

This instrument prepared by and returned to: City Attorney's Office Sharon P. Miller, Esq., P.O. Box 14250 Ft. Lauderdale, FL 33302

AGREEMENT

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93-31281
20928-0234
D. RABCOH/PAGE
08-02-93 10:07AM

THIS IS AN AGREEMENT, entered into on July 30, 1993, between:

CITY OF FORT LAUDERDALE, a municipal corporation of the State of Florida, hereinafter referred to as "City",

and

GILL HOTELS COMPANY, a Florida corporation, hereinafter referred to as "Developer".

Pursuant to Motion, adopted at its meeting of July 30, 1993, the City Commission of City authorized the proper City officials to enter into this Agreement.

WHEREAS, the Developer has requested the City to grant a permit to construct a pedestrian bridge for public traverse between the west side of State Road A-1-A to the beach.

WHEREAS, the City has found that the construction of such Bridge in the location proposed is in the best interest of the public, subject to certain terms and conditions.

In consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

1. **Premises.** The subject of this Agreement consists of an area (describe stairwell/elevator area) (herein "Premises") and a portion of air space beginning and including an area which is a part of the structure known as the Sheraton Yankee Trader Beach Resort located at 303 North Atlantic Boulevard, continuing to the easternmost side of the Hotel and continuing eastward over State Road A-1-A and ending on an area lying east of State Road A-1-A, the Premises being more particularly described in Exhibit "A" attached hereto and incorporated herein.
2. **Term.** The term of this Agreement is for a period of fifty (50) years following its commencement unless sooner terminated or extended as hereinafter provided.
3. **Annual Inspection Fee.** Developer agrees to pay to City for each year of the Agreement Term, annually in advance on the first day of January of each year, an annual inspection fee determined by the City Manager.
4. **Representations.** Developer represents and warrants to City the following:

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(a) that it is an entity authorized to do business in the State of Florida,

(b) that it has obtained, or will use its best effort to obtain, adequate financial resources to construct the improvements specified below and that it has or will obtain adequate financial resources to perform all other obligations imposed by this Agreement,

(c) that it has the requisite business skill and ability to perform the obligations imposed upon it by this Agreement, including but not limited to the obligation to operate the Premises for the purposes intended, and

(d) that it will have obtained all of the permits and approvals from all governmental agencies having jurisdiction over the Premises and the construction of the Bridge, including the approval of the State of Florida to construct the Bridge over the State's right-of-way prior to the issuance of the building permit by City for any portion of the Bridge which requires approval from other governmental agencies.

5. Construction of Improvements. The Premises shall be used as the site for the construction and maintenance of a pedestrian bridge ("Bridge") for the public, and shall be used for no other purpose whatsoever unless otherwise approved by the City Commission of City. Developer shall construct the Bridge in accordance with the following terms and conditions:

(a) Developer shall prepare construction plans and specifications based on the site plan approved by the City Commission attached hereto as Exhibit "B". The plans and specifications shall contain a schedule of construction. The aforementioned plans and specifications shall be approved in accordance with the laws, regulations and rules of all governmental entities with jurisdiction over the construction and maintenance of the Bridge.

(b) Developer shall obtain a building permit for the construction of the Bridge and commence construction of the Bridge not later than thirty (30) days after the date this Agreement is fully executed by City and Developer unless the time for commencement is extended by the City Manager. Further, Developer agrees to complete construction of the structure within one hundred sixty (160) days of the date it commences such construction. Failure to commence and complete construction within the aforementioned periods of time may be treated as a default by Developer and the provisions of Paragraph 17 of this Agreement shall take effect.

(c) Developer shall be responsible for all costs and fees associated with the planning, permitting and construction of the Bridge. City permit fees may require special assessment for inspection and coordination of connections to and alterations of existing or future City facilities that may be required. The Developer agrees that the location and finish grades of the improvements shown on Exhibit "B" will be indicated on the site and approved by city prior to commencement of construction.

(d) Developer agrees that it will replace any and all public improvements which are damaged as a result of the construction of the Bridge utilizing the same quality of materials and workmanship as approved by the City Engineer.

(e) Before the commencement of the construction of the Bridge, Developer shall obtain and provide to City or require its contractor to furnish a surety bond in a form, content and amount acceptable to City and payable to City in a sum equal to the cost of constructing the Bridge which guarantees to City the completion of the construction of the Bridge and which guarantees the performance of the work necessary to complete the Bridge as well as full payment of all suppliers, materialmen, laborers or subcontractors employed to provide services to complete the Bridge, from a surety company having at least an A Best's Policy holder's rating and a Class VII Best's Financial Size Category. The Developer has entered into a contract for construction of the Bridge in the amount of six hundred thirty-seven seven hundred ninety-three dollars (\$637,793) and agrees to provide a bond in at least this amount. Developer agrees to deliver or cause to be delivered the form of the surety bond to be provided and any other documentation requested by City reasonably necessary to show that Developer has the ability to meet the requirements of providing a surety bond as provided in this paragraph 5, at least four (4) days prior to the issuance of the building permit. City shall notify Developer in writing in the event the surety bond is not acceptable to City within three (3) days of the City's receipt of same specifying the defects. City's approval of the surety bond will not be withheld unreasonably.

Such bond shall remain in effect for one (1) year after completion of the project and Developer will correct any defective or faulty work or materials which appear within one (1) year after completion of the Bridge.

(f) City hereby approves the location of that portion of the Bridge on City property described in Exhibit "C" and over those portions of City property located within the Premises. The Bridge and all improvements and structures associated thereto and constructed on the

Premises shall be the property of the Developer and shall become the property of City only upon termination of this Agreement as provided herein.

6. Use of Premises. Simultaneous with and as a condition of the issuance by City of a certificate of occupancy for the Bridge the Developer shall execute and deliver to City a perpetual public pedestrian easement over, under and through the Premises and the Bridge erected therein. Such easement shall be in form attached hereto as Exhibit "D". This easement shall grant to the public ingress and egress on the Bridge and Premises at all times subject to such regulations approved by City. This easement shall survive the termination of this Agreement. Unless otherwise directed by the City Manager, both sides of the Bridge shall be open to the public between the hours from sunrise to sunset except when closure is required for public safety or maintenance as determined by the City Manager. In no event will the Bridge be opened solely for the use of the Developer and if the Bridge is open for use, it shall be open for the use of the public.

7. Repairs and Maintenance. Developer shall not commit or suffer waste or injury to the Premises or the Bridge constructed thereon. Developer will, at its own cost and expense, at all times cause the Bridge to be maintained, adequately lighted, in good condition, repair, clean, and free of rubbish and other hazards to persons using the Bridge. Developer further covenants and agrees, to make or cause to be made any and all repairs or replacements, ordinary or extraordinary, structural or otherwise, necessary to keep in good physical order, appearance and condition the Premises and Bridge, inside and outside, including but not limited to, repairs to and replacement of foundation, walls, roofs, floors, ceilings, wires or conduits for electricity, and fixtures. All repairs and replacements shall be at least of equal quality and class to the original work. The color of the Bridge shall be white unless otherwise approved by the City Manager. When making such repairs, replacements and maintenance Developer shall comply with all laws, ordinances, codes and regulations in effect. Such maintenance and repair shall include but not be limited to:

- (a) Removal of all papers, debris, filth and refuse;
- (b) Washing walls and floors and sweeping Bridge areas;
- (c) Maintaining only such signs as approved in accordance with plans and specifications approved by the City;
- (d) Providing cleaning, maintenance and lighting as needed;
- (e) Maintenance of the Bridge free from any obstructions not required for their intended use;
- (f) Removing any signs not permitted by City;

- (g) Providing reasonable security;
- (h) Painting and repairing Bridge.

8. **Emergencies.** Within sixty (60) days of this Agreement, the Developer shall provide in writing to the City an emergency contact name and phone number. If an emergency situation arises with respect to the Bridge where the Bridge presents an imminent threat to the health or safety, the City shall make reasonable efforts to provide telephone notice to the contact person. If following that notice, the Developer fails to take timely action to correct the emergency situation, and allowing the emergency situation to continue would pose an imminent threat to health or safety, the City may undertake such limited actions as are necessary to eliminate the emergency; and the City shall be entitled to recover its costs of cure from the Developer in accordance with Paragraph 19.

9. **Alterations.** Developer may, at its own sole cost and expense, at any time and from time to time make such changes, alterations, replacements, improvements or additions in and to the Premises, and the structures and improvements thereon, including the demolition of any structure and improvements or structures that hereinafter may be situated or erected on the Premises, provided, however, that the plans and specifications for any such change, alteration, replacement, improvement or addition shall be approved in the same manner as the initial plans for construction were approved and as required by this Agreement.

10. **Damage to Public Property.** In the event the construction, operation or maintenance of the Bridge or Premises causes any damage whatsoever to any public property, including but not limited to, damage to State Road A-1-A and the public beach areas, erosion of sand, and damage to the sidewalk areas on either side of State Road A-1-A, then Developer shall be responsible for the cost of repair and shall, at City's option, make said repairs or reimburse City for the cost of same.

11. **Modification of State Road A-1-A.** In the event the governing authority having jurisdiction over State Road A-1-A wishes to modify the configuration of State Road A-1-A during the term of this Agreement and such roadway modification requires alteration or modification of the Bridge or any part thereof, Developer agrees to expeditiously make such modification at its sole cost and expense upon notice by the governing authority.

12. **Condemnation.** In the event the Premises or Bridge is taken by any public authority (including the City) under the power of eminent domain, or is sold to a public authority under threat or instead of such a taking this Agreement shall cease as of the day that the public authority takes possession or title, whichever is earlier.

All compensation awarded or paid on a total or partial taking of the Premises or Bridge including the value of the Bridge and all improvements will belong to and be the property of the City without any participation by the Developer. The Developer has no claim to any such award based on the Developer's agreement with the City or its construction and maintenance of the Bridge. The Developer agrees that it will not prosecute any claim independently or otherwise against the public authority in connection with the taking.

13. Taxes, Assessments and Utility Charges.

(a) Developer shall pay or cause to be paid all real estate taxes, assessments and other similar payments, usual or unusual, extraordinary as well as ordinary, which shall during the term imposed upon, become due and payable, or become a lien upon the Bridge or any part of it, but specifically limited to such taxes or assessments which accrue after the commencement of the term, by virtue of any present or any future law of the United States of America or of the State of Florida or of any county or municipal authority. Developer will, upon request, exhibit receipt for such payments to the City annually. Further, subject to subparagraph (b) below, commencing from the date this Agreement takes effect, Developer shall pay or cause to be paid all operating expenses, such as those for heat, light, electricity, charges for water and sewer, and all costs attributable to the maintenance and operation of all improvements to be erected on the Premises.

(b) The Developer shall have the right to review, by legal proceedings, any taxes, assessments or other charges imposed upon it. If any such taxes, assessments or other charges shall be reduced, cancelled, set aside or to any extent discharged, the Developer shall pay the amount that shall be finally assessed or imposed against the property or adjudicated to be due and payable on any disputed or contested items.

(c) If, as a result of any legal proceedings pursuant to the provisions of subparagraph (b) hereof, there is any reduction, cancellation, setting aside or discharge of any tax or assessment, the refund shall be payable to Developer, and if such refund be made to the City, then and in that event the City shall regard such refund as a trust fund and shall immediately pay over the same to the Developer. The term "legal proceedings" as used in this paragraph shall be construed to include appropriate appeals from any judgments, decrees or orders, and certiorari proceedings.

14. Damage and Destruction. If during the term of this Agreement the structure or improvements owned by Developer on the Premises at the commencement of the term or thereafter

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shall be destroyed or damaged in whole or in part by fire or any other cause, and whether or not such destruction or damage is covered by the insurance policy on the Premises, Developer shall give to City immediate notice thereof, and Developer shall:

- (a) seek the necessary permits from City to repair, replace and rebuild the same or cause the same to be repaired, replaced or rebuilt as nearly as possible to their value and condition immediately prior to such damage or destruction, or
- (b) to the extent that such destruction or damage affected the structures and improvements, or any part thereof, if Developer elects to remove such structures and improvements, or any part thereof, Developer shall seek the necessary permits from City to promptly replace said structures and improvements with new structures and improvements having the same general character and conditions (as nearly as may be possible under the circumstances) as the structures and improvements so removed, or
- (c) seek the approval of City to remove the structure.

All such repair, restructure and replacement shall be hereafter referred to as "Restoration". The cost of Restoration shall be paid solely by Developer.

15. Insurance. At all times during the term of this Agreement, the Developer, at its expense, shall keep or cause to be kept in effect the following:

- (a) Fire and All Risk Property coverage (including flood) on the structure, improvements, fixtures and machinery contained therein constructed or under construction on the Premises by Developer in an amount equal to not less than eighty percent (80%) of its full insurable value. The deductible shall be no more than ten percent (10%) of the value of the structure.
- (b) Workers' Compensation Insurance in its own name.
- (c) A commercial general liability insurance policy, in standard form, insuring Developer and City as an additional insured, against any and all liability for bodily injury or property damage in the amount of not less than Five Million Dollars (\$5,000,000.00) in respect to injuries or death attributable to any one occurrence. This policy shall not be affected by any other insurance carried by City.
- (d) With exception of workers' compensation and commercial liability coverage, all such insurance to be provided by Developer under this paragraph 15 shall name the Developer and City as insured as their respective interests may appear. The All Risk policy

shall include the City's interest as a loss payee. All such policies of insurance shall also provide for the adjustment of claims under such policies by Developer.

(e) Any and all net insurance proceeds received by or on account of Developer, as the case may be, shall be held in trust by the recipient thereof, who shall administer and apply such proceeds in accordance with the provisions of Paragraph 14.

(f) All of the policies of insurance provided for in this Agreement: (i) shall be in the form and substance approved by the Insurance Department of the State of Florida, (ii) shall be issued only by companies licensed by the Insurance Department of the State of Florida, (iii) Certificates of Insurance pertaining to same shall be delivered to City, prior to the commencement of the term of this Agreement, (iv) shall be with a carrier having an A Best's Rating of not less than A, Class VII, (v) shall bear endorsements showing the receipt by the respective companies of the premiums thereon or shall be accompanied by other evidence of payment of such premiums to the insurance companies, including evidence of current annual payment, if on any installment payment basis, and (vi) shall provide, if obtainable, that they may not be cancelled by the insurer for thirty (30) days after service of notice of the proposed cancellation upon City and shall not be invalidated as to the interest of City by any act, omission or neglect of Developer. In any case where the original policy of any such insurance shall be delivered to the Developer, a duplicated original or certificate of such policy shall thereupon be delivered to City. All insurance policies shall be renewed by Developer, and certificates evidencing such renewals, bearing endorsements or accompanied by other evidence of the receipt by the respective insurance companies of the premiums thereon, shall be delivered to City, at least twenty (20) days prior to their respective expiration dates.

(g) If Developer fails to obtain and maintain insurance as provided in this Agreement and such failure shall continue for a period of fifteen (15) days after notice by City, City may, but shall not be obligated to, effect and maintain any such insurance coverage and pay premiums therefor.

(h) The obligation of collection upon the insurance policies furnished and provided for by Developer, or obtained by City by reasons of the failure of Developer to obtain them, shall be upon Developer, but City shall cooperate in such collection (but without expense to City) in such reasonable degree as may be requested by Developer.

(1) Until the expiration or sooner termination of this Agreement, title to any structures or improvements situated or erected on the Premises by Developer and the structure, equipment and other items installed by Developer thereof and any alterations, changes or additions thereto, shall remain with Developer. City agrees that Developer shall be entitled to the tax deduction for depreciation for any structure or structures, equipment or other items, improvements, additions, changes or alterations which Developer constructs and installs.

16. Indemnity. The Developer shall protect, defend, indemnify and hold harmless the City, its officers, employees and agents from and against any and all lawsuits, penalties, damages, settlements, judgments, decrees, costs, charges and other expenses including attorney's fees or liabilities of every kind arising in connection with or arising out of this Agreement, the deed to any City property which is part of the Premises or any restrictions contained therein, the City's application or permit for the construction of the Bridge, the location, construction, repair, maintenance use or occupancy of the Premises or Bridge, or the breach or default by Developer of any covenant or provision of this Agreement except for any occurrence arising out of or resulting from intentional torts or gross negligence of the City, its officers, agents and employees. Without limiting the foregoing, any and all such claims, suits causes of action relating to personal injury, death, damage to property, defects in construction, rehabilitation or restoration of the Bridge or other improvements on the Premises, alleged infringement of any patents, trademark, copyright or of any other tangible or intangible personal or real property right, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation or decree of any court, is included in the indemnity. The Developer further agrees to investigate, handle, respond to, provide defense for, and defend any such claims at its sole expense and agrees to bear all other costs and expenses related thereto even if the claim is groundless, false or fraudulent and if called upon by the City, Developer shall assume and defend not only itself but also the City in connection with any suit or cause of action, and any such defense shall be at no cost or expense whatsoever to City.

The City makes no representations upon which the Developer may rely with regard to the ability of the Developer to use the Premises as provided herein and the Developer shall indemnify the City against any claims it or anyone else may have with regard to any actions of the City in connection with the Premises, Bridge, this Agreement or any combination of same.

17. Defaults. In the event any one or more of the following events shall occur:

(a) Developer shall default in making payment to City of any cost or fees, as and when the same shall become due and payable, and such default in payment shall continue for a period of thirty (30) days after notice

by City; or

(b) Developer shall fail to pay any tax, assessment, rate or charge or other governmental imposition or any other charge or lien against the Bridge or Franises which Developer is required to pay, at least ten (10) days prior to the expiration of any grace period allowed by law or by the governmental authority imposing the same and such default shall continue for a period of thirty (30) days after notice by City; or

(c) Developer shall file a petition to be declared bankrupt, or insolvent or be adjudicated or declared bankrupt or insolvent by any court, or Developer files for reorganization under the Federal Bankruptcy Act, or for the appointment of a receiver or trustee for all of Developer's property; or Developer enters into an arrangement with creditors; or if Developer's creditors institute Bankruptcy proceedings or receivership proceedings which are not dismissed within one hundred eighty (180) days after same are instituted. However, this provision has no effect so long as all of the other provisions of this Agreement are being performed; or

(d) Developer fails to repair, replace or maintain the Franises or Bridge in accordance with the terms of this Agreement and such failure continues for a period of thirty (30) days after notice by City; or

(e) Developer obstructs public passage for a period in excess of twenty-four (24) continuous hours or for more than two (2) days within any calendar year, unless such closure is necessary to conduct maintenance, repairs or replacement in accordance with this Agreement. If in the opinion of the City Manager it is determined that the Bridge is unsafe due to Developer's failure to maintain, repair or replace any improvements in accordance with the terms of this Agreement and as a result City determines that the Bridge must be closed to the public until said repairs, maintenance or replacements have been made, such closure shall be considered an obstruction by Developer of public passage as provided herein; or

(f) Developer shall default in complying with any other agreement, term, covenant or condition of this Agreement and such default in compliance shall continue for a period of thirty (30) days after notice by City specifying the claimed default, and Developer shall not, in good faith, have commenced within said thirty (30) day period, to remedy such default and diligently and continuously proceed therewith;

then, if any of the above-referenced events should occur, City may serve a written fifteen (15) day notice of cancellation and termination of this Agreement, and upon the expiration of fifteen

(15) days, the Developer, at City's direction shall either:

(1) quit and surrender to the City the Premises and Bridge and each and every part thereof, and City may enter into or repossess the Premises and Bridge, such structures and improvements and each and every part thereof, in accordance with Florida law, or

(2) within thirty (30) days of notice by City, commence the removal of the Bridge and all structures and improvements on the Premises and complete removal within thirty (30) days of commencement, and, at the option of the City, restore the Premises to the same condition it was in on the date this Agreement was executed. Developer shall then quit the Premises and return same to the City. City shall advise Developer if there are any improvements it does not wish Developer to remove,

and except for the provisions of Paragraph 18, this Agreement shall terminate. In the event Developer fails to take the actions provided in subparagraph (2), then this Agreement shall terminate and the provisions of Paragraph 18 shall take effect.

18. Termination.

(a) In the event of termination of this Agreement by City in accordance with Paragraph 17, all of the rights, estate and interest of Developer in the Premises, the improvements therein and thereon, the equipment and fixtures owned by Developer therein, and all fees, issues and profits thereof, whether then accrued or to accrue, all insurance policies and all insurance moneys paid or payable thereunder, vest in and belong to City. Further, City shall have the option to demolish the Bridge at the cost of Developer and the provisions of Paragraph 19 shall take effect.

(b) Upon the expiration of the term of this Agreement, City shall have the option to:

(1) extend the term of this Agreement or enter into a new agreement with Developer,

(2) take title and possession to the Bridge and Developer shall peaceably surrender same, or

(3) within thirty (30) days of notice by City request the Developer to commence and complete removal of the Bridge and all structures and improvements on the Premises and restore the Premises to the same condition it was in on the date this Agreement was executed at Developer's expense.

19. Remedies of City.

(a) In the event the Developer fails to construct, maintain, make repairs, demolish or take such actions as provided in this Agreement in Paragraphs 5, 7, 10, 11, 13, 14 or 17 or fails to provide insurance as provided in Paragraph 15, and such default shall continue for a period of thirty (30) days after notice by City, City has the option and right to take such action which was required to be taken by the Developer at Developer's sole cost and expense. Developer shall 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 fifty percent (50%) for amounts up to One Thousand Dollars (\$1,000) and ten percent (10%) for amounts over One Thousand Dollars (\$1,000) and Developer shall reimburse City within sixty (60) days following written demand therefor. For each month when such reimbursement to the City remains unpaid, interest of one percent (1%) per month shall be due to the City. The demand 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 ninety (90) days after the date that the City makes the original written demand for payment, the Developer shall pay the undisputed amount and shall provide the City with a bond or other security acceptable to the City for the disputed amount pending a resolution of the dispute by negotiation or litigation. In addition to any other remedies available to City, City shall be entitled to recover from Developer all costs of collection, including reasonable attorneys' fees and court costs incurred at all tribunal and appellate levels, provided the City ultimately prevails in such proceedings.

(b) If Developer does not make the payments required by subparagraph (a) 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 real property described in Exhibit "E", which lien may be for all reasonable and necessary costs and expenses of any cure undertaken by the City in accordance with subparagraph (a) above, the cost of any interim insurance policy as provided in Paragraph 15 hereof, and reasonable attorneys' fees and costs associated therewith. The 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 lien shall continue until payment to the City of the amounts set forth in the lien (at which time the City shall record a satisfaction of such lien) or until the City obtains a judgment of foreclosure upon the lien. Prior to filing

of any suit to foreclose upon the lien, the City shall give Developer sixty (60) days prior written notice of its intention to so file. In addition to the lien, the City shall have all other rights and remedies granted to it at law or in equity for Developer's failure to reimburse the City pursuant to subparagraph (a) above. Developer shall be entitled to pursue all legal and equitable remedies to contest the amount or existence of any such lien.

(c) In the event that the City has provided the notice described in subparagraph (a), but the Developer has failed to cure or to commence and diligently pursue cure of the necessary maintenance or repair items, and the City makes such repairs or undertakes such protect, maintenance or take other actions described herein, and the Developer fails to make payment in accordance with subparagraph (a), the Developer shall be in default under this Agreement and the provisions of Paragraph 17 shall take effect. Such a default shall not arise where Developer has paid the undisputed amount and secured any disputed amount, or where the Developer pays the costs of cure as set forth in subparagraph (b) 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 in Paragraph 17(1) and (2).

20. **Assignment, Subletting and Mortgages.** Developer may not sell, transfer or assign this Agreement or any interest herein, without the prior written approval of City, and only if Developer's obligations hereunder in a writing in recordable form. Upon delivery of said writing to City, Developer shall be fully released and relieved from all liability and obligation hereunder. Developer shall not assign or attempt to assign any portion of this Agreement prior to completion of construction. Any transfer or assignment of this Agreement must first be approved by City in writing which may not be unreasonably withheld. City shall have the right to request and receive of any proposed assignee or transferee, the same information it requested of Developer prior to accepting it and may base its approval on the information it recorded.

21. **Liens.** If any mechanic's or other liens or orders for the payment of money shall be filed against the Premises or any structure or improvements thereon by reason of or arising out of any labor or material furnished, or alleged to have been furnished, or to be furnished, to or for the Developer at the Premises, the Developer shall, within thirty (30) days after written notice from the City, either pay or bond the same or procure the discharge thereof in such manner as may be provided by law. The Developer shall also defend on behalf of the City, at the Developer's sole cost and expense, any action, suit or proceedings, which may be brought thereon or for the enforcement of such lien, liens, or orders, and the Developer shall pay any

damage and discharge any judgment entered therein and save harmless City from any claim or damage resulting therefrom.

22. Time is of the Essence. Time is of the essence in the performance of this Agreement.

23. Radon Notification. As of January 1, 1989, Section 404.056, Florida Statutes, requires provision of the following notification concerning radon gas:

"RADON GAS: Radon is a naturally occurring radioactive gas that, when it has assigned or transferred shall expressly assume all the accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and buildings in Florida. Additional state information regarding radon and radon testing may be obtained from your county public health unit."

24. Choice of Law; Venue. This Agreement shall be governed by the laws of the State of Florida. In the event of litigation between the parties, venue for any such litigation shall be in Broward County, Florida.

25. Compliance with Governing Law. The parties shall comply with all applicable laws, ordinances, and codes of the United States of America, the State of Florida and all local governments having jurisdiction, in carrying out the rights and responsibilities provided in this Agreement.

26. Entire Agreement. This Agreement represents the entire understanding of the parties and merges all prior negotiations and agreements, except that agreement between the parties dated December 14, 1992.

27. Notices. Whenever it is provided herein that notice, demand, request or other communication shall or may be given to, or served upon, either of the parties by the other, or either of the parties shall desire to give or serve upon the other any notice, demand, request or other communication with respect hereto or with respect to the Premises, each such notice, demand, request or other communication shall be in writing and any law or statute to the contrary notwithstanding shall not be effective for any purpose unless the same shall be given by mailing the same by registered or certified mail, postage prepaid, return receipt requested, addressed to the party at the address set forth below, or at such other address or addresses and to such other person or firm as City may from time to time designate by notice as herein provided.

All notices, demands, requests or other communications hereunder shall be deemed to have been given or served for all purposes hereunder forty-eight (48) hours after the time that the same shall be deposited in the United States mails, postage

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prepaid, in the manner aforesaid, provided, however, that for any distance in excess of five hundred (500) miles, air mail service shall be utilized, if available.

City: City Manager
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, FL. 33301

Developer: President
Gill Hotels Company
303 North Atlantic Boulevard
Fort Lauderdale, FL. 33308

Copy to: William F. Leonard
Leonard & Morrison
Post Office Box 11025
Fort Lauderdale, FL. 33339

28. **SUCCESSORS.** This Agreement shall be binding on and inure to the benefit of the parties, their successors and assigns.

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

WITNESSES:

CITY OF FORT LAUDERDALE

Patrick H. Adams

By [Signature]
Mayor

Dorothy O'Leary

By [Signature]
City Manager

(CORPORATE SEAL)

ATTEST

[Signature]
City Clerk

Approved as to form:

[Signature]
City Attorney

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WITNESSES:

GILL HOTELS COMPANY, a Florida corporation

[Signature]
Janet Wood
(CORPORATE SEAL)

By [Signature]
Vice President

Attest:
[Signature]
Secretary

STATE OF FLORIDA :
COUNTY OF OKLAHOMA :

The foregoing instrument was acknowledged before me this 30th day of July, 1993, by ANDREW R. GILL and WILLIAM F. LEONARD, as VICE PRESIDENT and SECRETARY, respectively, of GILL HOTELS COMPANY, a Florida corporation, on behalf of the corporation. They are personally known to me or have produced proper evidence as identification and did not (did) take an oath.

(SEAL)

[Signature]
Notary Public, State of Florida
(Signature of Notary taking Acknowledgment)

JANET WOOD
Name of Notary Typed,
Printed or Stamped

My Commission Expires: APR. 12, 1997
JANET WOOD
NOTARY PUBLIC STATE OF FLORIDA
COMM. NO. 00000000
MY COM. ISSUED ON APR. 12, 1997

SPM/gill3
July 30, 1993

400 Northeast Third Avenue
FT. LAUDERDALE, FLORIDA 33301

Telephone (305) 768-7611
Facsimile (305) 768-7618

SHEET 1 OF 2

**SKETCH AND DESCRIPTION
PEDERSTRIAN EASEMENT**

A portion of Government Lot 3, Section 6, Township 30 South, Range 43 East, and a portion of Lot 1, Block 8, LAUDER DEL MAR, according to the plat thereof recorded in Plat Book 7, Page 30, of the public records of Broward County, Florida, more fully described as follows:

Commencing at Monument R-73, as shown on COASTAL CONSTRUCTION CONTROL LINE, according to the map thereof recorded in Miscellaneous Map Book 6, Page 10, of the public records of Broward County, Florida; thence North 85°00'00" West, a distance of 145.00 feet; thence South 02°02'45.9" West, on said COASTAL CONSTRUCTION CONTROL LINE, a distance of 470.58 feet; thence North 88°56'58" East, on the North line of said Lot 1, a distance of 57.99 feet to the Point of Beginning; thence North 01°03'07" West, a distance of 11.25 feet; thence North 88°56'53" East, a distance of 17.00 feet; thence North 01°03'07" West, a distance of 23.00 feet; thence North 88°56'53" East, a distance of 31.40 feet; thence South 03°17'29" West on the West right-of-way line of State Road A-1-A, a distance of 3.68 feet; thence South 88°56'53" West, a distance of 27.45 feet; thence South 01°03'07" East, a distance of 26.67 feet; thence South 88°56'53" West, a distance of 17.00 feet; thence South 01°03'07" East, a distance of 11.01 feet; thence North 88°56'53" East, a distance of 18.31 feet; thence South 01°03'07" East, a distance of 3.67 feet; thence South 88°56'53" West, a distance of 21.98 feet; thence North 01°03'07" West, a distance of 10.76 feet to the Point of Beginning.

Said land situate, lying, and being in the City of Fort Lauderdale, Broward County, Florida, and containing 458 square feet or 0.0105 Acres more or less.

Certified correct. Dated at Fort Lauderdale, Florida, this 7th day of July, 1993.

MCLAUGHLIN ENGINEERING CO.

NOTES:

- (1) THIS IS NOT A SURVEY.
- (2) This sketch reflects all easements and rights-of-way as shown on the above referenced plat. The subject property was not abstracted for other easements, road reservations, or rights-of-way of record by McLaughlin Engineering Co.
- (3) Bearings refer to COASTAL CONSTRUCTION CONTROL LINE, Misc. M.B.6, P. 10, S.C.R.
- (4) Description prepared by McLaughlin Engineering Co. this 7th day of July, 1993.
- (5) THIS DRAWING IS NOT VALID UNLESS SEALED WITH AN EMBOSSED SURVEYORS SEAL.

Robert C. McLaughlin
Robert C. McLaughlin
Registered Land Surveyor No. 3356
State of Florida

EXHIBIT 'A'
PAGE 1 OF 1

FIELD BOOK NO.

2-5547

JOB ORDER NO.

DRAWN BY

DFB

CHECKED BY

400 N. E. 3RD AVENUE
FORT LAUDERDALE, FLORIDA

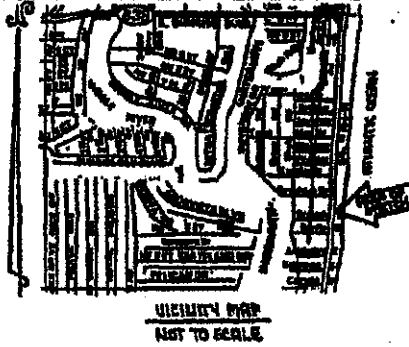
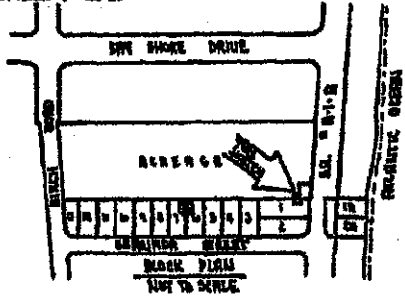
McLAUGHLIN ENGINEERING CO.
ENGINEERS - SURVEYORS

20928-0311
G. R. BOOK/PAGE

SHEET 2 OF 2

CENTRAL INDEX NO. NUMBER, PAGE. MISCELLANEOUS
PLAN. FIELD BOOK, P. PAGE, S.E.C. BROWARD COUNTY RECORDS

SCALE: 1" = 50'



SKETCH AND DESCRIPTION
PEDESTRIAN WALKWAY

A portion of Government Lot 3, Section 6, Township 50 South, Range 43 East,
and a portion of Lot 1, Block 8, LAUDER DEL MAR, and being more fully described
on SHEET 1 OF 2.

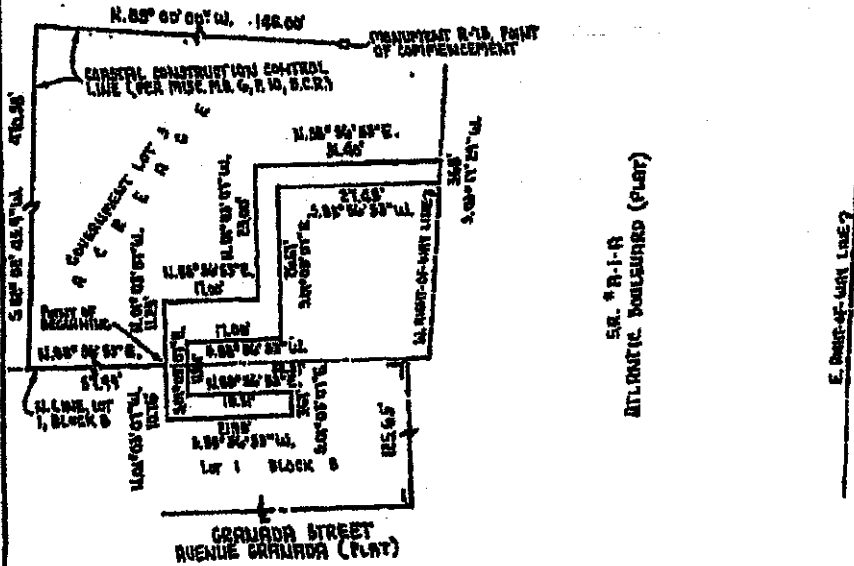


EXHIBIT 'A'
PAGE 2 OF 7

McLAUGHLIN ENGINEERING CO.

Signature

ROBERT C. McLAUGHLIN, REGISTERED LAND
SURVEYOR NO. 2394, STATE OF FLORIDA
"Not Valid Unless Sealed with an embossed Surveyors Seal"

FIELD BOOK No. _____
JOB ORDER No. R-2847

DRAWN BY _____
CHECKED BY _____

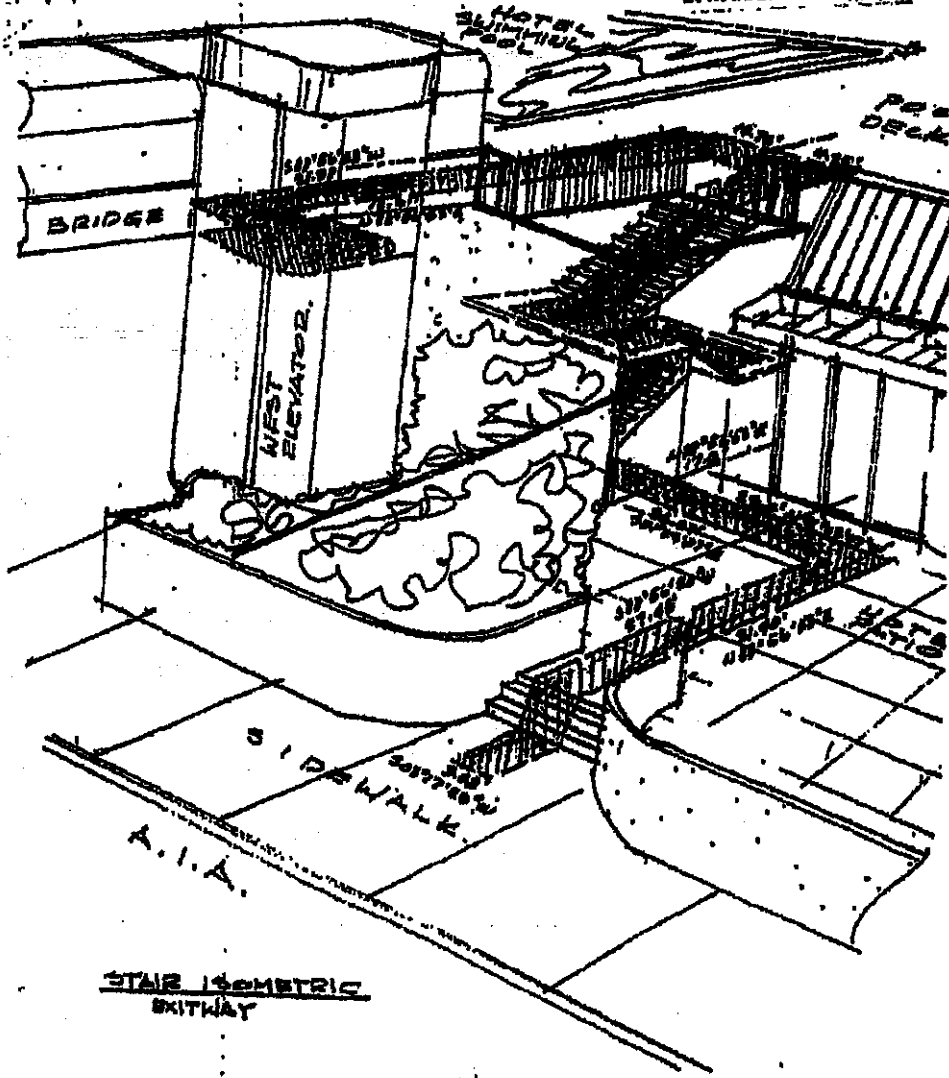


Exhibit "A"
Page 3 of 7

400 Northeast Third Avenue
FT. LAUDERDALE, FLORIDA 33301

Telephone (305) 783-7811
Facsimile (305) 783-7818

2092A-0313
D. R. BOOK/PAGE

SHEET 1 OF 2

**SKETCH AND DESCRIPTION
LANDING AREA**

A portion of Government Lot 3, Section 6, Township 50 South, Range 43 East, and a portion of Lot 1, Block 8, LAUNDS DEL MAR, according to the plat thereof recorded in Plat Book 7, Page 30, of the public records of Broward County, Florida, more fully described as follows:

Commencing at Monument R-73, as shown on COASTAL CONSTRUCTION CONTROL LINE, according to the map thereof recorded in Miscellaneous Map Book 6, Page 10, of the public records of Broward County, Florida; thence North 85°00'00" West, a distance of 145.00 feet; thence South 02°02'45.9" West, on said COASTAL CONSTRUCTION CONTROL LINE a distance of 470.58 feet; thence North 88°56'53" East, on the North line of said Lot 1, a distance of 78.97 feet to the Point of Beginning; thence North 01°03'07" West, a distance of 3.90 feet; thence North 88°56'53" East, a distance of 11.00 feet; thence South 01°03'07" East, a distance of 9.33 feet; thence South 85°45'13" East, a distance of 10.04 feet; thence South 01°03'07" East on the West right-of-way line of State Road A-1-A, a distance of 11.03 feet; thence North 85°45'13" West, a distance of 20.00 feet; thence North 01°03'07" West, a distance of 8.45 feet; thence South 88°56'53" West, a distance of 1.00 feet; thence North 01°03'07" West, a distance of 7.10 feet to the Point of Beginning.

Said Land situate, lying, and being in the City of Fort Lauderdale, Broward County, Florida, and containing 321 square feet or 0.0074 Acres more or less.

Certified correct. Dated at Fort Lauderdale, Florida, this 7th day of July, 1993.

NOTES:

- (1) THIS IS NOT A SURVEY.
- (2) This sketch reflects all easements and rights-of-way as shown on the above referenced plat. The subject property was not abstracted for other easements, road reservations, or rights-of-way of record by McLaughlin Engineering Co.
- (3) Bearings refer to COASTAL CONSTRUCTION CONTROL LINE, Misc. M.B. 6, P. 10, S.R.
- (4) Description prepared by McLaughlin Engineering Co. this 7th day of July, 1993.
- (5) THIS DRAWING IS NOT VALID UNLESS SEALED WITH AN ENGRAVED SURVEYORS SEAL.

McLAUGHLIN ENGINEERING CO.

[Signature]
Robert G. McLaughlin
Registered Land Surveyor No. 3356
State of Florida

EXHIBIT 'A'
PAGE 4 OF 7

FIELD BOOK NO. _____
JOB ORDER NO. 2-5647

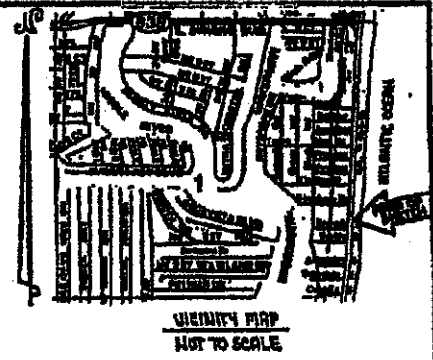
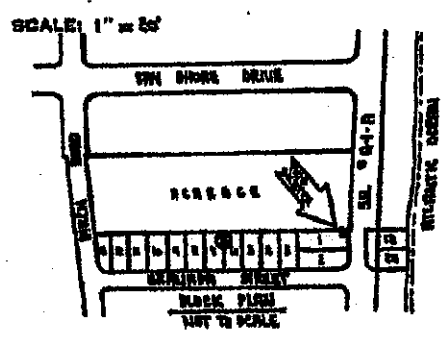
DRAWN BY DFB
CHECKED BY _____

400 N. E. 3RD AVENUE
 3307 LAURELDALE, FLORIDA

McLAUGHLIN ENGINEERING CO.
 ENGINEERS-SURVEYORS

80928-0314
 G. R. BOOK/PAGE SHEET 2 OF 2

PLANTERLINE, NO. 100, P. 100, M.C. - MISCELLANEOUS
 P.L.R. - FIRE BOOK, E. PAGE, A.C.S. - BROWARD COUNTY RECORDS



**EXTENT AND DESCRIPTION
 LANDING AREA**

A portion of Government Lot 3, Section 6, Township 50 South, Range 43 East, and a portion of Lot 1, Block 8, LADDER DEL MAR, and being more fully described on SHEET 1 OF 2.

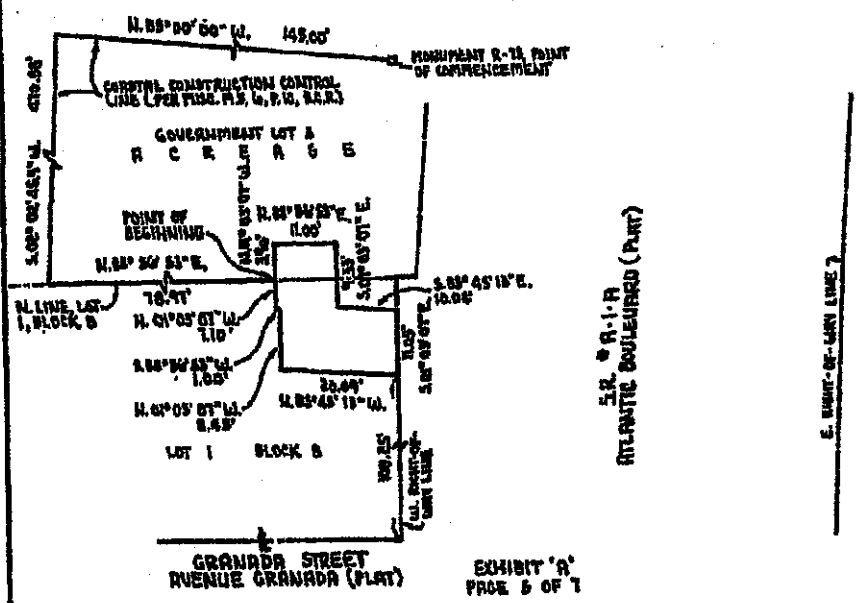


EXHIBIT 'A'
 PAGE 5 OF 7

McLAUGHLIN ENGINEERING CO.

ROBERT E. McLAUGHLIN REGISTERED LAND SURVEYOR NO. 3154, STATE OF FLORIDA
 Not Valid Unless Sealed with an embossed Surveyors Seal

FIELD BOOK No. _____
 JOB ORDER No. R-5547

DRAWN BY _____
 CHECKED BY _____

408 Northeast Third Avenue
FT. LAUDERDALE, FLORIDA 33301

Telephone (800) 768-7013
Facsimile (306) 701-7010

**SKETCH AND DESCRIPTION
A-1-A/PEDESTRIAN OVERPASS**

That portion of airspace lying above the finished grade or surface of the centerline of an existing roadway and right-of-way known as STATE ROAD A-1-A, and adjacent public beach, in Fort Lauderdale, Florida, and legally described as airspace above that portion of road right-of-way and public beach lying East of Lot 1, Block B, LAUDER DEL MAR, according to the plat thereof recorded in Plat Book 7, Page 30, of the public records of Broward County, Florida, said airspace located in Broward County, Florida, and as more fully described both parametrically and vertically as follows:

PERIMETRICAL DESCRIPTION:

Commencing at Monument R-73, as shown on COASTAL CONSTRUCTION CONTROL LINE, according to the plat thereof recorded in Miscellaneous Map Book 6, Page 10, of the public records of Broward County, Florida; thence North 85°05'00" West, a distance of 145.00 feet; thence South 02°02'45.9" West, on said COASTAL CONSTRUCTION CONTROL LINE, a distance of 470.58 feet; thence North 88°36'53" East on the North line of Lot 1 of said Block B, a distance of 99.97 feet; thence South 01°03'07" West, on the West right-of-way line of State Road A-1-A, a distance of 6.36 feet to the Point of Beginning; thence continuing South 01°03'07" East, on the said West right-of-way line, a distance of 11.05 feet; thence South 85°45'19" East, a distance of 87.48 feet; thence North 04°14'47" East, a distance of 11.00 feet; thence North 85°45'13" West, a distance of 88.51 feet to the Point of Beginning.

VERTICAL DESCRIPTION

All that certain space lying within the confines of the above PERIMETRICAL DESCRIPTION, lying above a horizontal plane having an elevation of 25.00 feet and lying below a horizontal plane having an elevation of 45.00 feet. Both elevations refer to National Geodetic Vertical Datum (1929).

Said land situate, lying, and being in the City of Fort Lauderdale, Broward County, Florida, and containing 19,380 cubic feet more or less.

Certified correct. Dated at Fort Lauderdale, Florida, this 7th day of July, 1993.
Added Vertical Description this 14th day of July, 1993.

NOTES:

MCLAUGHLIN ENGINEERING CO.

- (1) THIS IS NOT A SURVEY.
- (2) This sketch reflects all easements and rights-of-way as shown on the above referenced plat. The subject property was not abstracted for other easements, road reservations, or rights-of-way of record by McLaughlin Engineering Co.
- (3) Bearings refer to COASTAL CONSTRUCTION CONTROL LINE, Misc. M.B.6, P. 10.
- (4) Description prepared by McLaughlin Engineering Co. this 7th day of July, 1993.
- (5) THIS DRAWING IS NOT VALID UNLESS SEALED WITH AN EMBOSSED SURVEYORS SEAL.

Signature
ROBERT C. McLaughlin
Registered Land Surveyor No. 3156
State of Florida

EXHIBIT "A"
PAGE 6 OF 7

FIELD BOOK NO. _____
JOB ORDER NO. _____

DRAWN BY _____
CHECKED BY _____

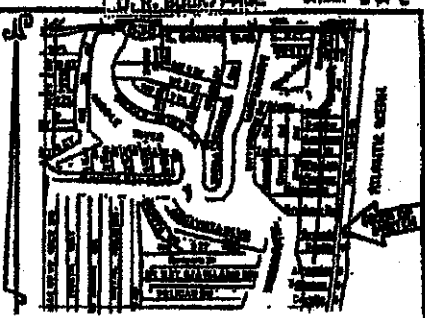
2420 N. E. 3RD AVENUE
FORT LAUDERDALE, FLORIDA

MCLAUGHLIN ENGINEERING CO.
ENGINEERS-SURVEYORS

20922-0316
I.D.R. BOOK/PAGE SHEET 2 OF 2

CONVENT LINE, D.L. & RUPPER, FISC. MISCELLANEOUS
P.L. & P.M. BOOK, P. PAGE, S.R. & S.W. INDIAN COUNTY RECORDS

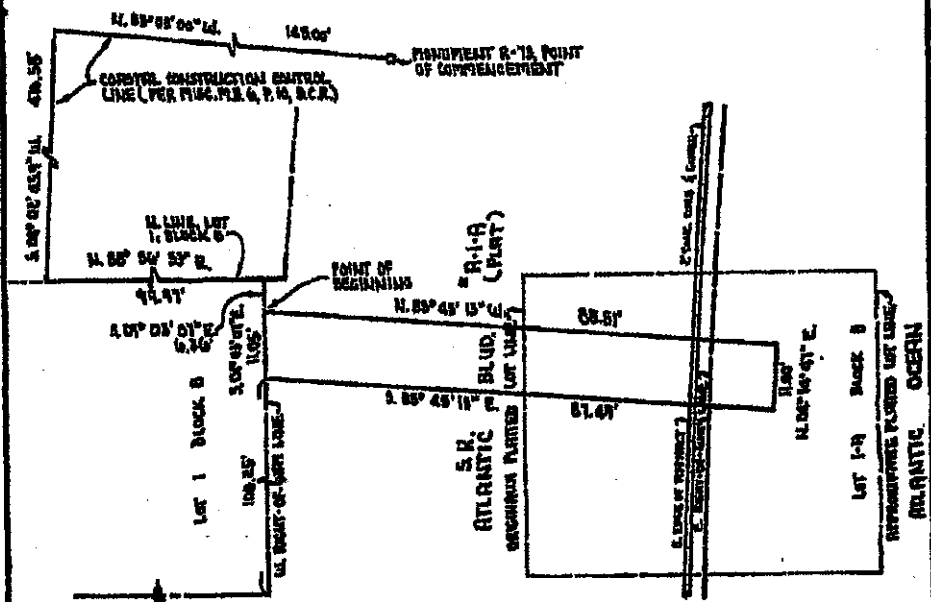
SCALE: 1" = 20'



VICINITY MAP
NOT TO SCALE

**SKETCH AND DESCRIPTION
A-1-A/ PEDESTRIAN OVERPASS**

That portion of airspace lying above the finished grade or surface of the centerline of an existing roadway and right-of-way known as STATE ROAD A-1-A, and being more fully described on SHEET 1 OF 2.



GRANADA STREET
AVENUE GRANADA (PLAT)

EXHIBIT 'A'
PAGE 1 OF 1

MCLAUGHLIN ENGINEERING CO.

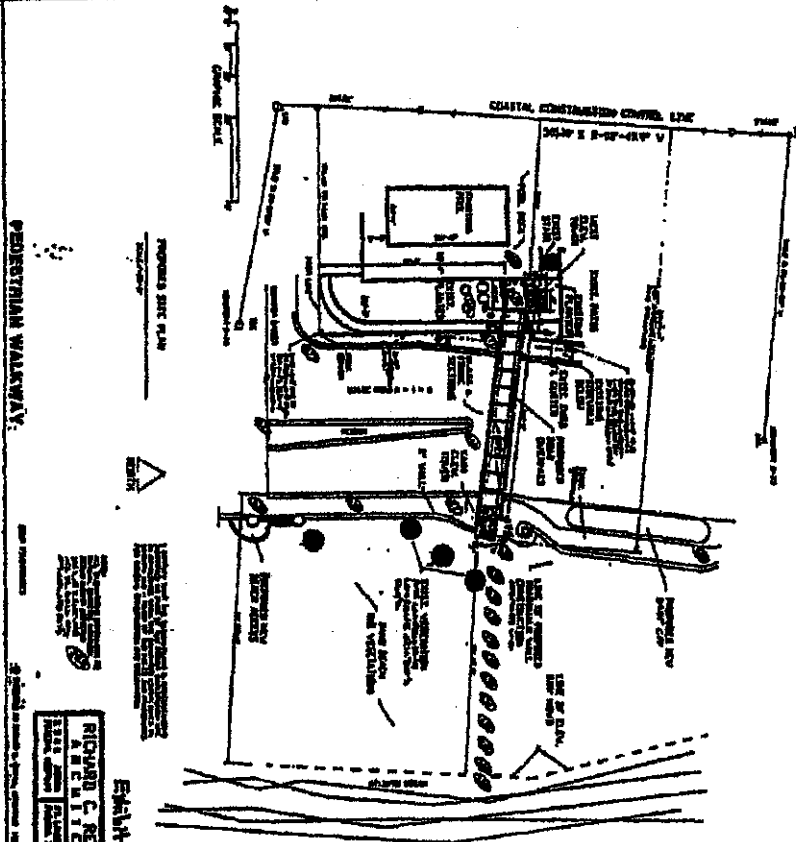
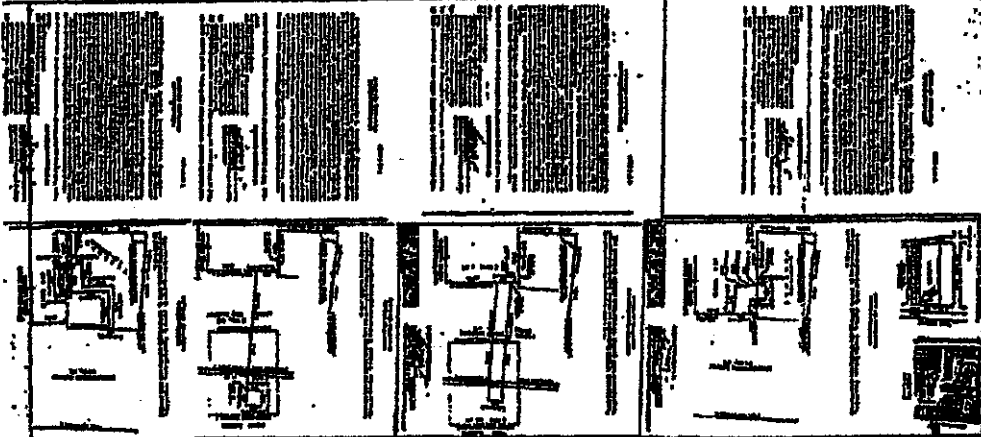
[Signature]
Robert E. McLaughlin REGISTERED LAND
SURVEYOR No. 1054, STATE OF FLORIDA
"Not Valid Unless Sealed with an embossed Surveyors Seal"

"THIS SKETCH REFLECTS ALL BEARINGS AND DISTANCES AS SHOWN ON ANY PREVIOUS RECORD PLAN. THE SURVEY PARTY HAS NOT CONDUCTED ANY OTHER SURVEYS, AND THEREFORE NO RECORDS OR RECORDS OF RECORDS BY ANY OTHER SURVEYOR."

FIELD BOOK No. _____
JOB ORDER No. B-3247

DRAWN BY _____
CHECKED BY _____

20928-0317
D. R. BODK/PRE

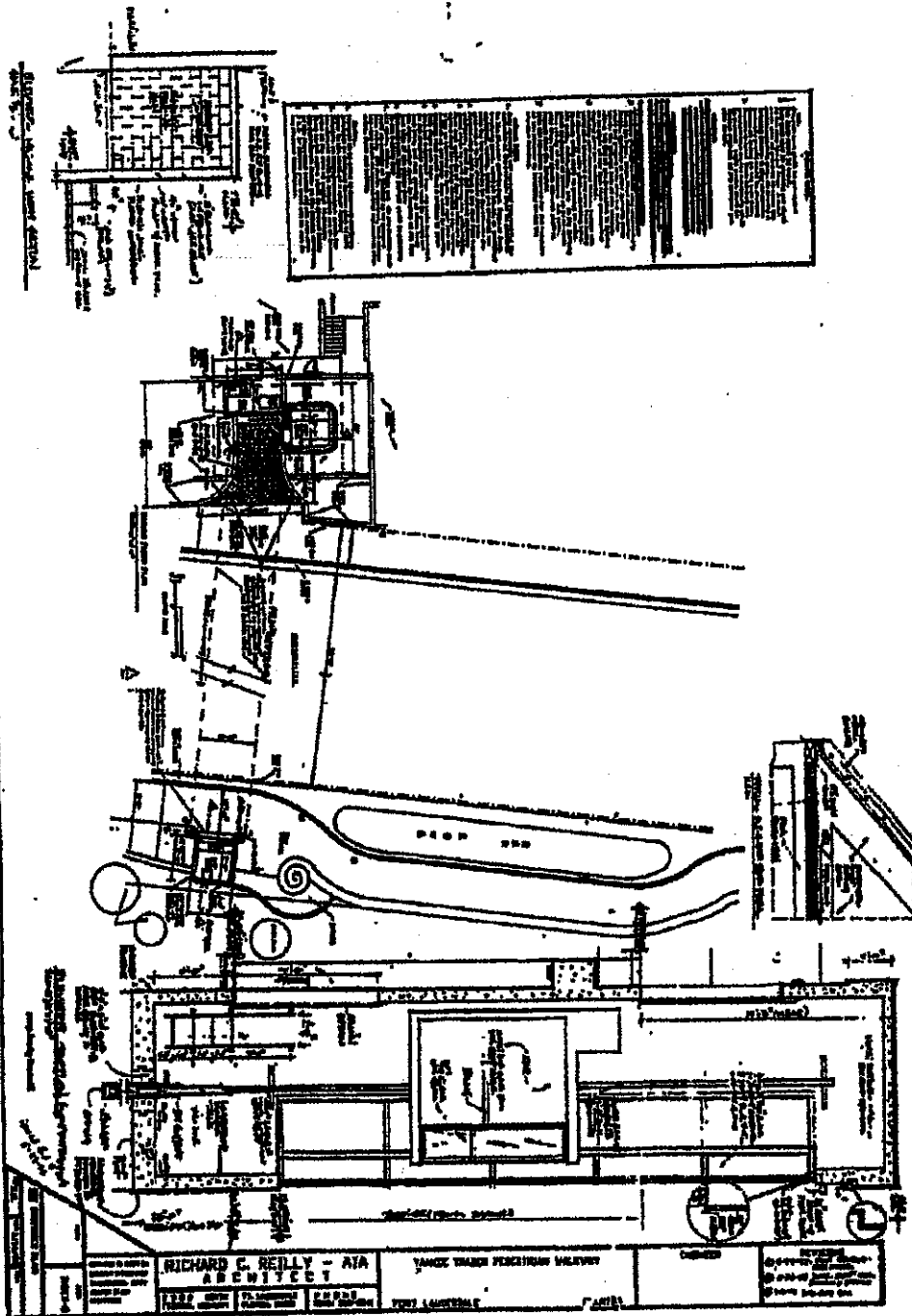


PEDESTRIAN WALKWAY

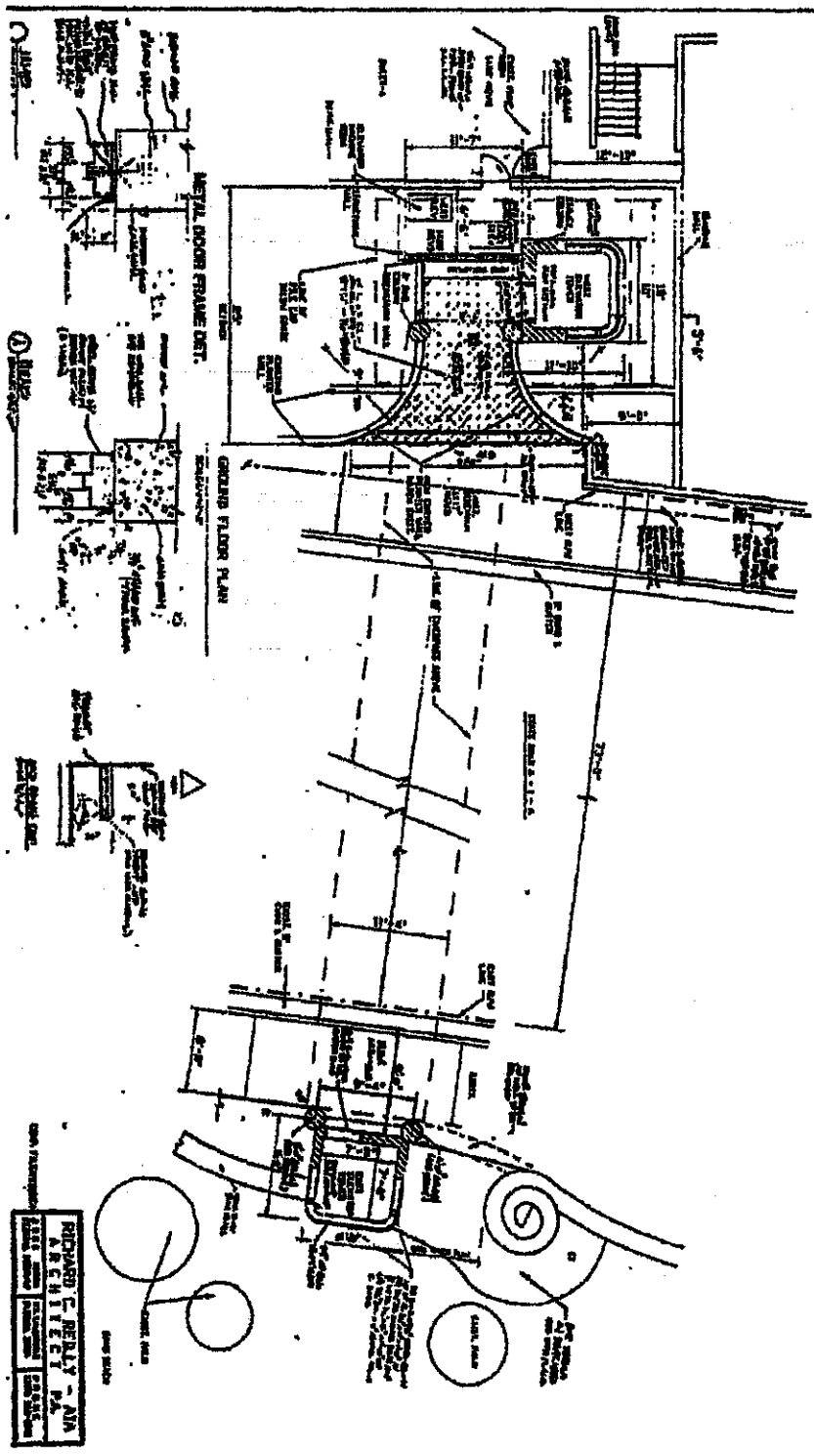
Richard C. Reilly - AIA
ARCHITECT
1111 11th Street, Suite 100
Cambridge, MA 02142
Tel: 617.452.1234
Fax: 617.452.1235
www.rcreilly.com

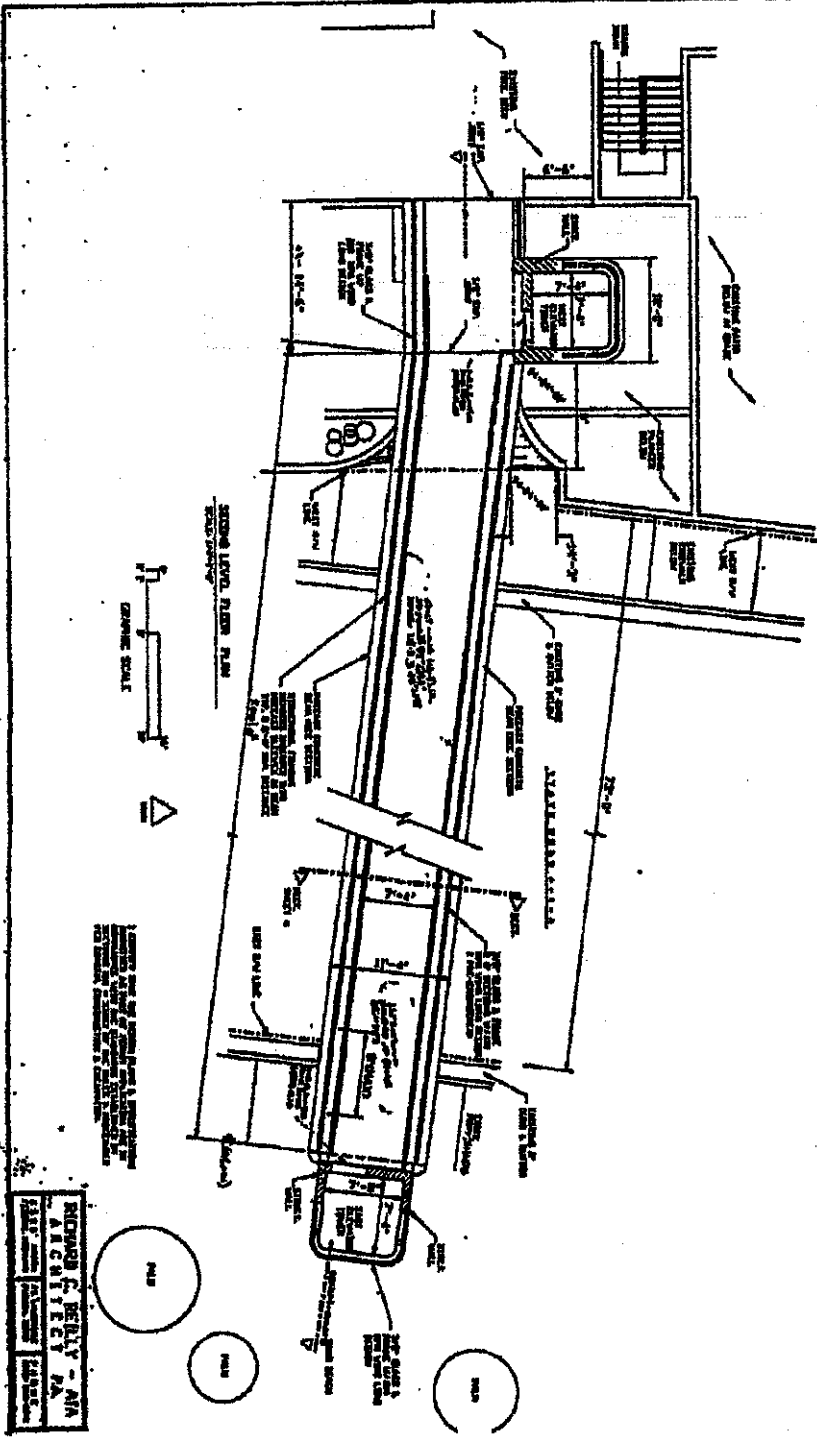
EXHIBIT 1

20928-0318
D. R. BOOK/PAGE



EO 9228-0319
O. R. BOOK/PAGE

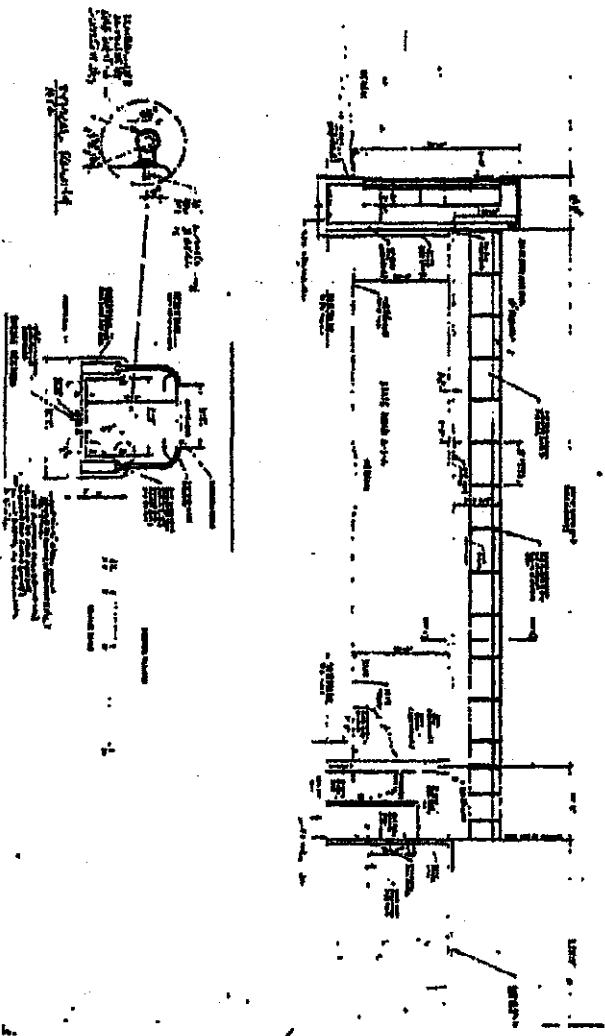




RICHARD C. BELLY - AIA
 ARCHITECT P.A.
 10101 1st Avenue, N.E.
 Seattle, WA 98115
 Phone: 206-462-1234
 Fax: 206-462-1235

POWER-0521
D. WEDDOK/PAGE

LINE OF ELEVATION SEE PAGE



RICHARD C. KELLY - AIA
ARCHITECT P.A.
1111 11th Street, N.W.
Washington, D.C. 20004
PH: 202-331-1234
FAX: 202-331-1235

SHEET - 5



MCLAUGHLIN ENGINEERING

6-50-73

ENGINEERS-SURVEYORS

300 Northeast Third Avenue
FT. LAUDERDALE, FLORIDA 33301

20928-0322
O. R. BOOK/PAGE

Telephone (888) 763-7611
Fossilville (888) 763-7613

SHEET 1 OF 2

**SKETCH AND DESCRIPTION
OF PROPERTY**

A portion of public beach in Government Lot 3, Section 6, Township 50 South, Range 43 East, and being a portion of Lot 1-A, Block 8, LAUNDRY DEL MAR, according to the plat thereof recorded in Plat Book 7, Page 30, of the public records of Broward County, Florida, more fully described as follows:

Commencing at Monument R-73, as shown on COASTAL CONSTRUCTION CONTROL LINE, according to the map thereof recorded in Miscellaneous Map Book 6, Page 10, of the public records of Broward County, Florida; thence North 85°00'00" East, a distance of 145.00 feet; thence South 02°02'45.9" West, on said COASTAL CONSTRUCTION CONTROL LINE, a distance of 470.58 feet; thence North 88°56'53" East, on the North line of Lot 1 of said Block 8, a distance of 99.97 feet; thence South 01°03'07" East, on the West right-of-way line of State Road A-1-A, a distance of 27.40 feet; thence South 85°45'13" East, a distance of 87.49 feet to the Point of Beginning; thence continuing South 85°45'13" East, a distance of 11.00 feet; thence North 04°14'47" East, a distance of 11.00 feet; thence North 85°45'13" West, a distance of 11.00 feet; thence South 04°14'47" West, a distance of 11.00 feet to the Point of Beginning.

Said land situate, lying, and being in the City of Fort Lauderdale, Broward County, Florida, and containing 121 square feet or 0.0028 Acres more or less.

Carried contract, Dated at Fort Lauderdale, Florida, this 7th day of July 1993.

NOTES:

- (1) THIS IS NOT A SURVEY.
- (2) This sketch reflects all easements and rights-of-way as shown on the above referenced plat. The subject property was not abstracted for other easements, road reservations, or rights-of-way of record by McLaughlin Engineering Co.
- (3) Bearings refer to COASTAL CONSTRUCTION CONTROL LINE, Misc. M.B.6, P. 10, B.C.R.
- (4) Description prepared by McLaughlin Engineering Co. this 7th day of July, 1993.
- (5) THIS DRAWING IS NOT VALID UNLESS SEALED WITH AN EMBOSSED SURVEYORS SEAL.

MCLAUGHLIN ENGINEERING CO.


 ROBERT C. McLaughlin
 Registered Land Surveyor No. 1198
 State of Florida

EXHIBIT 'C'
PAGE 1 OF 2

FIELD BOOK NO. _____
JOB ORDER NO. P-55AT

DRAWN BY DPB
CHECKED BY _____

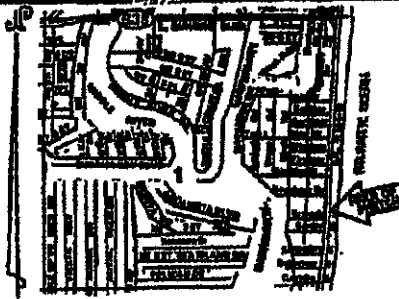
200 N. E. 2ND AVENUE
 P.O. BOX 1000
 LAUDERHALL, FLORIDA

McLAUGHLIN ENGINEERING CO.
 ENGINEERS-SURVEYORS

BOOK 0323
 D. R. BOOK/PAGE SHEET 2 OF 2

FIELD BOOK NO. 1000000 P. PAGE
 M.L. MICHELLE RECORD, S.E. 1/4 SECTION 6
 COUNTY RECORDS, LAUDERHALL

SCALE: 1" = 50'



NEIGHBOR MAP
 NOT TO SCALE

**SKETCH AND DESCRIPTION
 CITY PROPERTY**

A portion of public beach in Government Lot 3, Section 6, Township 50 South,
 Range 49 East, and being a portion of Lot 1-A, Block 8, LAUDER DEL MAR, and being
 more fully described on SHEET 1 OF 2.

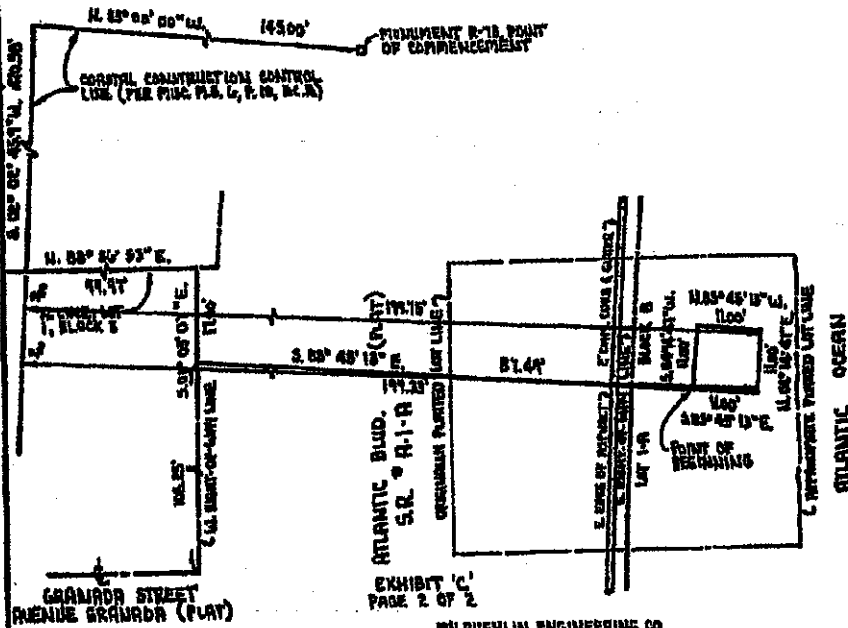


EXHIBIT 'C'
 PAGE 2 OF 2

McLAUGHLIN ENGINEERING CO.

[Signature]
 ROBERT C. McLAUGHLIN REGISTERED LAND
 SURVEYOR IN 1956 STATE OF FLORIDA
 "Not Valid Unless Sealed with an embossed Surveyors Seal"

FIELD BOOK No. _____
 JOB ORDER No. R-5941

DRAWN BY _____
 CHECKED BY _____

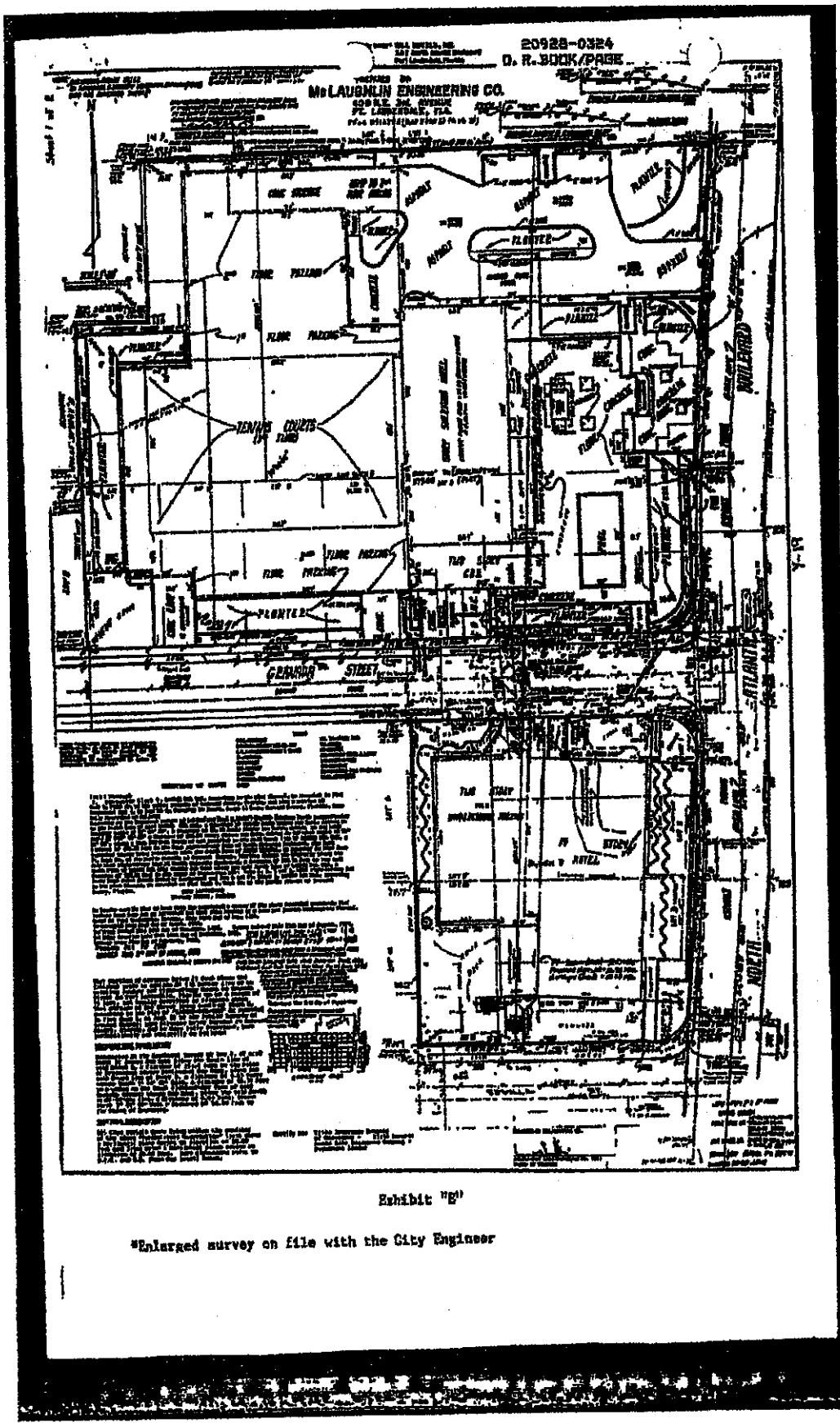


Exhibit "B"

*Enlarged survey on file with the City Engineer

This instrument prepared by:
Danielle DeVito-Hurley, Esq.
Cunator, Yeakley & Stewart, P.A.
500 E. Broward Blvd., Suite 1400
Ft. Lauderdale, FL 33394

ASSIGNMENT AND ASSUMPTION OF AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION OF AGREEMENT (this "Assignment and Assumption"), dated as of this 10th day of July, 2005, by and between **G.H.L. HOTELS COMPANY**, a Florida corporation, as assignor (the "Assignor"), and **AIA TRADER, L.L.C.**, a Delaware limited liability company, as assignee (the "Assignee").

WHEREAS, Assignor and **VI Florida Hotel Holdings, L.L.C.**, a Delaware limited liability company ("Holdings"), entered into that certain Agreement for Sale and Purchase of Real Property made as of October 22, 2004, as amended from time to time, and as assigned by Holdings to Assignee (collectively, the "Contract"), in connection with the sale by Assignor to Assignee of the real property described in the Contract; and

WHEREAS, pursuant to the terms of the Contract, Assignor desires to assign, transfer, set over and deliver to Assignee all of Assignor's right, title and interest in, to and under that certain Agreement between the City of Fort Lauderdale and Assignor, dated July 30, 1993, recorded August 2, 1993, in Official Records Book 2092B, Page 294, of the Public Records of Broward County, Florida (the "Agreement");

WHEREAS, Assignee desires to assume the duties, obligations and liabilities of Assignor with respect to the Agreement.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00), the sufficiency and receipt of which are hereby acknowledged, Assignor and Assignee hereby covenant and agree as follows and take the following actions:

1. The above recitals are true and correct and incorporated herein by reference.
2. Assignor does hereby assign, transfer, set over and deliver unto Assignee all of the Assignor's right, title and interest in, to and under the Agreement.
3. Assignee hereby accepts the foregoing assignment of the Agreement and assumes all duties, obligations and liabilities of Assignor under the Agreement starting from and after the date hereof.
4. This Assignment and Assumption shall be: (a) binding upon, and inure to the benefit of, the parties hereto and their respective legal representatives, successors and assigns; and (b) construed in accordance with the laws of the State of Florida, without regard to the application of choice of law principles, except to the extent such laws are superseded by federal law.

5. The parties hereto agree from time to time to execute and deliver such further and other transfers, assignments and documents and do all matters and things which may be convenient or necessary to more effectively and completely carry out the intentions of this Assignment and Assumption, including, without limitation, any documents required by any governmental authority.

6. The parties hereto are entitled to give notice of this Assignment and Assumption to any agency or political subdivision of the State of Florida and may record this Assignment and Assumption in the Public Records of Broward County, Florida.

7. This Assignment and Assumption may be executed in counterparts each of which shall constitute an original and together shall constitute one and the same instrument. A facsimile copy of this Assignment and Assumption and any signatures hereon shall be considered for all purposes as originals.

IN WITNESS WHEREOF, this Assignment and Assumption has been signed, sealed and delivered by Assignor and Assignee as of the date first above written.

Witnesses:

Signed, sealed and delivered in the presence of:

[Signature]
Print Name: Daniel Maister

[Signature]
Print Name: Guillermo Rios

[Signature]
Print Name: William J. Williams

[Signature]
Print Name: Adelberto Sarrillo

ASSIGNOR:

GILL HOTELS COMPANY, a Florida corporation

By: *[Signature]*
Name: Lucretia J. Gill
Title: CEO

ASSIGNEE:

AIA TRADER, L.L.C., a Delaware limited liability company

By: CLIPPERTRADER HOLDINGS, L.L.C., a Delaware limited liability company, its Managing Member

By: *[Signature]*
Name: Robert Casim
Title: 3rd Vice President

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing Assignment and Assumption of Agreement was acknowledged before me this 31 day of May, 2005, by LINDA L. BROWN as President of GILL HOTELS COMPANY, a Florida corporation, for said corporation, who is () personally known to me, or () produced Fl. Driver's License as identification.



Linda L. Brown
Notary Public

Printed Name of Notary Public

STATE OF Georgia
COUNTY OF Chatham

The foregoing Assignment and Assumption of Agreement was acknowledged before me this 10 day of June, 2005, by Robert Genovese as VP of CLIFFER/TRADER HOLDINGS, L.L.C., a Delaware limited liability company, as Managing Member of AJA TRADER, L.L.C., a Delaware limited liability company, for said company, who is () personally known to me, or () produced _____ as identification.



Melody Williams
Notary Public

Printed Name of Notary Public

CONSENT TO ASSIGNMENT AND ASSUMPTION OF AGREEMENT

In accordance with Section 20 of the Agreement between the City of Fort Lauderdale and Gill Hotels Company, dated July 30, 1993, recorded August 2, 1993, in Official Records Book 20928, Page 234, of the Public Records of Broward County, Florida, the undersigned hereby acknowledges its consent to the Assignment and Assumption of Agreement, to which this Consent is attached, by and between Gill Hotels Company, as assignor, and AIA Trader, L.L.C., as assignee.

IN WITNESS WHEREOF, the City of Fort Lauderdale has caused these premises to be executed in its name by its Mayor, and its seal to be hereto affixed, situated by its City Clerk, this 18 day of July, 2005.

WITNESSES:

CITY OF FORT LAUDERDALE

[Signature]
LUDIE STUBBS
[Witness type or print name]

By: [Signature]
Mayor

[Signature]
KARINA SUAREZ-OLIVERA
[Witness type or print name]

By: [Signature]
City Manager

ATTEST:

(CORPORATE SEAL)

[Signature]
Jonda K. Joseph
City Clerk

Approved as to form:

[Signature]
City Attorney



FLORIDA DEPARTMENT OF TRANSPORTATION
DISTRICT FOUR
GENERAL USE PERMIT APPLICATION

SEP 15 2005

DATE OF DEPARTMENT RECEIPT: _____ PERMIT NUMBER: 91-S-491-1242

ROAD SECTION: 86050, STATE ROAD: A1A (US _____) LIMITED ACCESS: N

COUNTY: BROWARD

APPLICANT: CITY OF FORT LAUDERDALE / A1A TRADERS. L.L.C.

PHONE: 770-563-1100

ADDRESS: 591 West Putnam Avenue, Greenwich, CT 06830

Applicant requests permission from the State of Florida Department of Transportation (hereinafter called the Department) TO OPERATE AND MAINTAIN AN EXISTING PEDESTRIAN FOOTBRIDGE OVER STATE ROAD A1A. REFERENCE PERMIT NO. 91-S-491-1242 (S-86050-1242-91) ISSUED TO CITY OF FT. LAUDERDALE / GILL HOTELS INC. ON SEPTEMBER 21, 1993.

FROM MP 2.265 TO MP 2.265 ; or FROM STATION 194+50.99 TO STATION 194+50.99

The requested permit work is: in the City of Fort Lauderdale.

Applicant agrees to the following conditions:

1. It is expressly stipulated that this permit is a license for permissive use only. The placing of facilities or improvements within public right-of-way, pursuant to this permit, does not create or vest any property rights.
2. The Department may determine that removal or adjustment of permitted features or improvements is required to facilitate necessary construction, maintenance, safety or efficiency of the highway. Removal or adjustment will be immediate or as otherwise directed by the Department and shall be at the expense of the applicant unless reimbursement is authorized.
3. The integrity of all declarations (whether expressed or implied) and of all design drawings filed with the Department to support this permit request is the responsibility of the applicant. Any misrepresentations of fact by the applicant may be cause for revocation of an issued permit.
4. To the extent allowed by law, the applicant, heirs, assigns, and successors in interest is bound and obligated to save and hold the State of Florida, the Department, its agents, and employees harmless from any and all damages, claims, expense, or injuries arising out of any act, neglect, or omission by the applicant, heirs, assigns, and successors in interest that may occur by reason of this facility design, construction, maintenance, or continuing existence of the permitted work, except that the applicant shall not be liable under this provision for damages arising from the sole negligence of the Department.
5. In the event the applicant fails to meet any of the provisions of this permit, all work in pursuit of the permit objective must cease and the applicant must immediately restore affected public property to a condition as good as or better than before permit work began. The applicant will continue to indemnify the Department as stated above until restoration is accepted by the Department.
6. The applicant is required by Florida Statute to notify local law enforcement agencies prior to closing one or more lanes of the State highway for periods exceeding two hours.
7. Special conditions for this permit: THIS PERMIT SHALL BE REVIEWABLE EVERY TEN (10) YEARS FROM THE DATE OF THE DOCUMENT WITH PROVISIONS FOR REVIEW AS PROVIDED IN THE MEMORANDUM OF AGREEMENT, WHICH IS ATTACHED HERETO AND MADE PART OF THIS PERMIT.

THIS PERMIT IS SUBJECT TO THE FOLLOWING WHICH ARE ATTACHED HERETO AND MADE A PART HEREOF:

1. MEMORANDUM OF AGREEMENT BY THE PARTIES
2. IRREVOCABLE LETTER OF CREDIT.

_____ to be completed by the Department

D-4 GU Revised March, 2002

TRACITA

(other special conditions may be attached), READ ATTACHMENT 'S' & GENERAL NOTES. ADVERTISING OF ANY KIND ON THIS STRUCTURE IS PROHIBITED.

8. The engineer of record is: N/A Telephone: () -

Professional Engineer License Number: _____ Address: _____

9. The Prime Professional Engineer (PPE) is responsible to certify that all work permitted herein is completed in compliance with the terms of this permit. The PPE (P.E. Number _____)

is: N/A Telephone: () - Address: _____

10. The Department project engineer of the local maintenance office or the resident construction office is to accept the certification of the Prime Professional Engineer. The Department Project Engineer is: _____ Telephone: () - Address: _____

14. Authorization for the agent signing for the applicant (if other than the applicant) is indicated in a notarized letter from the applicant dated _____. The letter is made a part of this application.

11. The applicant understands that alteration to this form (other than filling out the blank spaces provided in the November revision) makes this application and approval invalid. Use of both front and back is required with signature blocks below on the back of the forms.

THE APPLICANT:

<p><u>Robert G. Geimer</u> <u>9-13-09</u></p> <p>TYPED OR PRINTED NAME DATE</p> <p><u>Manager / VP Vice President</u></p> <p>TYPED OR PRINTED TITLE</p>	<p>SIGNATURE: <u>Robert Geimer</u></p>
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RECOMMENDED FOR THE DEPARTMENT OF TRANSPORTATION FOR APPROVAL BY:

<p>NAME: _____ DATE: _____</p>	<p>SIGNATURE: _____</p>
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APPROVED FOR THE DEPARTMENT OF TRANSPORTATION BY:

<p>NAME: <u>Roger G. LaLanne, P.E.</u> <u>SEP 15 2009</u></p> <p>TITLE: <u>District Permits Engineer</u></p>	<p>SIGNATURE: <u>[Signature]</u></p>
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File

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
D-4(W)(S) 12/90 10
SPECIAL PERMIT NO
PERMIT 586050-1912-91

DATE: 7/8/93 PERMIT NO.: S-86050-1242-91C
SUBJECT: Section 86050 State Road A1A County Broward
PERMITTEE: City of Ft. Lauderdale/ Gill Hotels Inc.
Requesting permission from the State of Florida Department of Transportation, hereinafter called the Department, to construct, operate and maintain
A pedestrian footbridge over State Road A1A

From MP Station: _____ to MP Station: _____

1. Proposed work is within the corporate limits of a municipality.
Yes (X) No ()
Name of Municipality: Ft. Lauderdale
2. Applicant declares that prior to submitting this application he has ascertained the location of all existing utilities, both aerial and underground. A letter of notification and plan of improvement was mailed on _____ to the following utilities/municipalities.
Ft. Lauderdale Building Permit # _____
3. Is Interstate or Toll Road right-of-way involved? Yes () No (X)
4. It is expressly stipulated that this permit is a license for permissive use only and that the placing of facilities upon public property pursuant to this permit shall not operate to create or vest any property right in said holder.
5. Whenever it is determined by the Department that it is necessary for the construction, repair, improvement, maintenance, safe and efficient operation, alteration, or relocation of all, or any portion of such highway, or that it is necessary for the public transportation facility, any and all facilities shall be immediately removed from said highway, or reset or relocated thereon as required by the Department, all at the expense of the permittee unless reimbursement is authorized.
The construction and maintenance of such facility shall not interfere with the property and rights of a prior permittee. The permit holder understands and agrees that the rights and privileges herein set out are granted only to the extent of the State's right, title and interest in the land to be entered upon and used by the permit holder. The permit holder will at all times assume all risk of and indemnify, defend, and save harmless the State of Florida and the Department from and against all loss, damage, cost or expense arising in any manner on account of the exercise or attempted exercise by said permit holder of the aforesaid rights and privileges. It is specifically understood and agreed that this indemnification does not cover or indemnify the Florida Department of Transportation for its sole negligence.
6. The Permit holder shall observe all Department safety regulations during construction. The permit holder must safely conduct the public through the project area in accordance with Part VI of the Manual on Uniform Traffic Control Devices and Index 600 of the Roadway and Traffic Design Standards by displaying necessary safety devices and taking whatever other measures are required or appropriate.
7. In case the permit holder fails to meet any of the Department requirements, the permit holder will be BARRED from performing further work under this permit and will be required to bring the permitted work into compliance or remove said work from the right-of-way at no cost to the Department; AND THE PERMIT HOLDER WILL STILL BE BOUND BY THE INDEMNITY PROVISION OF PARAGRAPH 7. All work shall meet the Department's Standards and be certified by THE ENGINEER OF RECORD in writing that the work has been substantially completed in accord with the Department Standards Specifications for Road and Bridge Construction, and in accord with all rules, regulation, policy, plans, special provision, and safety standards pertaining to this type work. The Engineer of Record is:
David O. Charland, P.E. located at
3559 N.W. 53rd St., Ft. Lauderdale, FL Florida, zip code 33309
TELEPHONE NO: (305) 484-7717

RECEIVED
JUL 19 1993
OFFICE
COMMUNITY DEVELOPMENT

VALIDITY OF THIS PERMIT IS CONTINGENT UPON PERMITTEE OBTAINING NECESSARY PERMITS FROM ALL OTHER AGENCIES INVOLVED.

D-4(W)(S)
12/90

BEFORE BEGINNING ANY WORK THE SIGNAL MAINTAINING AGENCY MUST BE NOTIFIED TO ESTABLISH THE LOCATION OF ANY SIGNAL LOOPS, WIRES, SYSTEM COMMUNICATIONS, ETC.

WORK OF THIS PERMIT AND PLANS WILL BE ON THE JOB SITE AT ALL TIMES DURING THE CONSTRUCTION OF THIS FACILITY.

- 11. All materials and equipment may be subject to inspection by the Maintenance or Resident Engineer.
- 12. All Department property shall be restored to its original condition as far as practical, in keeping with Department specifications, and in a manner satisfactory to the Department.
- 13. The attached drawing and special provision covering details of this installation shall be made part of this permit.
- 14. The permittee shall commence actual construction in good faith within 30 days from the day of said permit approval and shall be completed within 120 days. If the beginning date is more than 60 days from date of permit approval, the permittee must review the permit with the D.O.T. Maintenance Engineer to make sure no changes have occurred in the highway that would affect the permitted construction.
- 15. The Office of Cleo Marsh, P.E. Maintenance or Resident Engineer, located at Ft. Lauderdale, Florida, Telephone Number 776-4300 will be notified twenty-four (24) hours in advance of the pre-construction meeting and again immediately before beginning work.
- 16. Special Instructions: This permit shall be reviewable every ten (10) years from the date of this document with provisions for review as provided in the memorandum of agreement, which is attached hereto and made a part of this permit.

- 17. Special Conditions: This permit is subject to the following which are attached hereto and made a part hereof:
 - 1. Memorandum of agreement by the Parties
 - 2. Irrevocable Letter of Credit

See attached special conditions: Read Attachment "S" & General Notes. Advertising of any kind on this structure is prohibited.

- 18. Effective July 1, 1986, according to the State Statute (14-65 Section 336.07) the Permittee must notify the local Law Enforcement Agencies prior to the closing of one (1) or more lanes of the State Highway for a period that exceeds two (2) or more hours for repair, reconstruction or alteration of the roadway.

Submitted by: [Signature]
SIGNATURE
WANDA L. GILL, VICE PRES.
NAME AND TITLE (Type or Print)

[Signature] PLACE CORPORATE SEAL
(1) WITNESS
[Signature]
(2) WITNESS
[Signature] ATTESTED

IF CORPORATE SEAL IS NOT APPROPRIATE THEN THE SIGNATURE OF TWO (2) WITNESSES IS REQUIRED.

"Waiver of Corporate Seal" on file with General Counsel, State of Florida Department of Transportation, Tallahassee, Florida.
Yes () No (X)

Roadway Construction is proposed/underway. Yes () Job # _____
No (X)

Recommended for Approval [Signature] Title E-IV

Date: 9/21/93

Approved by: [Signature]
District Traffic Services Engineer/Authorized Representative

Confidential - John A. Coburn, P.E. 228-972-4110
10/13/2014 10:23 AM