

p ① ✓ 8/27/15 (L)

CITY MANAGER

DOCUMENT ROUTING FORM

2015 AUG 20 PM 3: 41

NAME OF DOCUMENT:

Boundary Line Settlement Agreement

Approved Comm. Mtg. on: 08/18/15 CAM #: 15-0970 ITEM #: CR-10

Routing Origin: CAO Also attached: copy of CAM Original Document

1) **City Attorney's Office:** Approved as to Form / # One Original Delivered to City Manager on August 20, 2015.

Lynn S. Solomon

CIP FUNDED YES NO
Capital Investment / Community Improvement Projects

Capital Investment / Community Improvement Projects defined as having a life of at least 10 years and a cost of at least \$50,000 and shall mean improvements to real property (land, buildings, fixtures) that add value and/or extend useful life, including major repairs such as roof replacement, etc. Term "Real Property" include: land, real estate, realty, real.

2) **City Manager:** Please sign as indicated and forward One original to Mayor.

3) **Mayor:** Please sign as indicated and forward One original to Clerk for attestation and City seal.

INSTRUCTIONS TO CLERK'S OFFICE

4) **City Clerk:** Please return One original document to Laura Comer, CAO.

Original Route form to Laura Comer, CAO, Extension 5036

executed + unrecorded

Prepared by and Return to:

Nectaria M. Chakas, Esq.
Lochrie & Chakas, P.A.
1401 E. Broward Boulevard, Suite 303
Ft. Lauderdale, FL 33301
Folio Nos: 504211012080 and 504211012070

BOUNDARY LINE SETTLEMENT AGREEMENT

This Boundary Line Settlement Agreement ("Agreement") is entered into this 24th day of August, 2015 by and between Brickell Lot, LLC a Florida limited liability company ("Brickell") and the City of Fort Lauderdale Florida ("City"), a Florida municipal corporation existing under the laws of the State of Florida.

WHEREAS, Brickell owns Lots 18 and 19 of Block 36 of the Colee Hammock Plat recorded in Plat Book 1, Page 17 of the public records of Broward County, Florida located at 1322 Brickell Drive ("Brickell Property"); and

WHEREAS, the City of Fort Lauderdale ("City") owns Lots 14, 15, 16 and 17 of Block 36 of the Colee Hammock Plat recorded in Plat Book 1, Page 17 of the public records of Broward County, Florida upon which it operates Colee Hammock Park ("City Property"); and

WHEREAS, the above referenced Plat of Colee Hammock was recorded approximately ninety-four years ago and has no specific measurements shown for Lot 18; and

WHEREAS, Brickell and the City have, in the past, had conflicting opinions on the exact location of the boundary between the Brickell Property and the City Property and specifically the location of the boundary line between Lot 17 and Lot 18 of the Colee Hammock Plat; and

WHEREAS, the disputed area is shown on Exhibit A-1, attached hereto and made a part hereof ("Disputed Area"), and Brickell and/or its predecessor, are currently and have in the past been paying real estate taxes based on Brickell, or its predecessor, owning all of the Disputed Area; and

WHEREAS, the parties wish to amicably resolve the exact location of the boundary in a way which assures that there is certainty as to the boundary line; and

WHEREAS, the City Commission of Fort Lauderdale has approved this Agreement and the Actions to be taken pursuant hereto by unanimous consent of the entire City Commission of the City of Fort Lauderdale, Florida.

NOW, THEREFORE, be it agreed to by and between the parties as follows:

Section 1. The above recitals are true and correct and made a part hereof as if fully set forth herein.

Section 2. Each party shall take title, control and possession of one half of the disputed area (as shown on Exhibit A-1) in settlement of this dispute. The parties agree that the new boundary line between lot 17 and lot 18 is as shown on the survey attached as **Exhibit A-2**, attached hereto and made a part hereof (the "New Boundary Line").

Section 3. Brickell shall bear all cost and expenses arising from this Agreement and settlement of this dispute, including, without limitation, recording fees, documentary stamps, costs to remove the existing fence located on the west side of Colee Hammock Park. In addition, Brickell shall, at its own cost and expense, install and at all times maintain or cause to be maintained a new wall or fence along the new boundary line as shown on Exhibit A-2 and according to the specifications and satisfaction of the City. Brickell, at its expense, shall secure all permits and licenses to construct said wall or fence and shall comply with all laws and ordinances related thereto.

Section 4. The boundary line established by this Agreement and as shown on the surveyor's sketch attached hereto as Exhibit A-2 shall be hereafter the "New Boundary Line" which shall hereinafter be permanent and irrevocable, and Brickell does hereby remise, release, convey and quit-claim unto the City its interest, if any, in the easterly one half of the Disputed Area as shown on the surveyor's sketch attached hereto as Exhibit A-2, and the City does hereby remise, release, convey and quit-claim unto Brickell its interest in the westerly one half of the Disputed Area as shown on the Survey attached hereto as Exhibit A-2. In addition, both parties shall sign Mutual Releases the form and content of which shall be acceptable to the attorneys' for both parties.

Section 5.

5.1 In the event that Brickell fails to commence to maintain, make repairs or take such actions required by this Agreement and such default(s) shall continue for a period of thirty (30) days after written notice to Brickell by City, it is declared that City has the option and right to take such action which was required to be taken by Brickell at Brickell's sole cost and expense. Brickell shall then be liable for payment to the City for all reasonable and necessary costs and expenses incurred by City in connection with the performance of the action or actions plus a surcharge of five percent (5%) for amounts up to One Thousand Dollars (\$1,000) and ten percent (10%) for amounts over One Thousand Dollars (\$1,000) and Brickell shall reimburse City within sixty (60) days following written demand therefor. Interest shall accrue on the unpaid amount at the rate of twelve (12.0%) percent per annum, compounded monthly, but in no event shall interest exceed the highest amount allowed by Florida law. The City's demand for such payment shall include reasonable documentation supporting the expenses incurred by City. If a dispute arises as to the need for, or amount due to the City for repairs or maintenance undertaken by the City in accordance with this Agreement, and such dispute is not resolved within forty-five (45) days after the date that the City makes the original written demand for

payment, then Brickell shall pay to City the undisputed amount (if any) and shall provide the City with a bond or other security reasonably acceptable to the City for the disputed amount pending a resolution of the dispute by negotiation or litigation.

5.2 If Brickell does not make the payments required by Section 5.1 above within the sixty (60) day period set forth therein, then the City shall have a right to record a Claim of Lien upon the Brickell Property, which Claim of Lien may be for all reasonable and necessary costs and expenses of any cure undertaken by the City in accordance with Section 5.1 above and reasonable attorneys' fees and costs associated therewith. The Claim of Lien shall be effective upon the recording of a Claim of Lien in the Public Records of Broward County, Florida, which Claim of Lien shall state all amounts due and owing to the City. The Claim of Lien may be foreclosed by City in the same manner as provided by law for foreclosure of mortgage liens. The Claim of Lien shall continue until payment to the City of the amounts set forth in the Claim of Lien (at which time the City shall record a satisfaction of such lien). In addition to the Claim of Lien, the City shall have all other rights and remedies granted to it at law or in equity for Brickell's failure to reimburse the City pursuant to Section 5.1 above. Brickell shall be entitled to pursue all legal and equitable remedies regarding the amount or existence of any such lien.

5.3 In the event that the City has provided the notice described in subparagraph 5.1, but Brickell has failed to cure or to commence and diligently pursue cure of the default(s), and the City cures such default(s), makes such repairs or undertakes such protection or maintenance or take other actions described herein, and Brickell fails to make payment in accordance with Section 5.1, then Brickell shall be in default under this Agreement. Such a default shall not arise where Brickell has paid the undisputed amount and secured any disputed amount, or where Brickell pays the costs of cure as set forth in Section 5.1 above prior to a judicial determination of a default. Upon judicial determination of such a default the City shall be entitled to a judgment of specific performance of this Agreement and the City shall have the right to exercise the options provided herein.

Section 6. The parties shall cooperate to effectuate the spirit and intent of this Agreement and shall execute such deeds or other documents as reasonably necessary for that purpose. Cooperation shall not be construed to require the City to approve any application for development or application related thereto.

Section 7. Notices required by this Agreement shall be deemed delivered upon mailing by certified mail, return receipt requested, to the following persons and addresses:

AS TO CITY:

City Manager
City of Fort Lauderdale
100 North Andrews Avenue
7th Floor
Fort Lauderdale, FL 33301

WITH A COPY TO: City Attorney
City of Fort Lauderdale
100 North Andrews Avenue, 7th Floor
Fort Lauderdale, FL 33301

AS TO BRICKELL: Brickell Lot, LLC
Attention: James Allen
1310 Brickell Drive
Fort Lauderdale, FL 33301

WITH A COPY TO: Stephen J. Simmons, Esq.
Mombach, Hardin, Boyle & Simmons, P.A.
Plaza 100 – Suite 1000
100 NE 3rd Avenue
Ft. Lauderdale, FL 33301

Either party may change the name or address of the person to receive notice by providing written notice as required above.

Section 8. If any part of this Agreement is found to be in conflict with applicable laws, such part shall be null and void insofar as it is found in conflict with the laws of the State of Florida, but the remainder of the Agreement shall be and remain in full force and effect.

Section 9. Each person executing this Agreement on behalf of either party individually warrants that he/she has full legal authority to execute this Agreement on behalf of the party for whom he/she is signing, and to bind and obligate such party and this Agreement shall be binding on the successors and assigns of each Party with respect to all provisions contained in this Agreement.

Section 10. This Agreement shall take effect on the date the last party affixes his signature hereto (“Effective Date”).

Section 11. Both parties have decided that it is in their best interest to resolve this dispute rather than engage in costly and time consuming litigation. However, execution of this Agreement shall not be deemed an admission regarding the merits of either party’s claims or demands.

Section 12. If approved by unanimous decision of the City Commission, then all actions and exchange of documents shall be completed within 60 days from the Effective Date.

Section 13. The terms and conditions of this Agreement shall be deemed a covenant running with the land (the Brickell Property and the City Property) and shall be binding on the heirs, successors and/or assigns of each party.

Section 14. In the event that suit is brought for the enforcement of this Agreement or any of the provisions hereof, or as the result of any alleged breach thereof, the successful party to

such suit shall be entitled to be paid by the losing party all costs, expenses and reasonable attorneys' fees incurred at all tribunal and appellate levels.

Section 15. This Agreement shall be recorded in the public records of Broward County, Florida and Brickell shall bear the expense of recording.

IN WITNESS WHEREOF, City and Brickell have executed this Agreement by their duly authorized officers on the day and year first above written

Signed, Sealed and Delivered in the Presence of:

CITY OF FORT LAUDERDALE, a Florida municipal corporation

By: Janette A. Johnson
Name: Janette A. Johnson

By: [Signature]
John P. "Jack" Seiler, Mayor

By: [Signature]
Name: Maxine A. Singh

By: Wendy Gonzalez
Name: Wendy Gonzalez

By: [Signature]
Lee R. Feldman, City Manager

By: [Signature]
Name: ANA S. Penedo

ATTEST: [Signature]

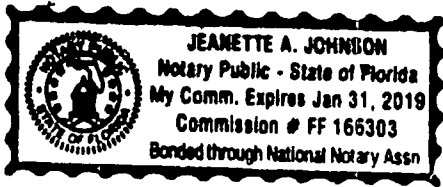
~~Jonda Joseph, City Clerk~~
JEFFREY A. MEDARELLI

APPROVED AS TO FORM:

[Signature]
Lynn Solomon, Asst. City Attorney

STATE OF FLORIDA)
)SS:
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this 24th day of August, 2015, by John P. "Jack" Seiler, Mayor of the CITY OF FORT LAUDERDALE, a municipal corporation of Florida, who (check one) is personally known to me or has produced _____ as identification.

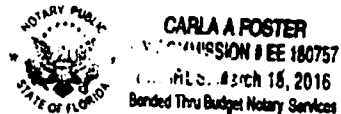


Jeanette A. Johnson
Print Name: Jeanette A. Johnson
NOTARY PUBLIC
State of Florida
My Commission Expires:

STATE OF FLORIDA)
)SS:
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this 24 day of August, 2015, by Lee R. Feldman, City Manager of the CITY OF FORT LAUDERDALE, a municipal corporation of Florida, who (check one) is personally known to me or has produced _____ as identification.

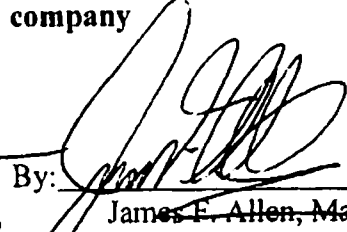
Carla Foster
Print Name: CARLA FOSTER
NOTARY PUBLIC
State of Florida
My Commission Expires:



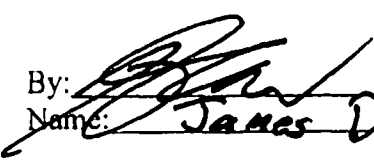
Signed, Sealed and Delivered in the Presence of:

BRICKELL LOT, LLC, a Florida limited liability company

By: Melisa A. Martinez
Name: Melisa A. Martinez

By: 
Name: James F. Allen, Manager

By: Linda Weiskopf
Name: LINDA WEISKOPF

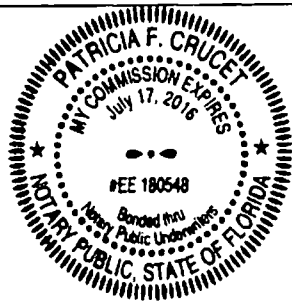
By: 
Name: James D. Allen

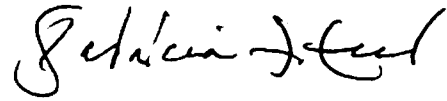
By: Isabel C. Allen
Name: Isabel C. Allen, Manager

By: M. Martinez
Name: M. Martinez

STATE OF FLORIDA)
)SS:
COUNTY OF BROWARD)

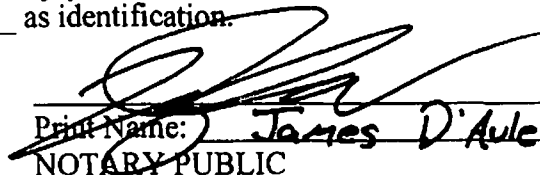
The foregoing instrument was acknowledged before me this 10th day of August, 2015, by James F. Allen, as Manager of Brickell Lot, LLC, a Florida limited liability company who (check one) is personally known to me or [] has produced _____ as identification.




Print Name: Patricia F. Crucet
NOTARY PUBLIC
State of Florida
My Commission Expires: July 17, 2016

New Jersey
STATE OF ~~FLORIDA~~)
)SS:
COUNTY OF ~~BROWARD~~)
Atlantic

The foregoing instrument was acknowledged before me this 14 day of August, 2015, by Isabel C. Allen, as Manager of Brickell Lot, LLC, a Florida limited liability company who (check one) is personally known to me or [] has produced _____ as identification.


Print Name: James D'Aulerio
NOTARY PUBLIC
State of ~~Florida~~ New Jersey
My Commission Expires:

JAMES M. D'AULERIO
Notary Public of New Jersey
My Commission Expires July 10, 2019
My ID# is 50000248

**Exhibit A-1
Disputed Area**



McLAUGHLIN ENGINEERING COMPANY
 400 NORTHEAST 3rd AVENUE
 FORT LAUDERDALE, FLORIDA, 33301
 ENGINEERS - SURVEYORS
 (LB# 286)

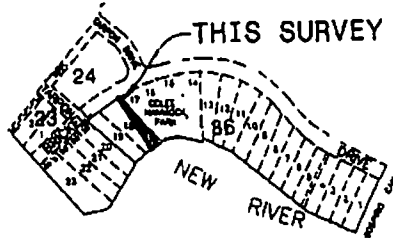
SURVEY EXHIBIT A-1
"DISPUTED AREA"

PHONE: (954) 763-7811

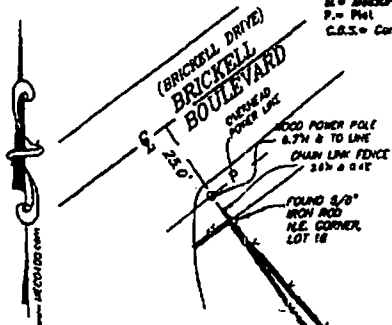
FAX: (954) 763-7815

o Indicates Marker
 Scale 1" = 30'

LEGEND
 Md. Cap. = McLaughlin Cap
 Elev. = Elevation
 1/2" = 10'
 G/S = G/Smet
 Conc. = Concrete
 M = Measured
 P. = Plat
 C.B.S. = Concrete Block Street

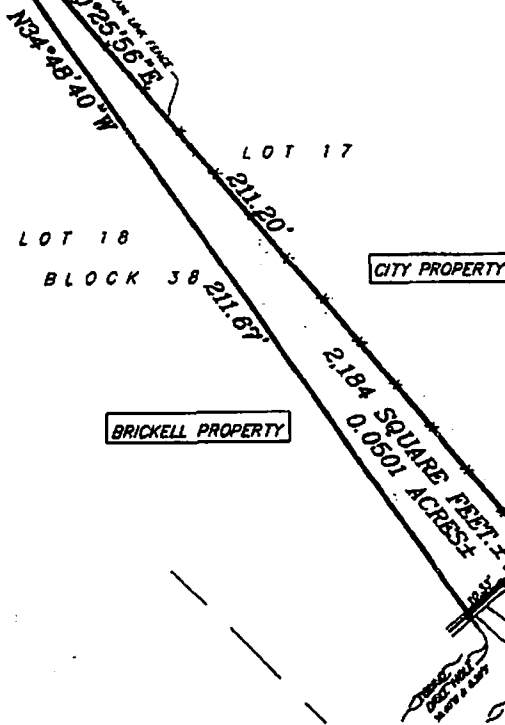


Block Plan
 Not To Scale



SURVEY EXHIBIT

Portion of Lot 18, Block 38, COLEE HAMMOCK, according to the Plat thereof, as recorded in Plat Book 1, Page 17 of the public records of Broward County, Florida.



NOTES:

- This survey reflects all easements and rights-of-way, as shown on above referenced record plat. The subject property was not abstracted for other easements, road reservations or rights-of-way of record by McLaughlin Engineering Co.
- Legal Description does not infer Title or Ownership.
- Underground Improvements, if any, not located.
- Bearings shown hereon refer to assumed Datum and assume the East Line of Lot 18 as South 34°48'40" East.

CERTIFICATION:

We hereby certify that this survey meets the "Standards of Practice" as set forth by the Florida Board of Professional Land Surveyors in Chapter 5J-17.05 Florida Administrative Code, pursuant to Section 472.027, Florida Statutes.

Dated at Fort Lauderdale, Florida, this 27th day of May, 2015.

McLAUGHLIN ENGINEERING CO.

Jerald A. McLaughlin
 Registered Land Surveyor No. 5269
 State of Florida

"NOT VALID UNLESS SEALED WITH AN EMBOSSED SURVEYOR'S SEAL"

FIELD BOOK NO. N/A
 JOB ORDER NO. V-0326
 C:\RAY\2015\10326.dwg 5/27/2015 12:59:48 PM EST

DRAWN BY: RT
 CHECKED BY: _____

EXHIBIT A-2
New Boundary Line



McLAUGHLIN ENGINEERING COMPANY
 400 NORTHEAST 3rd AVENUE
 FORT LAUDERDALE, FLORIDA 33301
 ENGINEERS - SURVEYORS
 (LB# 886)

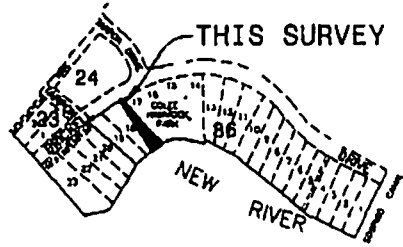
SURVEY EXHIBIT A-2
"NEW BOUNDARY LINE"

PHONE: (954) 763-7811

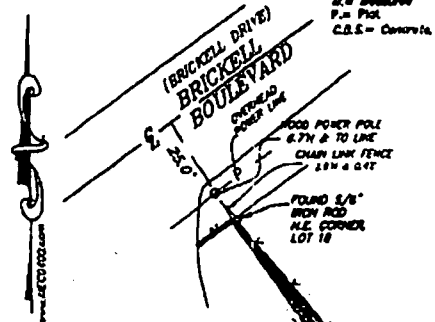
FAX: (954) 763-7615

o Indicates Marker
 Scale 1" = 30'

Legend
 M.L. Cap. = McLaughlin Cap
 D.L. = Deviation
 W. = With
 O/S = Offset
 C.S. = Concrete
 M. = Measured
 P. = Plot
 C.B.S. = Concrete, Block, Stone

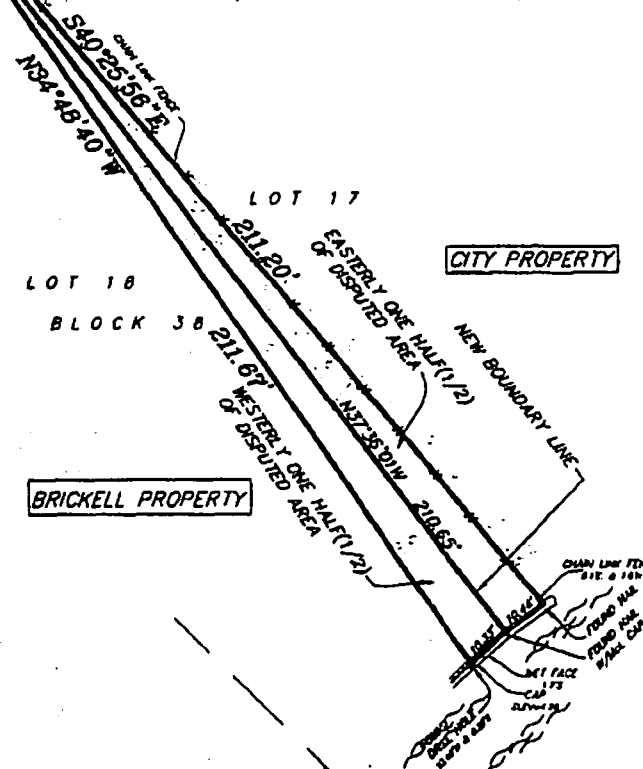


Block Plan
 Not To Scale



SURVEY EXHIBIT

Portion of Lot 18, Block 36, COLEE HAMMOCK, according to the Plat thereof, as recorded in Plat Book 1, Page 17 of the public records of Broward County, Florida.



NOTES:

1. This survey reflects all easements and rights-of-way, as shown on above referenced record plat. The subject property was not abstracted for other easements, road reservations or rights-of-way of record by McLaughlin Engineering Co.
2. Legal Description does not infer Title or Ownership.
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Jerald A. McLaughlin
 Registered Land Surveyor No. 5269
 State of Florida

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FIELD BOOK NO. N/A
 JOB ORDER NO. V-0326
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DRAWN BY: RT
 CHECKED BY: _____