

February 10, 2020

VIA ELECTRONIC DELIVERY

City of Miami Beach Design Review Board

c/o Mr. Thomas Mooney
City of Miami Beach
Planning Department
1700 Convention Center Drive
Miami Beach, Florida 33139

Re: Final Design Review Board Submittal / 7140 Abbott Letter of Intent for Design Review Board Application File No. DRB19-0482 (the "Application") / Properties located at 409 71st Street, 430 72nd Street, 7120-7140 Abbott Avenue & 7117-7135 Byron Avenue, Miami Beach (collectively, the "Property")

Dear Design Review Board Members:

Our firm represents Pumps at 71 LLC, 7433 Collins Ave. Corp and Abbott Avenue Partners, LLC (collectively, the "Applicant"), in connection with certain land use and zoning matters relating to the above-referenced Property. This correspondence constitutes the letter of intent accompanying the Application requesting design review, waiver and variance approvals for the construction of a 14-story mixed use development comprised of ground floor commercial and upper level residences at the Property, as more fully detailed below.

I. The Property

The Property is located within the North Beach Town Center neighborhood and is generally bound by 72nd Street to the North, Byron Avenue to the West, 71st Street to the South and Abbott Avenue to the East. Note, there is a condominium development on the southwest corner of the block. On July 31, 2019, pursuant to Resolution 2019-30928 (the "Resolution"), the City Commission approved the vacation of the northern portion of the alley bisecting the block, conditioned upon the Applicant dedicating a rerouted connection to Byron Avenue as well as stormwater retention area improved as a bioswale. Enclosed please find a copy of the Resolution and the Vacation Agreement recorded in the Official Records Book 31715, Page 398 of the Public Records of Miami Dade County, Florida, as **Exhibits "A" and "B"** respectively¹. According to that certain Boundary and Topographic Survey, a copy of which is enclosed, the Property contains a total of 53,776 +/- square feet or 1.235 +/- acres of land.

The enclosed Project plans include the entire northern half of the Property, with the southern half to remain. The southern portion of the Property contains an existing gas station

¹ The closing of the alley vacation has not yet occurred. Therefore, Applicant confirms that as a condition of approval the vacation and dedication be complete prior to the issuance of a building permit for the Project.

subject to a lease between the Applicant and a third party. The lease for the existing gas station does not expire in the near future and therefore is not intended to be relocated as part of this Application. Upon the expiration or earlier termination, Applicant will submit an applicant for design review approval of the Phase II structures to be located on the southern portion of the Property. A copy of the redacted lease is enclosed. Note, the collective Property will be unified through a Declaration of Restrictive Covenants in Lieu of Unity of Title. The Application includes a request for a phase development approval pursuant to Sections 142-746 and 118-259 of the Land Development Regulations.

The Property is currently improved with the following uses and existing structures: (i) a 2-story commercial/office building (7140 Abbott Avenue); (ii) a 2-story multifamily structure (430 72nd Street); (iii) surface parking lots (7134 Abbott Avenue, 7315 Byron Avenue and 7117 Byron Avenue); (iv) a 2-story commercial building (7124 Abbot Avenue); and (v) a gas station with ancillary services (409 71st Street).

II. North Beach Town Center History

Over the past several years the residents of Miami Beach voiced their desire to improve and revitalize the North Beach area with high intensity, pedestrian-oriented mixed-use redevelopment. On November 7, 2017, the Miami Beach electorate demonstrated their support of this goal and voted in favor of increased FAR for the Town Center zoning districts (TC). Subsequently, on November 18, 2018, the City Commission adopted amendments to the Comprehensive Plan and Land Development Regulations permitting a maximum 3.5 FAR for the properties located within certain TC-zoning districts. Throughout a yearlong process of public engagement, the City Commission approved detailed development standards for the Town Center neighborhood, including increased height, increased density with diverse residential options (co-living) and relaxed parking requirements that continue to encourage thoughtful and engaging mixed use development for this area. Consistent with the City's vision for the North Beach Town Center neighborhood and compatible with the recently approved, mixed use development in the immediate vicinity, the Applicant seeks to develop a high quality, mixed use development on the Property in full compliance with the TC-C District Regulations and intent, provided in Chapter 142, Division 21 of the City's Land Development Regulations (the "LDRs").

III. The Project - Design Review Approval

As detailed in the enclosed plans prepared by Arquitectonica, dated February 10, 2020, the Applicant will develop the Property with a 14-story mixed use development comprised of ground floor commercial space, upper level residential units and amenity space at the podium and rooftop levels (the "Project").

The Project is designed with 232 upper level residential units, significant ground floor commercial space and service areas conveniently located in the interior of the Property. The residential development includes 141 total co-living units made up of studio and 1-bedroom units, as well as non co-living 1-bedroom and 2-bedroom units with up to 843 square feet. The Project's residential program provides diverse housing options and high quality, cost-effective living space within a single development. The Project provides ample amenity and communal space located on the fifth floor, which includes indoor and outdoor fitness space, spa services, outdoor kitchen and lounge areas, as well as an innovative dog run on the upper rooftop level.

The parking podium for the Project is hidden with decorative screening and is internally located throughout the second, third and fourth levels. Additionally, active residential units line each level of the 3-story parking podium along 72nd Street and Abbott Avenue so that the parking structure is concealed from streetscape views to better integrate the residential and pedestrian experience along these Class A and Class B frontages. In accordance with the TC-C regulations, vehicular access is exclusively located on Byron Avenue (Class C street).

As stated above, the City Commission adopted Resolution 2019-30928 approving the vacation of the northern portion of the existing alley (Abbott Court) and the simultaneous dedication of western portion of the Property running from Byron Avenue to the middle of the Property (the "New Alley"). The New Alley allows uninterrupted connectivity from 71st Street to Byron Avenue and provides direct access to the residential and commercial loading area via the New Alley. The one-way drive aisle from 71st Street to Byron Avenue supports the seamless maneuverability of residential and commercial loading trucks to and from the Property prohibiting the exit onto 71st Street (classified as a Class "A" street). Furthermore, loading through the New Alley allows 72nd Street (Class "A" street) and Abbott Avenue (Class "B" Street) to remain free from vehicular interference, creating a stronger activation of these frontages with pedestrian-friendly uses that will complement the North Shore Park and recreational facilities directly across the street.

Please note, the Property also includes the existing gas station and ancillary services on the southern portion of the Property (along 71st Street) that is subject to a lease agreement with a third party that is not set to expire in the immediate future. In accordance with Section 142-746 of the LDRs, the Applicant has reserved approximately 11,560 +/- square feet of floor area for the Phase II development. Upon the expiration or earlier termination of the lease, the Applicant will request design review approval and related entitlements from the Design Review Board for the Phase II development of the existing gas station portion of the Property. Applicant intends on utilizing the public benefits for the portions of the Project above 125' in height pursuant to Section 142-747(g)(1) (expedited development option).

IV. Waivers

- *Sec. 142-745(a)(12)(b): Loading for nonresidential uses that are on lots over 45,000 square feet shall provide for loading spaces that do not require vehicles to reverse into or out of the site, unless waived by the design review board.*
- *Sec. 142-745(a)(12)(c): "Driveways for parking and loading shall be combined, unless waived by the design review board"*
- *Sec. 142-745(g)(3)(b): "Driveways shall be spaced no closer than 30 feet apart, unless waived by the design review board."*

While the above are separate waivers, the justifications are intertwined. The Applicant is requesting the abovementioned Waiver(s) pursuant to Section 142-745(a)(12)(b) and (c) for the dedicated residential and commercial loading along the New Alley designed for the Project, with upper level residential and commercial parking accessed via the driveway on Byron Avenue. The separate driveways are necessary for the efficient vehicular operation of the loading and parking

needs of the Project. The vehicular entry points into the parking structure are located on Byron Avenue, a Class C frontage and diverts traffic away from the retail and pedestrian-oriented frontages along 72nd Street, Abbott Avenue and 71st Street. Although both parking and loading touch upon Byron Avenue, a bifurcated entrance with a dedicated vehicular parking ramp and a separate loading drive provides streamlined vehicular circulation to ensure that loading vehicles do not interfere with dedicated residential access to the Property. As stated above, the parking component of the Project is intentionally hidden from the Class A and Class B street sides of the Property in accordance with the LDRs and located as far away as allowable from the Class A frontages to allow the retail extension to remain uninterrupted. Note, the 3rd Waiver for the distance between driveways relates to the private driveway's distance to the New Alley. While alleys are encouraged to be used, the use of the alley for loading triggers the classification as an alternate driveway. Therefore, Applicant is requesting a waiver for the distance between the alley (which is used by the public and is not a designated private driveway) and the Project's private driveway (located 16'-9" apart where 30' is required).

Loading accessibility through the alley configuration is the ideal method for loading at the Property, as parking and loading is encouraged to be accessible from an alley when available. As such, the Project is designed with the loading area located off the New Alley. Note, the loading area is buffered by the 20' New Alley as well as a 2,198 +/- square foot bioswale, providing for an approximate 40 foot buffer from the loading façade to the abutting property to the south.

V. Variances

1. Variance from the 45' habitable depth requirement on Abbott Avenue (Class B) for limited trash room area.

Sec. 142-745(f)(2)(b) – Class B Frontage: Habitable Depth

Except where required for driveways and utility infrastructure, the ground floor shall contain habitable space for residential, hotel, or commercial uses with a minimum depth of 45 feet from the building façade for the minimum required length along the setback line.

Pursuant to Section 142-745(f)(2)(b), the ground floor retail space must include 45' in depth. In this case, the Abbott Avenue frontage contains continuous and uninterrupted commercial space for the entire 136'-8" of frontage. However, because of internal design constraints, an extremely limited area of this commercial space will include a trash room servicing the residential units located in the tower above. This variance is located approximately 32' into the commercial space, and only 14'-4" wide (185 square feet in the rear of this commercial venue). This variance will not be noticed from the outside of the Property. Our commercial consultants have confirmed this variance will not impact the utilization of this space. Also, the LDRs require the trash room "to be noise-baffled, enclosed, and air-conditioned".

2. Variance from the 85% building façade requirement on Byron Avenue (Class C) to provide driveway access.

Sec. 142-745(g)(2) – Class C Frontage

Buildings shall have a minimum of one floor located along a minimum of 85 percent of the length of the setback line pursuant to the following regulations:

3. Variance from the 20' minimum depth requirement on Byron Avenue (Class C) to provide for necessary utility equipment (i.e., back flow preventer).

Sec. 142-745(g)(2)(c) -Allowable Encroachments within required yards

Except where required for driveways and utility infrastructure, the ground floor shall contain habitable space for residential, hotel, or commercial uses with a minimum depth of 20 feet from the building façade for the minimum required length along the setback line.

The requested variances for the frontage width and depth are co-related. Essentially, the building frontage is 148'-5". Once the 24' driveway is introduced, the remaining space for the building façade is 124'-5" or 83.8% of the frontage (where 85% is required). Therefore, this variance is required to provide an appropriate driveway to the upper level garage. The back flow preventer is also required utility infrastructure and requires exterior access. The back flow preventer is located off the alley, but within the front 20'. Approval of these de minimis variances will allow the Project to focus all of the active ground floor uses along the A Street (72 Street), B Street (Abbott Avenue) and the portion of the C Street Frontage (Byron) closest to 72nd Street. The overall vision of the project requires the vehicular and back of house uses in this limited location to not interfere with the primary ground floor uses

The requested variances should be approved as they are in accordance with the standards of review for a Variance application, as provided in Section 118-353(d) of the City's LDRs, and support the intent of the TC-C regulations. Specifically, a Variance shall be approved upon demonstration of the following:

- (i) *Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district.*

Satisfied; The Project is uniquely situated with frontages on three (3) sides. Meaning, each façade must comply with the depth and frontage length requirements. While the Applicant can comply with the requirements on most of the commercial areas, a limited variance for the trash room for approximately 185 square feet, located over 30' into the commercial space is required on the B Street frontage. Additionally, the dedication of the bioswale and alley re-alignment has eliminated a significant portion of the Project's C Street frontage. As such, the length of that façade and the depth required for commercial uses is limited and impacted by the need to provide access to back of house areas as well as the dedicated driveway to the upper level garage.

- (ii) *The special conditions and circumstances do not result from the action of the applicant.*

Satisfied; As mentioned above, the Property includes all the lots on this City block, with the exception of Lots 5-6. These lots contain an existing multifamily structure located on the southwest portion of this block (Block 6). As a result, the Property contains a unique L-shaped configuration that did not result from the action of the Applicant. Furthermore, the vacation of the existing alley in exchange for the dedication of the larger, New Alley and dedicated bioswale area provides valuable public benefits to the City. In order to unify the site and design in accordance with the LDR's, these limited variances are required. Note, the purpose of the regulations for providing active ground floor uses remains supported by the enclosed plans. The Project is designed with a significant amount of commercial venues (both in length and depth) on all frontages enhancing and supporting activation at the ground level, while keeping the vehicular mobility in a safe and controlled environment.

- (iii) *Granting the variance requested will not confer on the applicant any special privilege that is denied by these land development regulations to other lands, buildings, or structures in the same zoning district.*

Satisfied; The requested Variances will not confer any special privilege on the Applicant that would be otherwise denied or detrimental to similarly situated properties, as there are no other similarly situated properties in the TC district. The unique alley configuration coupled with the dedication of the bioswale creates unique design constraints not shared by other blocks in the TC-C district.

- (iv) *Literal interpretation of the provisions of these land development regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of these land development regulations and would work unnecessary and undue hardship on the applicant.*

Satisfied; Failure to approve the requested variances will create a hardship on the Applicant, as the Applicant would be forced to eliminate pedestrian access at the ground floor level to the back of house areas and reduce the width of the driveway, which is designed for the safe maneuverability of the residential and commercial uses. Without these variances, the Applicant is concerned about creating an unsafe traffic configuration. The limited trash room encroachment into the commercial space on Abbott Avenue is necessary to have an appropriately sized residential trash room servicing the upper floors. Shrinking the trash room would only serve to inhibit the proper residential use, without benefit to the ground floor commercial space. Applicant's significant commercial expertise has determined that the amount of commercial depth is material, and this limited variance will not impact the commercial viability or operations.

- (v) *The variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.*

Satisfied; The Variance is the minimum required to develop the Project in accordance with the intent of the Town Center District regulations. Applicant is

creating a strong operations plan to enhance the commercial activation at the ground floor, and locate noncompatible uses (trash room, vehicular access and back of house access) to the areas furthest from the active uses (e.g., the A and B Streets).

- (vi) *The granting of the variance will be in harmony with the general intent and purpose of these land development regulations and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.*

Satisfied; The proposed variance does not negatively impact the surrounding neighborhood, as the Property contains the majority of the lots on this City block (Block 6). Additionally, the variances are essentially internal variances that do not impact the public realm. The driveway separation, while technically a variance, should be supported as City-wide the use of alleys for loading, where available, is highly encouraged.

- (vii) *The granting of this request is consistent with the comprehensive plan and does not reduce the levels of service as set forth in the plan.*

Satisfied; The requested variance will allow for the redevelopment of the Property consistent with the City Comprehensive Plan and will not reduce levels of service.

VI. Sea Level Rise and Resiliency Review Waiver

Section 133-50(a) provides review criteria for compliance with the City's recently adopted sea level rise and resiliency criteria.

- (i) *A recycling or salvage plan for partial or total demolition shall be provided.*

A recycling plan will be provided as part of the submittal for a partial/total demolition permit to the building department.

- (ii) *Windows that are proposed to be replaced shall be hurricane proof impact windows.*

The windows and glass balcony system will be hurricane impact windows.

- (iii) *Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.*

Passive cooling systems, such as operable windows and balcony doors, may be installed as appropriate.

- (iv) *Whether resilient landscaping (salt tolerate, highly water absorbent, native or Florida friendly plants) will be provided.*

All new landscaping will consist of Florida friendly plants.

- (v) *Whether adopted sea level rise projections in the Southeast Florida Regional Climate Action Plan, as may be revised from time-to-time by the Southeast Florida Regional Climate Change compact, including a study of land elevation and elevation of surrounding properties were considered.*

The Project is designed to activate the pedestrian streetscape with a pedestrian path around the Property. To build the proposed building to BFE plus 5 feet would require significant ramping and would disrupt the pedestrian connectivity and experience with the ground floor active uses designed for the Project. The Applicant will work with staff to address future SLR predictions and resiliency improvements.

- (vi) *The ground floor, driveways, and garage ramping for new construction shall be adaptable to the raising of public rights-of-ways and adjacent land.*

Based on recent discussions, the City has not proposed to raise the roadways nor committed any funding sources to facilitate any road raising and infrastructure improvements in the near future. However, the Project is designed with future public right of way/street raising taken into consideration so that the ground floor spaces will not will not require significant revision at such time.

- (vii) *Where feasible and appropriate, all critical mechanical and electrical systems shall be located above base flood elevation with room to raise.*

Where feasible, mechanical and electrical systems will be located above BFE. Any such facilities located below BFE will be floodproofed in accordance with Florida Building Code requirements.

- (viii) *Existing buildings shall be, where reasonably feasible and appropriate, elevated to the base flood elevation.*

The gas station and ancillary services on the southern portion of the Property are existing structures. The Applicant plans to redevelop this portion of the Property as Phase II, and at such time, will develop Phase II in compliance with the code criteria, including minimum flood elevations.

- (ix) *When habitable space is located below the base flood elevation plus City of Miami Beach Freeboard, wet or dry flood proofing systems will be provided in accordance with Chapter 54 of the City Code.*

To the extent applicable, Applicant will wet or dry flood proof as appropriate.

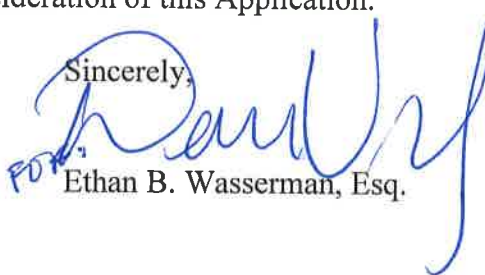
- (x) *Where feasible and appropriate, water retention systems shall be provided.*

As mentioned above, in accordance with Resolution 2019-30928, the Applicant has dedicated approximately 2,198 square feet for the development of an improved bioswale area. The dedicated bioswale area will serve as a significant

benefit to the future residents, tenants and visitors of the Project as well as the neighboring residential property to the South thereby lowering the demand on the existing infrastructure.

V. **Conclusion**

The Applicant is requesting design review, waiver and variance approval for the Project and the phased development of the Property. Approval of this Project will provide diverse residential housing options within a high-quality urban design. Based on the foregoing, we respectfully request your favorable consideration of this Application.

Sincerely,

for Ethan B. Wasserman, Esq.

BEW:dv

Enclosures

ADMIN 36250543v6

EXHIBIT “A”

RESOLUTION NO. 2019-30928

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) THE NORTHERN HALF OF AN ALLEY KNOWN AS "ABBOTT COURT," CONSISTING OF APPROXIMATELY 3,521 SQUARE FEET IN TOTAL LOT AREA; AND (2) THE ALLEY KNOWN AS "NORMANDY BEACH COURT," CONSISTING OF APPROXIMATELY 1,000 SQUARE FEET IN TOTAL LOT AREA, WITH THE FOREGOING ALLEYS LOCATED BETWEEN BYRON AVENUE AND ABBOTT AVENUE, FROM 71ST STREET TO 72ND STREET (COLLECTIVELY, THE "CITY ALLEYS"), IN FAVOR OF THE ABUTTING PROPERTY OWNERS, ABBOTT AVENUE PARTNERS, LLC; PUMPS AT 71, LLC; AND 7433 COLLINS AVE. CORP. (THE "APPLICANT"); FURTHER, PROVIDING THAT THE VACATION OF THE CITY ALLEYS SHALL BE SUBJECT TO AND CONDITIONED UPON THE APPLICANT'S EXECUTION OF A VACATION AGREEMENT AND DELIVERY OF CERTAIN PUBLIC BENEFITS TO THE CITY, INCLUDING THE DEDICATION OF THE SOUTHERN FORTY (40) FEET OF 7117 BYRON AVENUE, CONNECTING BYRON AVENUE TO ABBOTT COURT, AND CONSISTING OF A TOTAL OF 4,741 SQUARE FEET (THE "NEW CITY ALLEY"), WITH APPROXIMATELY 2,543 SQUARE FEET OF THE NEW CITY ALLEY TO BE DEDICATED FOR PUBLIC USE AS AN ALLEY FOR PEDESTRIAN AND VEHICULAR TRAVEL, AND WITH APPROXIMATELY 2,198 SQUARE FEET OF THE NEW CITY ALLEY TO BE DEDICATED AS A NEW STORMWATER RETENTION AREA, AND IMPROVED AS A BIOSWALE, AT APPLICANT'S SOLE COST AND EXPENSE; 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; FURTHER, AUTHORIZING THE ADMINISTRATION TO FINALIZE A VACATION AGREEMENT THAT INCORPORATES THE CONDITIONS SET FORTH IN THIS RESOLUTION, AND FURTHER AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE VACATION AGREEMENT, SUBJECT TO FORM APPROVAL BY THE CITY ATTORNEY.

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

(1) the northern half of an alley known as Abbott Court, running south approximately 125 feet from the southerly right-of-way ("ROW") line of 72nd Street, which consists of a 20 foot ROW containing approximately 3,521 square feet, as shown on the Plat of the Normandy Beach South Subdivision, recorded in Plat Book 21, Page 54 of the Public Records of Miami-Dade County (the "Normandy Beach South Plat"), and more fully described in Exhibit "A" attached hereto (the "Abbott Court Alley"); and

(2) the portion of the alley known as Normandy Beach Court, located between the easterly ROW line of Abbott Court and the westerly ROW line of Abbott Avenue, which consists of a 10 foot ROW containing approximately 1,000 square feet, as shown on the Normandy Beach South Plat, and more fully described in Exhibit "B" attached hereto (the "Normandy Beach Court Alley");

(collectively, the Abbott Court Alley and Normandy Beach Court Alley shall be hereinafter referred to as the "City Alleys"); and

WHEREAS, Abbott Avenue Partners, LLC; Pumps at 71, LLC; and 7433 Collins Avenue Corp. (the "Applicant") own the properties abutting or in the vicinity of the City Alleys; which parcels are known as 7117 and 7135 Byron Avenue; 7120, 7124, 7134, 7136, and 7140 Abbott Avenue; 430 72nd Street; and 409 71st Street (collectively, the "Property"); and

WHEREAS, the Applicant intends to develop the Property as a mixed-use residential and commercial development (collectively, the "Proposed Development"); and

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

WHEREAS, in conjunction with Proposed Development, the Applicant is requesting that the City vacate the City Alleys, and has submitted its application to the City's Public Works Department with respect thereto; 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, on March 6, 2019, the Land Use and Development Committee discussed the proposed vacation, and recommended that the City Commission refer the vacation proposal to the Finance and City Wide Projects Committee (FCWPC), pursuant to City Code Section 87-37(a);

WHEREAS, at the FCWPC's June 14, 2019 meeting, the Planning Department staff advised that the proposed vacation would be consistent with the North Beach Master Plan recommendations, as well as the recently adopted land development regulations for the TC-C district; and

WHEREAS, at its June 14, 2019 meeting, the FCWPC recommended in favor of the proposed vacation of the City Alleys, with the vacation of the City Alleys subject to and conditioned upon the Applicant's delivery of certain public benefits to the City, including: the Applicant's dedication of the southern forty (40) feet of 7117 Byron Avenue, connecting Byron Avenue to Abbott Court, consisting of a total of 4,741 square feet, for use by the public, as described more fully in Exhibit "C" attached hereto (the "New City Alley"), with approximately 2,543 square feet of the New City Alley to be dedicated as a new alley for pedestrian and vehicular travel, and the remaining 2,198 square feet of the New City Alley to be developed as a new stormwater retention

area, and improved as a bioswale, as described more fully in Exhibit "D" attached hereto (the "Bioswale Improvements"); and

WHEREAS, the Planning Department analysis of the vacation, pursuant to Section 82-38 of the City Code, is attached as Exhibit "E" hereto; and

WHEREAS, the Public Works Department obtained an appraisal on April 2, 2019, which appraisal is attached as Exhibit "F" hereto and valued the City Alleys at \$2,350,000; 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, by operation of law, upon a vacation, a right-of-way reverts to the abutting property owners or the holders of any interest in any reversionary rights to the vacated area; and

WHEREAS, as the only persons entitled to the vacated City Alleys is the Applicant (as the abutting property owners and holder of the appropriate reversionary interests), 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 proposed vacation will be heard before the Planning Board on July 23, 2019 meeting, where it must be approved by 4/7^{ths} vote; and

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

WHEREAS, the vacation of the City Alleys shall be subject to and conditioned upon the Applicant and City executing a Vacation Agreement that includes the following terms and conditions:

(1) Applicant shall dedicate to the public the New City Alley, consisting of approximately 4,741 square feet, with approximately 2,543 square feet to be dedicated for public use as an alley for pedestrian and vehicular travel, and the remaining approximately 2,198 square feet to be dedicated for the Bioswale Improvements; and

(2) Applicant shall complete construction of the Bioswale Improvements, at Applicant's sole cost and expense, prior to the Applicant's completion of the Proposed Development; and

(3) Applicant shall pay all City's costs in connection with the proposed vacation of the City Alleys and dedication of the New City Alley, including any City closing costs, recording fees, or outside legal fees that may be incurred by the City; and

(4) Applicant shall be responsible, at Applicant's sole cost and expense, for the relocation of any underground utilities located within the City Alleys and the New City Alley, as may be necessary for the Proposed Development and/or to fulfill the vacation conditions herein.

(5) Applicant agrees that City's quit claim deed for the City Alleys shall contain a reverter clause, to provide for the City Alleys to revert back to the City in the event Applicant fails to satisfy all conditions of this Vacation Resolution prior to the completion of the Proposed Development, and with such reverter being without prejudice to any other rights or remedies that may be available to the City in the event the Applicant fails to satisfy the conditions of this Resolution; and

(6) Applicant agrees that City shall not issue a temporary certificate of occupancy or final certificate of occupancy for the Proposed Development until the Applicant has satisfied all conditions of this Resolution; and

(7) The Applicant agrees to indemnify, defend, save and hold harmless the City from any claims, demands, causes of action, liabilities, losses, costs, fees, expenses, orders, judgments and/or decrees of any nature whatsoever as a result of City's adoption of the Vacation Resolution or issuance of a Building Permit prior to the satisfaction of the conditions of the Vacation Resolution, including the reasonable, out-of-pocket attorneys' fees and expenses incurred in the defense of any such claim, demand or cause of action; and

(8) in the event the foregoing conditions of the Vacation Agreement are not met, following notice to Applicant and a reasonable opportunity to cure, the Vacation Agreement shall be subject to termination, and in the event of any such termination, this Vacation Resolution shall be null and void; and

WHEREAS, on July 17, 2019, the Mayor and City Commission held the first reading of this Resolution, and read the title 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 terms and conditions contained herein, and further recommends that the Administration be authorized to finalize a vacation agreement incorporating the conditions set forth in this Resolution, and that the Mayor and City Clerk be authorized to execute the vacation agreement, upon form approval by the City Attorney.

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/public hearing of this Resolution, the vacation of the (1) the Abbott Court Alley described in Exhibit "A"; and (2) the Normandy Beach Court Alley described in Exhibit "B", in favor of the abutting property owners, Abbott Avenue Partners, LLC; Pumps at 71, LLC; and 7433 Collins Ave. Corp.; further, providing that the vacation of the City Alleys shall be subject to and conditioned upon the Applicant's delivery of certain public benefits to the City, including dedication of the New City Alley, as described in Exhibit "C", with approximately 2,543 square feet of the New City Alley to be dedicated for public use as an alley for pedestrian and vehicular travel, and with approximately 2,198 square feet of the New City Alley to be dedicated as a new stormwater retention area, and improved as a bioswale, at Applicant's sole cost and expense, as described in Exhibit "D"; further, waive, by 5/7ths vote, the competitive bidding requirement, pursuant to Section 82-39, finding such waiver to be in the best interest of the City; further, authorize the Administration to finalize a vacation agreement that

incorporates the conditions set forth in this Resolution, and further authorize the Mayor and City Clerk to execute the vacation agreement, subject to form approval by the City Attorney.

PASSED and ADOPTED this 31 day of July, 2019.

ATTEST:



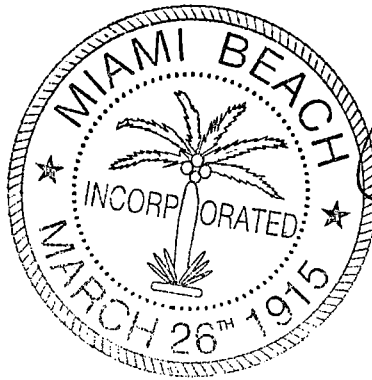
Dan Gelber, Mayor



Aug 12, 2019

Rafael G. Granado, City Clerk

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney

RAP

7/23/19
Date

EXHIBIT "A"

LEGAL DESCRIPTION: Right of Way (To be Vacated)

A portion of a 20' Alley also known as Abbott Court lying adjacent to Lots 1, 2, 3, 4, 11, 12, 13, 14, 15, 16, 17 and 18, Block 6, NORMANDY BEACH SOUTH, according to the plat thereof, as recorded in Plat Book 21 at Page 54 of the Public Records of Miami-Dade County, Florida, being more particularly described as follows:

Begin at the Northeast corner of said Lot 1; thence S 02°21'31" E along the East line of said Lots 1, 2, 3 and 4, also being the West right of way line of a 20' Alley also known as Abbott Court for 166.44 feet to a point on a circular curve concave to the Southwest and whose radius point bears S 25°49'29" W; thence Southeasterly along a 37.90 foot radius curve leading to the right through a central angle of 61°49'00" for an arc distance of 40.89 feet to a non-tangent point; thence N 02°21'31" W along the West line of said Lots 11, 12, 13, 14, 15, 16, 17 and 18, also being the East right of way line of said 20' Alley also known as Abbott Court for 199.87 feet to the Northwest corner of said Lot 18; thence S 87°35'51" W along the Westerly projection of the South right of way line of 72nd Street for 20.00 feet to the Point of Beginning.

Containing 3,521 Square Feet more or less.

SURVEYOR'S NOTES:

- This site lies in Section 11, 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°21'42" W for the West right of way line of Abbott Avenue.
- Lands shown hereon were not abstracted for easements and/or rights-of-way of records.
- 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 #2019-041.

CERTIFICATION TO:

City of Miami Beach

SURVEYOR'S CERTIFICATION:

I hereby certify that this "Sketch of Description" was made under my responsible charge on July 19, 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.

Drawn By	MAP
Cad. No.	190398
Ref. Dwg.	2019-041
REV.1	090735
Plotted:	7/19/19 10:45a

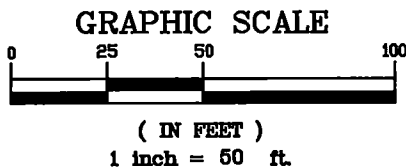
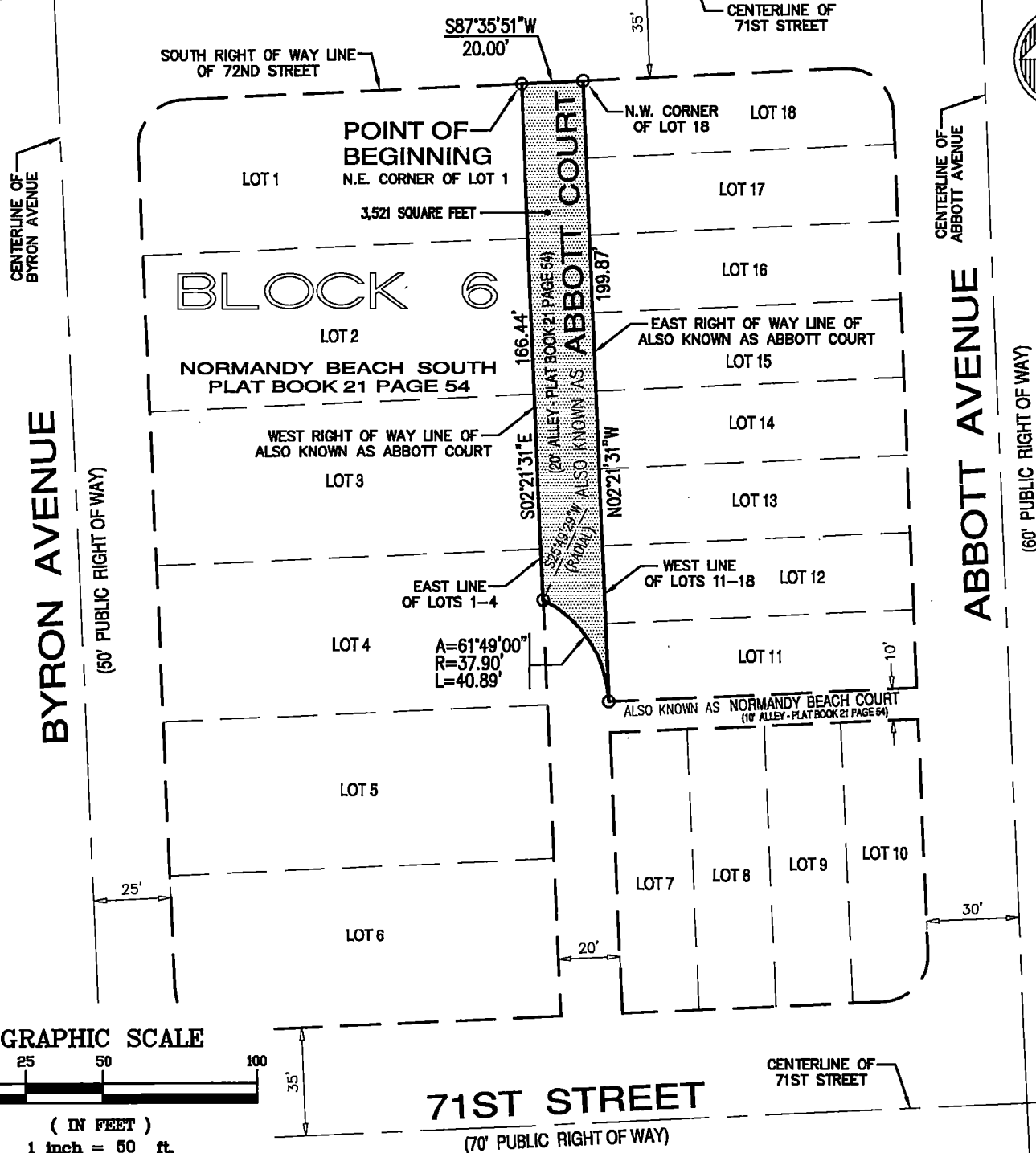
LEGAL DESCRIPTION, NOTES & CERTIFICATION

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: 305-653-7192 Email fls@flssurvey.com

Date	7/19/19
Scale	NOT TO SCALE
Job. No.	190398
Dwg. No.	1019-022-2
Sheet	1 of 3

72ND STREET (70' PUBLIC RIGHT OF WAY)

EXHIBIT "A"



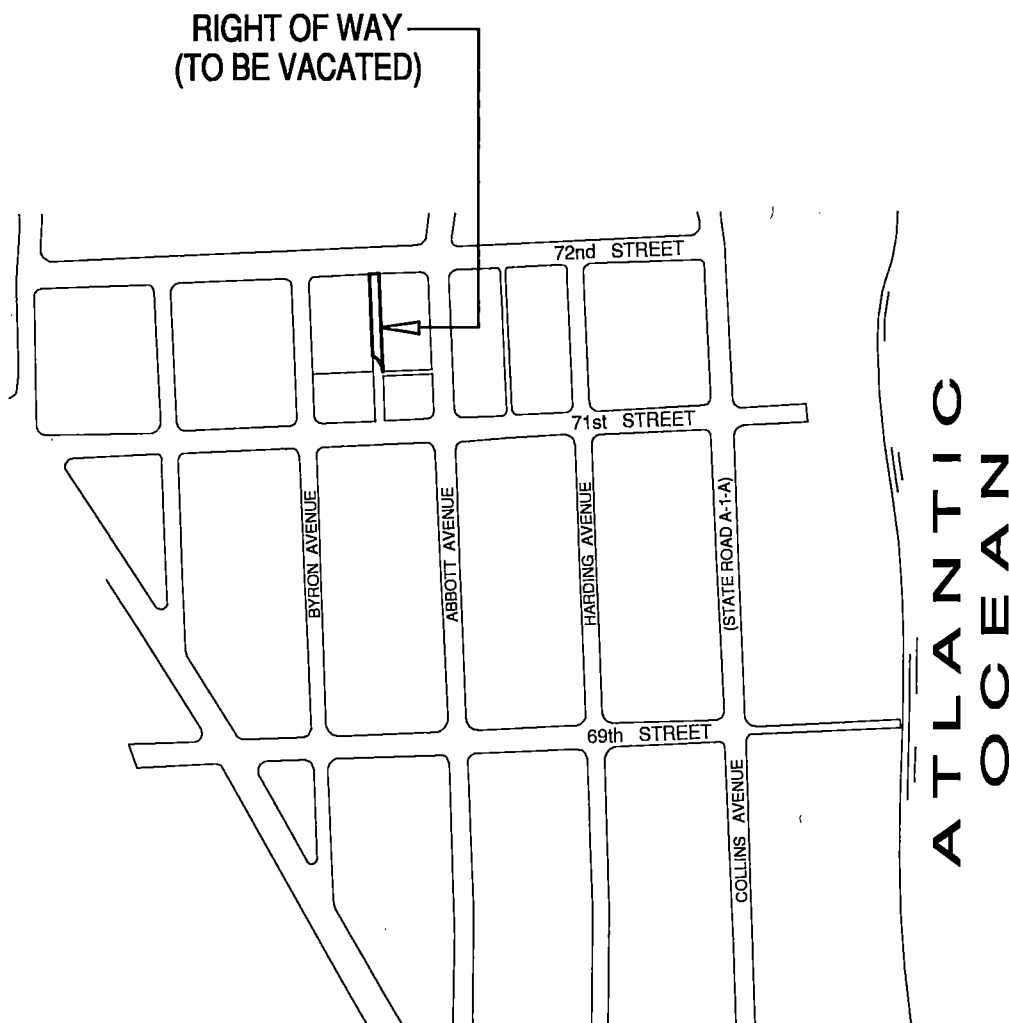
Drawn By	MAP
Cad. No.	190398
Ref. Dwg.	2019-041
REV.1	090735
Plotted:	7/19/19 10:45a

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: 305-653-7192 Email fls@flssurvey.com

Date	7/19/19
Scale	1"=50'
Job. No.	190398
Dwg. No.	1019-022-2
Sheet	2 of 3

EXHIBIT "A"



Drawn By	MAP
Cad. No.	190398
Ref. Dwg.	2019-041
REV.1	090735
Plotted:	7/19/19 10:45a

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: 305-653-7132 Email fls@flssurvey.com

Date	7/19/19
Scale	NOT TO SCALE
Job. No.	190398
Dwg. No.	1019-022-2
Sheet	3 of 3

EXHIBIT "B"

LEGAL DESCRIPTION: Right of Way (To be Vacated)

All of a 10' Alley also known as Normandy Beach Court lying adjacent to Lots 7, 8, 9 10 and 11, Block 6, NORMANDY BEACH SOUTH, according to the plat thereof, as recorded in Plat Book 21 at Page 54 of the Public Records of Miami-Dade County, Florida, being more particularly described as follows:

Begin at the Northeast corner of said Lot 10; thence S 87°34'52" W along the North line of said Lots 7, 8, 9 and 10 for 100.01 feet to the Northwest corner of said Lot 7; thence N 02°21'31" W along the Northerly projection of the East right right of way line of a 20' Alley also known as Abbott Court for 10.00 feet to the Southwest corner of said Lot 11; thence N 87°34'52" E along the South line of said Lot 11 for 100.01 feet to the Southeast corner of said Lot 11; thence S 02°21'42" E along the Southerly projection of the West right right of way line of Abbott Avenue for 10.00 feet to the Point of Beginning.

Containing 1,000 Square Feet more or less.

SURVEYOR'S NOTES:

- This site lies in Section 11, 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°21'42" W for the East right of way line of Abbott Avenue.
- Lands shown hereon were not abstracted for easements and/or rights-of-way of records.
- 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 #2019-041.

CERTIFICATION TO:

City of Miami Beach

SURVEYOR'S CERTIFICATION:

I hereby certify that this "Sketch of Description" was made under my responsible charge on July 19, 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=A010
97C00000161773B91FA0000E42
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Date: 2019.07.19 11:43:09 -04'00'

Drawn By	MAP
Cad. No.	190398
Ref. Dwg.	2019-041
REV.1	090735
Plotted:	7/19/19 10:45a

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: 305-653-7152 Email: fls@flsurvey.com

Date	7/19/19
Scale	NOT TO SCALE
Job. No.	190398
Dwg. No.	1019-022-3
Sheet	1 of 3

72ND STREET (70' PUBLIC RIGHT OF WAY)

EXHIBIT "B"



CENTERLINE OF
BYRON AVENUE

BYRON AVENUE
(50' PUBLIC RIGHT OF WAY)

BLOCK 6

LOT 1

LOT 2

NORMANDY BEACH SOUTH
PLAT BOOK 21 PAGE 54

LOT 3

LOT 4

LOT 5

LOT 6

ABBOTT COURT
(20' ALLEY - PLAT BOOK 21 PAGE 54)

EAST RIGHT OF WAY LINE OF
ABBOTT COURT
ALSO KNOWN AS ABBOTT COURT

CENTERLINE OF
71ST STREET

LOT 18

LOT 17

LOT 16

LOT 15

LOT 14

LOT 13

N02°21'31"W

10.00'

SOUTH LINE
OF LOT 11

S.W. CORNER
OF LOT 11

N87°34'52"E

100.01'

ALSO KNOWN AS: NORMANDY BEACH COURT
(10' ALLEY - PLAT BOOK 21 PAGE 54)

S87°34'52"W

100.01'

NORTH LINE
OF LOTS 7-10

N.W. CORNER
OF LOT 7

LOT 7

LOT 8

LOT 9

LOT 10

N.E. CORNER
OF LOT 10

10'

POINT OF BEGINNING

30'

WEST RIGHT OF WAY LINE
OF ABBOTT AVENUE

(60' PUBLIC RIGHT OF WAY)

ABBOTT AVENUE

CENTERLINE OF
71ST STREET

71ST STREET (70' PUBLIC RIGHT OF WAY)

GRAPHIC SCALE



(IN FEET)
1 inch = 50 ft.

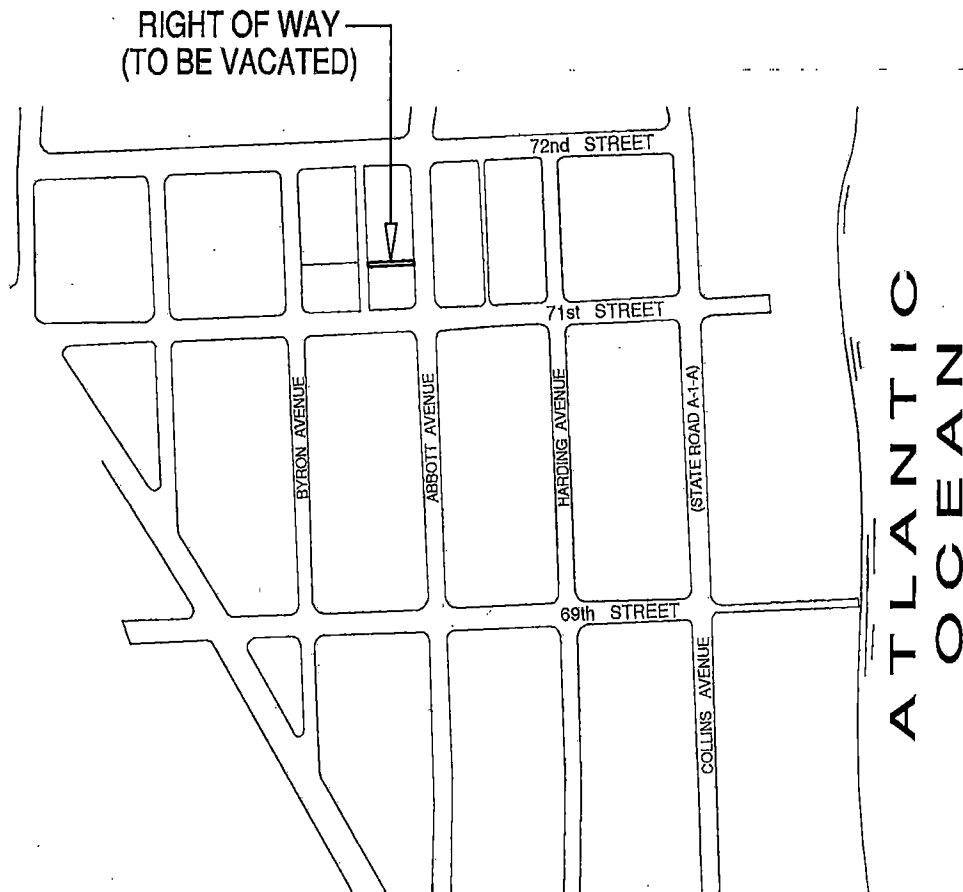
Drawn By	MAP
Cad. No.	190398
Ref. Dwg.	2019-041
REV.1	090735
Plotted:	7/19/19 10:45a

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: 305-653-7161 Email: fls@flssurvey.com

Date	7/19/19
Scale	1"=50'
Job. No.	190398
Dwg. No.	1019-022-3
Sheet	2 of 3

EXHIBIT "B"



Drawn By	MAP
Cad. No.	190398
Ref. Dwg.	2019-041
REV.1	090735
Plotted:	7/19/19 10:45a

LOCATION SKETCH

FORTIN, LEAVY, SKILES, INC.
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Phone: 305-653-4493 / Fax: 305-653-7162 / Email: fls@flssurvey.com

Date	7/19/19
Scale	NOT TO SCALE
Job. No.	190398
Dwg. No.	1019-022-3
Sheet	3 of 3

EXHIBIT "C"

LEGAL DESCRIPTION: Right of Way (To be Dedicated)

A portion of Lot 4, Block 6, NORMANDY BEACH SOUTH, according to the plat thereof, as recorded in Plat Book 21 at Page 54 of the Public Records of Miami-Dade County, Florida, being more particularly described as follows:

Commence at the Southwest corner of said Lot 4, the following two (2) courses being along the West line of said Lot 4, also being the East right of way line of Byron Avenue; 1) thence N 02°21'18" W for 18.00 feet to the Point of Beginning; 2) thence continue N 02°21'18" W for 20.00 feet; thence N 87°34'53" E for 107.07 feet to a point of curvature; thence Southeasterly along a 37.90 foot radius curve leading to the right through a central angle of 28°14'36" for an arc distance of 18.68 feet to a non-tangent point; thence S 02°21'31" E along the East line of said Lot 4, also being the West right of way line of a 20' Alley also known as Abbott Court for 33.41 feet to a point on a circular curve concave to the Southwest and whose radius point bears S 87°38'29" W; thence Northwesterly along a 17.90 foot radius curve leading to the left through a central angle of 90°03'36" for an arc distance of 28.14 feet to a point of tangency; thence S 87°34'53" W for 107.09 feet to the Point of Beginning.

Containing 2,543 Square Feet more or less.

SURVEYOR'S NOTES:

- This site lies in Section 11, 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°21'42" W for the West right of way line of Abbott Avenue.
- Lands shown hereon were not abstracted for easements and/or rights-of-way of records.
- 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 #2019-041.

CERTIFICATION TO:

City of Miami Beach

SURVEYOR'S CERTIFICATION:

I hereby certify that this "Sketch of Description" was made under my responsible charge on July 19, 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

**Daniel C
Fortin**

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

Digitally signed by Daniel C Fortin
DN: c=US, o=IdenTrust ACES
Unaffiliated Individual, cn=Daniel C
Fortin,
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Date: 2019.07.19 12:08:28 -04'00'

Drawn By	MAP
Cad. No.	190398
Ref. Dwg.	2019-041
REV.1	090735
Plotted:	7/19/19 10:45a

LEGAL DESCRIPTION, NOTES & CERTIFICATION

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CONSULTING ENGINEERS, SURVEYORS & MAPPERS
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Phone: 305-653-4493 / Fax: 305-653-7162 / Email: fls@flssurvey.com

Date	7/19/19
Scale	NOT TO SCALE
Job. No.	190398
Dwg. No.	1019-022-1
Sheet	1 of 3

72ND STREET (70' PUBLIC RIGHT OF WAY)

EXHIBIT "C"



CENTERLINE OF
BYRON AVENUE

BYRON AVENUE
(50' PUBLIC RIGHT OF WAY)

CENTERLINE OF
ABBOTT AVENUE

ABBOTT AVENUE
(60' PUBLIC RIGHT OF WAY)

CENTERLINE OF
71ST STREET

CENTERLINE OF
71ST STREET

BLOCK 6

LOT 1

EAST RIGHT OF WAY LINE
OF BYRON AVENUE

LOT 2

NORMANDY BEACH SOUTH
PLAT BOOK 21 PAGE 54

WEST RIGHT OF WAY LINE OF
ALSO KNOWN AS ABBOTT COURT

LOT 3

A=281'4"36"
R=37.90'
L=18.68'

2,543 SQUARE FEET
N02°21'18"W
20.00'

N87°34'53"E 107.07'

WEST LINE
OF LOT 4

EAST LINE
OF LOT 4

S87°34'53"W 107.09'

S87°38'29"W
(RADIAL)

POINT OF
BEGINNING
A=90°03'36"
R=17.90'
L=28.14'

LOT 5

POINT OF
COMMENCEMENT
S02°21'31"E
33.41'

S.W. CORNER OF LOT 4

LOT 6

LOT 18

LOT 17

LOT 16

LOT 15

LOT 14

LOT 13

LOT 12

LOT 11

ALSO KNOWN AS NORMANDY BEACH COURT
(10' ALLEY - PLAT BOOK 21 PAGE 54)

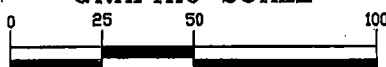
LOT 7

LOT 8

LOT 9

LOT 10

GRAPHIC SCALE



(IN FEET)
1 inch = 50 ft.

71ST STREET

(70' PUBLIC RIGHT OF WAY)

Drawn By MAP

Cad. No. 190398

Ref. Dwg. 2019-041

REV.1 090735

Plotted: 7/19/19 10:45a

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 305-653-7162 / Email fls@flssurvey.com

Date 7/19/19

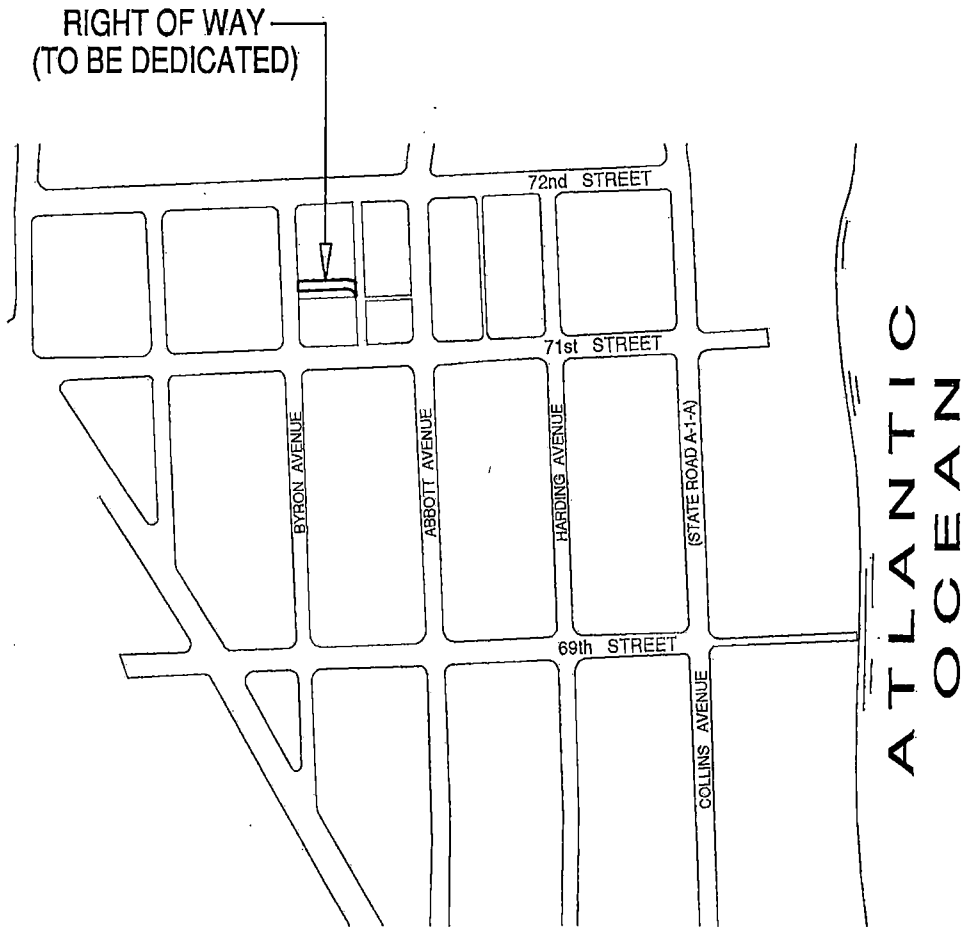
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Job. No. 190398

Dwg. No. 1019-022-1

Sheet 2 of 3

EXHIBIT "C"

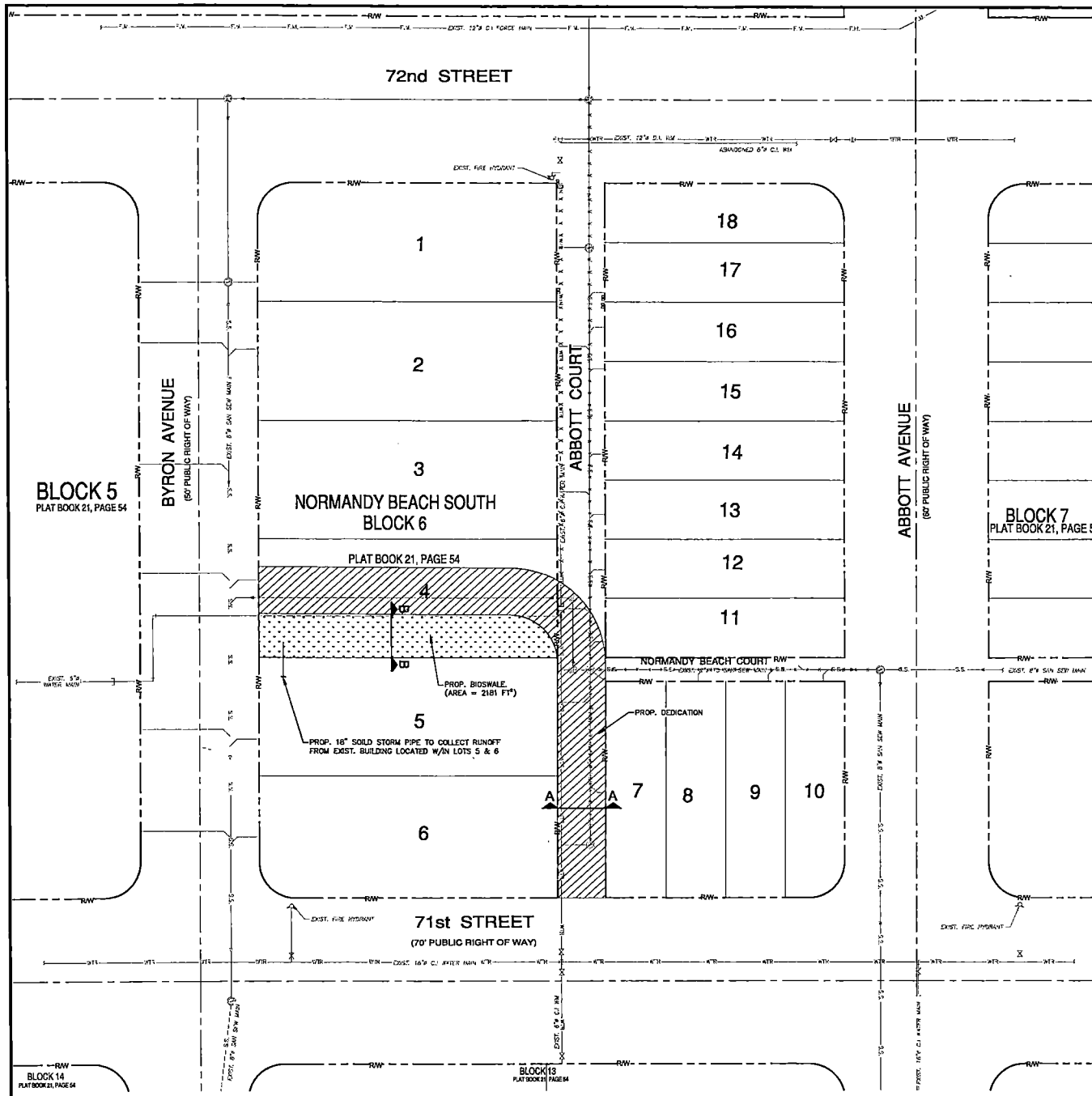


Drawn By	MAP
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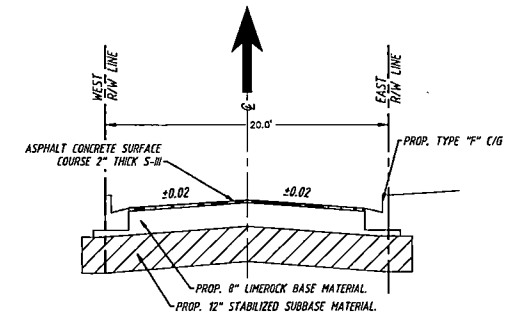
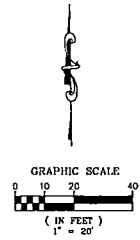
LOCATION SKETCH	
FORTIN, LEAVY, SKILES, INC.	
CONSULTING ENGINEERS, SURVEYORS & MAPPERS	
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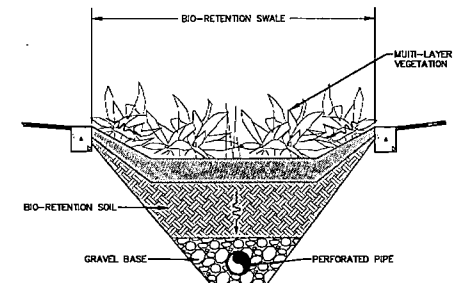




LEGEND:
 --- R/W LINE / PROPERTY LINE
 --- CENTER LINE
 --- EXISTING WATER MAIN LINE
 --- EXISTING SAN. SEW. MAIN LINE



TYPICAL SECTION ABBOTT COURT
SECTION A-A N.T.S.



SECTION B-B
(BIOSWALE)
 N.T.S.

Sunshine
 Call 811 or www.sunshine11.com for full
 service and information. We are a 24-hour
 service and are available to you.

OCEAN
 ENGINEERING
 CIVIL ENGINEERING CONSULTANTS
 10000 W. 11th Ave., Suite 100
 Fort Lauderdale, FL 33304
 Phone: 754.922.1111
 Fax: 754.922.1112
 Email: info@oceaneng.com

Revision Description

Date

No.

NORTH BEACH
CONCEPTUAL PAVING GRADING AND
DRAINAGE PLAN

ENGINEER OF RECORD
 WALTER L. LUGO, P.E.
 LICENSE NO. 12172
 FLORIDA



Date: Apr 22, 2019
 Scale: AS SHOWN
 Designed By:
 Drawn By:
 Checked By:
 CAD File:
 Project No.: 2019-0321-12
 Prep. No.:
 Sheet: C200



CFN 2019R0756650
DR BK 31715 Pgs 398-431 (34Pgs)
RECORDED 12/05/2019 12:44:15
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

DOCUMENT COVER PAGE

For those documents not providing the required 3 x 3 inch space on the first page, this cover page must be attached.

An additional recording fee for this page must be remitted.

(Space above this line reserved for recording office use)

Document Title:
(Mortgage, Deed, Etc.)

Agreement

Return Document To / Prepared By:

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.



This instrument was prepared by (record and return to):

Michael W. Larkin, Esq.
 Bercow Radell Fernandez & Larkin, PLLC
 200 S. Biscayne Boulevard, Suite 850
 Miami, Florida 33131
 (305) 374-5300

(Space reserved for Clerk)

VACATION AGREEMENT

THIS VACATION AGREEMENT (the "Agreement") is made and entered into as of the 18th day of November 2019, by and among the City of Miami Beach, a Florida municipal corporation (the "City"), and Abbott Avenue Partners, LLC, a Florida limited liability company; Pumps at 71, LLC, a Florida limited liability company; and 7433 Collins Ave Corp., a Florida corporation (collectively the "Developer"):

Recitals

A. The property that is the subject of this Agreement lies in the City of Miami Beach, Miami-Dade County, Florida

B. The Developer owns the properties located at 7117 Byron Avenue, 7135 Byron Avenue, 7134 Abbott Avenue, 430 72nd Street, 7140 Abbott Avenue, 7136 Abbott Avenue, 7124 Abbott Avenue, 7120 Abbott Avenue, and 409 71st Street, Miami Beach, Florida, and more particularly described in "Exhibit A" attached (collectively the "Developer's Parcels") and currently intends to develop the Project thereon. The City of Miami Beach holds a right-of-way dedication to a 20 foot wide public right-of way known as Abbott Court, running parallel to Abbott Avenue, between Abbott Avenue and Byron Avenue, between 71st Street and 72nd Street ("Abbott Court Right-of-Way Property") and a dedication to a 10 foot wide public right-of-way known as Normandy Beach Court, running east from Abbott Court and parallel to 71st Street, between 71st and 72nd Street ("Normandy Beach Court Right-of-Way Property"), more particularly described in "Exhibit B" attached.

C. Developer seeks to have the City vacate the north approximate 125 feet of the Abbott Court Right-of-Way Property located between Developer's Parcels, for the entire 20 foot width thereof, and the entirety of the Normandy Beach Court Right-of-Way Property (the



"Vacation Parcel"). The remainder of the Abbott Court Right-of-Way Property will not be vacated. Developer has requested that the City vacate the Vacation Parcel in order to incorporate such Vacation Parcel, (including, without limitation, the Floor Area Ratio ("FAR") attributable thereto) into the Project, subject to the conditions and restrictions as set forth herein. See Exhibit B.

D. Developer will dedicate to the City for use by the public the southern 40 feet of 7117 Byron Avenue, consisting of approximately 4,741 square feet (the "Dedicated Parcel"), with approximately 2,543 square feet to be dedicated for public use as an alley for pedestrian and vehicular travel (the "New City Alley"), and the remaining approximately 2,198 square feet to be dedicated for development and use as a new stormwater retention area, and improved as a bioswale containing landscape elements designed to concentrate or remove debris and pollution out of surface runoff water, with the design and construction of such improvements having a value of approximately \$357,000 (the "Bioswale Improvements"). The floor area with regard to the Dedicated Parcel will remain with the Dedicated Parcel and not be transferred to the Developer's Parcel. See Exhibit C.

E. From and after the Vacation Parcel Closing Date, the resulting land owned by the Developer will be the Vacation Parcel combined with the Developer's Parcels less the Dedicated Parcel. The resulting land owned by the Developer shall be known as the "Property".

F. The City is a Florida municipal corporation with powers and authority conferred under the Florida Constitution, the Municipal Home Rule Powers Act, Florida Statutes and the Miami Beach City Charter and Code of Ordinances. The City has all governmental, corporate and proprietary powers to enable it to conduct municipal government, perform municipal and governmental functions, and render municipal services, including the authority to adopt, implement and enforce (together with any other required governmental approvals) comprehensive plans, zoning ordinances, redevelopment plans, and other police power and legislative measures necessary to assure the health, safety and general welfare of the City and its inhabitants.

G. Having fully considered this Agreement and approved the vacation and dedication at two duly noticed public hearings in compliance with Section 82-37 of the Code; and having further determined that it is in the City's best interest to address the issues covered by this Agreement in a comprehensive manner, in compliance with all applicable laws, ordinances, plans, rules and regulations of the City, the City has agreed to enter into this Agreement with the Developer.



H. The City has determined that the Project, the dedication of the Dedicated Parcel, the vacation of the Vacation Parcel, and the Voluntary Contribution will benefit the City and the public.

I. All capitalized terms used in the Recitals are defined in Section 3 or elsewhere in this Agreement.

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

1. Recitations. The foregoing Recitals are true and correct and are incorporated herein by this reference.

2. Authority. This Agreement is entered into pursuant to the authority and procedures provided in Sections 82-36 through 82-40 of the Code.

3. Definitions. All capitalized terms in this Agreement shall have the definitions set forth in this Section 3.

3.1 "Abbott Court Right-of-Way Property" shall have the meaning set forth in Recital B.

3.2 "Bioswale Improvements" shall have the meaning set forth in Recital D.

3.3 "Building Permit" shall mean a permit issued by the designated building official, his designee or authorized agency or department of the City which allows a building or structure to be erected, constructed, demolished, altered, moved, converted, extended, enlarged, or used, for any purpose, in conformity with applicable codes and ordinances.

3.4 "City" shall mean the City of Miami Beach, a Florida municipal corporation, having its principal offices at 1700 Convention Center Drive, Miami Beach, Florida 33139. In all respects hereunder, City's obligations and performance is pursuant to City's position as the holder of the right of way dedication for the Abbott Court Right-of-Way Property and Normandy Beach Court Right-of-Way Property, acting in its proprietary capacity. In the event City exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any rules, regulations, laws and ordinances (including through the exercise of the City's building, fire, code enforcement, police department or otherwise) shall be deemed to have occurred pursuant to City's regulatory authority as a governmental body and shall not be attributable in any manner to City as a party to this Agreement or in any way deemed in conflict with, or a default under, the City's obligations hereunder.



3.5 "Comprehensive Plan" shall mean the comprehensive plan which the City has adopted and implemented for the redevelopment and continuing development of the City pursuant to Chapter 163 Part II, of the Florida Statutes.

3.6 "Dedicated Parcel" shall have the meaning set forth in Recital D.

3.7 "Developer" means the person or entity undertaking the development of the Property, as defined in the preamble to this Agreement, or any permitted successors, assigns, or heirs thereof.

3.8 "Developer's Parcels" shall have the meaning set forth in Recital B.

3.9 "Development Order" means any order granting, denying, or granting with conditions an application for a Development Permit.

3.10 "Development Permit" shall have the meaning set forth in Section 163.3221(5), Florida Statutes (2014), which includes any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.

3.11 "Effective Date" is the date when the City records the executed Agreement in the Public Records of Miami-Dade County.

3.12 "Execution Date" is the date the last of the parties hereto executes this Agreement.

3.13 "Land Development Regulations" shall have the meaning set forth in Section 163.3221(8), Florida Statutes (2014) and shall also include, without limitation, the definition of "land development regulations" in Section 114-1 of the City Code.

3.14 "Laws" means all ordinances, resolutions, regulations, the Comprehensive Plan, Land Development Regulations, and rules adopted by a local government having jurisdiction affecting the development of land, specifically including the City's Comprehensive Plan and the City's Land Development Regulations.

3.15 "New City Alley" shall have the meaning set forth in Recital D.

3.16 "Normandy Beach Court Right-of-Way Property" shall have the meaning set forth in Recital B.

3.17 "Project" shall mean the construction and development on the Property of a mixed-use project with residential and retail/restaurant uses and structured parking subject to Developer's right to amend the components of the Project.

3.18 "Property" shall have the meaning set forth in Recital E.



3.19 "Vacation Parcel" shall have the meaning set forth in Recital C.

3.20 "Vacation Parcel Closing Date" shall mean the date when the City delivers a quit claim deed to the Developer conveying City's right, title and interest in and to the Vacation Parcel, and Developer simultaneously dedicates the Dedicated Parcel, in accordance with the terms of the Vacation Resolution, and as set forth in Section 4 of this Agreement.

3.21 "Vacation Resolution" means the City's Resolution No. 2019-30928, approving, with conditions, the vacation of the Vacation Parcel.

3.22 "Voluntary Contribution" shall have the meaning set forth in subsection 4.6.

4. Vacation of Vacation Parcel and Public Benefit Contributions

4.1 The closing shall occur on a date mutually agreed upon by the Developer and the City ("Closing"), provided, however, that in no event shall the Closing be scheduled on less than ten (10) business days prior written notice to the City. Developer shall pay all City's actual costs in connection with the proposed vacation of Vacation Parcel and dedication of New City Alley, including any City closing costs, recording fees, or reasonable outside legal fees that may be incurred by the City. At the Closing, the Developer and the City shall perform the following:

(a) The City, pursuant to and subject to the terms of the Vacation Resolution, will deliver a quit claim deed to Developer, through which the City quit claims, releases and transfers unto Developer and its successors/assigns forever, all right, title, interest, claim and demand that City has in and to the Vacation Parcel, subject to the conditions of the Vacation Resolution and Developer's obligations under this Agreement.

(b) Developer will, subject to City's delivery of the quit claim deed pursuant to Section 4.1(a), dedicate to the City for use by the public the Dedicated Parcel, consisting of approximately 4,741 square feet, with approximately 2,543 square feet to be dedicated for public use for the New City Alley for pedestrian and vehicular travel, and the remaining approximately 2,198 square feet to be dedicated for the Bioswale Improvements. See Exhibit C.

4.2 Developer shall complete, in all material respects, the design, permitting and construction of the Bioswale Improvements and New City Alley, with the design and construction thereof subject to approval by the City's Public Works Director (or his or her designee), at Developer's sole cost and expense, prior to the issuance of the Temporary Certificate of Occupancy for the Project. Developer shall direct the construction process and be responsible for entering into all contracts necessary for the construction of the Bioswale Improvements and New City Alley. Developer shall secure all required permits and approvals for the Bioswale Improvements and New City Alley on its own behalf and, to the extent appropriate, on behalf of the City and with the City's cooperation. Any approval, consent, or joinder required



from the City (in its proprietary capacity) shall be given to Developer within fifteen (15) days of the request by Developer, unless, within that time, City provides Developer with a written statement setting forth in detail the City's reasons for not so providing, or otherwise conditioning Developer's request, including, without limitation, in the event that the City requires additional time for the City Commission or the applicable City board to consider Developer's request.

(a) Notwithstanding any provision to the contrary herein, in no event shall Developer commence construction work for the Bioswale Improvements or New City Alley until (i) the plans and specifications for any such work (including modifications to previously approved plans and specifications) have been approved by the Public Works Director or designee, such approval not to be unreasonably withheld; (ii) Developer has delivered to the City a certificate of insurance naming the City as an additional insured on its construction contractor's general liability insurance policy (which policy shall have minimum limits of \$2 million per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability).

4.3 In the event the actual costs to complete the Bioswale Improvements and New City Alley exceed Developer's estimated costs, whether due to unforeseen conditions or for any other reason whatsoever, Developer shall be solely responsible for all such costs, as may be required to complete the Bioswale Improvements and New City Alley. In no event shall City be responsible for paying or otherwise reimbursing Developer for any costs to design, develop or construct the Bioswale Improvements and New City Alley.

4.4 Warranty. Developer shall cause for its construction contractor to warrant the work for the Bioswale Improvements and New City Alley for a period of one (1) year following substantial completion thereof. Developer shall promptly correct, or cause to be corrected, all defective or non-conforming work discovered within any warranty period, without cost to the City. In the event that any aspect of the work is not proceeding in accordance with the approved plans, or if the quality of the construction is materially deficient, then the City, through its Public Works Director or his designee, shall promptly notify the Developer in writing, specifying any deviations from the approved plans and/or any significant deficiencies in the construction of the work. The Developer shall have a reasonable period of time in which to cure the noted deficiencies.

4.5 As part of the design and construction of the Bioswale Improvements and New City Alley, Developer shall be responsible, at Developer's sole cost and expense, for the relocation of any underground utilities located within the City Alleys and the New City Alley, as may be necessary for the Project.

4.6 Developer has offered a voluntary public contribution of \$25,000.00 to the City to pay for the installation of security cameras on the external façade of the building, and shall grant to the City a perpetual, exclusive easement for installation and use of an antennae on the rooftop of the Project, with no additional rent, use payments or other monetary consideration whatsoever due to Developer (or its successors/assigns) for the easement rights granted to the City (the "Voluntary Contribution"). At the latest, Developer shall make payment



of the \$25,000 contribution and execute the easement in favor of the City, in form and content acceptable to the City, prior to the issuance of the TCO for the Project.

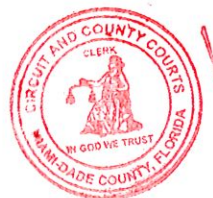
4.7 City shall not issue a Temporary Certificate of Occupancy or final Certificate of Occupancy for the Project until Developer has satisfied all of the conditions in the Vacation Resolution and obligations of the Developer under this Agreement.

5. Applications for Development Approvals and Development Permits. As soon as reasonably possible, following the Effective Date of this Agreement, the Developer will initiate and diligently pursue all applications for Development Orders and Development Permits that were not previously initiated. The City shall process all Development Permit and Development Order applications in a timely fashion and join in application(s) as may be necessary. Notwithstanding the foregoing, Owner shall be solely responsible for obtaining all final, non-appealable Development Orders and Development Permits for the Project. No extension of any time period herein shall be deemed to be an extension of any time periods contained within the Development Permits or Development Orders.

6. "As Is" Condition. Developer agrees to accept the Vacation Parcel in its "AS IS" and "WHERE IS" condition "WITH ALL FAULTS" and latent or patent defects, and without any representation or warranty by the City of any kind, express or implied, or arising by operation of law. Any information provided by the City to the Developer or to Developer's contractors relating to the Bioswale Improvements, New City Alley, and/or existing conditions upon, about, beneath or adjacent to the Vacation Parcel or the site where the Bioswale Improvements or New City Alley will be constructed, including, without limitation, any geotechnical or environmental reports, or other information pertaining to subsurface exploration and conditions, borings, test pits, tunnels, as-built drawings and other conditions affecting such areas, are provided only for the convenience of the Developer and Developer's Contractors only, and City makes no representations as to, and assumes no responsibility for, the accuracy, sufficiency or completeness of any such information.

7. Compliance with Local Regulations Regarding Development Permits. This Agreement is not and shall not be construed as a Development Permit, approval or authorization to commence any development, fill, or other land modification. The Developer and the City agree that the failure of this Agreement to address a particular permit, approval, procedure, condition, fee, term or restriction in effect on the Execution Date of this Agreement shall not relieve Developer of the necessity of complying with the regulation governing said permitting requirements, conditions, fees, terms or restrictions, subject to the terms of Section 16 of this Agreement.

8. Reservation of Rights. This Agreement shall not affect any rights that may have accrued to any party to this Agreement under applicable laws and each party hereto reserves any and all of such rights.



9. City's Representative. The City's Director of Public Works shall be the City's Representative for all purposes under this Agreement. The City's Representative may include any duly authorized representatives designated in writing by the City's Director of Public Works with respect to any specific matter(s) concerning this Agreement.

10. Inspection. The City has the right (but not the obligation) to regularly inspect and monitor the design, permitting and construction process with respect to the Bioswale Improvements and New City Alley, for general conformance and compliance with the intent of this Agreement, the approved plans, or applicable laws, provided, however, that City's failure to monitor any aspect of the work shall not relieve Developer of its obligations to perform and deliver the work in accordance with this Agreement, the approved plans, and applicable laws.

11. Reverter. The Developer agrees that the City's quit claim deed for the City Alleys shall contain a reverter clause, to provide for the Vacation Parcel to revert back to the City in the event the Developer fails to satisfy all conditions of this Agreement, and with such reverter being without prejudice to any other rights or remedies that may be available to the City in the event the Developer fails to satisfy the conditions of the Vacation Resolution.

12. Default.

12.1 Default by Developer. Each of the following shall be an "Event of Default" by Developer:

(i) If Developer shall fail to observe or perform any material term, covenant or condition of this Agreement on Developer's part to be observed or performed and Developer shall fail to cure or remedy the same within ten (10) days of Developer's receipt of written notice from the City, with respect to monetary defaults, or within thirty (30) days of Developer's receipt of written notice from the City with respect to non-monetary defaults (each, a "Default Notice"). If such non-monetary default is susceptible to cure but cannot reasonably be cured within said thirty (30) day period, then Developer shall have an additional sixty (60) day period to cure such failure and no Event of Default shall be deemed to exist hereunder so long as Developer commences such cure within the initial thirty (30) day period and diligently and in good faith pursues such cure to completion within said sixty (60) day period, subject to force majeure in Section 19.

(ii) If Developer shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall consent to the appointment of a receiver or trustee or liquidator of all of its property or the major part thereof or if all or a substantial part of the assets of Developer are attached, seized, subjected to a writ or distress warrant, or are levied upon, or come into the possession of any receiver, trustee, custodian or assignee for the benefit of creditors.



In the event the City shall claim any Event of Default shall have occurred hereunder, the City's Default Notice shall state with specificity the provisions of this Agreement under which the Default is claimed, the nature and character of such Default, the date by which such Default must be cured pursuant to this Agreement, if applicable, and, if elected by the City, that the failure of Developer to cure such Default by the date set forth in such notice will result in the City having the right to terminate this Agreement.

12.2 Default by City. Each of the following shall be an "Event of Default" by City hereunder:

(i) If City shall fail to observe or perform any material term, covenant or condition of this Agreement on City's part to be observed or performed and City shall fail to cure or remedy the same within thirty (30) days of City's receipt of written notice from the Developer (each, a "Default Notice"). If such default is susceptible to cure but cannot reasonably be cured within said thirty (30) day period, then City shall have any additional sixty (60) day period to cure such failure and no Event of Default shall be deemed to exist hereunder so long as City commences such cure within the initial thirty (30) day period and diligently and in good faith pursues such cure to completion.

(ii) If City shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall consent to the appointment of a receiver or trustee or liquidator of all of its property or the major part thereof or if all or a substantial part of the assets of City are attached, seized, subjected to a writ or distress warrant, or are levied upon, or come into the possession of any receiver, trustee, custodian or assignee for the benefit of creditors.

In the event the Developer shall claim any Event of Default shall have occurred hereunder, the Developer's Default Notice shall state with specificity the provisions of this Agreement under which the Default is claimed, the nature and character of such Default, the date by which such Default must be cured pursuant to this Agreement, if applicable, and, if elected by the Developer, that the failure of City to cure such Default by the date set forth in such notice will result in the Developer having the right to terminate this Agreement.

13. Enforcement of Performance; Damages and Termination. If an Event of Default occurs hereunder, the City or Developer, as applicable, may elect any one or more of the following remedies:

13.1 Enforce strict performance by Developer or City, as applicable;

13.2 Terminate this Agreement; or

13.3 Pursue any other remedy available to the City or Developer, as the case may be, at law or in equity.



The City's or Developer's election of a remedy hereunder with respect to any one or more Events of Default shall not limit or otherwise affect the City's or Developer's right to elect any of the remedies available to it hereunder with respect to any other Event of Default.

In the event the City or Developer elects to terminate this Agreement after an Event of Default and such termination is stayed by order of any court having jurisdiction of any matter relating to this Agreement, or by any federal or state statute, then following the expiration of any such stay, the City or Developer shall have the right, at its election, to terminate this Agreement with five (5) days' written notice to the other party, who as debtor in possession or if a trustee has been appointed, to such trustee.

14. Strict Performance; Waiver. No failure by the City or Developer to insist upon strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy available to such party by reason of the other party's default or an Event of Default hereunder shall constitute a waiver of any such default, Event of Default or of such other covenant, agreement, term or condition hereunder.

15. Notices. Any notices required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given if delivered by hand, sent by recognized overnight courier (such as Federal Express) or mailed by certified or registered mail, return receipt requested, in a postage prepaid envelope, and addressed as follows:

If to the City at: City of Miami Beach, City Hall
1700 Convention Center Drive
Miami Beach, Florida 33139
Attn: City Manager

With a copy to: City of Miami Beach, City Hall
1700 Convention Center Drive
Miami Beach, Florida 33139
Attn: City Attorney

If to Developer at: Abbott Avenue Partners, LLC
2999 NE 191 Street, Suite 800
Aventura, FL 33180
Attn: Robert Finvarb

With a copy to: Michael W. Larkin, Esq.
Bercow Radell Fernandez & Larkin, PLLC
200 S. Biscayne Blvd.
Suite 300
Miami, Florida 33131

Notices personally delivered or sent by overnight courier shall be deemed given on the date of delivery and notices mailed in accordance with the foregoing shall be deemed given



three (3) days after deposit with In the U.S. mails. The terms of this Section 15 shall survive the termination of this Agreement.

16. Governing Laws, Construction and Litigation. This Agreement shall be governed 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 Developer and the City agree that Miami-Dade County, Florida is the appropriate and exclusive state court venue, and that the U.S. District Court, Southern Division of Florida is the appropriate and exclusive federal court venue, in connection with any litigation between the parties with respect to this Agreement. All of the parties to this Agreement have participated fully in the negotiation and preparation hereof; and accordingly, this Agreement shall not be more strictly construed against any of the parties hereto. In construing this Agreement, captions, and section and paragraph headings shall be disregarded and the use of any gender shall include every other and all genders. All of the exhibits referenced in this Agreement are incorporated in, and made a part of, this Agreement. In the event of any litigation between the parties under this Agreement for a breach thereof, the prevailing party shall be entitled to reasonable attorney's fees, expenses and court costs at all trial and appellate levels. BY ENTERING INTO THIS AGREEMENT THE CITY AND DEVELOPER EXPRESSLY WAIVE ANY RIGHTS EITHER MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT. The terms of this Section 16 shall survive the termination of this Agreement.

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

18. Binding Effect. The obligations imposed pursuant to this Agreement upon the Developer and upon the Property shall run with and bind the Property as covenants running with the Property, and this Agreement shall be binding upon and enforceable by and against the parties hereto, their personal representatives, heirs, successors, grantees and assigns.

19. Force Majeure. Time periods will be tolled due to force majeure (strikes, lockouts, acts of God, and other causes beyond the control of either party), and delays in obtaining permits from other governmental agencies, including but not limited to development orders, development permits and construction time. This Section 19 shall survive the termination or expiration of this Agreement.

20. Indemnification of City. Developer shall defend, indemnify and hold harmless the City, its agents, servants and employees, from and against any loss, cost, expense, claim, demand or cause of action of whatever kind or nature arising out of or related to the conduct, act or omission of Developer and/or its officers, directors, officials, employees, contractors and agents, related to (i) this Agreement, (ii) City's adoption of the Vacation Resolution, (iii) the issuance of a Building Permit prior to the satisfaction of the conditions of the Vacation Resolution, and/or (iv) the Project, except not including City's gross negligence or willful misconduct. The Developer



shall directly pay all reasonable costs and expenses related to any expense or cost charged, or legal defense required by the City, using legal counsel reasonably acceptable to the City, pursuant to the foregoing. The City shall reasonably cooperate and collaborate (but at no expense to the City) with the Developer in connection with any legal proceeding in which the Developer is defending the City. This Section 20 shall survive termination or expiration of this Agreement.

21. Corporate Obligations. It is expressly understood that this Agreement and the obligations issued hereunder are solely corporate obligations, and that no personal liability will attach to, or is or shall be incurred by, the incorporators, stockholders, officers, directors, elected or appointed officials (including, without limitation, the Mayor and City Commissioner of the City) or employees, as such of Developer, any of any successor corporation or any of them, under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom; and that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any of all such rights and claims against, every such incorporator, stockholder, officer, director, elected or appointed official (including, without limitation, the Mayor and City Commissioner of the City) or employee, as such, or under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom are expressly waived and released as a condition of, and as consideration for, the execution of this Agreement.

22. Police Power.

22.1 The parties hereto recognize and agree that certain provisions of this Agreement require the City and its boards, departments or agencies, acting in their governmental capacity, to consider governmental actions, as set forth in this Agreement. All such considerations and actions shall be undertaken in accordance with established requirements of state statutes and municipal ordinances, in the exercise of the City's jurisdiction under the police power. Nothing contained in this Agreement shall entitle the Developer to compel the City to take any such actions, save and except the consents, if applicable, to the filing of such applications for Development Permits or Development Orders, as more fully set forth herein, and to timely process such applications.

22.2 The parties further recognize and agree that these proceedings shall be conducted openly, fully, freely and fairly in full accordance with law and with both procedural and substantive due process to be accorded the applicant and any member of the public. Nothing in this Agreement shall be construed to prohibit the City from duly acting under its police power to approve, approve with conditions, or reject any public hearing application dealing with the Property.

23. Third Parties. Nothing expressed or implied in this Agreement is intended, or shall be construed, to confer upon or give any person or entity, other than Developer and the City, any rights or remedies under, or by reason of this Agreement.



24. Conflict. In the event of an inconsistency or conflict between the terms of this Agreement and the Vacation Resolution, the terms of this Agreement shall control.

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EXECUTED as of the date first above written in several counterparts, each of which shall be deemed an original, but all constituting only one agreement.

Signed, sealed and delivered
in the presence of:

CITY OF MIAMI BEACH,
a Florida municipal corporation

Samantha Leon
Print Name: Samantha Leon

Michele Burger
Print Name: Michele Burger

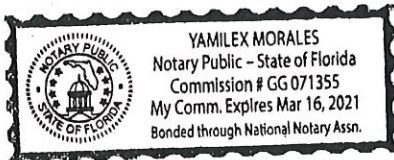
By: *[Signature]*

Name: Mayor Dan Gelber

Attest: *TA* 11/12/19
City Clerk

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

The foregoing instrument was acknowledged before me this 12th day of November, 2019, by Dan Gelber, as Mayor of the City of Miami Beach, a municipal corporation, on behalf of the 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

[Signature] 11/8/19
City Attorney RAP Date



Abbott Avenue Partners, LLC,
a Florida limited liability company

Rita Kuan
Print Name: Rita Kuan

By: [Signature]
Robert Finvarb, Managing Member

Nindiri Rivas
Print Name: Nindiri Rivas

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

The foregoing instrument was acknowledged before me this 18 day of November, 2019
by Robert Finvarb, as managing member of Abbott Avenue Partners, LLC, a Florida limited liability
company, on behalf of the company. He is personally known to me or has produced
DL as identification and who ~~did~~ did not take an oath.



Tiffannie Ramos
NOTARY PUBLIC
STATE OF FLORIDA
Comm# GG291228
Expires 1/21/2023

NOTARY PUBLIC

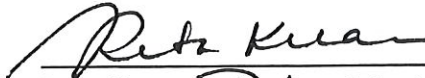
Typed or printed Name of Notary

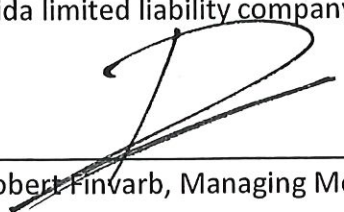
My Commission expires:

Serial No., if any _____




Pumps at 71 LLC,
a Florida limited liability company



Print Name: Reta Kuan

By: 
Robert Finvarb, Managing Member

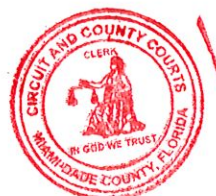

Print Name: Nindiri Rivas

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

The foregoing instrument was acknowledged before me this 18 day of November, 2019
by Robert Finvarb, as managing member of Pumps at 71, LLC, a Florida limited liability company,
on behalf of the company. He is personally known to me or has produced
 as identification and who did/did not take an oath.

 Tiffannie Ramos
NOTARY PUBLIC
STATE OF FLORIDA
Comm# GG291228
Expires 1/21/2023

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



7433 Collins Ave Corp.,
a Florida corporation

[Signature]
Print Name: Campbell Griffin

By: [Signature]
Benny Klepach, Managing Member

[Signature]
Print Name: Celine Klepach

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

The foregoing instrument was acknowledged before me this 18 day of November, 2019
by Benny Klepach, as managing member of 7433 Collins Ave Corp., a Florida corporation, on
behalf of the company. He is personally known to me or has produced
personally as identification and who did/did not take an oath.

Anaely Guerrero
NOTARY PUBLIC

Typed or printed Name of Notary

My Commission expires: Jun 13, 2020

Serial No., if any _____

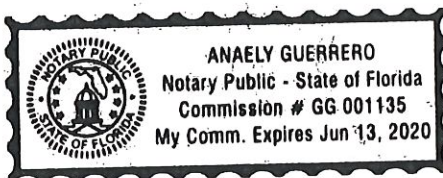


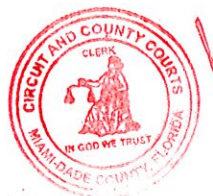


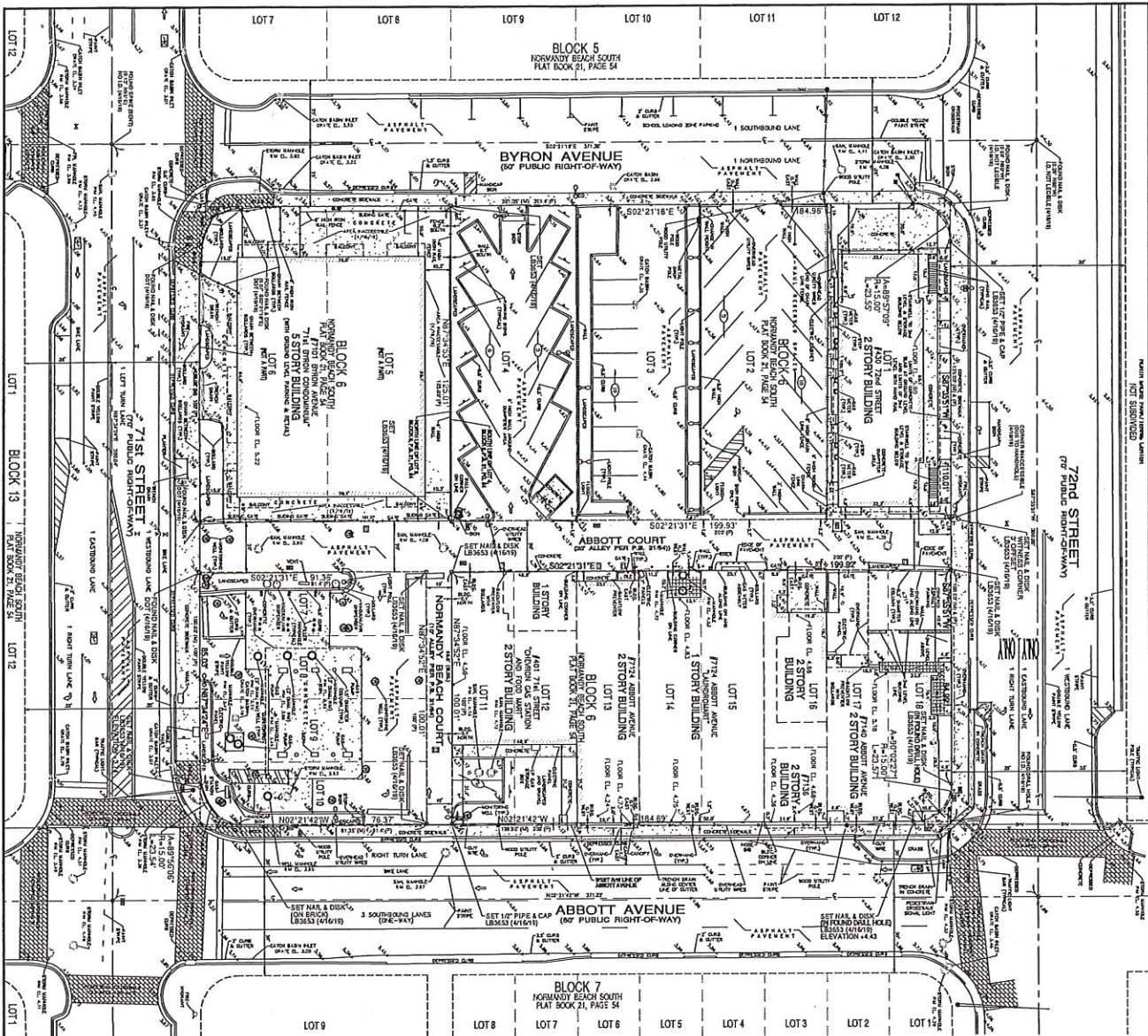
EXHIBIT A



LEGAL DESCRIPTION:

Lots 1, 2, 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, Block 6, Normandy Beach South, according to the plat thereof as recorded in Plat Book 21 at Page 54 of the Public Records of Miami-Dade County, Florida.





811
KNOW WHAT'S BELOW
BEFORE YOU DIG
www.call811.com

LEGEND

1	1/4" = 1' SCALE
2	1/8" = 1' SCALE
3	1/16" = 1' SCALE
4	1/32" = 1' SCALE
5	1/64" = 1' SCALE
6	1/128" = 1' SCALE
7	1/256" = 1' SCALE
8	1/512" = 1' SCALE
9	1/1024" = 1' SCALE
10	1/2048" = 1' SCALE
11	1/4096" = 1' SCALE
12	1/8192" = 1' SCALE
13	1/16384" = 1' SCALE
14	1/32768" = 1' SCALE
15	1/65536" = 1' SCALE
16	1/131072" = 1' SCALE
17	1/262144" = 1' SCALE
18	1/524288" = 1' SCALE
19	1/1048576" = 1' SCALE
20	1/2097152" = 1' SCALE
21	1/4194304" = 1' SCALE
22	1/8388608" = 1' SCALE
23	1/16777216" = 1' SCALE
24	1/33554432" = 1' SCALE
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EXHIBIT B



EXHIBIT "A"

LEGAL DESCRIPTION: Right of Way (To be Vacated)

A portion of a 20' Alley also known as Abbott Court lying adjacent to Lots 1, 2, 3, 4, 11, 12, 13, 14, 15, 16, 17 and 18, Block 6, NORMANDY BEACH SOUTH, according to the plat thereof, as recorded in Plat Book 21 at Page 54 of the Public Records of Miami-Dade County, Florida, being more particularly described as follows:

Begin at the Northeast corner of said Lot 1; thence S 02°21'31" E along the East line of said Lots 1, 2, 3 and 4, also being the West right of way line of a 20' Alley also known as Abbott Court for 166.44 feet to a point on a circular curve concave to the Southwest and whose radius point bears S 25°49'29" W; thence Southeasterly along a 37.90 foot radius curve leading to the right through a central angle of 61°49'00" for an arc distance of 40.89 feet to a non-tangent point; thence N 02°21'31" W along the West line of said Lots 11, 12, 13, 14, 15, 16, 17 and 18, also being the East right of way line of said 20' Alley also known as Abbott Court for 199.87 feet to the Northwest corner of said Lot 18; thence S 87°35'51" W along the Westerly projection of the South right of way line of 72nd Street for 20.00 feet to the Point of Beginning.

Containing 3,521 Square Feet more or less.

SURVEYOR'S NOTES:

- This site lies in Section 11, 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°21'42" W for the West right of way line of Abbott Avenue.
- Lands shown hereon were not abstracted for easements and/or rights-of-way of records.
- 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 #2019-041.

CERTIFICATION TO:

City of Miami Beach

SURVEYOR'S CERTIFICATION:

I hereby certify that this "Sketch of Description" was made under my responsible charge on July 19, 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,
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Date: 2019.07.19 11:45:09 -04'00'



Drawn By	MAP
Cad. No.	190398
Ref. Dwg.	2019-041
REV.1	090735
Plotted:	7/19/19 10:45a

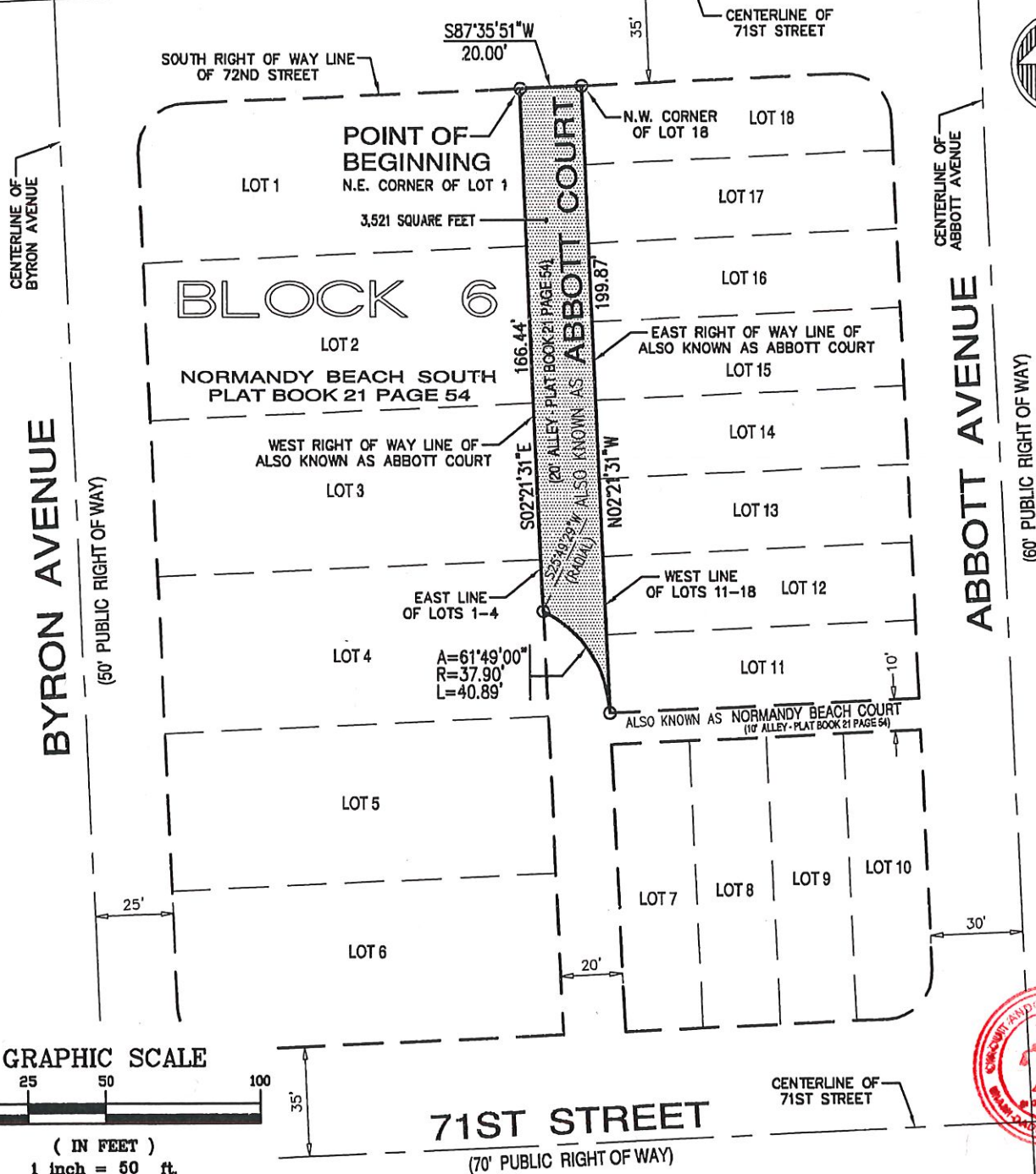
LEGAL DESCRIPTION, NOTES & CERTIFICATION

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	7/19/19
Scale	NOT TO SCALE
Job. No.	190398
Dwg. No.	1019-022-2
Sheet	1 of 3

72ND STREET (70' PUBLIC RIGHT OF WAY)

EXHIBIT "A"



Drawn By	MAP
Cad. No.	190398
Ref. Dwg.	2019-041
REV.1	090735
Plotted:	7/19/19 10:45a

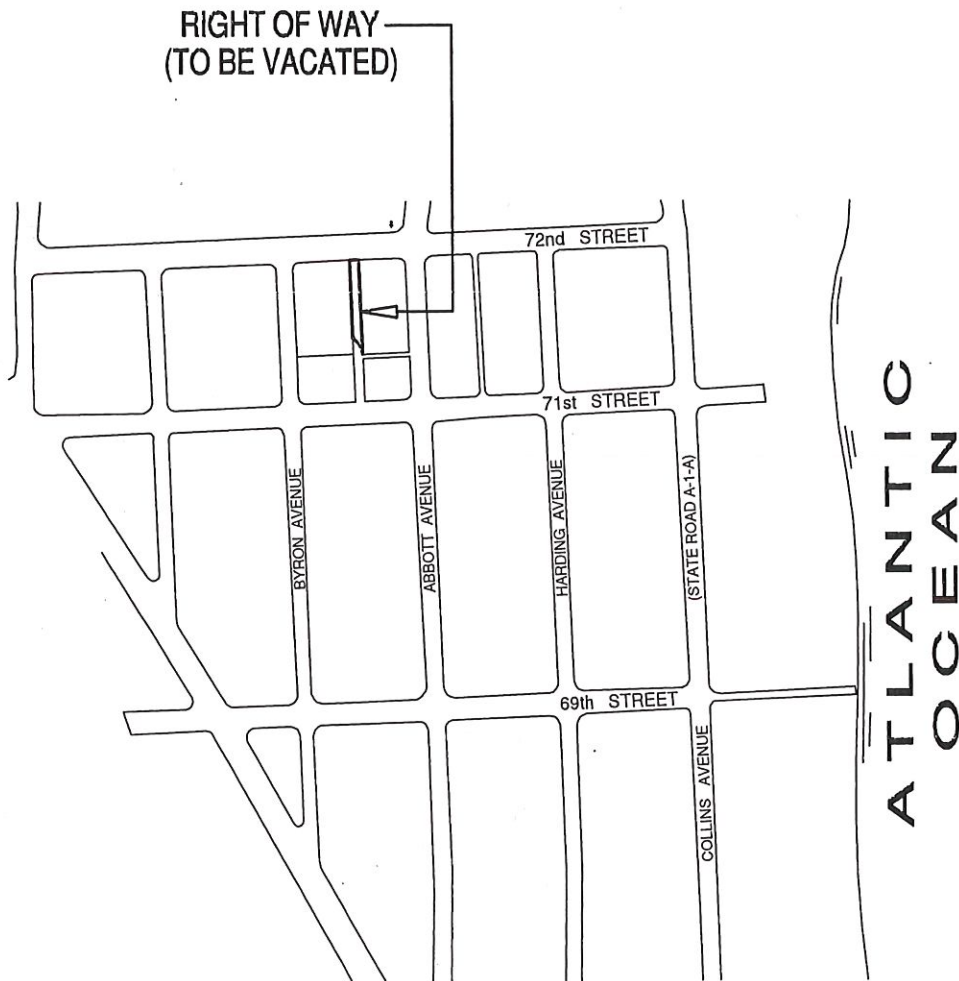
SKETCH OF DESCRIPTION

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	7/19/19
Scale	1"=50'
Job. No.	190398
Dwg. No.	1019-022-2
Sheet	2 of 3



EXHIBIT "A"



Drawn By	MAP
Cad. No.	190398
Ref. Dwg.	2019-041
	REV.1 090735
Plotted:	7/19/19 10:45a

LOCATION SKETCH

FORTIN, LEAVY, SKILES, INC.
 CONSULTING ENGINEERS, SURVEYORS & MAPPERS
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 Phone: 305-653-4493 / Fax 305-651-7152 / Email fls@flssurvey.com

Date	7/19/19
Scale	NOT TO SCALE
Job. No.	190398
Dwg. No.	1019-022-2
Sheet	3 of 3

EXHIBIT "A"

LEGAL DESCRIPTION: Right of Way (To be Vacated)

All of a 10' Alley also known as Normandy Beach Court lying adjacent to Lots 7, 8, 9 10 and 11, Block 6, NORMANDY BEACH SOUTH, according to the plat thereof, as recorded in Plat Book 21 at Page 54 of the Public Records of Miami-Dade County, Florida, being more particularly described as follows:

Begin at the Northeast corner of said Lot 10; thence S 87°34'52" W along the North line of said Lots 7, 8, 9 and 10 for 100.01 feet to the Northwest corner of said Lot 7; thence N 02°21'31" W along the Northerly projection of the East right of way line of a 20' Alley also known as Abbott Court for 10.00 feet to the Southwest corner of said Lot 11; thence N 87°34'52" E along the South line of said Lot 11 for 100.01 feet to the Southeast corner of said Lot 11; thence S 02°21'42" E along the Southerly projection of the West right of way line of Abbott Avenue for 10.00 feet to the Point of Beginning.

Containing 1,000 Square Feet more or less.

SURVEYOR'S NOTES:

- This site lies in Section 11, 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°21'42" W for the East right of way line of Abbott Avenue.
- Lands shown hereon were not abstracted for easements and/or rights-of-way of records.
- 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 #2019-041.

CERTIFICATION TO:

City of Miami Beach

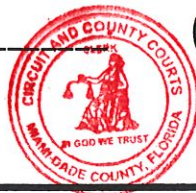
SURVEYOR'S CERTIFICATION:

I hereby certify that this "Sketch of Description" was made under my responsible charge on July 19, 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,
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Date: 2019.07.19 11:43:09 -04'00'

Drawn By	MAP
Cad. No.	190398
Ref. Dwg.	2019-041
REV.1	090735
Plotted:	7/19/19 10:45a

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	7/19/19
Scale	NOT TO SCALE
Job. No.	190398
Dwg. No.	1019-022-3
Sheet	1 of 3

72ND STREET (70' PUBLIC RIGHT OF WAY)

EXHIBIT "A"



CENTERLINE OF
BYRON AVENUE

BYRON AVENUE
(50' PUBLIC RIGHT OF WAY)

BLOCK 6

NORMANDY BEACH SOUTH
PLAT BOOK 21 PAGE 54

ALSO KNOWN AS ABBOTT COURT
(20' ALLEY - PLAT BOOK 21 PAGE 54)

CENTERLINE OF
ABBOTT AVENUE

WEST RIGHT OF WAY LINE
OF ABBOTT AVENUE

ABBOTT AVENUE
(60' PUBLIC RIGHT OF WAY)

POINT OF
BEGINNING

GRAPHIC SCALE



(IN FEET)
1 inch = 50 ft.

71ST STREET

(70' PUBLIC RIGHT OF WAY)

CENTERLINE OF
71ST STREET



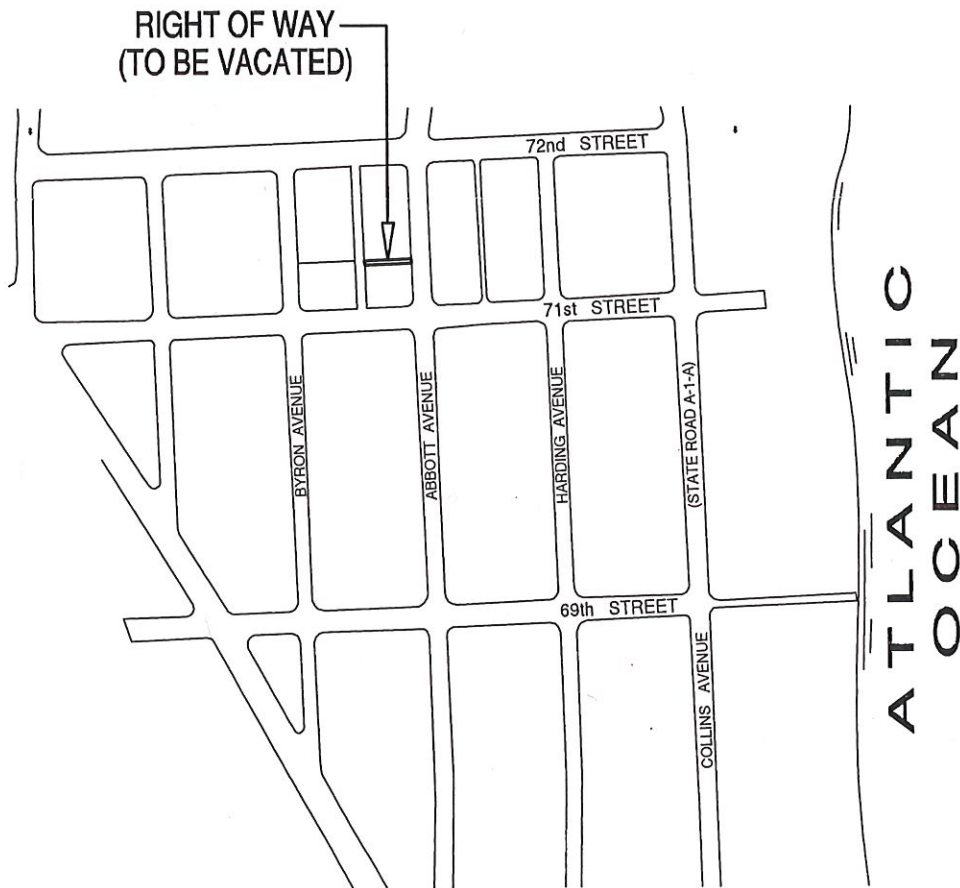
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Cad. No.	190398
Ref. Dwg.	2019-041
REV.1	090735
Plotted:	7/19/19 10:45a

SKETCH OF DESCRIPTION

FORTIN, LEAVY, SKILES, INC.
CONSULTING ENGINEERS, SURVEYORS & MAPPERS
FLORIDA CERTIFICATE OF AUTHORIZATION NUMBER: 00003653
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Date	7/19/19
Scale	1"=50'
Job. No.	190398
Dwg. No.	1019-022-3
Sheet	2 of 3

EXHIBIT "A"



Drawn By	MAP
Cad. No.	190398
Ref. Dwg.	2019-041
REV.1	090735
Plotted:	7/19/19 10:45a

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	7/19/19
Scale	NOT TO SCALE
Job. No.	190398
Dwg. No.	1019-022-3
Sheet	3 of 3

EXHIBIT C



EXHIBIT "A"

LEGAL DESCRIPTION: Right of Way (To be Dedicated)

A portion of Lot 4, Block 6, NORMANDY BEACH SOUTH, according to the plat thereof, as recorded in Plat Book 21 at Page 54 of the Public Records of Miami-Dade County, Florida, being more particularly described as follows:

Commence at the Southwest corner of said Lot 4, the following two (2) courses being along the West line of said Lot 4, also being the East right of way line of Byron Avenue; 1) thence N 02°21'18" W for 18.00 feet to the Point of Beginning; 2) thence continue N 02°21'18" W for 20.00 feet; thence N 87°34'53" E for 107.07 feet to a point of curvature; thence Southeasterly along a 37.90 foot radius curve leading to the right through a central angle of 28°14'36" for an arc distance of 18.68 feet to a non-tangent point; thence S 02°21'31" E along the East line of said Lot 4, also being the West right of way line of a 20' Alley also known as Abbott Court for 33.41 feet to a point on a circular curve concave to the Southwest and whose radius point bears S 87°38'29" W; thence Northwesterly along a 17.90 foot radius curve leading to the left through a central angle of 90°03'36" for an arc distance of 28.14 feet to a point of tangency; thence S 87°34'53" W for 107.09 feet to the Point of Beginning.

Containing 2,543 Square Feet more or less.

SURVEYOR'S NOTES:

- This site lies in Section 11, 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°21'42" W for the West right of way line of Abbott Avenue.
- Lands shown hereon were not abstracted for easements and/or rights-of-way of records.
- 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 #2019-041.

CERTIFICATION TO:

City of Miami Beach

SURVEYOR'S CERTIFICATION:

I hereby certify that this "Sketch of Description" was made under my responsible charge on July 19, 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

**Daniel C
Fortin**

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

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=A01097C00
000161773B91FA0000E42F
Date: 2019.07.19 12:08:28 -04'00'



Drawn By	MAP
Cad. No.	190398
Ref. Dwg.	2019-041
REV.1	090735
Plotted:	7/19/19 10:45a

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	7/19/19
Scale	NOT TO SCALE
Job. No.	190398
Dwg. No.	1019-022-1
Sheet	1 of 3

72ND STREET (70' PUBLIC RIGHT OF WAY)

EXHIBIT "A"



CENTERLINE OF
BYRON AVENUE

BYRON AVENUE
(50' PUBLIC RIGHT OF WAY)

CENTERLINE OF
ABBOTT AVENUE

ABBOTT AVENUE
(60' PUBLIC RIGHT OF WAY)

(60' PUBLIC RIGHT OF WAY)

CENTERLINE OF
71ST STREET

CENTERLINE OF
71ST STREET

71ST STREET

(70' PUBLIC RIGHT OF WAY)

BLOCK 6

LOT 1

EAST RIGHT OF WAY LINE
OF BYRON AVENUE

LOT 2

NORMANDY BEACH SOUTH
PLAT BOOK 21 PAGE 54

WEST RIGHT OF WAY LINE OF
ALSO KNOWN AS ABBOTT COURT

LOT 3

2,543 SQUARE FEET

N02°21'18"W

20.00'

A=28°14'36"
R=37.90'
L=18.68'

N87°34'53"E

107.07'

WEST LINE
OF LOT 4

LOT 4

EAST LINE
OF LOT 4

S87°34'53"W

107.09'

S87°38'29"W
(RADIAL)

POINT OF
BEGINNING

A=90°03'36"
R=17.90'
L=28.14'

LOT 5

POINT OF
COMMENCEMENT

S.W. CORNER OF LOT 4

S02°21'31"E

33.41'

LOT 6

LOT 18

LOT 17

LOT 16

LOT 15

LOT 14

LOT 13

LOT 12

LOT 11

ALSO KNOWN AS NORMANDY BEACH COURT
(10' ALLEY - PLAT BOOK 21 PAGE 54)

LOT 7

LOT 8

LOT 9

LOT 10

GRAPHIC SCALE



(IN FEET)
1 inch = 50 ft.

SKETCH OF DESCRIPTION

FORTIN, LEAVY, SKILES, INC.

CONSULTING ENGINEERS, SURVEYORS & MAPPERS

FLORIDA CERTIFICATE OF AUTHORIZATION NUMBER: 00003653

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Scale	1"=50'
Job. No.	190398
Dwg. No.	1019-022-1
Sheet	2 of 3

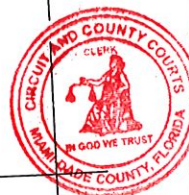
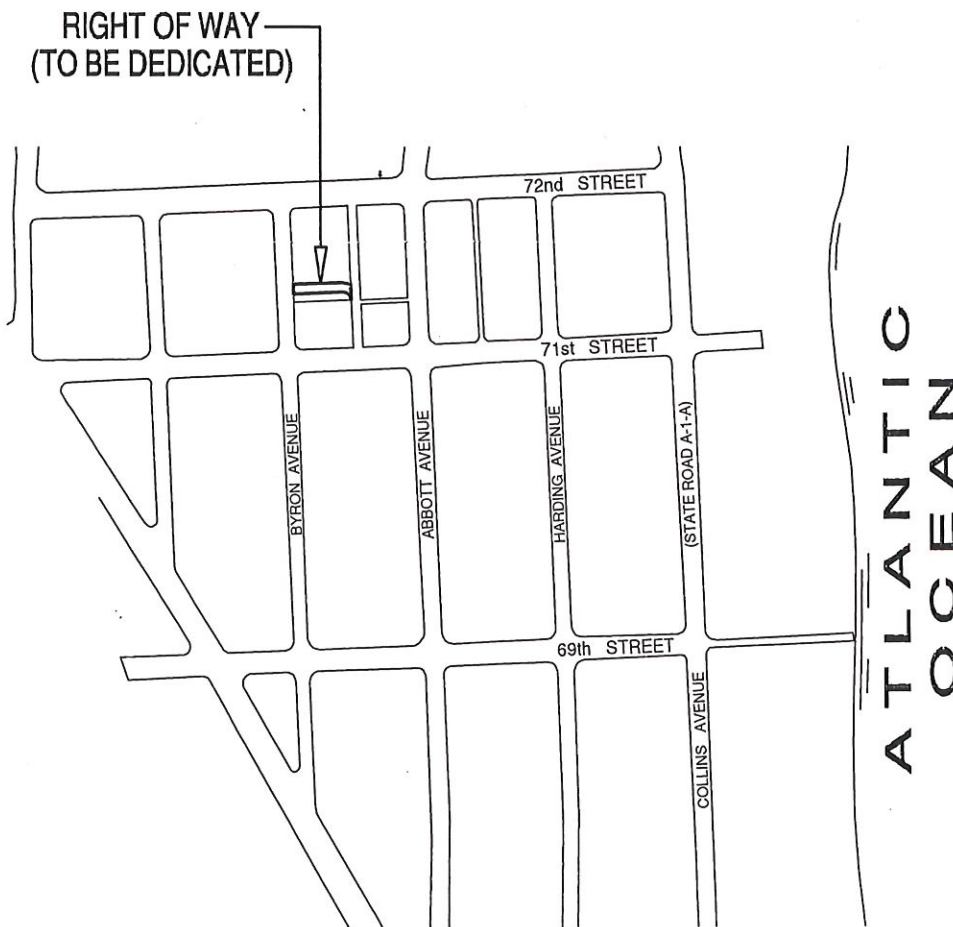


EXHIBIT "A"

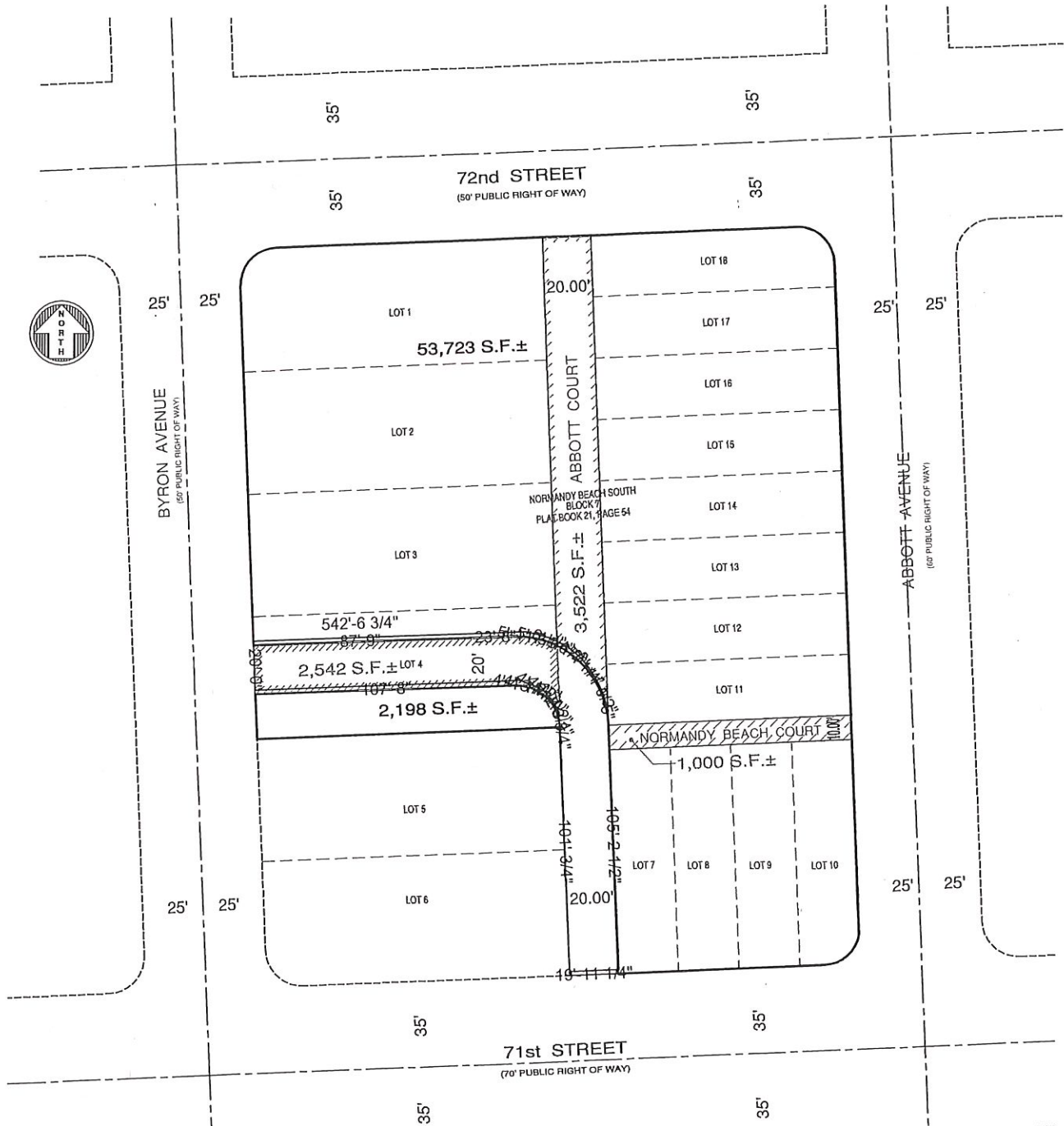


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LOCATION SKETCH

FORTIN, LEAVY, SKILES, INC.
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Sheet	3 of 3



2019-04-12
AREA LEGEND:

PROPOSED FEE LAND AREA: 55,921 SQUARE FEET±
PROPOSED RIGHT OF WAY DEDICATION: 2,542 SQUARE FEET±
PROPOSED RIGHT OF WAY VACATION: 4,522 SQUARE FEET±

STATE OF FLORIDA, COUNTY OF MIAMI-DADE
I HEREBY CERTIFY that this is a true copy of the
original filed in this office on 05/19 day of MAY, AD 2019

WITNESS my hand and Official Seal.
HARVEY RUVIN, Clerk of Circuit and County Courts
By [Signature] D.C.

