

**LICENSE AND USE AGREEMENT**

THIS LICENSE AND USE AGREEMENT ("Agreement"), made the 13 day of MAY, 2019 (the Effective Date), by and between the CITY OF MIAMI BEACH, FLORIDA, a Florida municipal corporation ("City" or "Licensor"), and the GREATER MIAMI HEBREW ACADEMY, a Florida not for profit corporation ("Licensee"). Licensor and Licensee may also sometimes be referred to, individually, as a "Party" or collectively, as the "Parties".

NOW, THEREFORE, and in consideration of the mutual promises, covenants, agreements, terms and conditions, herein contained, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereto do agree as follows:

1. **City Manager's Designee.** For purposes of administering this Agreement on behalf of the City, David Martinez, P. E., Director, Office of Capital Improvement Projects.
2. **Permitted Uses.** Licensor hereby grants to Licensee a license to occupy and use, subject to all of the terms and conditions hereof, a portion of the City's property, having a physical address of 2300 Pine Tree Drive, Miami Beach, Florida 33140 (Folio No. 02-3227-000-0100) ("City's Property"), as more particularly described in the sketch and legal description attached as **Exhibit "A"** hereto, ("Staging Site").

Licensee may occupy and use the Staging Site solely for the purpose of staging equipment and storage of materials in connection with those certain private improvements and repairs being undertaken by the Licensee at Licensee's property, having a physical address of 2400 Pine Tree Drive Miami Beach, Florida 33140 (Folio No 02-3227-000-0092) ("Licensee's Property"), in connection with the work which is the subject of City of Miami Beach permit number BCO616-0530 (hereinafter referred to as "the Project"). As a condition precedent to using the Staging Site, Licensee shall be required to install a fence around the Staging Site. Licensee shall be responsible for securing the required governmental approvals/permits from the City's Building Department in connection with the installation of the fence and the approved uses.

3. **No Improper Use.** Licensee will not use, nor suffer or permit any person to use, in any manner whatsoever, the Staging Site for any illegal, improper, immoral or offensive purpose, or for any other purpose in violation of any Federal, State, County, or municipal ordinance, rule, order or regulation, or of any governmental rule or regulation now in effect or hereafter enacted or adopted. Licensee will protect, indemnify, and forever save and keep harmless the City, its officials, employees, contractors, and agents from and against damage, penalty, fine, judgment, expense or charge suffered, imposed, assessed or incurred for any violation, or breach of any law, ordinance, rule, order or regulation occasioned by any act, neglect or omission of Licensee, or any official, director, agent, contractor, or servant relating to the use of the Staging Site. In the event of any violation by Licensee, or if the City or its authorized representative shall deem any conduct on the part of Licensee to be objectionable or improper, the City shall have the right to suspend the use of the Staging Site should Licensee fail to correct any such violation, conduct, or practice to the satisfaction of the City Manager or its authorized representative within twenty-four (24) hours following written notice of the nature and extent of such violation, conduct, or practice. Such suspension shall continue until the violation is cured to the satisfaction from the City Manager or its authorized representative.

## ATTACHMENT A

### 4. Term/Termination.

A. Term. The term of this Agreement shall commence upon execution of the Agreement by both Parties, which shall be referenced as the "Effective Date" on page 1 (above) of this Agreement, and shall expire by June 21, 2020 or 15 months from the Effective Date, whichever is the earliest date, unless terminated earlier pursuant to the terms of this Agreement.

### B. Termination For Cause.

If Licensee shall fail to fulfill in a timely manner, or otherwise violates, any of the covenants, agreements, or stipulations material to this Agreement, the City, through its City Manager, shall thereupon have the right to terminate this Agreement for cause. Prior to exercising its option to terminate for cause, the City shall notify Licensee of its violation of the particular term(s) of this Agreement, and shall grant Licensee thirty (30) days to cure such default, except with respect to any defaults pursuant to Section 3 herein (Improper Use), which requires a shortened cure Period. In the event that a default (except with respect to a default pursuant to Section 3) is not reasonably susceptible to being cured within the thirty (30) days, the Licensee shall not be considered in default if it shall, within such period, commence with due diligence and dispatch to cure such default and thereafter completes with dispatch and due diligence the curing of such default, but in no event shall such extended cure period exceed ninety (90) days from the date of written notice thereof. In the event Licensee cures any default pursuant to this subsection, it shall promptly provide the City Manager's designee with written notice of same. If such default remains uncured at the end of the cure period, the City may terminate this Agreement without further notice to Licensee. Upon termination, the City shall be fully discharged from any and all liabilities, duties, and terms arising out of, or by virtue of, this Agreement.

Notwithstanding the above, Licensee shall not be relieved of liability to the City for damages sustained by the City by any breach of the Agreement by Licensee. The City, at its sole option and discretion, shall be entitled to bring any and all legal/equitable actions that it deems to be in its best interest in order to enforce the City's rights and remedies against Licensee. The City shall be entitled to recover all costs of such actions, including reasonable attorneys' fees.

5. Use Fee/Performance Bond or Alternate Security. Licensee will not be required to pay rent in connection with the Permitted Uses. Prior to commencing using the Staging Site, Licensee shall furnish to the City Manager or City Manager's designee a payment and performance bond, in the penal sum of Fifty Thousand and 00/100 (\$50,000.00) Dollars, for which Licensee shall bind itself for the faithful performance of the terms and conditions of this Agreement. A cash deposit, irrevocable letter of credit, or certificate of deposit may also suffice, as determined by the City Manager or City Manager's designee, in his/her sole and reasonable discretion. The form of the Performance Bond or alternate security shall be approved by the City's Chief Financial Officer. In the event that a certificate of deposit is approved, it shall be a Fifty Thousand and 00/100 (\$50,000.00) Dollar one-year certificate of deposit in favor of the City, which shall be automatically renewed, the original of which shall be held by the City's Chief Financial Officer. Licensee shall be required to maintain said performance bond or alternate security in full force and effect throughout the term of this Agreement. Licensee shall have an affirmative duty to notify the City Manager or City Manager's designee, in writing, in the event said performance bond or alternate security lapses or otherwise expires. All interest that accrues in connection with any financial instrument or sum of money referenced above shall be the property of Licensee, except in an event of default, in which case the City shall be entitled to all interest that accrues after the date of default.

## ATTACHMENT A

6. **Indemnification.** In consideration of a separate and specific consideration of Ten (\$10.00) Dollars and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Licensee shall indemnify, hold harmless and defend the City, and its officials, directors, members, employees, contractors, agents, and servants from and against any and all actions (whether at law or inequity), claims, liabilities, losses, and expenses, including, but not limited to, attorneys' fees and costs, for personal, economic or bodily injury, wrongful death, loss of or damage to property, which may arise or be alleged to have arisen from: (1) wholly or in part from the negligent acts, errors, omissions or other misconduct of Licensee, its officers, director, members, employees, agents, contractors, subcontractors, or any other person or entity acting under Licensee's control or supervision; (2) Licensee's breach of the terms of this Agreement or its representations and warranties herein; or (3) the use or occupancy of the Staging Site. To that extent, Licensee shall pay all such claims or losses and shall pay all such costs and judgments which may issue from any lawsuit arising from such claims and losses, and shall pay all costs and attorneys' fees expended by the City in the defense of such claims and losses, including appeals.

This Section 6 shall survive the termination or expiration of this Agreement.

7. **Insurance.** Licensee shall not commence use of the Staging Site under this Agreement until all insurance required under this section has been obtained and such insurance has been approved by the City's Risk Manager. Licensee shall carry and maintain the following insurance coverages during the term of this Agreement:

- A. **Worker's Compensation Insurance** as required by Florida, with Statutory limits and Employer's Liability Insurance limit of no less than \$1,000,000 per accident for bodily injury or disease.
- B. **Commercial General Liability Insurance** on an occurrence basis, including products and completed operations, contractual liability, property damage, bodily injury and personal & advertising injury for vehicles while in the Licensee's care, custody and control with limits no less than \$1,000,000 per occurrence, and \$2,000,000 general aggregate. **City of Miami Beach must be shown as an additional insured with respect to this coverage.**
- C. **Automobile Liability Insurance** covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.

### **Additional Insured Status**

The City of Miami Beach must be covered as an additional insured with respect to liability arising out of work or operations performed by or on behalf of the Licensee.

### **Waiver of Subrogation**

Licensee hereby grants to City of Miami Beach a waiver of any right to subrogation which any insurer of the Licensee may acquire against the City of Miami Beach by virtue of the payment of any loss under such insurance. Licensee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City of Miami Beach has received a waiver of subrogation endorsement from the insurer.

# ATTACHMENT A

## **Acceptability of Insurers**

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than **A:VII**, unless otherwise acceptable to the City of Miami Beach Risk Management Office.

## **Verification of Coverage**

Licensee shall provide the required insurance certificates, endorsements or applicable policy language effecting coverage required by this Section. All certificates of insurance and endorsements are to be received prior to any work commencing. However, failure to obtain the required coverage prior to the work beginning shall not waive the Licensee's obligation to provide them. The City of Miami Beach reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

## **Special Risks or Circumstances**

The City of Miami Beach reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

## **Certificate Holder**

**CITY OF MIAMI BEACH  
c/o INSURANCE TRACKING SERVICES  
1700 CONVENTION CENTER DRIVE  
MIAMI BEACH, FL 33139**

Compliance with the foregoing requirements shall not relieve Licensee of his liability and obligation under this section or under any other section of this Agreement.

8. **Inspection.** The City shall have the right to inspect the Staging Site (including, without limitation, Licensee's Property thereon) at any time by the City Manager's designee or by any other municipal, County, State officer, or officers of any other agency(ies) having responsibility and/or jurisdiction for inspections of such operations. Licensee hereby waives all claims against the City for compensation for loss or damage sustained by reason of any interference with Licensee's operations as a result of inspection by any public agency(ies) or officials, (including, without limitation, by reason of any such public agency or official in enforcing any laws, ordinances, or regulations as a result thereof). Any such interference shall not relieve Licensee from any obligation hereunder.

9. **Safety and Workmanship.** Licensee shall coordinate all work with the City Manager's designee in order to minimize impact on the City's operations. Licensee shall take all necessary safety precautions, secure the Staging Site by appropriate construction fencing with a dust curtain, and coordinate with the City Manager's designee to assure the safety of City employees, contractors, residents, guests, invitees, visitors, and the general public at all times during the Term.

Licensee shall resolve any safety or workmanship issues to the conditions mandated by the City.

10. **No Dangerous Materials.**

A. Licensee agrees not to use or permit the storage and/or use of gasoline, fuel oils, diesel, illuminating oils, oil lamps, combustible powered electricity producing generators, turpentine, benzene, naphtha, propane, natural gas, or other similar substances, combustible materials, or explosives of any kind, or any substance or thing prohibited in the standard policies of fire insurance companies in the State of Florida, on or within the Staging Site, or on any City property and/or right of way.

## ATTACHMENT A

- B. Licensee shall indemnify and hold the City harmless from any loss, damage, cost, or expense of the City, including, without limitation, reasonable attorney's fees, incurred as a result of, arising from, or connected with the placement by Licensee of any "hazardous substance" or "petroleum products" on, under, in or upon the Staging Site as those terms are defined by applicable Federal and State Statute, or any environmental rules and environmental regulations promulgated thereunder; provided, however, Licensee shall have no liability in the event of the willful misconduct or gross negligence of the City, its agents, servants or employees. The provisions of this Section 10 shall survive the termination or earlier expiration of this Agreement.

11. Storm Water Pollution Prevention Plan. Licensee shall submit a Storm-water Pollution Prevention Plan for the Staging Site within sixty (60) days of the Effective Date. The purpose of this Plan is to reduce the potential of sediments and construction debris from entering the City's storm water system from the Licensee's construction staging activities:

- A. The Licensee should describe and provide indication on a site map of all erosion and sediment controls and storm water best management practices to reduce erosion, sedimentation, and storm water pollution. These controls may include silt fences, entrance/exit controls, storm drain inlet protection, and reinforced soil retaining systems. The Licensee should establish a maintenance plan for all structural and non-structural controls to assure that they remain in good and effective operating condition.
- B. The Licensee should implement good housekeeping techniques to reduce contamination of storm water runoff. The Licensee should describe in detail controls for the following potential pollutants:
- (i) waste disposal, this may include construction debris, chemicals, litter, and sanitary waste;
  - (ii) offsite vehicle tracking from construction entrances/exits; and
  - (iii) the storage, application, generation and migration of all toxic substances.

12. The Licensee should implement good housekeeping techniques to eliminate contamination of site from machinery oil and fluid, temporary construction bathroom facility, contaminated soil or any other contaminated material.

13. Surrender of Staging Area/Licensee's Obligation for Restoration. Upon expiration, or earlier termination of this Agreement, Licensee shall immediately surrender the Staging Site, remove Licensee's Property from the Staging Site, and restore the Staging Site and any other adjacent City property affected by the Licensee's activities, to a condition that is not only safe and usable, but that is as good as, or better, than previously existed prior to the Effective Date of this Agreement. If upon inspection by the City, the City, in its sole discretion, determines that the condition of the Staging Site requires additional restoration/remediation, as a result of the Licensee's use, Licensee will perform such additional restoration work within ten (10) days from the date requested by the City. Licensee shall perform the restoration process in such a way as to minimize interference with the operation of the City's Property.

Licensee's obligation to observe or perform this covenant shall survive the expiration or other termination of this Agreement. Continued occupancy of the Staging Site after expiration, or early termination, of the Agreement shall constitute trespass by the Licensee, and may be prosecuted as such. In addition, Licensee shall pay to the City One Thousand (\$1,000.00) Dollars per day as liquidated damages for such trespass and holding over.

## ATTACHMENT A

14. Construction of Agreement. The Parties to this Agreement have substantially contributed to the drafting and negotiation of this Agreement, and this Agreement shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than any other. The Parties acknowledge that they have thoroughly read this Agreement, including all exhibits and attachments hereto, and have sought and received whatever competent legal advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein.

15. Notices. All notices and communications in writing required or permitted hereunder may be delivered personally to the representatives of Licensor and Licensee listed below or may be mailed by registered mail, postage prepaid (or airmailed if addressed to an address outside of the city of dispatch).

Until changed by notice in writing, all such notices and communications shall be addressed as follows:

**TO LICENSEE:** GREATER MIAMI HEBREW ACADEMY  
Title: TREASURER  
2400 PINE TREE DRIVE  
MIAMI BEACH, FL 33140  
(305) 672-8200 Ext. \_\_\_\_  
Attn: MARK HERSKOWITZ, TREASURER

**TO LICENSOR:** City of Miami Beach  
City Manager  
1700 Convention Center Drive  
Miami Beach, Florida 33139  
(305) 673-7000, Ext. 6399  
Attn: Jimmy L. Morales

16. Entire Agreement. The making, execution and delivery of this Agreement by Licensor has been induced by no representations, statements, warranties, or agreements other than those contained herein. This Agreement embodies the entire understanding of the Parties and there are no further or other agreements or understandings, written or oral, in effect between the Parties relating to the subject matter hereof.

ATTACHMENT A

EXECUTED as of the day and year first above written.

Attest:

[Signature]  
City Clerk

5/13/19  
Date

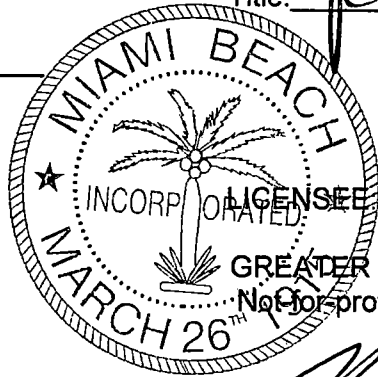
Attest:

[Signature]  
Secretary  
Miriam Rosenblatt  
Print Name

5-6-19  
Date

LICENSOR:  
CITY OF MIAMI BEACH  
a Florida Municipal Corporation

By: [Signature]  
Name: Jimmy L. Morales  
Title: City Manager



GREATER MIAMI NEBREW ACADEMY, a Florida  
Not-for-profit corporation

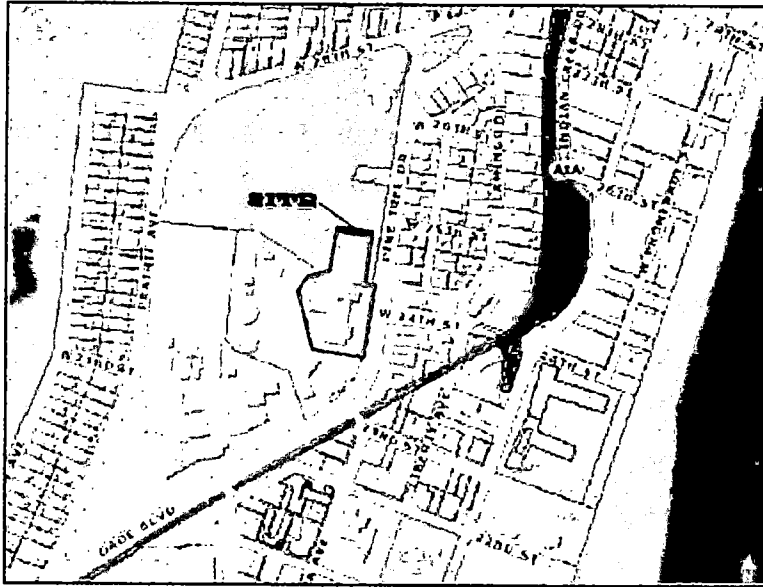
By: [Signature]  
Name: Mark Heoskowitz  
Title: TREASURER

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

[Signature] 4-29-19  
City Attorney Date

EXHIBIT A - STAGING SITE

**SKETCH AND LEGAL**



**LOCATION MAP**

SECTION 27, TOWNSHIP 53 SOUTH, RANGE 42 EAST  
LYING AND BEING IN MIAMI-DADE COUNTY FLORIDA  
(NOT TO SCALE)

**SUBJECT PROPERTY ADDRESS:**

FOLIO No. 02-3227-000-0100  
2300 PINE TREE DRIVE  
MIAMI BEACH, FL 33140

AREA OF PROPERTY: 4,993,718.4 SQUARE FEET AND/OR  
114.64 ACRES MORE OR LESS.

**CERTIFIED TO:**

THIS SKETCH AND LEGAL HAS BEEN PREPARED FOR THE EXCLUSIVE USE OF THE ENTITIES NAME HEREON. THE CERTIFICATIONS DO NOT EXTEND TO ANY UNNAMED PARTIES.

- GREATER MIAMI HEBREW ACADEMY
- CITY OF MIAMI BEACH

**SURVEYORS CERTIFICATE:**

I HEREBY CERTIFY TO THE BEST OF MY KNOWLEDGE AND BELIEF THAT THIS "SPECIFIC PURPOSE SURVEY" IS A TRUE AND CORRECT REPRESENTATION OF A SURVEY PREPARED UNDER MY DIRECTION THAT IT MEETS THE STANDARDS OF PRACTICE AS SET FORTH BY THE STATE OF FLORIDA BOARD OF PROFESSIONAL LAND SURVEYORS IN CHAPTER 5J-17.050 THROUGH 5J-17.052 OF THE FLORIDA ADMINISTRATIVE CODE AND ITS IMPLEMENTING LAW, PURSUANT TO CHAPTER 42.02, FLORIDA STATUTE.

SIGNED

FOR THE FIRM ARTURO MENDIGUTIA, P.S.M.

P.S.M. No. 6844 - STATE OF FLORIDA NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER. ADDITIONS OR DELETIONS TO SURVEY MAPS OR REPORTS BY OTHER THAN THE SIGNING PARTY OR PARTIES IS PROHIBITED WITHOUT WRITTEN CONSENT OF THE SIGNING PARTY OR PARTIES IN A DIGITAL FORMAT NOT VALID WITHOUT AN AUTHENTIC ELECTRONIC SIGNATURE AND AUTHENTICATED ELECTRONIC SEAL

SHEET 1 NOT VALID WITH OUT SHEET 2	
FOLIO NUMBER: 02 3227-000-0100	
LOCATION MAP, SURVEYORS NOTES & CERTIFICATE	
Project No. 1807-144	
Drawn by: M.G	SKETCH
Approved by: AM	SHEET 1 OF 2
DATE: 03-21-2019	Scale: AS SHOWN

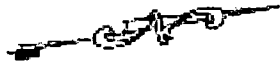


1435 S.W. 87th AVENUE  
SUITE "201"  
MIAMI, FL 33174  
PHONE: (305) 556-4002  
FAX: (305) 555-4003  
EMAIL:  
JFEE@LMSURVEYING.COM



# SKETCH AND LEGAL EXHIBIT 'A'

A PORTION OF SECTION 27-06-42  
A.R.A. DAYTONA BEACH



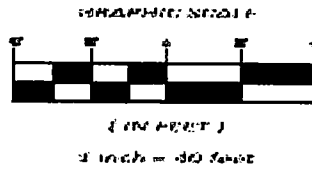
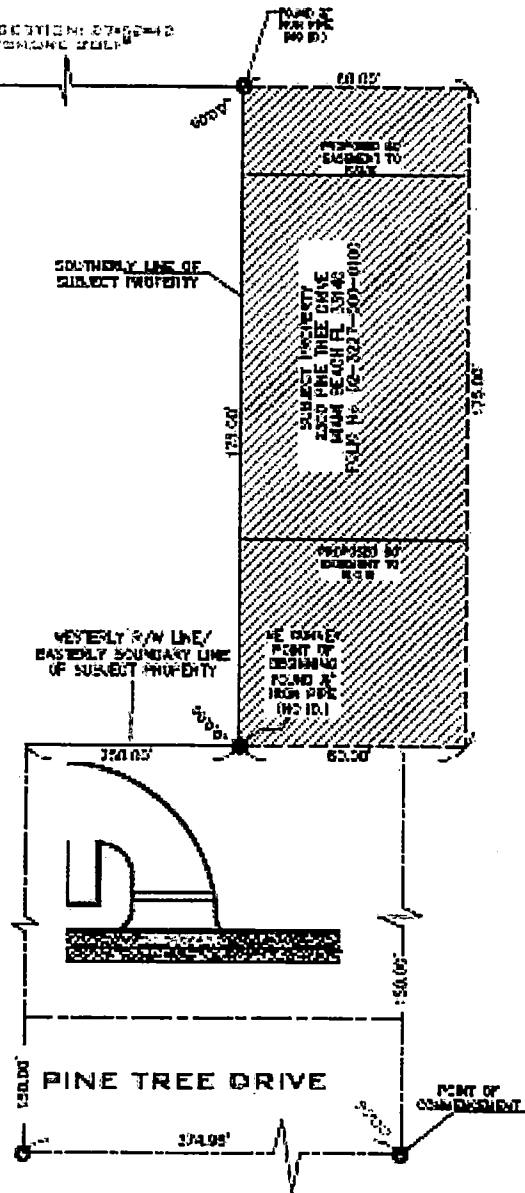
**LEGAL DESCRIPTION OF  
PROPOSED EASEMENT:**

A 10,500 SQUARE FOOT AREA FOR INGRESS, EGRESS AND HEAVEN AND CONSTRUCTION STAGING PURPOSES ALONG A PORTION OF LAND IN THE SE 1/4 OF SECTION 27, TOWNSHIP 33 SOUTH, RANGE 42 EAST, DADE COUNTY, FLORIDA

BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT A POINT ON THE EASTERLY LINE OF PINE TREE DRIVE AT THE INTERSECTION WITH THE NORTHERLY LINE OF WEST 25TH STREET, AS SHOWN ON THE PLAT OF FLAMING TERRACE EXTENSION, RECORDED IN PLAT BOOK 38, PAGE 81, PUBLIC RECORDS OF DADE COUNTY, FLORIDA, THENCE RUN SOUTHERLY, ALONG THE EASTERLY LINE OF PINE TREE DRIVE FOR A DISTANCE OF 374.98 FEET TO A POINT, THENCE RUN WESTERLY, AT RIGHT ANGLE TO THE EASTERLY BOUNDARY LINE OF SUBJECT PROPERTY, SAID LINE ALSO BEING THE WESTERLY HIGH-OF-WAY LINE OF PINE TREE DRIVE FOR A DISTANCE OF 150.00 FEET TO THE POINT; THENCE NORTH ALONG THE EASTERLY BOUNDARY LINE OF SUBJECT PROPERTY FOR A DISTANCE OF 200.00 FEET TO THE POINT OF BEGINNING, SAID POINT ALSO BEING THE NORTHERLY CORNER OF SUBJECT PROPERTY; THENCE CONTINUE ALONG THE LAST DESCRIBED COURSE FOR A DISTANCE OF 80.00 FEET; THENCE WEST AT RIGHT ANGLE (90°) FOR A DISTANCE OF 175.00 FEET; THENCE SOUTH AT RIGHT ANGLE (90°) FOR A DISTANCE OF 60.00 FEET; THENCE EAST AT RIGHT ANGLE (90°), ALONG THE NORTHERLY BOUNDARY LINE OF SUBJECT PROPERTY FOR A DISTANCE OF 175.00 FEET TO THE POINT OF BEGINNING.

SAID LANDS LYING AND BEING IN MIAMI DADE COUNTY, FLORIDA AND CONTAINING 10,500 SQ. FT. OR 0.241 ACRES MORE OR LESS.



SHEET 2 NOT VALID WITH OUT SHEET 1	
JOB NO NUMBER: 02-2007-000-0100	
LEGEND & ABBREVIATION - SKETCH AND LEGAL	
Project No.: 1002-144 - SKETCH AND LEGAL	
Drawn by: M.C.	SKETCH
Approved by: AM	SHEET 2 OF 2
Date: 03-21-2010	Scale: 1" = 40'



2485 S.W. 87th AVENUE  
SUITE "201"  
MIAMI, FL 33174  
PHONE: (305) 556-4002  
FAX: (305) 556-4002  
EMAIL:  
JFE@LMSURVEYING.COM