This instrument prepared by:

Name: Graham Penn, Esq.
Address: Bercow Radell Fernandez Larkin & Tapanes PLLC
200 S. Biscayne Boulevard, Suite 300
Miami, FL 33131

DECLARATION OF RESTRICTIVE COVENANTS AND MAINTENANCE AGREEMENT

KNOW ALL BY THESE PRESENTS that the undersigned OSIB MIAMI BEACH PROPERTIES, LLC (the "Owner") hereby makes, declares and imposes on the land herein described, covenants running with the title to the land, which shall be binding on the Owner, its heirs, successors and assigns, personal representatives, mortgagees, lessees, and against all persons claiming by, through or under them (the "Declaration");

WHEREAS, the Owner holds fee simple title to the land in the City of Miami Beach, Florida (the "City"), located at 1628-1634 Alton Road (Folio Nos. 02-3234-018-0170 and 02-3234-018-0180) and more particularly described as (the "Property"):

> Lots 8 and 9, Block 45, Commercial Subdivision, according to the plat thereof recorded in Plat Book 6, Page 5, of the Public Records of Miami-Dade County, Florida.

WHEREAS, the Owner has obtained several development approvals and building permits from the City in connection with its redevelopment of the Property with a commercial development; and

WHEREAS, the City requires the Owner to design, construct and install landscaping and architectural features and improvements on the Property and within the public right-of-way adjacent to the Property and further described on Exhibit A attached hereto and incorporated herein by reference (the "Enhancements");

WHEREAS, the City requests the Declaration from the Owner to ensure that the Owner will maintain or cause to be maintained the Enhancements in a satisfactory matter, without liability or cost to the City; and

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Owner voluntarily agree that the Property shall be subject to the following provisions that are intended and shall be covenants running with the land and binding upon the Owner, its successors and assigns, as follows:

1. The Owner shall install and maintain all Enhancements including landscaping and irrigation systems, above-grade utility infrastructure, lighting, pedestrian ramps and steps, and pedestrian sidewalk improvements as described in Exhibit A in accordance with the City's Routine Ground Maintenance Specifications, attached hereto and incorporated herein as Exhibit B. All Enhancements shall be at Owner's sole cost and expense.

2. The Owner shall further maintain the landscape, irrigation systems and bonding aggregate paving located within the sidewalk area of the right of way of Alton Road (State Road 907) in a manner consistent with the requirements of the "Florida Department of Transportation Landscape, Irrigation and Bonded Aggregate Paving Maintenance Memorandum of Agreement with the City of Miami Beach" dated May 30, 2012 and approved through City Resolution No. 2012-27899 (attached and incorporated herein as Exhibit C).

3. The Owner agrees to replace, restore, and/or repair the aboveground Enhancements at the Owner's expense following a necessary and permitted utility cut for replacement, construction, or maintenance work of utilities or a major natural disaster. The City shall notify the Owner in writing and provide thirty (30) calendar days' notice in advance of such work and shall make all necessary effort to salvage and store on-site any of the Enhancements' salvageable material and shall provide a temporary restoration surface with a City standard material such as cement or asphaltic concrete. Upon receipt of notice from the City, the Owner shall have forty-five (45) calendar days to undertake any restoration work. Restoration performed within the public right of way should not exceed ten (10) working days following the completion of the repairs/construction activity. This time period may be reasonably extended by the City to account for the impact of permitting delays, unanticipated delays caused by utility providers, and Acts of God (including fire, flood, earthquake, hurricane, or other natural disaster). The City shall remain responsible for all repairs, restorations, or replacement of any underground utilities.

Notwithstanding the above, after the completion of any excavation or temporary encroachment, and before the Owner undertakes any restoration work, the Owner and the City shall confer as to whether any party (e.g., the City, any agency, or a private party) intends to perform any work (e.g., any excavation or temporary encroachment) in the future that would be likely to damage, disrupt, disturb, or interfere with any restoration. If such future work is anticipated, then the Owner may request that the City extend the restoration deadline to the date which is forty-five (45) calendar days after such future work is completed (subject to extension to the extent that such restoration cannot be completed using commercially reasonable efforts within such forty-five (45) calendar day period), and such request for an extension shall not be unreasonably withheld, conditioned, or delayed. Furthermore, such deadline shall automatically be extended if the City, any agency, or a private party is scheduled to perform future work within the area within the six (6) month period following the completion of the prior excavation or temporary encroachment.

4. If the Owner breaches any of its obligations as specified herein (and same are not waived in writing by the City), then the City shall provide the Owner written notice specifying the nature of the default. The Owner shall have thirty (30) calendar days after receipt of such notice within which to cure the specified default, after which time the City may take action to complete the restoration work, at the Owner's expense. However, if the nature of such default is such that the same cannot reasonably be cured within such thirty (30) day period, then the Owner shall not be deemed to be in default if the Owner shall, within such period, commence such cure and thereafter diligently prosecute the same to completion.

5. The Owner shall obtain and maintain a liability insurance policy in the covered amount of $1,000,000 per incident, to provide compensation for personal injuries or related claims stemming from any error, omission, negligence, or misconduct on the part of the Owner, or any of its respective officers, agents, servants, employees, or contractors in the installation or maintenance of the Enhancements. The Owner shall add the City as an additional insured on the Certificates of Insurance for Liability.

6. The Owner shall indemnify, hold and save the City, and its officers, agents, contractors, and employees, whole and harmless from and against all claims, demands, actions, damages, losses, costs, liabilities, expenses, and judgments of any nature recovered from or asserted against the City on account of injury or damage to person(s)

or property, to the extent that any such damage or injury may be incident to, arise out of, or be caused, either proximately or remotely, wholly or in part, by any act, error, omission, negligence, or misconduct on the part of the Owner, or any of their respective officers, agents, servants, employees, or contractors in the installation or maintenance of the Enhancements. The Owner shall be entitled to select counsel of the Owner's choice to defend the claim; provided, however, that such counsel shall first be approved by the City Attorney, which approval shall not be unreasonably conditioned, withheld or delayed; and provided further, that the City shall be permitted, at its cost and expense, to retain independent counsel to monitor the claim proceeding. Notwithstanding the foregoing, the Owner shall not be obligated or liable to the City, or any third parties, for any claims, demands, actions, damages, losses, costs, liabilities, expenses, or judgments resulting from the negligence, recklessness, or willful misconduct of the City or its officials, employees, contractors, representatives, or agents.

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

8. The provisions of this Declaration shall become effective and shall be binding upon the Owner and the Owner's successors and assigns, upon its recordation in the public records of Miami-Dade County, Florida, and shall continue in effect for a period of thirty (30) years after the date of such recordation, after which time they shall be extended automatically for successive periods of ten (10) years each, unless modified, amended or released prior to the expiration thereof.

9. This Declaration sets forth the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior discussions, negotiations, understandings or agreements relating thereto. This Declaration may be modified, amended or released as to any portion of the Property by a written instrument executed by the then owners of the fee-simple title to the land to be affected by such modification, amendment or release providing that same has been approved by the Public Works Director. Should this instrument be so modified, amended or released, the Public Works Director shall execute a written instrument in recordable form effectuating and

acknowledging such modification, amendment or release.

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

11. An action to enforce the terms and conditions of this Declaration may be brought by the City and may be, at law or in equity, against any party or person violating or attempting to violate any provision of this Declaration or provisions of the building, zoning or land development regulations, either to restrain violations or to recover damages.

12. This Declaration shall be enforceable in Miami-Dade County, Florida. This Declaration shall be governed by, and construed in accordance with, the laws of the State of Florida, both substantive and remedial, without regard to principles of conflict of laws. The exclusive venue for any litigation arising out of this Declaration shall be Miami Dade County, Florida. BY ENTERING INTO THIS DECLARATION, THE OWNER AND THE CITY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS DECLARATION.

13. In any action or proceeding involving this Declaration or the contents hereof, the prevailing party shall be entitled to recover from the other party the prevailing party's reasonable costs and expenses actually incurred in such action or proceeding.

14. 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 Declaration shall be in writing and addressed as follows:

If to OSIB MIAMI BEACH PROPERTIES, LLC:	citizenM USA Properties 2 LLC 148 Madison Avenue Second Floor New York, NY 10016 Attn: Legal
With copies to:	Bercow Radell Fernandez Larkin & Tapanes PLLC Attn: Graham Penn, Esq.

200 S. Biscayne Boulevard,
Suite 300
Miami, Florida 33131

If to the City:

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

With copies to:

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

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

APPROVED AS TO
FORM & LANGUAGE

_____ _____
City Attorney Date

_____ _____
City Public Works Director Date

[SIGNATURE PAGE CONTINUES ON NEXT PAGE]

IN WITNESS WHEREOF, OSIB MIAMI BEACH PROPERTIES, LLC have caused these presents to be signed in its name by its proper officials.

Witnesses:

_____
Signature

_____
Print Name

_____
Signature

_____
Print Name

OSIB MIAMI BEACH PROPERTIES, LLC
Address: citizenM USA Properties 2 LLC
148 Madison Avenue
Second Floor
New York, NY 10016
By: _____

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

On the ____ day of _____ in the year 20____, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
NOTARY PUBLIC, State of New York at Large
(NOTARY SEAL)

My Commission Expires:

EXHIBIT A

Description of Enhancements

The enhancements include planting Bridalveil trees (Caesalpinia granadillo), Natchez Crepe Myrtle trees (Lagerstromia fauriei 'Natchez'), and Live Oak trees (Quercus virginiana), Horizontal cocoplum (Chrysobalanus icaco 'Horizontal'), Dwarf Pitch Apple (Clusia rosea ‘Nana'), Simpson's Stopper (Myrcianthes fragrans), and Bahama Wlid Coffee (Psychotria ligustrifolia). All planters will be irrigated with spray irrigation and lighting will be installed. Additional detail sheets are attached.

LANDSCAPE LEGEND

ZONING DISTRICT: CD-2 LOT AREA 18,295.20 ACRES 0.42

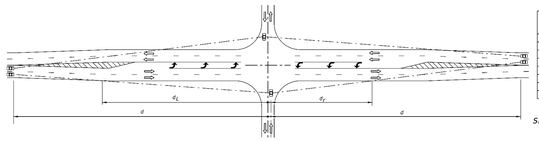
	REQUIRED	PROVIDED
OPEN SPACE		
A. Square feet of required open space as indicated on site plan: 3,659.04	3,659	6,726
B. Square feet of parking lot open space required as indicated on site plan	NA	NA
C. Total square feet of landscaped open space required: A+B	3,659	6,726
LAWN AREA CALCULATION		
A. Square feet of landscaped open space required	3,659	6,726
B. Maximum lawn area (sod) permitted= 20% x 3,659	732	0
TREES		
A. Number of trees required per lot or net lot acre, less existing number of trees (12' high / 2" cal min) meeting minimum requirements = 9.24 trees - 0 existing trees=	10	11
B. % Native trees required: Number of provided trees x 30% =	3	10
C. % Low maintenance/Drought tolerance required: Number of provided trees x 50% =	6	10
D. Street Trees (maximum average spacing of 20' o.c.): 270 linear feet along street / 20 =	14	12
E. Street trees located directly beneath power lines: (maximum average spacing of 20' o.c.): NA linear feet along street / 20 =	NA	NA
SHRUBS		
A. Number of shrubs required (18" min height): (No. of required trees + No. of street trees) x 12 =	288	534
Number of required shrubs planted on roof deck = 107		
B. % Native shrubs required: Number of required shrubs x 50% =	144	389
All required native shrubs planted at ground level.		
LARGE SHRUBS OR SMALL TREES		
A. Number of large shrubs or small trees required: Number of required shrubs x 10%	29	29
Number of large shrubs or small trees planted on roof deck = 22		
B. % Native large shrubs or small trees required: Number of large shrubs or small trees provided x 50%	14	23

Topic #625-000-002
FDOT Design Manual

Table 215.2.2 Minimum Lateral Offset Criteria

Design Element		Curbed Roadways: New Construction, Design Speed 25-35 mph	Curbed Roadways: New Construction, Design Speed 40-45 mph	Curbed Roadways: RRR, Design Speed 25-35 mph	Curbed Roadways: RRR, Design Speed 40-45 mph	High Speed Curbed and Flush Shoulder Roadway
Light Poles	**Conventional**	Do not locate in Medians, except in conjunction with barriers that are justified for other reasons. See ***FDM 215.2.9***.				
		1.5 feet	4.0 feet	1.5 feet	1.5 feet	20 feet from Travel Lane, 14 feet from Auxiliary Lane, or Clear Zone width, whichever is less
	High Mast	Outside Clear Zone				
Signal Poles and Controller Cabinets		Do not locate in Medians. See ***FDM 215.2.9***.				
		1.5 feet	4.0 feet	1.5 feet	1.5 feet	Outside Clear Zone
Traffic Infraction Detectors		For placement and installation specifications, refer to the State Traffic Engineering and Operations Office web page: http://www.fdot.gov/traffic/				
ITS Poles and Related Items	**Pole & Other Aboveground Fixed Objects**	Do not locate in Medians, except in conjunction with barriers that are justified for other reasons. See ***FDM 215.2.9***.				
		1.5 feet	4.0 feet	1.5 feet	4.0 feet	Outside Clear Zone
	Equipment Shelters and Towers	Do not locate within the limited-access right of way, except as allowed by ***Policy No. 000-625-025, Telecommunications Facilities on Limited Access Rights of Way***.				
	Breakaway Objects	1.5 feet	4.0 feet	1.5 feet	4.0 feet	As Close to R/W As Possible
Traffic Control Signs	**Single and Multi-Column**	Locate in accordance with Standard Plans.				
	Overhead Sign Structures	Outside Clear Zone				
Trees	**Where the diameter is or is expected to be > 4 inches measured 6 inches above the ground**	1.5 feet	4.0 feet	1.5 feet	1.5 feet	Outside Clear Zone
	RRR Projects: (1) Meet New Construction criteria for new plantings.					

NOTE:
-SEE CIVIL ENGINEERING DWG'S FOR INTENT TO APPROVE FDOT PERMIT # 2020-A-691-00021.
PROPOSED HARDSCAPE (C04-001) IS IN CIVIL ENGINEERING SCOPE OF WORK



Design Speed (mph)	d (Ft.)	d_1 (Ft.)	d_2 (Ft.)
30	375	205	110
35	440	245	130
40	500	275	145
45	565	310	165
50	625	345	180
55	690	380	200
60	750	410	215
65	815	450	235

Passenger Vehicle

Design Speed (mph)	d (Ft.)	d_1 (Ft.)	d_2 (Ft.)
30	480	265	140
35	560	310	165
40	640	350	185
45	720	395	210
50	800	440	230
55	880	485	255
60	960	525	280
65	1040	570	300

SU Vehicle

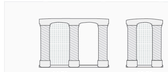
Design Speed (mph)	d (Ft.)	d_1 (Ft.)	d_2 (Ft.)
30	500	315	185
35	665	365	195
40	760	420	220
45	855	470	245
50	950	520	275
55	1045	575	300
60	1140	625	330
65	1235	675	355

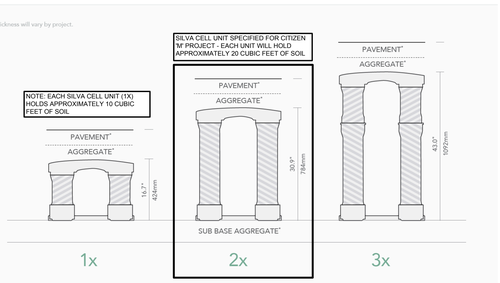
Combination Vehicle

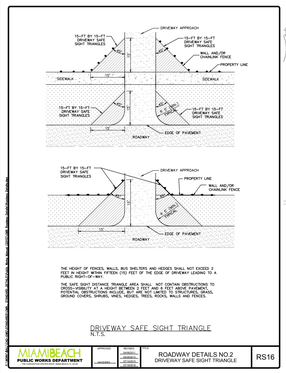
SIGHT DISTANCE (d) AND RELATED DISTANCES (d_1 , d_2) (FEET)
4-LANE UNDIVIDED WITH LEFT TURN LANE

SILVA CELL 2 CONSTRUCTION DEPTHS

This drawing shall be used in conjunction with Silva Cell Details and Specifications.
The information contained in this drawing is not to scale.
Aggregate sub-base and paving profile will vary by project.







GROUND FLOOR TREE SCHEDULE

Symbol	ID	Qty	Botanical Name	Common Name	DBH	Height	Spread	Native	Remarks
	CG	4	Caesalpinia granadillo	Bridalveil Tree	3"	12'	8'	N	Single leader standard, 5' clear trunk
	LFN	6	Lagerstromia fauriei 'Natchez'	Natchez Crepe Myrtle	3"	12'	8'	N	Standard individuals, 5' clear trunk. White flowering variety.
	QV	2	Quercus virginiana	Live Oak	8"	25'	15'	Y	10' clear trunk @ sidewalk. Canopy over road to be maintained at 14'-6" vertical clearance at face of curb.

GROUND FLOOR SHRUB SCHEDULE

Symbol	ID	Qty	Botanical Name	Common Name	Size	Height	Spread	Spacing	Native	Remarks
	Cih	126	Chrysobalanus icaco 'Horizontal'	Horizontal cocoplum	7 Gal	14"	20"		Y	
	Crn	49	Clusia rosea 'Nana'	Dwarf Pitch Apple	7 Gal	24"	24"		Y	
	Mf	7	Myrcianthes fragrans	Simpson's Stopper	25 Gal	6'	4'		Y	(Large shrub per COMB)
	Pl	12	Psychotria ligustrifolia	Bahama Wild Coffee.	7 Gal	30"	24"		Y	

NOTE:
-PRIOR TO THE INSTALLATION OF ANY PLANT MATERIAL, ALL AT-GRADE PLANTING BEDS SHALL BE EXCAVATED WITHIN THEIR ENTIRE LIMITS TO 30" MINIMUM BELOW ADJACENT HARDSCAPE FINISH (ELEVATION) IN ORDER TO REMOVE ALL COMPACTED, CONTAMINATED AND INORGANIC MATERIAL.
-PLANTING BEDS SHALL BE CHECKED FOR ADEQUATE PERCOLATION THEN BACKFILLED WITH APPROVED PLANTING MEDIUM AS INDICATED IN THE PLANTING SPECIFICATIONS SECTION OF THESE DRAWINGS AND TO THE EXTENT THAT THE FILL LEVEL ACCOUNTS FOR MEDIUM SETTLEMENT (+/- 25%) DURING THE WARRANTY PERIOD.

200A FDOT PLANTING

SCALE: 1" = 10'

1

citizenM Hotels
1212 LINCOLN ROAD, MIAMI BEACH, FL 33139

Gensler
Lic. No. AA0002837

MAIN OFFICE
45 Fremont Street
Suite 1500
San Francisco, CA 94105
USA
T 415.433.3700

MIAMI OFFICE
801 Brickell Avenue,
Suite 2300
Miami, FL 33131
USA
T 305.350.7070

CONCEPT ARCHITECT
concrete
oudezijds achterburgwal 78a
1012 dr amsterdam NL

STRUCTURAL
YOUSSEF HACHEM CONSULTING ENGINEERING, INC
99 NW 27 AVE
Miami, FL 33125
T 305.969.9423

MEP/FP/T
BR+A CONSULTING ENGINEERS
2600 Douglas Road, Suite 1100
Coral Gables, FL 33134
T 305.529.1515

CIVIL
MILLER LEGG
5747 N. Andrews Way
Fort Lauderdale, FL 33309
T 954.436.7000

LANDSCAPE ARCHITECTS
URBAN ROBOT LLC
420 Lincoln Rd #600
Miami Beach, FL 33139
T 786.246.4857

ACOUSTICS
ACENTECH
33 Moulton Street
Cambridge MA 02138
T 617.499.8000

POOL CONSULTANT
AQUADYNAMICS
5000 SW 75th Ave, Suite 103
Miami, FL 33155
T 305.667.8975

FOOD
RICCA DESIGN STUDIOS
5325 S. Valentia Way
Greenwood Village, CO 80111
T 303.928.1362

VERTICAL TRANSPORTATION
LERCH BATES
9780 S. Meridian Boulevard, Suite 450
Englewood, CO 80112
T 303.795.7956

LIFE SAFETY
SLS CONSULTING
260 Palermo Ave
Coral Gables, FL 33134
T 305.461.9852

Seal / Signature

	Date	Description
1	01.06.2022	F.D.O.T. COMMENTS
2	02.02.2022	F.D.O.T. COMMENTS
3	03.10.2022	F.D.O.T. COMMENTS
4	04.28.2022	F.D.O.T. COMMENTS
5	05.12.2022	F.D.O.T. COMMENTS

Project Name
citizenM Miami South Beach

Project Number
79.0337.000

Description
PLANTING PLAN LEVEL 01 (FDOT)

Scale
As indicated

L200

© 2019 Gensler

BIM 360://079.0337.000 - citizenM - Miami South Beach/79.0337.000_Citizen M Miami Beach_2019.rvt
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CITY OF MIAMI BEACH ROUTINE GROUNDS MAINTENANCE SPECIFICATIONS

1. **STANDARDS AND REFERENCES:** The landscape maintenance personnel shall be well versed in Florida maintenance operations and procedures, Florida Friendly Landscaping, and Integrated Pest Management practices. All employees shall be competent and skilled in their particular job in order to insure that they properly perform the work assigned.

   The following organizations provide standards and publications which shall be used as a guide for conducting grounds maintenance services. Any deviations from these standards should be approved by the City in writing:

   - Florida Cooperative Extension Services, 18710 SW 288th Street, Homestead, Florida, 33030.
   - Florida Turf-Grass Association, Inc., 302 Graham Avenue, Orlando, Florida, 32803-6399.
   - National Recreation and Park Association, 1601 N. Kent Street, Arlington, Virginia, 22209.
   - Florida Recreation and Park Association, 1406 Hays Street, Suite 1, Tallahassee, Florida, 32301.
   - Florida Department of Transportation, "Manual on Traffic Controls and Safe Practices for Street & Highway Construction, Maintenance and Utility Operations."
   - Institute for Regional Conservation.
   - Florida Department of Environmental Protection.
   - American National Standards Institute A-300 Standards.
   - Florida Nursery, Growers and Landscape Association.

2. **MATERIALS:** All materials supplied and used by landscape maintenance personnel shall be the highest quality and used in accordance with manufacturer's directions. Commercial products such as fertilizers and pesticides shall bear the manufacturer's label and guaranteed analysis. City inspectors may require tests and reject materials not meeting these specifications or manufacturer's guarantee. Salvage materials will not be allowed.

   A. **REPLACEMENT:** Any plants which are damaged or die as a result of improper maintenance, inadequate or lack of irrigation or lack of sufficient maintenance shall be replaced by the landscape maintenance personnel, at no cost to the City, within ten (10) calendar days upon discovery by the landscape maintenance personnel or notification by the City. The following criteria shall be used to determine if replacement is necessary.

      i. Plants are not in a healthy growing condition and this renders them below the minimum quality standard (Florida Grade #1 as defined by the Florida Grades and Standards Manual for Nursery Plants).

      ii. There is a question of any plants ability to thrive after the end of the maintenance period which would render it below the minimum quality standards (Florida Grade #1 as defined by the Florida Grades and Standards Manual for Nursery Plants).

      iii. The plant material is dead.

3. SIZE, QUALITY, AND GRADE OF REPLACEMENT:

A. Replacement material shall be of the same brand, species, quality and grade as that of the material to be replaced, or it shall conform to the Florida Grades & Standards for nursery plants Florida #1 Quality, whichever is higher. The size of the replacement plants shall not be necessarily the same size as the original specified plant at its initial planting. The replacement shall be of equal size to the plant to be replaced at the time it has been determined that it must be replaced. However, if for some reason, the plant to be replaced is smaller than the size to be replaced, the replacement shall be at least equal to the original size when the maintenance period began.

B. Plants shall be sound, healthy, and vigorous, free from plant disease, insect pests or their eggs, and shall have normal root systems and comply with all State and local regulations governing these matters, and shall be free from any noxious weeds.

C. All trees shall be measured six (6) inches above ground surface.

D. SHAPE AND FORM: Plant materials shall be symmetrical, and/or typical for variety and species.

E. All plant materials must be provided from a licensed nursery.

4. WATER: Should landscape maintenance personnel be required to supply water temporarily, the water shall be fresh (non-salt), and containing no harmful levels of pollutants or chemicals.

5. SOIL:

A. Any soil supplied by landscape maintenance personnel shall be good, clean, friable top soil (or soil mix), free from any toxic, noxious or objectionable materials, including rocks, lime rock, plant parts or seeds.

B. "Planting Soil Mix" shall be equal parts of Canadian peat, silica sand, and composted organic matter, sterilized.

C. "Muck-sand-soil" shall be 70 percent silica sand and 30 percent Florida peat.

6. FERTILIZER: All fertilizer shall be the best commercial grade and except for free flowing liquids, shall be delivered to site and be dry when processed for application. Fertilizers shall be in appropriate containers and tagged. Special permission from the City is required to use bulk fertilizers.

Landscape maintenance personnel may be required to submit copies of the manufacturer's specifications for all fertilizer including data substantiating that the proposed materials comply with specified requirements.

7. PESTICIDES (INSECTICIDES, FUNGICIDES, HERBICIDES, ETC.): Insecticides & Fungicides shall be only those which are approved or recommended for use near open water bodies and those specified. Only the Federal Environmental Protection Agency (EPA) approved products

shall be used.

All pesticides are to be registered and approved for use by the Florida Department of Agriculture.

Landscape maintenance personnel should document and retain to be produced if requested, a schedule of spraying and dusting materials to be used to control pests and disease infestation, the reason for their use and the method to be used to apply the materials and the method of application before it is delivered and used on the site. The need for pest and disease control, will be determined by the landscape maintenance personnel's Horticulturist. Also, if requested by the City, landscape maintenance personnel will furnish documentation that the implementation of these control measures for pests and disease infestation is in strict compliance with all Federal, State, and Local Regulations. Any use of pesticides in Parks must be approved in writing by City.

8. **MISCELLANEOUS MATERIALS:** Mulch shall be Amerigrow Recycling's or City approved equivalent shredded, round-wood, recycled mulch Pine Bark Brown in color. Other mulch types may be required upon request by the City.

9. **EQUIPMENT:** Equipment supplied by landscape maintenance personnel shall be designed for or suited to the grounds maintenance task in which it is to be used. Equipment will not be used in areas or to perform tasks where damage will result to the landscapes or sites.

   Landscape maintenance personnel shall maintain supplied equipment in a good appearance and all equipment shall be maintained in a safe, operational and clean condition.

10. **COMPLETION OF WORK:** All work is to be completed in a continuous manner. That is all mowing, edging, weed control, trimming, litter removal, etc. shall be completed before leaving the job site.

11. **GROUNDS MAINTENANCE FUNCTIONS AND TASKS:**

   A. TURF CARE: Maintain turf areas in a healthy, growing green and trim condition by performing the following operation:

      i. SITE PREPARATION: The landscape maintenance personnel shall, prior to mowing, retrieve materials and dispose of waste to include, and not be limited to, papers, glass, bottles, cans, fallen tree limbs and/or fronds, and all other deleterious materials found on the sites listed herein. Should the landscape maintenance personnel have knowledge of the existence of hazardous wastes upon lands covered by the provisions of this agreement, the landscape maintenance personnel shall have a duty to immediately notify the City in writing of such a condition, and provide information on the disposal of the material.

   B. MOWING GENERAL

      i. Mowing shall be performed in a workmanlike manner that insures a smooth surface appearance without scalping or leaving any "missed" uncut grass. Special care will be required to avoid scalping swales and on top of berms. Line trimmers will not be permitted for cutting grass in areas larger than 64

square feet.

ii. Reel mowers will be used on Bermuda, Paspalum and Zoysia grass.

iii. Rotary mowers will be used on St. Augustine and Bahia grass.

iv. All mowers are to be adjustable and adjusted to the proper cutting height and level for the kind of grass and current condition of the turf. Mower blade height adjustment is to be measured from a level floor surface to the parallel and level plane of the mower blade.

v. All mower blades are to be maintained sharpened condition and sharp enough to cut, rather than to tear grass blades.

vi. All litter and debris is to be removed from turf before mowing to avoid shredding that will damage turf appearance, or items that may be propelled by mower blades.

vii. Mowing will be done carefully so as not to "bark" trees or shrubs, or to introduce weeds into ground cover beds, or to damage sprinkler heads, curbs, or other facilities.

viii. Grass clippings or debris caused by mowing or trimming will be collected and removed from the turf or from adjacent walks, drives, gutters and curbs or surfaces on the same day as mowed or trimmed and legally disposed of at an off-site location at Contractor's expense. Dispersion of clippings by the use of blowers is expressly forbidden.

ix. Mowing will not be done when weather or other conditions will result in damaged turf.

C. MOWING SPECIFICS

i. ST. AUGUSTINE GRASS: Mow only with a rotary mower a minimum of once per week during the growing season of May through the end of September and at other General Service, as needed, throughout the year.

ii. BAHIA GRASS: Turf shall be mowed at 4" to 4 1/2 "above soil level with a mower designed for use in the specific circumstances. Remove clippings from areas if excessive clippings result from the mowing operation.

D. TRIMMING AND EDGING: Landscape maintenance personnel shall trim and properly edge all shrub and flower beds as well as trees, curbs, walks, lighting and all other obstacles in the landscape and remove clippings. Paved areas (hard edges) shall be edged **every mowing** with respect to the turf type adjacent to the edging. Edging of beds and the tree rings (soft edging) shall be executed not less than every other mowing with respect to the turf type adjacent to the edging. Turf edging at shrub beds, flower beds, ground cover beds, hedges, or around trees (where "edging" rather than "trimming" is directed), shall be edged with a manual or mechanical edger to a neat vertical uniform line. Line Trimmers are not to be used for vertical edging or for cutting

turf grass in areas lager than 64 square feet. Line trimming of large areas shall be considered contrary to Accepted Standard Industry Maintenance Practices and subject to payment reductions as described in Appendix B Section 1.5. Edge grass at plant bed lines to keep grass from growing toward shrubs, keep the width of sod as it was originally placed. Care shall be taken to avoid damage of ground cover weed barrier. Grass will be trimmed at the same height as adjacent turf is mowed, and to remove all grass leaves from around all obstacles and vertical surfaces in the turf, such as posts, walls, fences, etc. Particular attention will be given to trimming around sprinkler heads and other irrigation system components to assure their proper water delivery function. The mechanical line trimmers are not to be used within eighteen (18") inches of tree or palm trunks and are not to be used in lieu of a trim mower, to mow large areas of grass. Note: Damage to property or existing vegetation by improper trimming or edging shall be repaired or replaced within 48 hours at landscape maintenance personnel's expense. All walks and other paved areas littered in the lawn maintenance process shall be vacuumed, swept, or blown off while the mowing, edging, or trimming is in process so that the appearance suffers for the least amount of time. Direct clippings back on to the site not in to the roadway. Debris shall never be disposed into storm drains, adjacent properties or in to adjacent roadways. Shell, mulch, gravel or other porous walk ways shall be raked clean with a fan rake. Blowers are not to be used on shell, mulch or sand walkways. Landscape lighting shall be wiped, blown off or vacuumed as needed to prevent accumulation of clippings and dead insects. Landscape areas shall be raked and cleaned of clippings, leaves, sticks, twigs, and all litter **during each service visit.**

Materials cleaned from grounds may not be disposed on-site, and must be removed from locations at landscape maintenance personnel's expense.

12. PRUNING SHRUBS AND GROUND COVER PLANT BED AREA MAINTENANCE: All shrubs and ground cover plants growing in the work areas shall be pruned, **as required**, to maintain plants in a healthy, growing, flowering condition and to maintain plant growth within reasonable bounds to prevent encroachment of passageways, walks, streets, view of signs or any manner deemed objectionable.

A. BED AREA MAINTENANCE: The landscape maintenance personnel shall keep the bedded areas free of dead plants, leaves, and branches at all times. All beds shall be vertically edged, and kept weed free at all times. Edge grass at plant bed lines to keep grass from growing toward shrubs, keep the width of sod as it was originally placed. Landscape edging where used must be kept in place, and vertical as it was originally installed.

B. SHRUBS: All shrub material shall be pruned a **minimum of once per month** to insure the best shape, health, and character of the individual plant. Mechanical trimming may only be utilized when the health or appearance of the plant will not be damaged by the mechanical trimmers.

C. GROUNDCOVER: All groundcover material shall be pruned a **minimum of once per month** to insure the best shape, health, and character of the individual plant. Groundcover plants shall be selectively cut back to encourage lateral growth and kept inbounds and out of other plantings, walkways, lighting, etc. Mechanical trimmings may only be utilized when the health or appearance of the plant will not be damaged by the mechanical trimmers.

13. **TREES AND PALM PRUNING:** Trees and palms are to be maintained in a healthy, growing, safe, attractive condition and in their proper shape and size according to variety, species and function in the landscape.

A. Emphasis to be placed on the proper (natural) shape and size. Limit the amount of trimming done to meet special purposes, e.g., sign clearance on businesses, leaves dropping on outdoor tables, etc. The City's tree code states that it is unlawful to destroy a tree's natural shape. This type of pruning to be performed only with the approval of the City Urban Forester.

B. **SEC. 46-62. TREE ABUSE PROHIBITION:** It shall be unlawful to abuse any tree located within the boundaries of the City of Miami Beach, either public or private. The following acts shall constitute tree abuse:

- Damage inflicted upon any part of a tree, including its root system, by machinery, mechanical devices, soil compaction, excavation, intentional vehicle abuse, chemical applications, changes to the natural grade, fire, storage or disposal of toxic or hazardous substances, or any removal of the outer bark area.
- Damage inflicted to or cutting a tree which permits infection or pest infestation.
- Cutting any tree which destroys its natural shape, such as topping or hat racking.
- Fastening any sign, rope, wire or object by nail, staple, chemical substance, or other adhesive means to go on through, or around, any tree, causing permanent damage to the tree.
- Any pruning, or cutting, in violation of the practices established by the American National Standards Institute (ANSI) A300 Standards for Tree Care Operations.

C. **PRUNING:** All pruning shall be in compliance with the most recent tree maintenance standards as published in the American National Standards Institute (ANSI) A300 Standards for Tree Care Operations. All tree pruning must be done by an ISA certified arborist or under the direct, on-site supervision of an ISA certified arborist.

Pruning will also be required from time to time to remove damaged branches from storms, frost, pruning to prevent encroachment of branches over streets, into private property, obscuring view of signs or traffic, particularly at a road intersection, or interference with lighting, etc.

Tree branches shall be pruned up to seven (7') feet over walkways and in areas so designated by the City Urban Forester. All tree pruning shall be accomplished in accordance with the most recent American National Standards Institute (ANSI) A300 Standards for Tree Care Operations.

In addition to the situations mentioned in the preceding text, Pruning shall include the following items:

- Dead, dying or unsightly part of the tree

- Remove sucker growth from base of the trees in which an exposed trunk character is desired
- Crossed branches that may rub together
- "V" crotches with included bark, which are subject to failure subordinate multiple leaders if the tree normally has only a single stem
- Growth that interferes with the movement of vehicle or pedestrian traffic, signage, or lighting. Nuisance growth includes the removal of all dangerous thorns, spikes or appendages which show potential conflict with people

All branches, dead wood, and cuttings shall be removed from the job site at time of pruning and disposed of in an acceptable manner. All lawn and shrub areas damaged by pruning equipment shall be restored.

Palms are to be pruned a minimum of four times a year, in June, September, December and March. Minor pruning as otherwise required to remove brown or broken fronds, prevent encroachments, and remove fruit shall be done throughout the year. Special attention should be paid Coconut Palms and Date Palms where fallen fruit may present a hazard to pedestrians or property or create problems with sanitation.

D. **NATURAL SHAPING AND THINNING:** Prune, thin, and trim all trees at least once a year. Trees should be inspected and evaluated monthly, and pruning scheduled as needed for health, development of structural strength, public safety, maintenance of clearances, etc. to keep the trees healthy, to (1) maintain the natural character of the variety, (2) to control shape and to prevent crowding. Pruning in general shall consist of the removal of dead, broken, fungus infected, superfluous, and intertwining branches, vines, and the removal of dead or decaying stumps and other undesirable growth. Palms shall be pruned as needed to remove fruit, inflorescence, dead fronds and weak stalks. In order to prevent the spread of disease and reduce the possibility of nutrient deficiencies, only dead, brown fronds should be removed under normal circumstances. Whenever live plant tissue is being cut, including for example, diseased, broken or mostly dead fronds or fruits or inflorescences, tools shall be disinfected. Disinfect tools between palms by soaking in a (5.25%) - 25% dilution Chlorine bleach and water solution for a minimum of 5 minutes. **Chainsaws shall not be used on Phoenix spp. Due to the difficulty in sanitizing chainsaws, hand saws only will be permitted. Saws must be disinfected after pruning each Phoenix palm.** Palms shall not be excessively pruned, i.e., above the horizontal plane with the ground, or the 3 o'clock/9 o'clock crown positions. Remove brown or broken fronds only unless removal is required due to encroachments.

E. **STAKING AND GUYING AND TREE SET-UP:** Maintain existing and adjust tree stakes, guy wires and hoses or blocks, until trees are capable of standing vertical and/or resisting normal winds.

i. Landscape maintenance personnel shall be responsible for the complete removal and replacement of those trees lost due to faulty maintenance or negligence, as determined by the City Urban Forester.

ii. Replacement shall be made by landscape maintenance personnel in the kind and size of tree determined by the City Urban Forester.

iii. All trees that have died or have been blown or knocked over are to be reported immediately upon discovery to the City Urban Forester.

iv. With prior approval from the City Urban Forester, it is the landscape maintenance personnel's responsibility to remove and properly dispose of all dead or injured trees and/or weed trees such as but not limited to Florida Holly, Melaleuca or Australian Pines. Landscape maintenance personnel shall set and support trees that have been knocked or blown over

v. Landscape maintenance personnel shall be responsible for removing all graffiti, signs, posters, boards, supports and any other material(s) attached or fastened to trees, or from elsewhere on the site, as directed by the City Urban Forester.

14. WEED CONTROL

A. All landscape areas within the specified area, including lawns, shrub and ground cover beds, planters, and areas covered with concrete, pavers, gravel or shell, shall be kept free of all weeds at all times. This means complete removal of all weed growth shall be **accomplished at each service visit.** For the purpose of this specification, a weed will be considered as any undesirable or misplaced plant. Weeds shall be controlled either by hand, mechanical, or chemical methods. The City may restrict the use of chemical or mechanical weed control in certain areas. Mechanical weed control shall not disturb the mulch layer so as to expose the underlying soil.

i. Weeds are to be mowed, trimmed, or edged from turf areas as a part of turf care operations.

ii. Weeds are to be manually removed from shrub, hedge, ground cover or flower beds, unless chemical or mechanical means are specifically authorized. Line Trimmers are not to be used for weed control in mulched areas. Use of line trimmers in mulched areas shall be considered contrary to Accepted Standard Industry Maintenance Practices. Damaged plant material resulting from such practice shall be replaced in kind.

iii. Weeds are to be removed from walkways, curbs, expansion joints, and along fence lines and guardrails at **each service**.

B. If infestations cannot be controlled by hand-pulling, or herbicide use will damage or kill the shrubs or ground-covers, the bed may be excavated, after removing all plants. Then, weeds may be destroyed **before** replanting by any of the following methods:

i. Sterilize the soil; or

ii. Allow weeds to re-establish a vegetative top and treat with a systemic herbicide, at least two (2) applications, about two (2) weeks apart, or until there is a 90% kill; or

iii. After the kill, apply, immediately after replanting, a pre-emergent herbicide, such as Treflan or prior to replanting utilizing a ground cover fabric.

iv. If it is determined by the City that the landscape maintenance personnel responsible for maintenance allows weed infestations to spread beyond the ability to control them, then the removal, treatment, and replacement of the planting bed shall be done as described above by the landscape maintenance personnel at no cost to the City. Soil which exhibits significant weed growth within one (1) month after planting, (20% ground coverage of the bed by weeds) shall be considered as previously weed-infested.

15. LITTER CONTROL

A. TRASH GENERATED FROM LANDSCAPING ACTIVITIES: Landscape maintenance personnel shall promptly remove all debris generated by his pruning, trimming, weeding, edging, and other work required in the specifications. Storm drains shall be kept clear and free of debris. Debris must be disposed of at an authorized site for commercial use. Neighborhood trash transfer stations or road side piles are not considered authorized sites. Landscape maintenance personnel shall clean driveways and paved areas with suitable equipment immediately after working in them. All cuttings are to be collected and removed on same day as cut.

B. LITTER REMOVAL: Litter shall be removed from all turf areas, landscape beds, walk ways and all hard surfaces at each regularly scheduled service.

16. FERTILIZATION AND SOIL TESTING: The fertilizer used shall be a commercial grade product and recommended for use on each plant type. Specific requirements should be determined by soil test results, soil type, and time of year. Applications shall proceed continuously once begun until all areas have been completed. In the event fertilizer is thrown on hard surfaces, it shall be removed immediately to prevent staining.

A. TURF

i. ST. AUGUSTINE: St. Augustine turf areas that contain palms shall be fertilized three (3) times per year; with "Palm Special Fertilizer" with the formulation of $8N\text{-}2P_2O_5\text{-}12K_2O$ +4Mg with micronutrients. 100% of the N, K, and Mg must be slow release with micronutrients in a water soluble form, applied according to label rates.

For all other turf grass areas; applications to be made during the following months: April, July, and October. The N< P< K ratios shall vary with the time of year of the application and results of the soil analysis.

The approximate N, P, K ratios should be:

- One (1) application of a 5:2:1 ratio with a post-emergent weed control;
- One (1) application of a 10:1:2 ratio with Insecticide, and one application being a blanket application of insecticide in accordance with IPM (Integrated Pest Management) standards;
- One (1) application of a 3:1:3 ratio;

ii. GROUNDCOVER AND SHRUBS: The fertilizer for all planted shrubs and groundcovers shall meet appropriate horticultural standards with an N, P, K ratio of 3:1:2, unless soil conditions or plant species dictate differently, with at

least 60% of the nitrogen from a non-water soluble organic source.

All shrubs and groundcovers shall be fertilized by broadcasting by hand over the beds three (3) times per year during the months of April, July and October.

Changes in fertilization rates, methods and composition must be approved by the City in writing.

iii. **FERTILIZATION OF TREES AND PALMS:** The fertilizer for all the planted trees shall be **a complete slow release fertilizer with minor elements,** with a N, P, K ratio of 3:1:2 or 3:1:3 (e.g. 12-4-8 or 15-5-15, unless soil conditions or plant species dictate differently,.

All Trees 5" caliper or under shall be fertilized three (3) times per year: April, July and October. Landscape maintenance personnel to apply a complete slow release fertilizer with minor elements, applying 1 pound of Nitrogen per 1000 square feet of area of root zone (drip line plus 50%).

All Palms shall be fertilized four (4) times per year; every three (3) months; during the months of January, April, July and October. Contractor to apply "Palm Special Fertilizer" with the formulation ($8N\text{-}2P_2O_5\text{-}12K_2O$ +4Mg) with micronutrients. 100% of the N, K, and Mg must be slow release with micronutrients in a water soluble form. The fertilizer shall be broadcast evenly under canopy area at a rate of 1.5 lbs of fertilizer (not N) per 100 sq. ft.

17. **DISEASE AND PEST CONTROL:** To control or eradicate infestations by chewing or sucking insects, leaf miners, fire ants, and other pests and diseases, spray affected plants with chemical sprays and combinations of sprays suitable for that particular pest when the infestation or infection becomes evident and as often thereafter as necessary. Landscape maintenance personnel shall be fully licensed to apply pesticides. Landscape maintenance personnel shall use sound cultural practices that aid in preventing the presence or proliferation of insect and diseases. IPM (Integrated Pest Management) standards and principles shall be incorporated into any approved disease and pest control plan. Insects in Bermuda, Paspalum and Zoysia grass shall be controlled by both curative and preventative measures. Timing will be critical on mole cricket applications and frequencies of application will be as needed to successfully control their infestations.

A. All Royal Palms shall receive a root drench with Merit insecticide every February per label directions to control summer infestations of the Royal Palm bug.

B. **PHOENIX SPP. PALMS DISEASE CONTROL:** Three times per year all Phoenix palms will be treated with a systematic fungicide(s) which is labeled for Fusarium, Pithium, and Phythophthora. These applications will be performed as a root drench during the months of March, July, and November and are considered to be preventive maintenance. Failure to complete applications as specified may result in landscape maintenance personnel being liable for the replacement of Phoenix palms lost to these diseases.

18. **APPLICATION OF HERBICIDES AND INSECTICIDES:** Landscape maintenance personnel may apply various herbicides by means of spray type devices to aid in the control of unwanted weeds and vegetation. All applications shall be performed by persons holding a valid herbicide application license as issued by the State of Florida and shall be done in accordance with the herbicide manufacturer's recommended rates and all applicable Federal, State, County and Municipal regulations.

A. Landscape maintenance personnel shall exercise extreme care so as not to over spray and effect areas not intended for treatment. Areas adversely affected by such over spray shall be restored by the landscape maintenance personnel at their expense.

B. When a chemical is being applied, the person using it shall have in their possession all labeling associated with the chemical. Also, the chemical shall be applied as indicated on the label. A specimen label and the Material Safety Data Sheet for each product shall be retained and supplied to the City upon request.

C. All insecticides shall be applied by an operator licensed pursuant to Chapter 487 of the Florida Statutes. The operator shall have the license/certification in his or her possession when insecticides are being applied. The implementation of control measures for pests and disease infestations shall be in strict compliance with all federal and local regulations. Upon request, the landscape maintenance personnel shall furnish documentation of such compliance.

D. The spraying of insecticides and other such chemicals are to be confined to the individual plant. Spraying techniques which may introduce the material being sprayed beyond the immediate area of the individual plant are strictly prohibited.

E. Spray or dust material on foliage only during calm days. Do not apply when leaves are wet, when rain is expected within 3-4 hours after spraying, or when temperatures exceed 88 degrees Fahrenheit. Spray at times when traffic is lightest (i.e., early mornings or weekends). Use a surfactant to aid in adherence and absorption of the material. Wash material off of pavements and buildings immediately after applying.

F. Landscape maintenance personnel shall utilize all safeguards necessary during disease or insect control operations to ensure safety to the public.

19. **TURF RENOVATIONS:** Turf renovations may be required if conditions warrant such a procedure and will be an extra charge. Conditions which warrant renovation include, areas thinned out or damaged turf resulting from natural burnout, traffic, and any area which has become unsightly.

Proper watering, fertilization and pest management will be critical during and after renovation. Any irrigation damaged because of turf renovation will be repaired at landscape maintenance personnel's expense.

20. **IRRIGATION SYSTEM MAINTENANCE AND WATERING:** Landscape maintenance personnel will be responsible for the operation and maintenance of the automatic/manual irrigation systems and for setting and adjusting the timer to insure proper watering of all plant material in the landscape.

A. Landscape maintenance personnel will be responsible for the labor and supervision to

make irrigation repairs to the lateral line, risers and sprinkler heads up to one inch (1") in diameter as required to keep the system operating.

B. Landscape maintenance personnel will also, at least once a month, perform a Full Irrigation Wet Test which will include fully operating all the irrigation zones and replace, repair or clean all irrigation heads, lines, valves, valve boxes, filters and controllers as needed. Any equipment damaged by landscape maintenance personnel shall be replaced with the same equipment and by the same manufacturer.

C. Irrigation System shall be constantly maintained and adjusted to insure that no water from the system hits the road or other hard surface.

D. Grass shall be cut back around all irrigation heads and valve boxes at least once per month or more often as required to keep them clearly visible and fully operational. Care shall be taken to avoid damage to the irrigation boxes, zone wires, sprinkler heads from the required clearance activities, and any damage caused will be the landscape maintenance personnel's sole responsibility to repair.

E. The irrigation shall be capable of providing 1-1/2" of water to all lawns and shrub beds each week or as often as required to provide for a uniform lush green landscape appearance. System shall be adjusted during the various seasons.

F. Landscape maintenance personnel shall be required to make all irrigation repairs within a 24 hour time period or sooner to prevent water loss.

G. Irrigate as necessary during times of little or no rainfall using the automatic irrigation system and any supplemental watering necessary to apply the proper amount of water to keep plant material in optimum health. Under normal conditions, irrigate deep and infrequently (2 – 3 times weekly) to promote a good root system. Water early mornings within watering restrictions. Avoid watering in the evenings.

H. Landscape maintenance personnel are required to ensure adherence to all local watering restriction ordinances. It shall be the responsibility of the landscape maintenance personnel to pay any and all fines levied due to lack of compliance with watering restrictions.

21. MULCHING BEDS

A. Replenish mulch in shrub beds as required to cover areas of bare soil, especially at the edge of the bed and in places where the shrub canopy has not grown together to shade the soil. Add mulch around tree trunks in sod areas. Mulch shall be added to maintain **a constant three (3) inches thickness**. Do not pile mulch against tree trunks and shrub stems.

B. Use Amerigrow Recycling's or a City approved equivalent shredded "round–wood" mulch "Pine Bark Brown" color.

22. SAND REMOVAL/POLICING: Cleaning of debris within the confines of the sites by blowing, sweeping, or vacuuming or other means must be performed as required to keep paved, bricked or concrete surfaces clean and neat at all times.

Attachment C 2012-27899

FLORIDA DEPARTMENT OF TRANSPORTATION
LANDSCAPE, IRRIGATION AND BONDED AGGREGATE PAVING
MAINTENANCE MEMORANDUM OF AGREEMENT
WITH THE
CITY OF MIAMI BEACH

This **AGREEMENT**, entered into on May 30, 2012, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, an agency of the State of Florida, hereinafter called the **DEPARTMENT**, and the **CITY OF MIAMI BEACH**, a municipal corporation of the State of Florida, hereinafter called the **CITY**, and collectively referred to as the **PARTIES**.

RECITALS:

A. The **DEPARTMENT** has jurisdiction over **State Road (S.R.) 907/Alton Road from 5th Street (MP 0.000) to Michigan Avenue (MP 1.539)**, which is located within the limits of the **CITY**; and

B. The **DEPARTMENT, pursuant to** Contract # T-6290, has drafted design plans for beautification improvements on S.R. 907/Alton Road from 5th Street to Michigan Avenue, the limits of which are described in the attached Exhibit 'A' (the **PROJECT LIMITS**), which by reference shall become a part of this **AGREEMENT**; and

C. The **DEPARTMENT** will install landscaping, irrigation systems and bonded aggregate paving in accordance with the design plans for Contract # T-6290 (the "Project"); and

D. The **PARTIES** to this **AGREEMENT** mutually recognize the need for entering into an agreement designating and setting forth the responsibilities of each party with regards to the maintenance of the landscaping, irrigation systems and bonded aggregate paving installed pursuant to the Project; and

E. The **CITY**, by Resolution No. 2012-27899 dated May 9, 2012, attached hereto as Exhibit 'B', which by reference shall become a part of this **AGREEMENT**, desires to enter into this **AGREEMENT** and authorizes its officers to do so.

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

1. **RECITALS**

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

2. **DEPARTMENT RESPONSIBILITIES**

The **PARTIES** agree that by executing this **AGREEMENT** all maintenance responsibilities pertaining to the landscaping and irrigation systems within the **PROJECT LIMITS** are assigned to the **CITY** in perpetuity upon the **DEPARTMENT'S** release of its contractor from further warranty work and responsibility, as set forth in Section 580-5 of the Departments Standard Specification for Road and Bridge Construction. Additionally, the **PARTIES** agree that all maintenance responsibilities pertaining to the bonded aggregate paving shall be assigned to the **CITY** in perpetuity upon the **DEPARTMENT'S** issuance of the Notice of Final Acceptance of the Project to its contractor.

3. **CITY'S MAINTENANCE RESPONSIBILITIES**

The **CITY** shall maintain the landscaping, irrigation systems and bonded aggregate paving, hereinafter may also be called "Roadway Features", in accordance with all applicable **DEPARTMENT** guidelines, standards, and procedures, which shall include but shall not be limited to the Maintenance Rating Program Handbook, as may be amended from time to time. Additionally, the **CITY** shall maintain the landscaping, irrigation systems and bonded aggregate paving in accordance with the International Society of Arboriculture standards, guidelines, and procedures, as may be amended from time to time, and in accordance with the standards set forth in the Project Plans, and in the Project Specifications and Special Provisions. The **CITY'S** maintenance obligations shall include but not be limited to:

a. Mowing, cutting and/or trimming and edging the grass and turf.

b. Pruning all plant materials, which include trees, shrubs and ground covers, and parts thereof.

c. Removing and properly disposing of dead, diseased or otherwise deteriorated plants in their entirety, and replacing those that fall below the standards set forth in the Project Plans and in the Project Specifications, incorporated herein by reference, and all applicable Department guidelines, standards and procedures, as may be amended from time to time. All replacement materials shall be in accordance with the Project Plans and the Project Specifications and Special Provisions.

d. Mulching all plant beds and tree rings.

e. Removing and disposing of all undesirable vegetation including but not limited to weeding of plant beds and removal of invasive exotic plant materials.

f. Watering and fertilizing all plants as needed to maintain the plant materials in a healthy and vigorous growing condition.

g. Performing routine and regular inspection of the irrigation system(s) to assure that the systems are fully functional; identifying damage and/or malfunctions to the system(s); repairing and/or replacing broken or missing irrigation equipment; and adjusting spray heads to eliminate overspray of water onto paved areas.

h. Paying all for water use and all costs associated therewith.

i. Performing routine and regular inspections of the bonded aggregate paving to ensure that the paving is fully functional; identifying damage and/or malfunctions in the paving; and repairing and/or

replacing damaged bonded aggregate paving to ensure paving is maintained in accordance with all applicable Department guidelines, standards, and all applicable Americans with Disabilities Act (ADA) requirements, as amended from time to time. For any routine repairs or replacement due to noticeable scarring or surface deterioration of the bonded aggregate pavement, the product authorized installer should be contacted.

j. Removing and disposing of litter from roadside and median strips in accordance with all applicable government rules, regulations, policies, procedures, guidelines, and manuals, as amended from time to time.

k. Removing and disposing of all trimmings, roots, branches, litter, and any other debris resulting from the activities described by 2.A through 2.J.

l. Maintaining a service log of all maintenance operations that sets forth the date of the maintenance activity, the location that was maintained, and the work that was performed.

m. Submitting Lane Closure Requests to the **DEPARTMENT** when maintenance activities will require the closure of a traffic lane in the **DEPARTMENT'S** right-of-way. Lane closure requests shall be submitted through the District Six Lane Closure Information System, to the **DEPARTMENT'S** area Permit Manager and in accordance with the District Six Lane Closure Policy, as may be amended from time to time.

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

4. MAINTENANCE DEFICIENCIES

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

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

a. Maintain the landscaping, irrigation systems and bonded aggregate paving, or a part thereof and invoice the **CITY** for expenses incurred; or

b. Terminate this Agreement in accordance with Section 7, remove any or all landscaping, irrigation systems and bonded aggregate paving located within the **PROJECT LIMITS**, and charge the **CITY** the reasonable cost of such removal.

5. NOTICES

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

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

To the CITY: City of Miami Beach

1700 Convention Center Drive
Miami, Florida 33139
Attention: City Manager

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

6. **REMOVAL, RELOCATION OR ADJUSTMENT OF THE LANDSCAPE, IRRIGATION SYSTEMS AND BONDED AGGREGATE PAVING**

a. The **PARTIES** agree that the Roadway Features addressed by this **AGREEMENT** may be removed, relocated or adjusted at any time in the future, at the **DEPARTMENT'S** sole discretion. In the event that the **DEPARTMENT** relocates or adjusts the landscaping, irrigation systems and bonded aggregate paving, the **CITY'S** maintenance responsibilities will survive the relocation or adjustment, as long as the materials remain within the **PROJECT LIMITS**.

7. **TERMINATION**

This **AGREEMENT** is subject to termination under any one of the following conditions:

b. By the **DEPARTMENT**, if the **CITY** fails to perform its duties under Section 3 of this **AGREEMENT**, following the thirty (30) days written notice, as specified in Section 4 of this **AGREEMENT**.

c. In accordance with Section 287.058(1)(c), Florida Statutes, the **DEPARTMENT** shall reserve the right to unilaterally cancel this **AGREEMENT** if the **CITY** refuses to allow public access to any or all documents, papers, letters, or other materials made or received by the **CITY** pertinent to this **AGREEMENT** which are subject to provisions of Chapter 119, of the Florida Statutes.

d. If mutually agreed to by both parties, upon thirty (30) days advance notice. An agreement to terminate shall be valid only if made in writing and executed

with the same formalities as this **AGREEMENT**.

8. **TERMS**

a. The effective date of this **AGREEMENT** shall commence upon execution by the **PARTIES**. This **AGREEMENT** shall continue in perpetuity or until termination as set forth in Section 7.

b. For purposes of performing its duties under this **AGREEMENT**, the **CITY** shall insert the following clause into any contracts entered into by the **CITY**, with vendors or contractors:

Vendors/Contractors:

i. Shall utilize the U.S Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the vendor/contractor during the term of the **AGREEMENT**; and

ii. Shall expressly require subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment of all new employees hired by the subcontractors during the **AGREEMENT** term.

c. This writing embodies the entire agreement and understanding between the **PARTIES** hereto and there are no other agreements and understanding, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.

d. This **AGREEMENT** shall not be transferred or assigned, in whole or in part, without the prior written consent of the **DEPARTMENT**.

e. This **AGREEMENT** shall be governed by and constructed in accordance with the laws of the State of Florida. Any provisions of this **AGREEMENT** found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions of the

AGREEMENT.

f. Venue for any and all actions arising out of or in connection to the interpretation, validity, performance or breach of this **AGREEMENT** shall lie exclusively in a state court of proper jurisdiction in Leon County, Florida.

g. A modification or waiver of any of the provisions of this **AGREEMENT** shall be effective only if made in writing and executed with the same formality as this agreement.

h. The section headings contained in this **AGREEMENT** are for reference purposes only and shall not affect the meaning or interpretation hereof.

i. No term or provision of this **AGREEMENT** shall be interpreted for or against either Party because the Party or its legal representative drafted the provision.

j. The **DEPARTMENT** is a state agency, self-insured and subject to the provisions of Section 768.28, Florida Statutes, as may be amended from time to time. Nothing in this **AGREEMENT** shall be deemed or otherwise interpreted as waiving the **DEPARTMENT'S** sovereign immunity protections, or as increasing the limits of liability as set forth in Section 768.28, Florida Statutes.

9. INDEMNIFICATION

Subject to Section 768.28, Florida Statutes, as may be amended from time to time, the **CITY** shall promptly indemnify, defend, save and hold harmless the **DEPARTMENT**, its officers, agents, representatives and employees from any and all losses, expenses, fines, fees, taxes, assessments, penalties, costs, damages, judgments, claims, demands, liabilities, attorneys fees, (including regulatory and appellate fees), and suits of any nature or kind whatsoever caused by, arising out of, or related to the **CITY'S** exercise or attempted exercise of its responsibilities as set out in this **AGREEMENT**, including but not limited to, any act, action, neglect or omission by

the **CITY**, its officers, agents, employees or representatives in any way pertaining to this agreement, whether direct or indirect, except that neither the **CITY** nor any of its officers, agents, employees or representatives will be liable under this provision for damages arising out of injury or damages directly caused or resulting from the sole negligence of the **DEPARTMENT.**

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

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

The **CITY'S** evaluation of liability or its inability to evaluate liability shall not excuse the **CITY'S** duty to defend and indemnify the **DEPARTMENT** under the provisions of this section. Only an adjudication or judgment, after the highest appeal is exhausted, specifically finding the **DEPARTMENT** was solely negligent shall excuse performance of this provision by the **CITY**.

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

CITY OF MIAMI BEACH:

BY: _____
CITY Mayor

ATTEST: _____ **(SEAL)**
CITY Clerk

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION:

BY: _____
District Director of
Transportation Operations

ATTEST: _____
Executive Secretary

LEGAL REVIEW:

BY: _____
CITY Attorney 4-30-12

BY: _____
District Chief Counsel

EXHIBIT 'A'

PROJECT LIMITS

Below are the limits of the landscape, irrigation and bonded aggregate paving to be maintained under this **AGREEMENT.**

State Road Number: 907/Alton Road

Agreement Limits: From 5th Street (M.P. 0.000) to Michigan Avenue (M.P. 1.539)

County: Miami-Dade

EXHIBIT 'B'

CITY OF MIAMI BEACH RESOLUTION

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