be deemed an original, but when taken together shall be deemed to be one and the same Agreement.

5.8 This Agreement shall never be construed as a conveyance in any manner whatsoever of fee simple title to any portion of the Property or the Easement Area; it being intended by the parties that this Agreement conveys only an easement interest with respect to the Easement Area for the specific uses and purposes set forth herein.

5.9 All of the rights, easements and interests herein created and granted are and shall be limited to and utilized solely for the uses and purposes expressly set forth herein. Except for Owner's use of the Easement Area in the same manner as made available to the general public pursuant to the purposes authorized pursuant to Section 2(a) herein or to effectuate the terms and conditions of the Ocean Terrace Development Agreement, Owner shall not otherwise use the Easement Area for any other purpose, or make any Owner Improvements to the Easement Area, without the City's consent, which consent may be withheld by the City Manager, if the City Manager determines, at his or her reasonable discretion, that such proposed uses or Owner Improvements would interfere in any material respect with the exercise by the public or by the City of the rights granted to the public and the City herein.

5.10 Owner shall not withhold or obstruct City's access to the Easement Area for any of the purposes authorized in Section 2 of this Agreement.

5.11 This Agreement and the rights, easements and interests herein created and granted shall only become effective upon the recordation of this Agreement in the Public Records of Miami-Dade County. This Agreement and the rights, easements and interests herein created and granted shall run with the Easement Area, and shall be binding on all persons holding title to the Easement Area.

5.12 Nothing in this Agreement shall be construed to create a joint venture, partnership, tenancy in common, or joint tenancy relationship between the Owner and the City, nor shall this Agreement render either party liable for the debts or obligations of the other party.

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

If to Owner:	OTH Streetscape, LLC 1035 North Miami Avenue, Suite 201 Miami, Florida 33136 Attn: Sandor Scher sscher@clarocorp.com
With a copy to:	Akerman LLP 98 SE 7th Street, Suite 1100 Miami, Florida 33131 Attn: Neisen O. Kasdin, Esq. neisen.kasdin@akerman.com
If to the City:	City of Miami Beach 1700 Convention Center Drive, 4th Floor Miami Beach, Florida 33139 Attn: Jimmy L. Morales, Esq., City Manager JimmyMorales@miamibeachfl.gov
With copies to:	City of Miami Beach 1700 Convention Center Drive, 4th Floor Miami Beach, Florida 33139 Attn: Roy Coley, Public Works Director RoyColey@miamibeachfl.gov

Each party may designate by notice in writing a new address to which any notice, demand, request or communication may thereafter be so given, served or sent. Any notice or other communication (i) sent by certified United States mail, postage prepaid, return receipt requested will be deemed effectively given or received on the third (3rd) business day following the postmark date of such notice or other communication; (ii) sent by overnight courier or by hand will be deemed effectively given or received upon receipt or refusal, as the case may be; and (iii) sent by electronic mail will be deemed effectively given or received on the day of transmission of such notice if sent on a business day before 6:00 P.M. Eastern Standard Time, or on the following business day if sent after 6:00 P.M. Eastern Standard Time or on a non-business day. Any notice or other communication given in the manner provided above by counsel for either party will be deemed to be notice or such other communication from the party represented by such counsel.

7. City Indemnity. Solely to the extent and limits permitted by Section 768.28 of the Florida Statutes, and without waiving any rights or defenses therein, the City shall indemnify, defend and hold the Owner harmless from and against all claims, demands, causes of action, suits, losses, damages, liabilities, liens, judgments, fees, costs, expenses and other charges (including, without limitation, reasonable attorneys' fees and costs through all trial, appellate and post judgment levels and proceedings) (collectively, the "**Claims**") commenced, incurred and/or paid by or against the Owner to the extent the Claims arise from: (a) the willful misconduct or negligent use of the Easement Area by the City or any successor, assign and/or City Grantee thereof expressly approved by the City Commission; (b) the design, construction, installation, operation, use, maintenance, repair and/or replacement of, or the failure to properly design, construct, install, operate, use, maintain, repair and/or replace, any Improvements by the City or any successor, assign and/or City Grantee thereof expressly approved by the City Commission; and (c) any default, breach or violation of any term, covenant, condition or provision of this Agreement by the City or any successor, assign and/or City Grantee thereof expressly approved by the City Commission, including, without limitation, any failure by the City to maintain, repair, and restore the Easement Area and the Park/Streetscape Improvements in accordance with Section 3 of this Agreement. Notwithstanding anything to the contrary contained in this Agreement: (y) nothing in this Agreement shall impair, limit or prohibit any rights or remedies the Owner has against any person or entity using or occupying the Easement Area under, through or as an assignee of the City or a City Grantee; and (z) the obligation of the City to indemnify, defend and hold the Owner harmless as set forth herein shall not apply to the extent any such Claims arise from the gross negligence or willful misconduct of the Owner or any successor, assign and/or grantee thereof. Nothing herein shall be construed to increase or otherwise waive any limits of liability or immunity afforded to the City under the laws of the State of Florida, including, without limitation, the limitations of liability and immunities set forth in Section 768.28 of the Florida Statutes.

8. Insurance. The City agrees to maintain a self-insurance fund, in compliance with Sections 768.28(16)(a) and 440.09, Florida Statutes, in the same manner as provided by the City with respect to other public right of ways of the City, to cover liability, workmen's compensation, and other claims that may arise against the City with respect to this Agreement or the use of the Easement Area. Owner shall maintain insurance sufficient to cover Owner's liability exposure with respect to the Easement Area, which insurance shall include Commercial General Liability Insurance, including Products-Completed Operations and Contractual Liability, in an amount not less than \$1,000,000 combined single limit per occurrence, and \$2,000,000 in the aggregate, for bodily injury and property damage, and Workmen's Compensation as required by law. Owner shall name the City as an additional named insured on the Certificates of Insurance for Commercial General Liability Insurance, and upon request of the City, shall provide City with a certificate of insurance evidencing the foregoing coverages.

9. Owner Indemnity. The Owner shall indemnify, defend and hold the City harmless from and against all Claims commenced, incurred and/or paid by or against the City to the extent the Claims arise from the design, construction, installation, operation, use, maintenance, repair and/or replacement of, or the failure to properly design, construct, install, operate, use, maintain, repair and/or replace, any Owner Improvements by the Owner. Notwithstanding anything to the contrary contained in this Agreement, the obligation of the Owner to indemnify, defend and hold the City harmless as set forth herein shall not apply to the extent any such Claims arise from the gross negligence or willful misconduct of the City, any successor or assign of the City, any City Grantee, and/or the general public.

10. Liability Limitation. The Owner, pursuant to and in accordance with the terms and conditions of this Agreement, makes the Easement Area available to the public free of charge for outdoor recreational purposes. Accordingly, to the maximum extent permitted by law, Owner may avail itself of the limitations of liability afforded pursuant to Section 375.251, Florida Statutes, to the fullest extent applicable to the Easement Area.

11. Ad Valorem Taxes and Assessments. The parties acknowledge that the Easement Area historically has been used and controlled by the City as a public right-of-way and, therefore, has been exempt from ad valorem taxation and assessments. As this Agreement is intended to ensure the continued use of the Easement Area solely for public purposes, the City covenants to cooperate with any efforts by the Owner to exempt the Easement Area from ad valorem taxation, by providing documentation to Owner, as may be reasonably necessary, to evidence the public uses of the Easement Area. Notwithstanding the foregoing, Owner shall be solely responsible for the payment of any ad valorem taxes or assessments, if any, with respect to the Easement Area.

12. Mortgages and Encumbrances. This Agreement is made subject to, and with the benefit of, all matters of record. To the extent the Easement Area is presently encumbered by a mortgage, Owner agrees to request that its mortgagee join in and consent to this Agreement and subordinate its mortgage lien to the easements granted herein. In addition, the Owner hereby reserves the right, for itself and its successors and assigns, to encumber all or any portion of the Easement Area, at any time and from time to time, with one or more mortgages, deeds of trust, or other financing instruments. Any mortgage hereafter encumbering or otherwise affecting any portion of the Easement Area shall at all times be subject and subordinate to the terms of this Agreement (and any modifications thereto, from time to time), and any party foreclosing any such mortgage, or acquiring title by deed in lieu of foreclosure, shall acquire title subject to all of the terms and provisions of this Agreement (and any modifications thereto, from time to time). No breach of the provisions of this Agreement shall defeat or render invalid the lien of any mortgage made in good faith for value covering any part of the Easement Area and any improvements thereon.

13. Assignment. Prior to Substantial Completion of the Park/Streetscape Improvements in accordance with the Ocean Terrace Development Agreement, the Owner shall only be permitted to assign or transfer its rights and/or delegate the performance of its obligations under this Agreement to a "Permitted Transferee," as defined in the Ocean Terrace Development Agreement. Following Substantial Completion of the Park/Streetscape Improvements, the Owner may assign or transfer its rights and/or delegate the performance of its obligations under this Agreement to any person or entity in accordance with the Ocean Terrace Development Agreement, so long as such person or entity is a subsequent owner or mortgage lender of the adjacent development parcels subject to the Covenant in Lieu of Unity of Title as contemplated in the Ocean Terrace Development Agreement, or is an organization or association of unit owners and/or parcel owners designated with the responsibility of maintenance of common areas in connection with the development or operation of such adjacent development parcels. Owner's successors and/or assigns shall not include individual unit owners, unless such individual unit owners are an organization or association of unit owners and/or parcel owners or a successor-in-interest to the Ocean Terrace Development Agreement as described above. The City may, in its sole discretion, transfer or assign this Agreement at any time only to a successor municipal corporation, provided, however, that nothing herein shall be deemed a limitation on City's or any successor municipal corporation's right to permit its invitees, agents, employees, licensees and the public to use the Easement Area in accordance with this Agreement. All other transfers, assignments, and delegations are prohibited (and, if attempted, void) absent the other party's prior written consent, which consent such other party may condition or withhold in its sole discretion. A party completing any permitted transfer, assignment, or delegation will promptly provide the other party with a written instrument evidencing the completion of such transaction. Upon any transfer, assignment, or delegation completed in accordance with this Section, the rights and obligations of the party completing such transfer, assignment, or delegation will be binding only on such party's transferee, assignee, or delegatee, as the case may be, and the other party will look only to such transferee, assignee, or delegatee for performance under this Agreement. In the case of a transfer, assignment, or delegation to an organization of unit owners and/or parcel owners, the obligations of the Owner pertaining to such

portion transferred, assigned, or delegated shall be binding only upon the organization of unit/parcel owners, and not upon the declarant or any particular unit/parcel owner, except to the extent otherwise specifically provided in the declaration governing such organization.

14. Enforcement. The rights, privileges, and remedies granted by this Agreement are enforceable exclusively by the City and the Owner. Nothing in this Agreement, whether express or implied, confers upon the general public any enforcement rights against the Owner. Notwithstanding anything to the contrary, neither party will be in breach of this Agreement, and no enforcement may be sought against a party through any means, unless such party (i) receives a written notice from the other party, detailing with specificity the ways in which such party is in breach of this Agreement, and (ii) fails to remedy such breach within fifteen (15) days from the date of such written notice, or, if the breach is susceptible to cure but cannot reasonably be cured within fifteen (15) days, then within forty-five (45) days from the date of such written notice, provided the breaching party promptly commences and diligently pursues the curing of such breach within the initial fifteen (15) day period.

15. Remedies. The parties may enforce the terms of this Agreement by injunctive relief, mandamus, and by any other remedies available at law or in equity, except for rescission, revocation or termination of this Agreement, or any other remedy which would deprive the public with the right to use the Easement Area in accordance with this Agreement. All rights, remedies, and privileges granted to any party under this Agreement are cumulative, and the exercise of any one or more such rights, remedies, or privileges will not preclude the exercising party from exercising any other rights, remedies, or privileges available to such party under this Agreement or at law or in equity.

16. Estoppel. The City will, no later than fifteen (15) business days after a written request therefor by the Owner, by any of the Owner's mortgagees or lenders, or by anyone claiming by or through the Owner (including, without limitation, the Owner's successors, assigns, and transferees), and upon payment of the reasonable fees to cover the City's expenses for any third-party resources required to comply, issue a written estoppel certificate, in recordable form, to the requesting party, certifying as to any matter related to this Agreement that the requesting party may reasonably request of the City, including, without limitation, (i) that this Agreement, or any particular paragraph or section of this Agreement specified by the requesting party, is in full force and effect and unmodified (or in what respects this Agreement is no longer in force or effect or has been modified); (ii) that all monies due and payable under this Agreement, if any, have been paid (or in what respects monies are owed); and (iii) that to the City's knowledge, the Owner is in compliance with this Agreement or with any particular paragraph or section hereof specified by the requesting party (or in what respects there is noncompliance). Such estoppel certificates will be binding on the City and its successors and assigns, and may be relied upon by the Owner, its mortgagees and lenders, and by all others claiming by or through the Owner. Notwithstanding the foregoing section or any representations in any estoppel certificates issued thereunder, City shall not be estopped as to matters to which it did not have knowledge.

[EXECUTION PAGES TO FOLLOW]

IN WITNESS WHEREOF, the City has caused these presents to be signed, sealed, executed and acknowledged on the 10th day of December 2019, in its name by its proper officials.

CITY OF MIAMI BEACH,
a Florida municipal corporation

Eric Carpenter
Print Name: Eric Carpenter

By: [Signature]
Dan Gelber
Mayor

[Signature]
Print Name: Michelle Burger

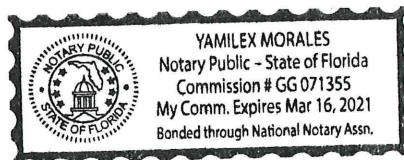
ATTEST:

781 12/10/19
Rafael E. Granado, City Clerk



STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 10th day of December 2019 by Dan Gelber, as Mayor of the City of Miami Beach, a Florida municipal corporation. He is personally known to me or has produced _____ as identification and who did/did not take an oath.



Yamilex Morales
NOTARY PUBLIC
Yamilex Morales
Typed or printed Name of Notary
My Commission expires: _____
Serial No., if any _____

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

22 C. L. 12-9-19
City Attorney RAP Date

Typed or printed Name of Notary _____
My Commission expires _____
Serial No., if any _____

EXHIBIT "A"

LEGAL DESCRIPTION:

A portion of the Right-of-Way of 74th Street, 75th Street and Ocean Terrace that adjoins Lots 1 through 7, 8 and 14, Block 1, TOWNSITE OF HARDING, according to the Plat thereof, as recorded in Plat Book 34 at Page 4, of the Public Records of Miami-Dade County, Florida, being more particularly described as follows:

Begin at the Southeast corner of said Block 1; thence N 02°58'50" W along the East line of said Block 1, also being the West Right-of-Way line of said Ocean Terrace (First Avenue per Plat Book 34 at Page 4) for 350.00 feet to the Northeast corner of said Block 1; thence S 86°59'28" W along the North line of said Block 1, also being the South Right-of-Way line of said 75th Street, (First Street per Plat Book 34 at Page 4) for 296.00 feet to the Northwest corner of said Block 1; thence N 02°58'50" W along the Northerly prolongation of the West line of said Block 1, also being the East Right-of-Way line of Collins Avenue for 40.00 feet; thence N 86°59'28" E along the North line of Government Lot 7, lying in Section 2, Township 53 South, Range 42 East, also being the North line of Plat Book 34 at Page 4 for 356.00 feet; thence S 02°58'50" E along the East Right-of-Way line of said Ocean Terrace (First Avenue per Plat Book 34 at Page 4) for 420.00 feet; thence S 86°59'28" W along the centerline of said 74th Street (Second Street per Plat Book 34 at Page 4) for 356.00 feet; thence N 02°58'50" W along the Southerly prolongation of said West line of Block 1 and East Right-of-Way line of Collins Avenue (Second Avenue per Plat Book 34 at Page 4) for 30.00 feet to the Southwest corner of said Block 1; thence N 86°59'28" E along the South line of said Block 1, also being the North Right-of-Way line of said 74th Street (Second Street per Plat Book 34 at Page 4) for 296.00 feet to the Point of Beginning.

SURVEYOR'S NOTES:

- This site lies in Section 2, Township 53 South, Range 42 East, City of Miami Beach, Miami-Dade County, Florida.
- Bearings hereon are referred to an assumed value of N 02°58'50" W for the centerline of Collins Avenue.
- Lands shown hereon were not abstracted for easements and/or rights-of-way of records.
- Lands shown hereon containing 45,920 square feet, or 1.054 acres, more or less.
- This is not a "Boundary Survey" but only a graphic depiction of the description shown hereon.
- Dimensions shown hereon are based on Fortin, Leavy, Skiles, sketch #2016-170-NGVD.

SURVEYOR'S CERTIFICATION:

I hereby certify that this "Sketch of Description" was made under my responsible charge on November 22, 2019, and meets the applicable codes as set forth in the Florida Administrative Code, pursuant to Section 472.027, Florida Statutes.

"Not valid without the signature and the original raised seal of a Florida Licensed Surveyor and Mapper"

FORTIN, LEAVY, SKILES, INC., LB3653

By: Daniel C. Fortin, Jr., For The Firm
Surveyor and Mapper, LS6435
State of Florida.

Daniel C
Fortin

Digitally signed by Daniel C Fortin
DN: c=US, o=IdenTrust ACES
Unaffiliated Individual, cn=Daniel C
Fortin,
0.9.2342.19200300.100.1.1=A01097
C00000161773B91FA0000E42F
Date: 2019.12.03 14:29:39 -05'00'

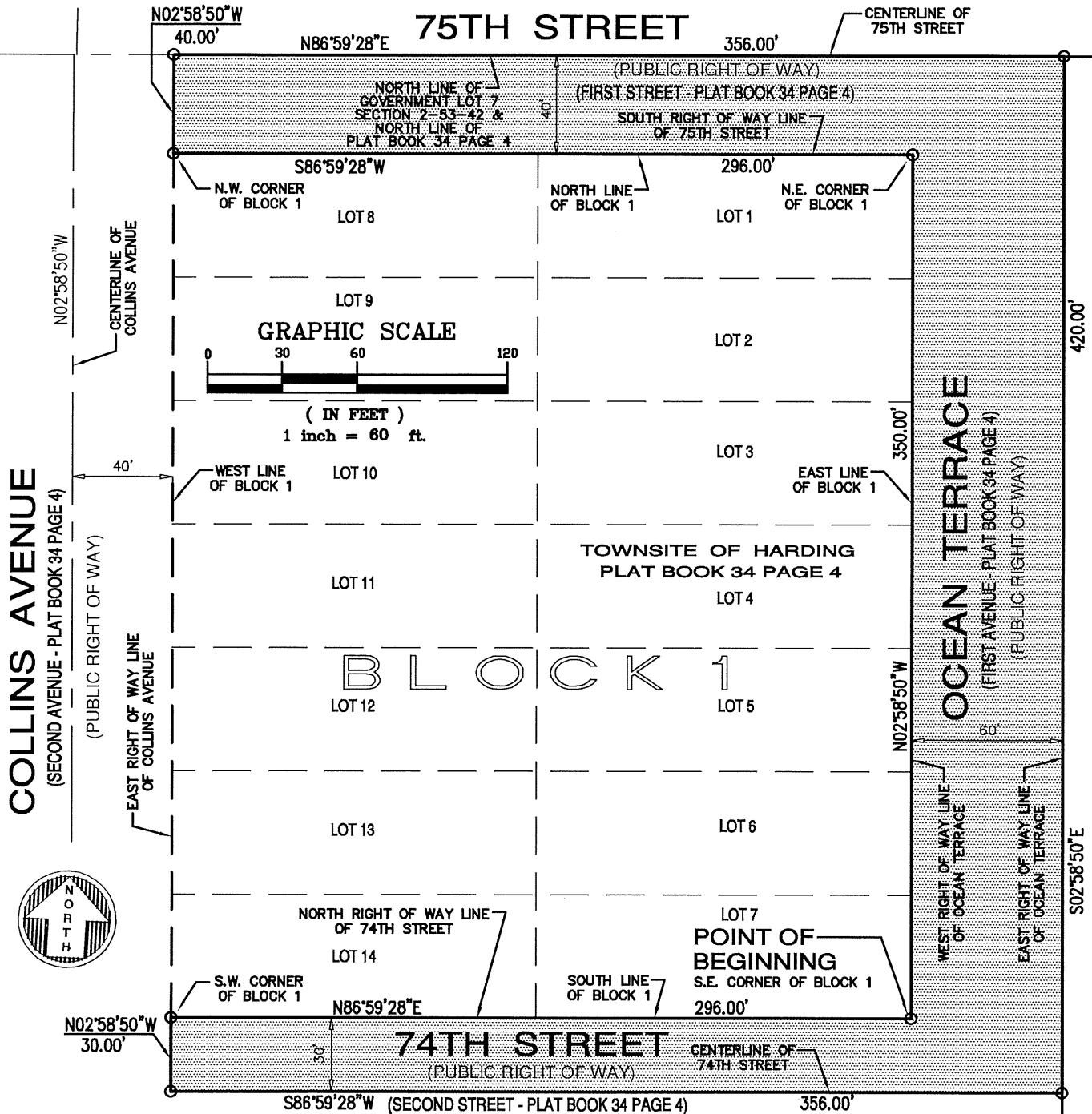
Drawn By	MAP
Cad. No.	190176
Ref. Dwg.	2016-170
Plotted:	11/22/19 1:31p

LEGAL DESCRIPTION, NOTES & CERTIFICATION

FORTIN, LEAVY, SKILES, INC.
CONSULTING ENGINEERS, SURVEYORS & MAPPERS
FLORIDA CERTIFICATE OF AUTHORIZATION NUMBER: 00003653
180 Northeast 168th. Street / North Miami Beach, Florida. 33162
Phone: 305-653-4493 / Fax 305-651-7152 / Email fls@flssurvey.com

Date	11/22/19
Scale	NOT TO SCALE
Job. No.	191077
Dwg. No.	1019-007-T
Sheet	1 of 3

EXHIBIT "A"



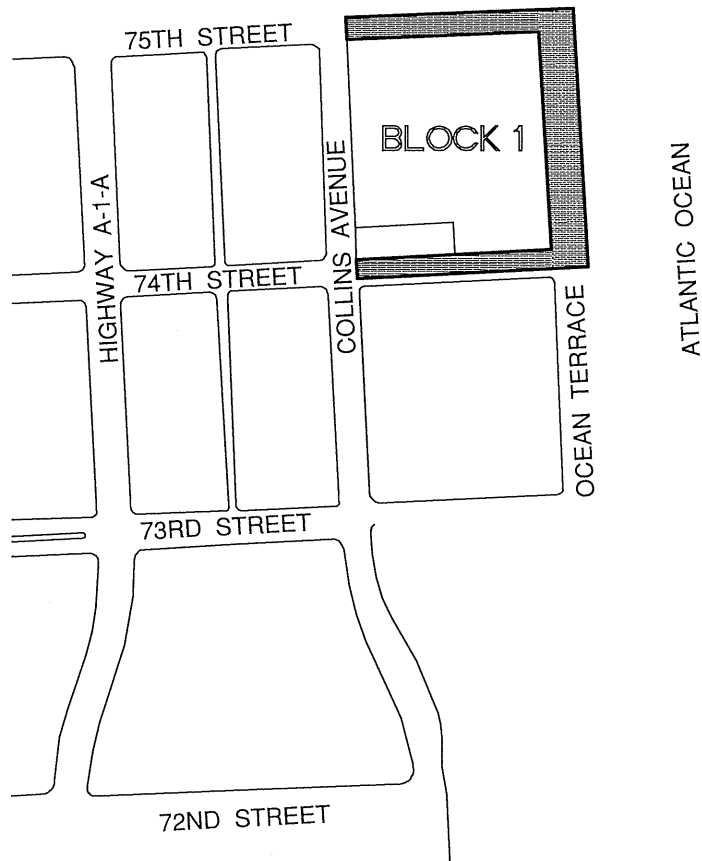
Drawn By	MAP
Cad. No.	190176
Ref. Dwg.	2016-170
Plotted:	11/22/19 1:31p

SKETCH OF DESCRIPTION

FORTIN, LEAVY, SKILES, INC.
 CONSULTING ENGINEERS, SURVEYORS & MAPPERS
 FLORIDA CERTIFICATE OF AUTHORIZATION NUMBER: 00003653
 180 Northeast 168th. Street / North Miami Beach, Florida. 33162
 Phone: 305-653-4493 / Fax 305-651-7152 / Email fls@flssurvey.com

Date	11/22/19
Scale	1"=60'
Job. No.	191077
Dwg. No.	1019-007-T
Sheet	2 of 3

EXHIBIT "A"



Drawn By	MAP
Cad. No.	190176
Ref. Dwg.	2016-170
Plotted:	11/22/19 1:31p

LOCATION SKETCH

FORTIN, LEAVY, SKILES, INC.
 CONSULTING ENGINEERS, SURVEYORS & MAPPERS
 FLORIDA CERTIFICATE OF AUTHORIZATION NUMBER: 00003653
 180 Northeast 168th. Street / North Miami Beach, Florida. 33162
 Phone: 305-653-4493 / Fax 305-651-7152 / Email fls@flssurvey.com

Date	11/22/19
Scale	NOT TO SCALE
Job. No.	191077
Dwg. No.	1019-007-T
Sheet	3 of 3

Exhibit "B"

Legal Description of the Benefited Parcels

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 in Block 1 of TOWNSITE OF HARDING, according to the Plat thereof, as recorded in Plat Book 34, Page 4, of the Public Records of Miami-Dade County, Florida.

27.00
5.00

Prepared by and when recorded return to:

Raul J. Aguila, City Attorney
City of Miami Beach
1700 Convention Center Drive, 4th Floor
Miami Beach, Florida 33139



CFN 2019R0765271
OR BK 31720 Pgs 4947-4949 (3Pgs)
RECORDED 12/10/2019 15:43:44
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

(Space for Clerk)

CLOSING CERTIFICATE

This **CLOSING CERTIFICATE** (this “**Certificate**”) is made effective as of December 10, 2019, by the **CITY OF MIAMI BEACH**, a Florida municipal corporation, with an address of 1700 Convention Center Drive, Miami Beach, Florida 33139 (the “**City**”) to and in favor of **7450 OCEAN TERRACE LLC**, a Delaware limited liability company, **7436 OCEAN TERRACE LLC**, a Delaware limited liability company, **7420 OCEAN TERRACE INVESTMENT, LLC**, a Florida limited liability company, **7410 OCEAN TERRACE LLC**, a Delaware limited liability company, **7400 OCEAN TERRACE, LLC**, a Florida limited liability company, **7409 COLLINS AVE INVESTMENT, LLC**, a Florida limited liability company, **7421 COLLINS AVE INVESTMENT, LLC**, a Florida limited liability company, **7433 COLLINS AVE INVESTMENT, LLC**, a Florida limited liability company, **7439 COLLINS AVE INVESTMENT LLC**, a Florida limited liability company, and **7441 COLLINS AVE INVESTMENT, LLC**, a Delaware limited liability company, each having its respective principal place of business at 1035 North Miami Avenue, Suite 201, Miami, Florida 33136 (collectively, the “**Developer**”), and **FIRST AMERICAN TITLE INSURANCE COMPANY (“FATIC”)**.

RECITALS

A. On July 31, 2019, the City approved Resolution No. 2019-30927 (the “**Resolution**”), authorizing the vacation of the City’s beneficial and legal interest in certain right-of-way parcels in 74th Street, 75th Street, and Ocean Terrace (the “**Street Vacation**”) to enable Developer and its affiliates to redevelop their property and construct certain park and streetscape improvements within and about the vacated right-of-way parcels, in accordance with that certain Development Agreement between the City and the Developer dated July 31, 2019, recorded in Book 31563, Page 1201 of the Public Records of Miami-Dade County, Florida (the “**Development Agreement**”), as affected by a certain Letter Agreement between the City and the Developer dated December 10, 2019 (the “**Letter Agreement**”).

B. The Resolution conditions the effectiveness of the Street Vacation upon the City Commission’s approval of, and the Developer’s satisfaction of, certain terms and conditions set forth in the Development Agreement, including the requirement that the Developer (1) grant to the City a perpetual easement over, across and under the vacated right-of-way areas for utilities and public vehicular, pedestrian, and recreational use and access; and (2) develop, design, and construct, at the Developer’s sole cost and expense (except for the payment of certain City fees), certain public park and streetscape improvements in the vicinity of Ocean Terrace, between 73rd

Street and 75th Street, with such public improvements having a value of approximately Fourteen Million Eight Hundred Thousand Dollars (\$14,800,000.00).

C. The specific conditions precedent to the effectiveness of the Street Vacation are memorialized in Section 5 of the Development Agreement, as affected by the Letter Agreement.

D. With the delivery of the items noted in Section 2 of this Certificate, the Developer has satisfied all of the conditions precedent in the Resolution and in the Development Agreement for the Street Vacation to become valid and effective, and that the City now wishes to certify the validity and effectiveness of the Street Vacation.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City hereby certifies as follows:

CERTIFICATION

1. Recitals. The above recitals are true and correct and by this reference are hereby incorporated into the body of this Certificate as if fully set forth herein.

2. Certification. The Developer (i) has delivered to the City a certain perpetual easement over, across, and under the vacated city right-of-way areas for utilities and public vehicular, pedestrian, and recreational use and access, to be recorded in the Public Records of Miami-Dade County, Florida, (ii) has delivered to the City a certain Irrevocable Standby Letter of Credit from City National Bank in the amount of Fourteen Million Eight Hundred Thousand Dollars (\$14,800,000.00) to secure the Developer's commitment to develop, design, and construct the public park and streetscape improvements required by the Development Agreement, and (iii) has satisfied all other terms and conditions of Section 5 of the Development Agreement, as affected by the Letter Agreement. Accordingly, the City hereby certifies and confirms to the Developer and FATIC that the Developer has satisfied, completed, and discharged all of the conditions precedent in the Resolution and in the Development Agreement for the Street Vacation to become valid and effective, and that the Street Vacation is in fact valid and effective as of the date of this Certificate.

3. Ratification. Except for the terms and conditions certified as having been satisfied, completed, and discharged as provided above, this Certificate does not modify any provision of, nor does it constitute a consent to or a waiver of any noncompliance with the provisions of, the Development Agreement, and the Development Agreement remains in full force and effect in accordance with its terms.

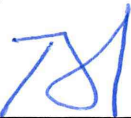
4. Effective Date. The foregoing certifications are true and correct and are made as of the date of this Certificate.

[Signatures follow]

Executed as of the date first above written.

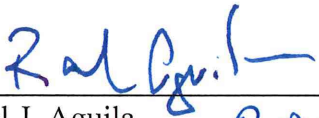
CITY OF MIAMI BEACH,
a Florida municipal corporation

Attest:

 12/10/19
Rafael E. Granado
City Clerk

By: 
Dan Gelber
Mayor

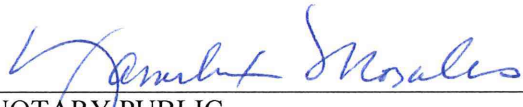
Approved as to form and legal sufficiency:

 RAP
Raul J. Aguila
City Attorney



STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 10th day of December 2019, by Dan Gelber, as Mayor of the City of Miami Beach, a Florida municipal corporation. He is personally known to me or has produced _____ as identification and who did/did not take an oath.


NOTARY PUBLIC
Print Name: Yamilex Morales

