

EP# 1877
Riverwalk
& Cheesecake
Cafe

#1 & 2

AMENDMENT TO LEASE AGREEMENT

Item Segment No. : N/A
State Project No. : 86010-2112
Federal Proj. No. : N/A
State Road No. : 5/US 1
County : Broward
Parcel No. : FDOT R/W above New River Tunnel

That lease between the State of Florida Department of Transportation, **Lessor**, and the City of Fort Lauderdale, **Lessee**, originally dated January 12, 1999, is hereby amended to extend the lease term of said agreement. Paragraph 1. of the original lease provided for a term of twenty (20) years beginning January 12, 1999 and ending January 11, 2019.

Said paragraph has been amended to a lease term of forty (40) years beginning January 12, 1999 and ending January 11, 2039. This Agreement may be renewed for an additional forty (40) year term at Lessee's option.

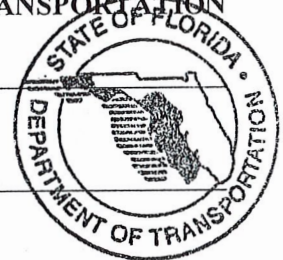
All provisions, terms and conditions in the original Lease Agreement that are not inconsistent with the above revisions shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on 5/23 2002.

LESSOR:

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

By: Rick Chesser
Rick Chesser, P.E., District Secretary



Attest: Maria Gutierrez
Executive Secretary

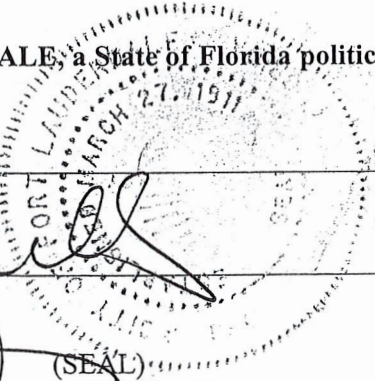
FDOT Attorney
Legal approved as to form and content

LESSEE:

CITY OF FORT LAUDERDALE, a State of Florida political corporation

By: Jim Naugle
Jim Naugle, Mayor

Attest: [Signature]
City Clerk



By: [Signature]
City Manager

Approved as to form
Sharon P. Miller
asst. City Attorney

RESOLUTIONS

**Amendment to Lease Agreement –
Florida Department of Transportation (FDOT) –
Right-of-Way Above Henry E. Kinney Tunnel for Linear Park**

(R-1)

A resolution authorizing the proper City officials to execute an amendment to the lease agreement with FDOT to extend the City's lease of FDOT right-of-way above the Henry E. Kinney Tunnel from 20 years to 40 years with a right to renew for an additional 40 years at lessee's option.

Recommend: Introduce resolution.
Exhibit: Memo No. 02-498 from City Manager.

Demolition of Buildings

(R-2)

At the February 21, 2002 and March 21, 2002 Unsafe Structures and Housing Appeals Board meetings, it was recommended that the following buildings be demolished and the properties be assessed with the appropriate costs:

- a. 205 N.E. 3 Street
- b. 731 N.W. 10 Terrace
- c. 1038 S.W. 5 Place
- d. 1401 N.W. 2 Street
- e. 2616 S.W. 2 Street

Recommend: Introduce resolution.
Exhibit: Memo No. 02-603 from City Manager.

Building Board-Up and Securing Charges

(R-3)

A resolution authorizing the proper City officials to impose liens against such properties for costs associated with boarding and securing the buildings.

Recommend: Introduce resolution.
Exhibit: Memo No. 02-428 from City Manager.

Lot Clearing and Cleaning Charges

(R-4)

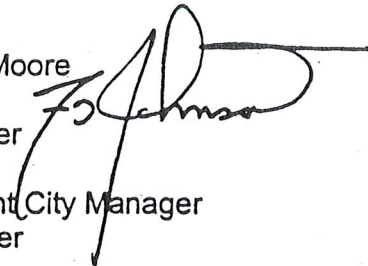
A resolution authorizing the imposition of liens against certain properties for costs associated with clearing and removal of debris located thereon.

Recommend: Introduce resolution.
Exhibit: Memo No. 02-429 from City Manager.

R-1

DATE: April 29, 2002

TO: Mayor Jim Naugle
Vice Mayor Cindi Hutchinson
Commissioner Tim Smith
Commissioner Gloria Katz
Commissioner Carlton B. Moore

FROM: F. T. Johnson, City Manager 

VIA: Gregory A. Kisela, Assistant City Manager
Hector Castro, City Engineer

BY: Peter J. Sheridan III, P.E., Assistant City Engineer

SUBJECT: May 7, 2002 Agenda – Amendment to Lease Agreement – Florida Department of Transportation (FDOT) FDOT Right-of-Way above Henry E. Kinney Tunnel

In January 1999, the City of Fort Lauderdale entered into a 20 year lease agreement with FDOT for their ROW land above the Henry E. Kinney Tunnel, for a linear park, i.e. "Riverwalk". There is no remuneration for the consideration of the lease or this amendment.

The City is now applying for a Florida Inland Navigational District (FIND) grant to fund improvements of Riverwalk near the Stranahan House. A condition of the grant is that the City must have ownership or control of the site of the funded improvements, for twenty five (25) years after the improvement is constructed. Since the current lease term ends eighteen (18) years from now, in 2019, we requested from FDOT their consideration for an extension of the lease to accommodate the grant requirement. FDOT has considered and granted the City's request for an extension, and has already executed the amendment to give us control of the site until January 11, 2039, as well as an option to renew for an additional forty (40) year term at the Lessee's option. FDOT retains the right to cancel on 30 days notice.

We recommend that the City Commission approve the lease extension and authorize the appropriate officials to execute the extension, so that we can move forward with the grant application.

FTJ/GAK/HC/PJS/ccm-02-498

State Project No. 86010-2112
W.P.I. No. N/A
F.A.P. No. N/A
State Road No. 5(US1)
Parcel No. FDOT RW above New River Tunnel
County Broward

THIS AGREEMENT, made this 12 day of January, 1999, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, (hereinafter called the Lessor), whose address is: 3400 W. Commercial Blvd., Ft. Lauderdale, FL 33309 and City of Fort Lauderdale, a political corporation of State of Florida (hereinafter called the Lessee), whose address is: 100 North Andrews Avenue, Fort Lauderdale, Florida 33301

WITNESSETH:

In consideration of One Dollar (\$1.00) and other good and valuable considerations, the Parties agree as follows:

1. Property and Term. Lessor does hereby lease unto Lessee the lands described in Exhibit "A", for a term of twenty(20) years beginning January 12, 1999 and ending January 11, 2019. This Agreement may be renewed for an additional Twenty (20) year term at Lessee's option, subject to the rent adjustment as provided in Paragraph 3 below. Lessee shall provide Lessor ninety (90) days advance written notice of its exercise of the renewal option.

If Lessee holds over and remains in possession of the land after the expiration of the term specified in this Lease, or any renewals of such term, Lessee's tenancy shall be considered a tenancy at sufferance, subject to the same terms and conditions as herein contained in this Lease.

This Lease is subject to all utilities in place and to the maintenance thereof as well as any other covenants, easements, or restrictions of record.

This lease shall be construed as a lease of only the interest, if any, of Lessor, and no warranty of title shall be deemed to be given herewith.

2. Use. The leased land shall be used solely for the purpose of a linear park, i.e., "Riverwalk". If the land is used for any other purpose, the Lessor shall have the option of immediately terminating this Agreement. Lessee shall not permit any use of the land in any manner that would obstruct or interfere with any transportation facilities.

The Lessee will further use and occupy said premises in a careful and proper manner, and not commit any waste thereon. Lessees will not cause, or allow to be caused, any nuisance or objectionable activity of any nature on the premises. Any activities in any way involving hazardous materials or substances of any kind whatsoever, either as those terms may be defined under any state or federal laws or regulations or as those terms are understood in common usage, are specifically prohibited. The Lessee will not use or occupy said premises for any unlawful purpose and will, at Lessee's sole cost and expense, conform to and obey any present or future ordinances and/or rules, regulations, requirements and orders of governmental authorities or agencies respecting the use and occupation of said premises.

3. Rent. Lessee shall pay to Lessor as rent, on or before the first day of each rent payment period, the sum of N/A plus tax, for each N/A of the term. If this Agreement is terminated prior to the end of any rent payment period, the unearned portion of any rent payment, less any other amounts that may be owed to Lessor, shall be refunded to Lessee. Lessee shall pay any and all state, county, city and local taxes that may be due during the term hereof, including any real property taxes. Rent payments shall be made payable to the Department of Transportation and shall be sent to Attention: R/W Surplus Property Management Department, Florida Department of Transportation, 3400 West Commercial Boulevard, Ft. Lauderdale, FL 33309.

The Lessor reserves the right to review and adjust the rental fee biannually and at renewal to reflect market conditions. Any installment of rent not received within ten (10) days after the date due shall bear interest at the highest rate allowed by law from the due date thereof. This provision shall not obligate Lessor to accept late rent payments or provide Lessee a grace period.

4. Improvements. No structures or improvements of any kind shall be placed upon the land without prior approval in writing by the District Secretary for District FOUR of Lessor. Any such structures or improvements shall be constructed in a good and workmanlike manner at Lessee's sole cost and expense. Subject to any landlords lien, any structures or improvements constructed by Lessee shall be removed by the Lessee, at Lessee's sole cost and expense, by midnight on the day of termination of this Agreement and the land restored as nearly as practical to its condition at the time this agreement is executed. Portable or temporary advertising signs are prohibited, and see addendum for additional provisions:

Lessee shall perform, at the sole expense of Lessee, all work required in the preparation of the property or premises hereby leased for occupancy by Lessee, in the absence of any special provision herein contained to the contrary; and Lessee does hereby accept the leased property or premises as now being in fit and tenantable condition for all purposes of Lessee.

Lessor reserves the right to inspect the leased area and to require whatever adjustment to structures or improvements as Lessor, in its sole discretion, deems necessary. Any adjustments shall be done at Lessee's sole costs and expense.

5. Maintenance. Lessee shall keep and maintain the land and any building or other structure, now or hereafter erected thereon, in good and safe condition and repair at Lessee's own expense during the existence of this lease, and shall keep the same free and clear of any and all grass, weeds, brush and debris of any kind, so as to prevent the same becoming dangerous, inflammable or objectionable. Lessor shall have no duty to inspect or maintain any of the land, buildings or other structures, if any, during the term of this Lease; however, Lessor shall have the right, upon twenty-four (24) hours notice to Lessee, to enter the property for purposes of inspection, including conducting an environmental assessment. Such assessment may include but would not be limited to: surveying; sampling of building materials, soil and groundwater; monitoring well installations; soil excavation; groundwater remediation; emergency asbestos abatement; operation and maintenance inspections; and, any other action which might be reasonable and necessary. Lessor's right of entry shall not obligate inspection of the property by Lessor, nor shall it relieve the Lessee of its duty to maintain the property. In the event of emergency due to a release or suspected release of hazardous waste on the premises, Lessor shall have the right of immediate inspection, and the right, but not the obligation, to engage in remedial action, without notice.

6. Indemnification. Lessee shall indemnify, defend, save and hold Lessor, its agents and employees, harmless of and from any losses, fines, penalties, costs, damage, claims, demands, suits and liabilities of any nature, including attorneys fees (including regulatory and appellate fees), arising out of, because of, or due to any accident, happening or occurrence on the leased land or arising in any manner on account of the exercise or attempted exercise of Lessee's rights hereunder, whether the same regards person or property of any nature whatsoever, regardless of the apportionment of negligence, unless due to the sole negligence of Lessor.

Lessee's obligation to indemnify, defend, and pay for the defense or at the Department's option, to participate and associate with the Department in the defense and trial of any claim and any related settlement negotiations, shall be triggered by the Department's notice of claim for indemnification to Lessee. Lessee's inability to evaluate liability or its evaluation of liability shall not excuse Lessee's duty to defend and indemnify within seven days after such notice by the Department is given by registered mail. Only an adjudication or judgment after the highest appeal is exhausted specifically finding the Department solely negligent shall excuse performance of this provision by Lessee. Lessee shall pay all costs and fees related to this obligation and its enforcement by the Department. Department's failure to notify Lessee of a claim shall not release Lessee of the above duty to defend.

7. Insurance. Lessee at its expense, shall maintain at all times during the term of this Lease, public liability insurance protecting Lessor and Lessee against any and all claims for injury and damage to persons or property or for the loss of life or property occurring in, on or about the land arising out of the act, negligence, omission, nonfeasance or malfeasance of Lessee, its employees, agents, contractors, customers, licensees and invitees. Such insurance shall be carried in a minimum amount of not

less than see addendum for bodily injury or death to any one person or any number of persons in any one occurrence and not less than see addendum for property damage. All such policies shall be issued by companies of recognized responsibility licensed to do business in the State of Florida and all such policies shall contain a provision whereby the same cannot be canceled or modified unless Lessor is given at least sixty (60) days prior written notice of such cancellation or modification. Lessee shall provide Lessor certificates showing such insurance to be in place and showing Lessor as additional named insured under the policies. Lessor may require the amount of any public liability insurance to be maintained by Lessee be increased so that the amount thereof adequately protects Lessor's interest. Lessee further agrees that it shall during the full term of this Lease and at its own expense keep the land and any improvements on the land fully insured against loss or damage by fire and other casualty. Lessee also agrees that it shall during the full term of this Lease and at its own expense keep its contents and personal property located on the land fully insured against loss or damage by fire or other casualty and does hereby release and waive on behalf of itself and its insurer, by subrogation or otherwise, all claims against Lessor arising out of any fire or other casualty whether or not such fire or other casualty shall have resulted in whole or in part from the negligence of Lessor.

8. Eminent Domain. Lessee acknowledges and agrees that its relationship with Lessor under this Lease is one of Landlord and Tenant and no other relationship either expressed or implied shall be deemed to apply to the parties under this Lease. Termination of this Lease for any cause shall not be deemed a taking under any eminent domain or other law so as to entitle Lessee to compensation for any interest suffered or lost as a result of termination of this Lease, including but not limited to (i) any residual interest in the Lease, or (ii) any other facts or circumstances arising out of or in connection with this Lease.

Lessee hereby waives and relinquishes any legal rights and monetary claims which it might have for full compensation, or damages of any sort, including but not limited to special damages, severance damages, removal costs or loss of business profits resulting from its loss of occupancy of the leased property specified in this Agreement, or adjacent properties owned or leased by it, when any or all such properties are taken by eminent domain proceedings or sold under the threat thereof. This waiver and relinquishment applies whether (i) this Lease is still in existence on the date of taking or sale; or, (ii) has been terminated prior thereto.

9. Miscellaneous.

a. This Agreement may be terminated by Lessor immediately, without prior notice, upon default by Lessee hereunder, and may be terminated by either party upon Thirty (30) days prior written notice to the other party.

b. In the case of litigation arising out of the enforcement of any terms, covenants or provisions of this Lease, the prevailing party shall be entitled to recover its reasonable attorneys' fees from the non-prevailing party.

c. Lessee acknowledges that it has reviewed this Lease, is familiar with its terms and has had adequate opportunity to review this Lease with legal counsel of Lessee's choosing. Lessee has entered into this Lease freely and voluntarily. This Lease contains the complete understanding of the parties with respect to the subject matter hereof. All prior understandings and agreements, oral or written, heretofore made between the parties and/or between Lessee and the previous owner of the leased property and landlord of Lessee are merged in this Lease, which alone, fully and completely expresses the agreement between Lessee and Lessor with respect to the subject matter hereof. No modification, waiver or amendment of this Lease or any of its conditions or provisions shall be binding upon Lessor or Lessee unless in writing and signed by both such parties.

d. Lessee shall not sublet the leased property or any part thereof, nor assign this Lease, without the prior consent in writing of Lessor, this Lease being executed by Lessor upon the credit and reputation of Lessee. Acceptance by Lessor of rental from a third party shall not be considered as an assignment or sublease.

e. Lessee shall be solely responsible for all bills for electricity, lighting, power, gas, water, telephone and telegraph services, or any other utility or service used on the land.

f. This Agreement shall be governed by the laws of the State of Florida, and any applicable laws of the United States of America.

g. All notices to Lessor shall be sent to the address for rent payments and all notices to Lessee shall be sent to the property address.

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

APPROVED AS TO FORM:

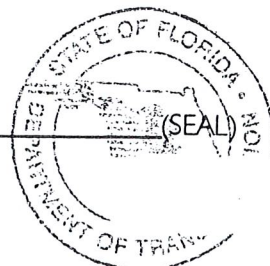
Kare Kameu
District Counsel

LESSOR

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

By: *Rick Chesser*
District Secretary

Attest: *Maria Gutierrez*
Executive Secretary



LESSEE: City of Fort Lauderdale, a State of Florida political corporation.

By: *F. Johnson*
City Manager

By: *[Signature]*

Approved as to form:

Sharon P. Mills
Asst. City Attorney

Title: Mayor

Attest: *[Signature]* (SEAL)

Title: City Clerk

ADDENDUM

This is an Addendum to that certain Lease between the City of Ft. Lauderdale and The State of Florida Department of Transportation dated the 12 day of January, 1999. In addition to the provisions contained in said Agreement, the following terms and conditions shall be deemed to be a part thereof pursuant to Paragraph 7 of said Agreement.

1. All improvement plans for leased area and above New River Tunnel, must be submitted, as required, to F.D.O.T. for approval and/or permits prior to implementation of plans for improvements.
2. The City of Fort Lauderdale will provide landscaping and access around the ventilation room.
3. Notwithstanding the provisions set forth in paragraph 6 of this agreement, the following shall apply: To the extent provided by law, the City shall indemnify, defend, and hold harmless the Department and all its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by the City, its agents, or employees, during the performance of the Agreement, except that neither the City, its agents, or its employees will be liable under this paragraph for any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by the Department or any of its officers, agents, or employees during the performance of the Agreement.
When the Department receives a notice of claim for damages that may have been caused by the City in the performance of services required under this Agreement, the Department will immediately forward the claim to the City. The City and the Department will evaluate the claim and report their findings to each other within fourteen (14) working days and will jointly discuss options in defending the claim. After reviewing the claim, the Department will determine whether to require the participation of the City in the defense of the claim or to require that the City defend the Department in such claim as described in this section. The Department's failure to promptly notify the City of a claim shall not act as a waiver of any right herein to require the participation in or defense of the claim by the City. The Department and the City will each pay its own expenses for the evaluation, settlement negotiations, and trial, if any. However, if only one party participates in the defense of the claim at trial, that party is responsible for all expenses at trial.
4. LESSEE is a governmental entity that is self-insured in an amount acceptable to LESSOR, the insurance provision in paragraph #7 of Lease shall not apply.
5. LESSEE shall be solely responsible for the payment of any damage or injury resulting from any debris tossed from the leased area and New River Tunnel surface into surrounding areas.
6. Florida Department of Transportation must have maintenance and inspection access to the New River Tunnel and surrounding area at all times, and there must be no obstruction to such access.

or other Lessor property, but not as a result of the damage caused by the acts of third parties, Lessor shall restore same to its condition prior to damage.

6. Use of the land for the purpose of a linear park, i.e., "Riverwalk" as described in Paragraph 2 of the Lease, may include but not be limited to landscaping, streetscape improvements, lights, irrigation benches, vending structures, parking and sidewalk cafes.

7. Notwithstanding the provisions of Paragraph 4 of the Lease, City shall be permitted to construct improvements which are similar to existing "Riverwalk" improvements. Upon termination of this lease, Lessor shall advise Lessee if it wishes Lessee to remove the bricks, sidewalk and other ground improvements which exist on the property at the time of termination.

8. Notwithstanding the provisions of Paragraph 9. g. of the Lease all notices which are required or permitted in this Agreement shall be deemed to have been given, delivered or made when a written notice has been deposited in the United States mail, certified or registered mail, return receipt requested, addressed to the Lessee as follows:

City Manager
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, Florida 33301

9. Whenever necessary, the LESSEE will be responsible for removing "graffiti" and debris from subject area during the term of the lease.

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


APPROVED AS TO FORM:

Case Kame
District 4 Senior Attorney

LESSOR:
STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

By: *Rick Chesney*
District Secretary

Attest: *Maria Gutierrez*
Executive Secretary

The seal of the State of Florida Department of Transportation is circular. It features a map of Florida in the center, surrounded by the text "STATE OF FLORIDA" at the top and "DEPARTMENT OF TRANSPORTATION" at the bottom.

WITNESSES

Sheri S. Roberts
Sheri S. Roberts

[Print or type name]

Wonne Brackett Buck
Wonne BRACKETT Buck

[Print or type name]

LESSEE:

CITY OF FORT LAUDERDALE

By:

Jim Naugle, Mayor

By:

City Manager

Attest:

Lucy Meile
City Clerk

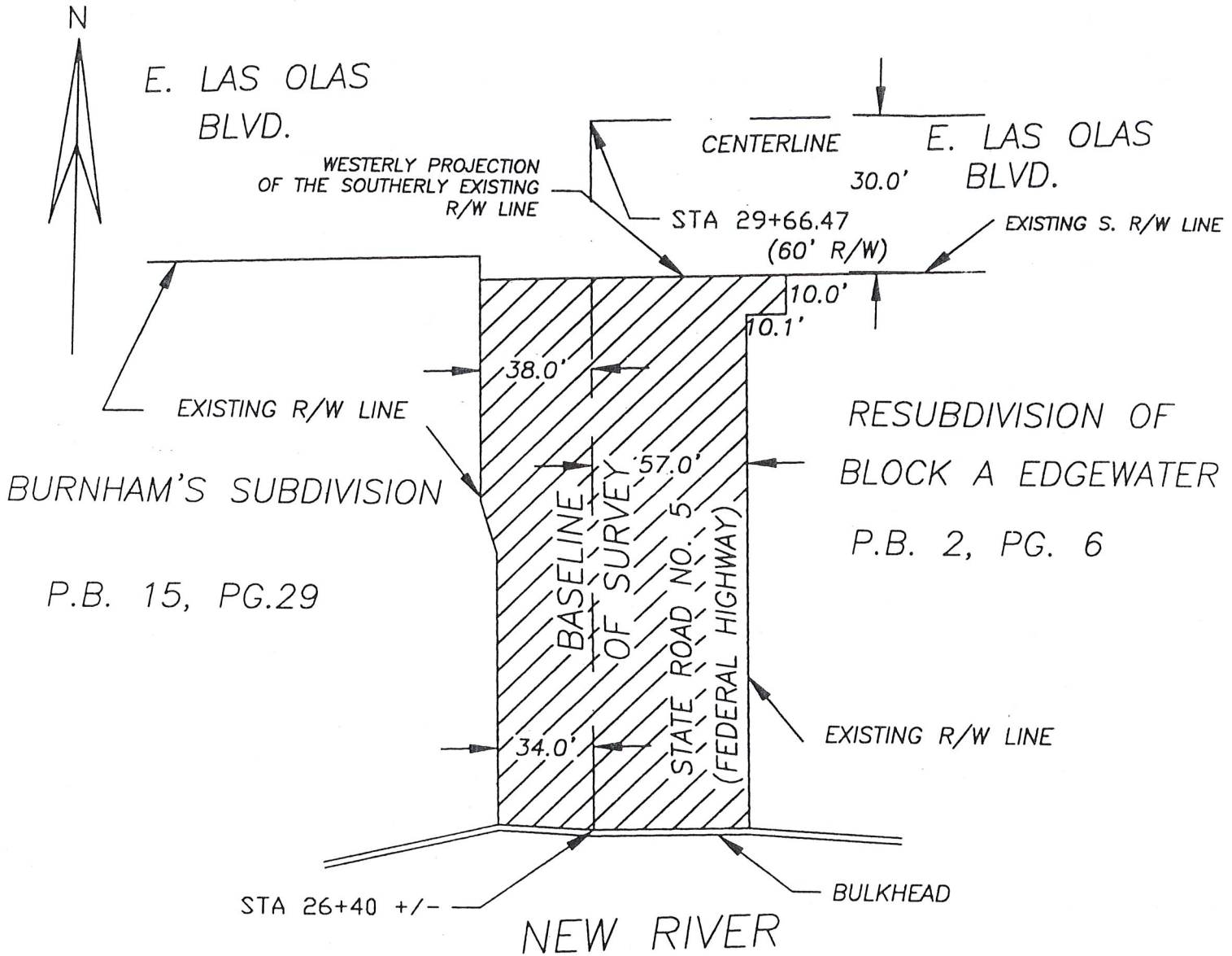
Approved as to form:

Sharon D. Miller
City Attorney

addendum

SKETCH AND DESCRIPTION

THIS IS NOT A SURVEY



LEGAL DESCRIPTION AREA TO BE LEASED FROM DOT

ALL OF THE RIGHT OF WAY OF STATE ROAD NO.5 (FEDERAL HIGHWAY) AS SHOWN ON FLORIDA STATE ROAD DEPARTMENT RIGHT OF WAY MAP, SECTION 8601-112, BOUNDED ON THE SOUTH BY THE BULKHEAD LINE OF THE NEW RIVER AND ON THE NORTH BY THE WESTERLY PROJECTION OF THE EXISTING SOUTH RIGHT OF WAY LINE OF EAST LAS OLAS BOULEVARD (60 FOOT RIGHT OF WAY). SAID LANDS SITUATE, LYING AND BRING IN THE CITY OF FORT LAUDERDALE, BROWARD COUNTY, FLORIDA.

R/W DENOTES RIGHT OF WAY
 STA DENOTES STATION
 P.B. DENOTES PLAT BOOK

Exhibit "A"

ANTHONY R. IRVINE
 PROFESSIONAL SURVEYOR AND MAPPER NO.4420
 STATE OF FLORIDA

CITY OF FORT LAUDERDALE		
PROPOSED FEDERAL HIGHWAY		
LEASE PARCEL		
FROM DOT		
BY: T.I.	ENGINEER	DATE: 3/31/98
CHK'D T.I.	DIVISION	SCALE: NONE