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DR BK 31715 Pgs 398-431 (34Pgs)  
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MIAMI-DADE COUNTY, FLORIDA

## DOCUMENT COVER PAGE

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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 18<sup>th</sup> 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 72<sup>nd</sup> Street, 7140 Abbott Avenue, 7136 Abbott Avenue, 7124 Abbott Avenue, 7120 Abbott Avenue, and 409 71<sup>st</sup> 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 71<sup>st</sup> Street and 72<sup>nd</sup> 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 71<sup>st</sup> Street, between 71<sup>st</sup> and 72<sup>nd</sup> 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.

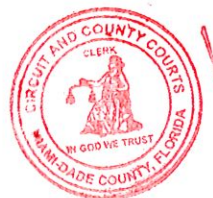
4.7 City shall not issue a Temporary Certificate of Occupancy or final Certificate of Occupancy for the Project until Developer has satisfied all of the conditions in the Vacation Resolution and obligations of the Developer under this Agreement.

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

Print Name: Sumantra Leon

Print Name: Michele Burger

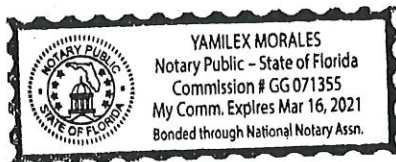
By: [Signature]

Name: Mayor Dan Gelber

Attest: 1/21/19  
City Clerk

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

The foregoing instrument was acknowledged before me this 12<sup>th</sup> 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.



NOTARY PUBLIC

Familex Morales  
 Typed or Printed Name of Notary  
 My Commission expires:  
 Serial No., if any:

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

City Attorney B. A. D. 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:

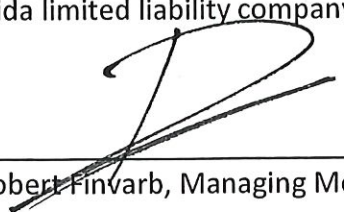
Serial No., if any \_\_\_\_\_






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            )

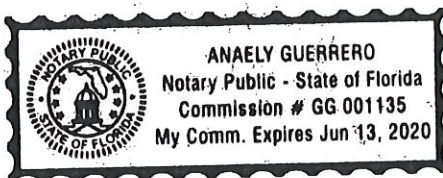
The foregoing instrument was acknowledged before me this 18 day of November, 2019  
by Benny Klepach, as managing member of 7433 Collins Ave Corp., a Florida corporation, on  
behalf of the company. He is personally known to me or has produced  
personally as identification and who did/did not take an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

*Anaely Guerrero*  
NOTARY PUBLIC

Typed or printed Name of Notary

My Commission expires: Jun 13, 2020

Serial No., if any \_\_\_\_\_







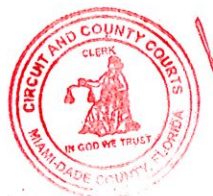
# EXHIBIT A

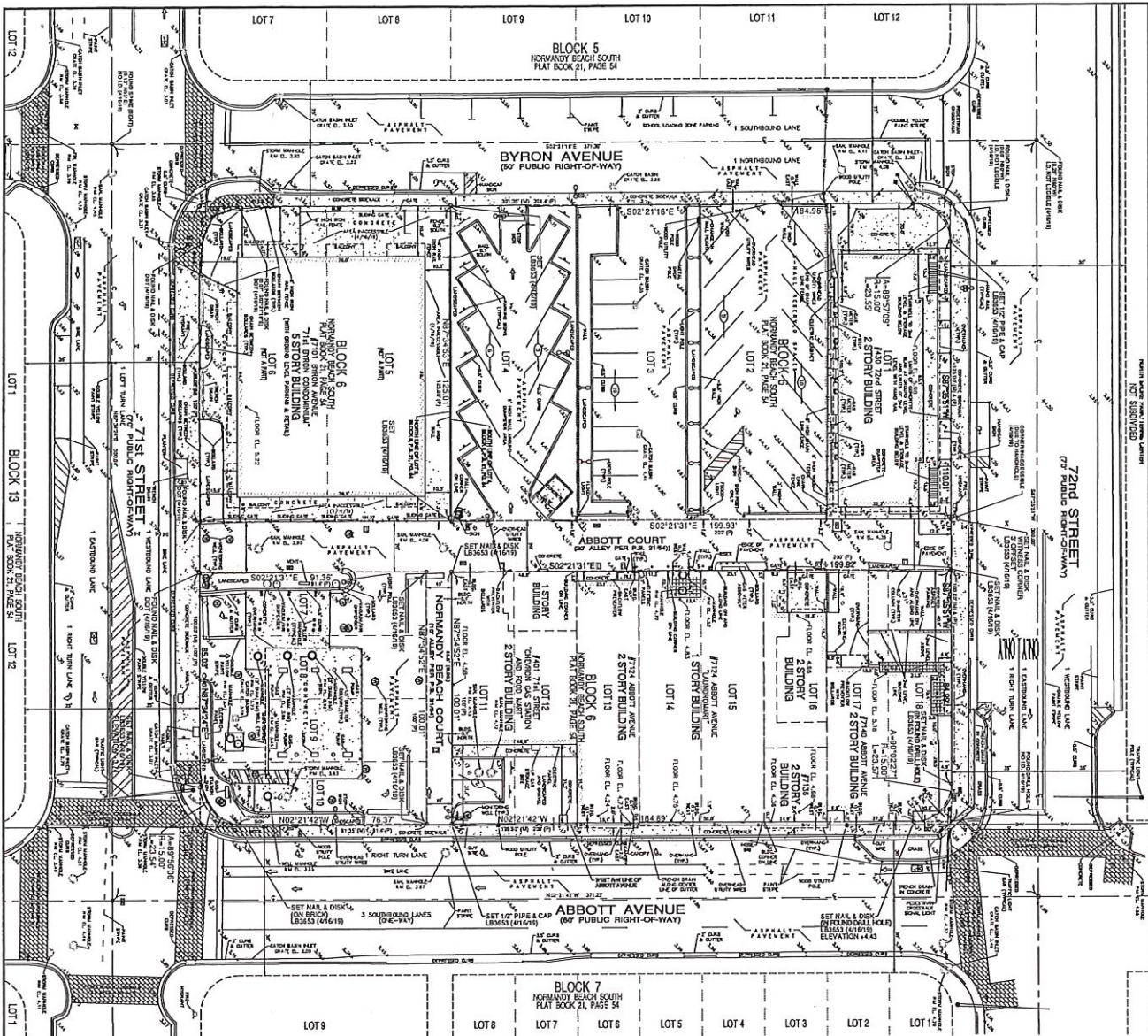




**LEGAL DESCRIPTION:**

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.





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**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
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12	1/8192" = 1' SCALE
13	1/16384" = 1' SCALE
14	1/32768" = 1' SCALE
15	1/65536" = 1' SCALE
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18	1/524288" = 1' SCALE
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20	1/2097152" = 1' SCALE
21	1/4194304" = 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,  
0.9.2342.19200300.100.1.1=A0109  
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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

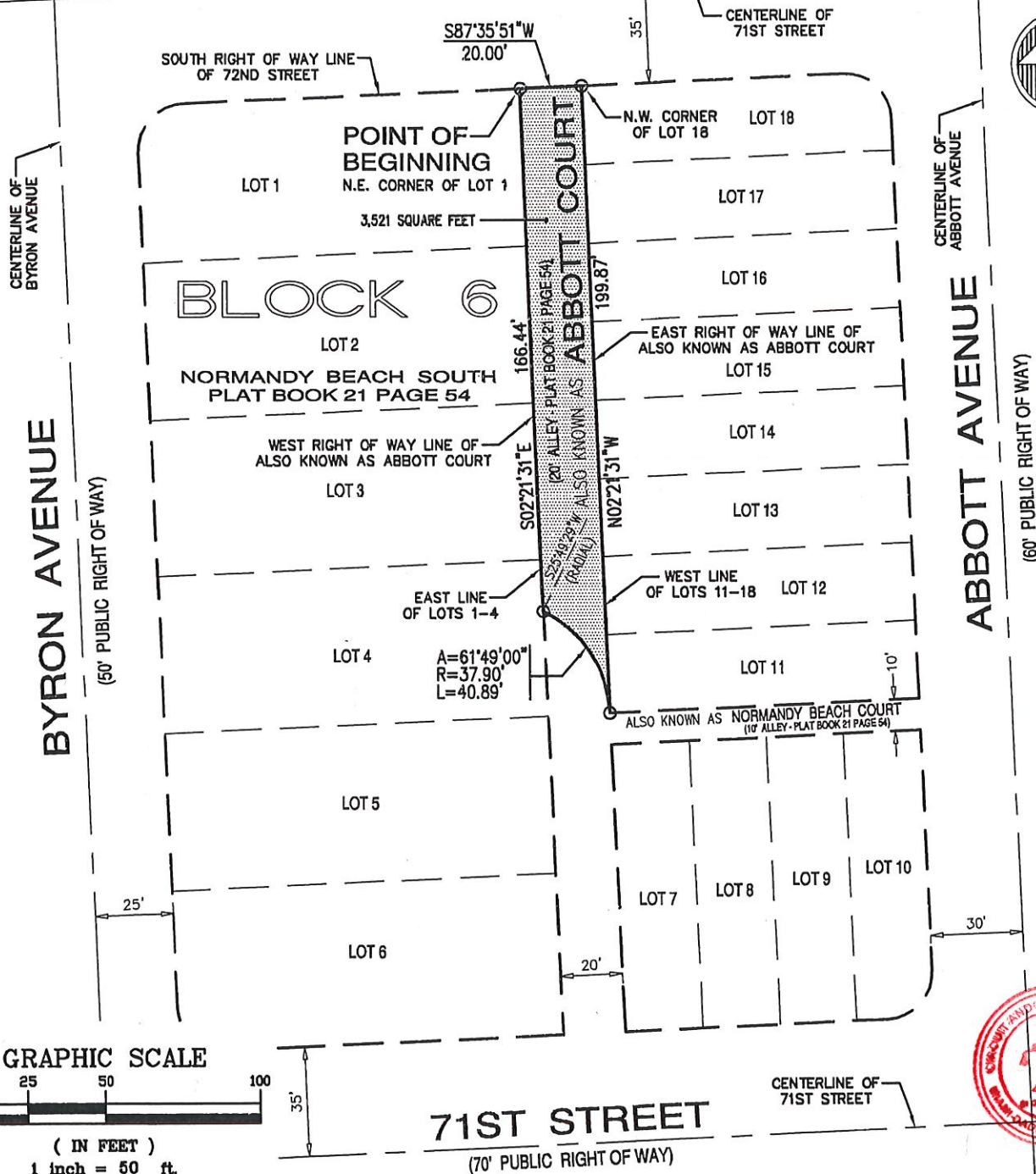
**FORTIN, LEAVY, SKILES, INC.**  
CONSULTING ENGINEERS, SURVEYORS & MAPPERS  
FLORIDA CERTIFICATE OF AUTHORIZATION NUMBER: 00003653  
180 Northeast 168th. Street / North Miami Beach, Florida. 33162  
Phone: 305-653-4493 / Fax 305-651-7152 / Email fls@flssurvey.com

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"



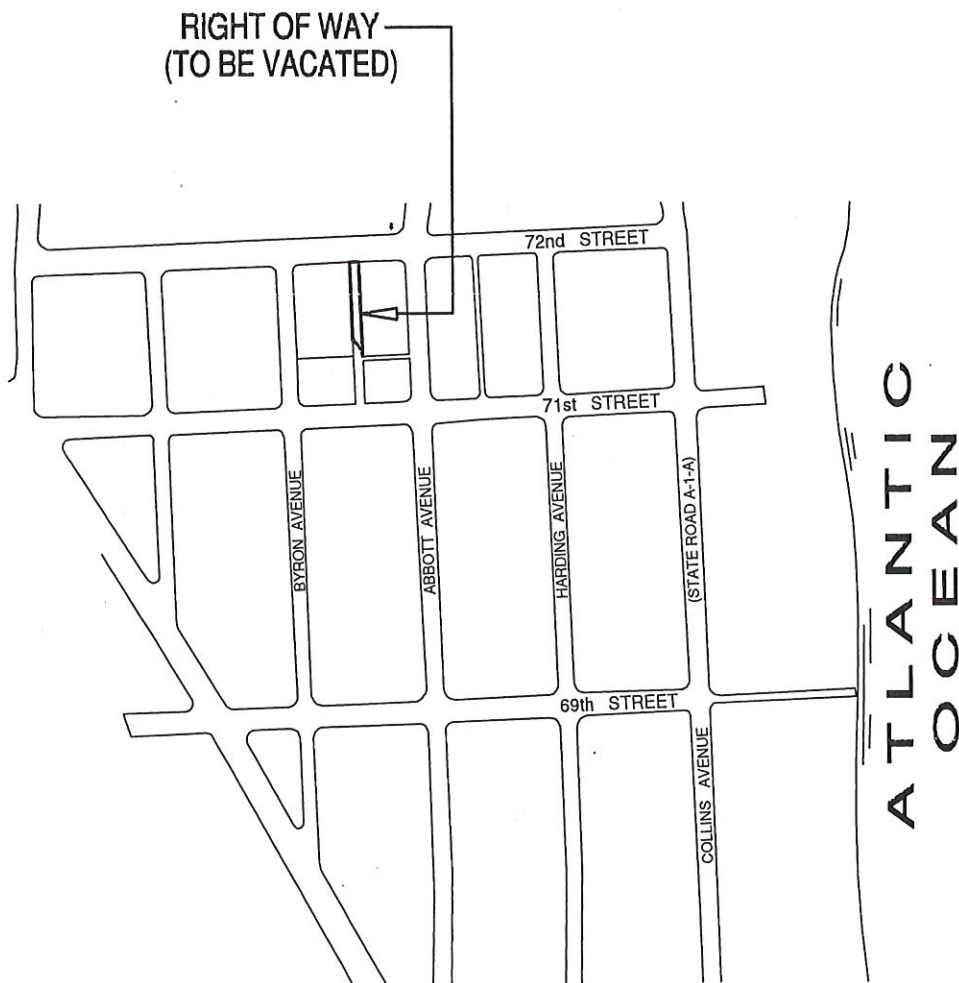
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Cad. No.	190398
Ref. Dwg.	2019-041
REV.1	090735
Plotted:	7/19/19 10:45a

SKETCH OF DESCRIPTION	
<b>FORTIN, LEAVY, SKILES, INC.</b>	
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  
 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	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

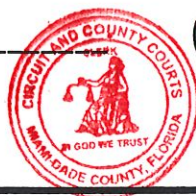
### SURVEYOR'S CERTIFICATION:

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

### LEGAL DESCRIPTION, NOTES & CERTIFICATION

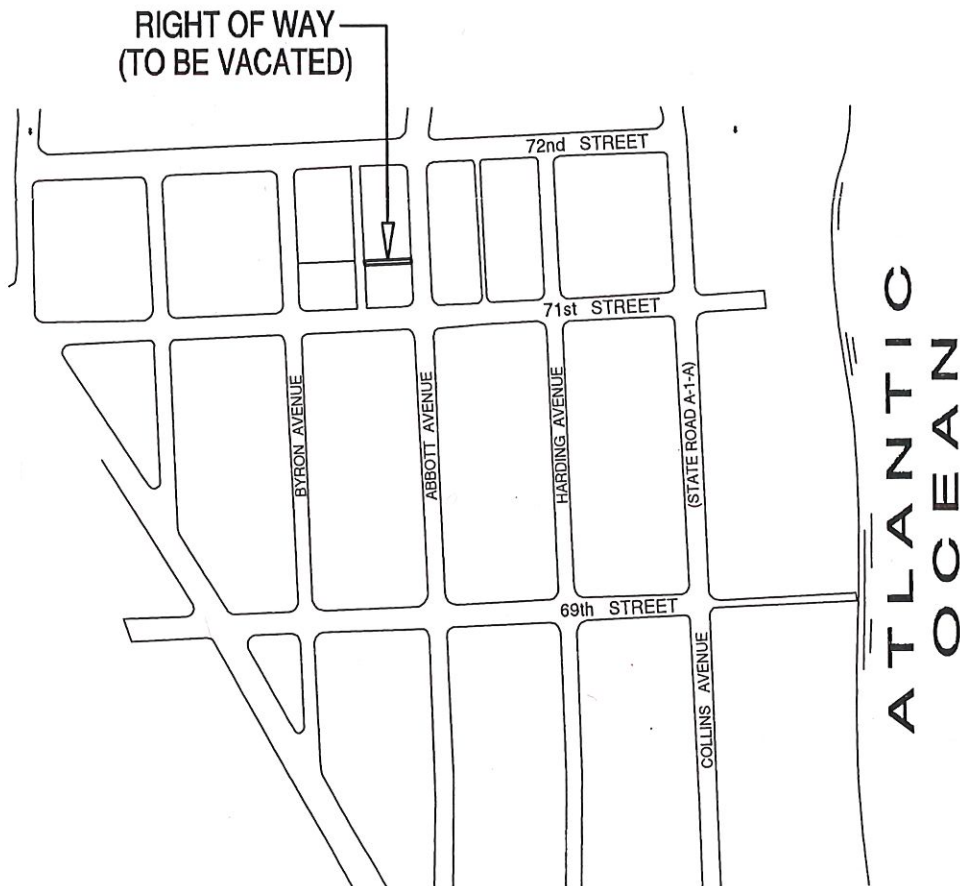
**FORTIN, LEAVY, SKILES, INC.**  
CONSULTING ENGINEERS, SURVEYORS & MAPPERS  
FLORIDA CERTIFICATE OF AUTHORIZATION NUMBER: 00003653  
180 Northeast 168th. Street / North Miami Beach, Florida. 33162  
Phone: 305-653-4493 / Fax 305-651-7152 / Email fls@flssurvey.com

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





# 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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 180 Northeast 168th. Street / North Miami Beach, Florida. 33162  
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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  
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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  
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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

A=28°14'36"  
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

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)

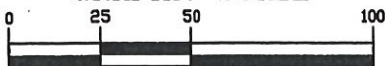
LOT 7

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

180 Northeast 168th. Street / North Miami Beach, Florida. 33162

Phone: 305-653-4493 / Fax 305-651-7152 / Email fls@flssurvey.com

Drawn By MAP

Cad. No. 190398

Ref. Dwg. 2019-041

REV.1 090735

Plotted: 7/19/19 10:45a

Date 7/19/19

Scale 1"=50'

Job. No. 190398

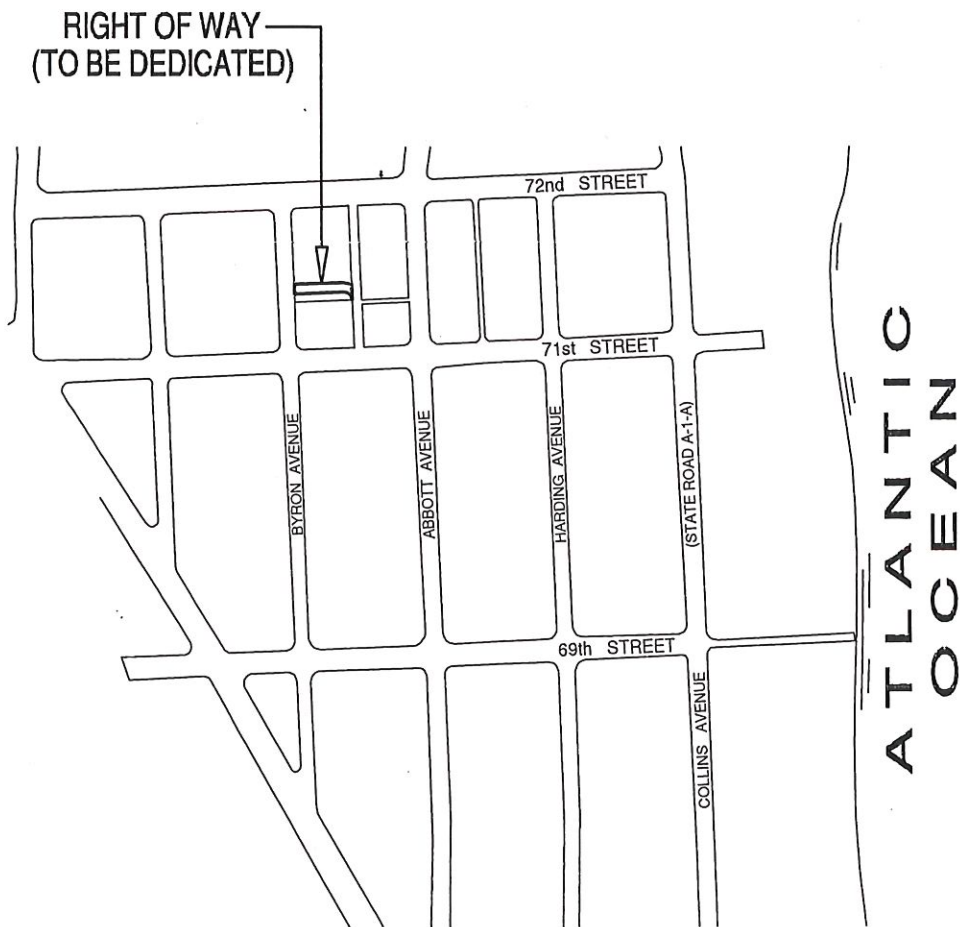
Dwg. No. 1019-022-1

Sheet 2 of 3





# EXHIBIT "A"



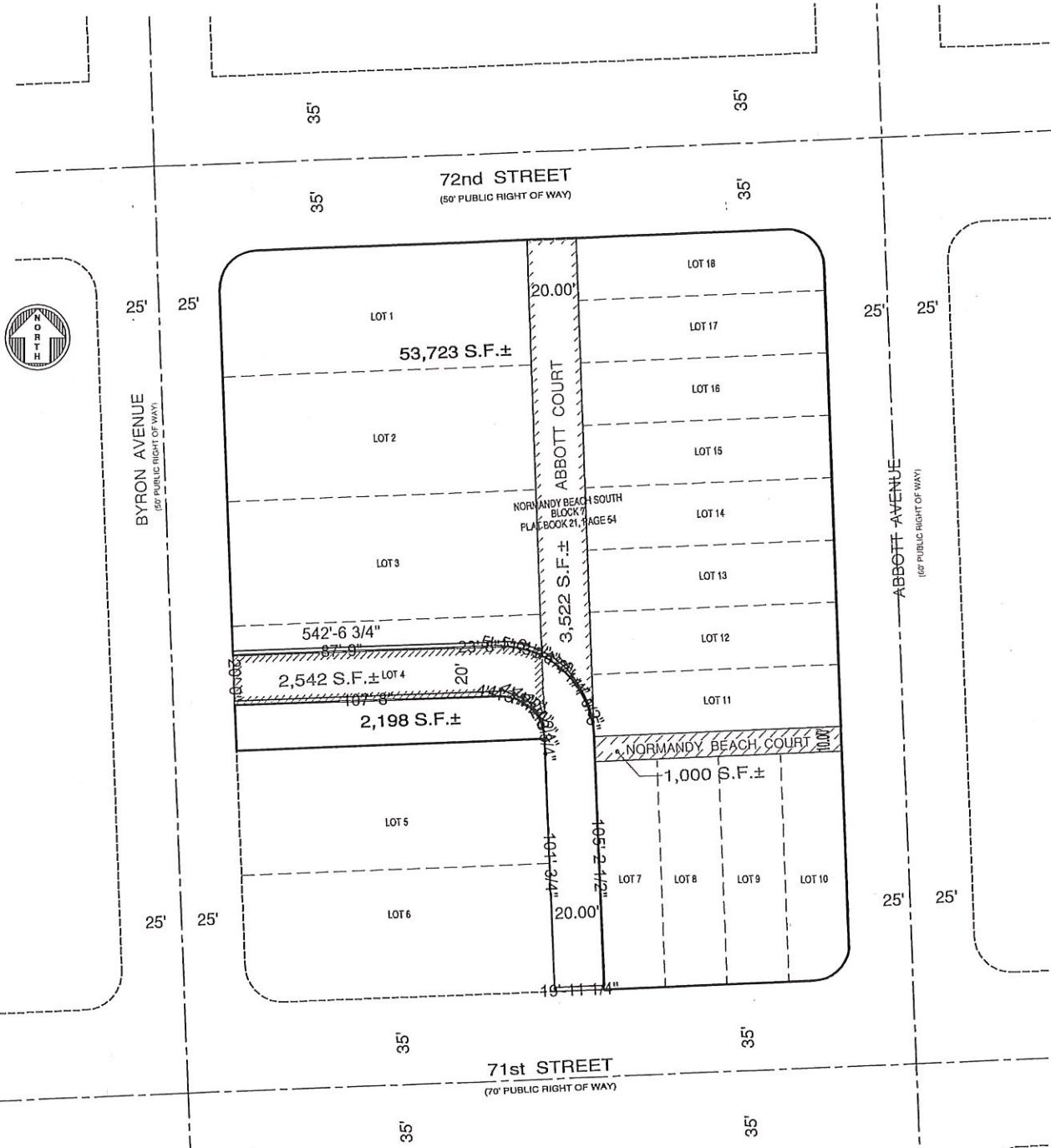
Drawn By	MAP
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## LOCATION SKETCH

**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  
AD 20  
WITNESS my hand and Official Seal.  
HARVEY RUVIN, Clerk of Circuit and County Courts  
By [Signature] D.C.

