

This Instrument prepared
by and return to:
Lynn Solomon, Assistant City Attorney
City of Fort Lauderdale
100 N. Andrews Avenue
Fort Lauderdale, FL 33301

**AGREEMENT ANCILLARY
TO
REVOCABLE LICENSE AGREEMENT
("Agreement")**

THIS IS AN AGREEMENT ANCILLARY TO A REVOCABLE LICENSE AGREEMENT (hereinafter "Agreement") made and entered into this ____ day of _____ by and between:

ANDREWS SECOND STREET, LLC, a Florida limited liability company organized and authorized to conduct business in the State of Florida, having a principal address of 17 West Las Olas Boulevard, Fort Lauderdale, Florida 33301, FEI/EIN No. _____, its successors and assigns (hereinafter "LICENSEE")

and

CITY OF FORT LAUDERDALE, a municipal corporation of the State of Florida having a principal address of 100 North Andrews Avenue, Fort Lauderdale, FL 33301 (hereinafter, "CITY")

RECITALS

WHEREAS, CITY and LICENSEE are about to enter into a Revocable License Agreement with Broward County, a political subdivision of the State of Florida (hereinafter, "COUNTY") relative to LICENSEE'S installation and maintenance of certain landscaping and related improvements in the right of way for South Andrews Avenue, the installation and maintenance of such improvements being subject to certain terms and conditions; and

WHEREAS, the Revocable License Agreement with COUNTY and CITY is attached hereto as **Exhibit "A"** and incorporated herein by reference (hereinafter, "RLA"); and

WHEREAS, pursuant to the Florida Transportation Code, South Andrews Avenue is within the County Road System; and

WHEREAS, there are a number of provisions within the RLA that cast obligations on the CITY that exceed that of CITY accepting the obligation of ongoing maintenance of the

landscaping, irrigation and other related improvements in the event LICENSEE fails to perform in accordance with the RLA; and

WHEREAS, Section 4.5 of the RLA, provides in pertinent part:

MUNICIPALITY hereby acknowledges and affirms that it shall be responsible for and assume the LICENSEE'S responsibilities and obligations for the ongoing maintenance of the landscaping, irrigation, and related improvements, should LICENSEE *fail to perform or comply with any terms or conditions* of this Agreement. MUNICIPALITY shall be responsible for and assume LICENSEE's responsibilities and obligations upon notice from the COUNTY that LICENSEE has failed to perform or comply with any terms of conditions of this Agreement. (Emphasis supplied.)

WHEREAS, Section 4.6 of the RLA, provides in pertinent part:

The obligations of LICENSEE as set forth in this Agreement may be performed by LICENSEE or MUNICIPALITY through the use of employees, or LICENSEE or MUNICIPALITY may enter into a contract with a third party to perform the services. In the event LICENSEE or MUNICIPALITY contracts with a third party, each shall remain fully responsible hereunder and shall ensure that its contractor complies at all times with each and every term, condition, duty, and obligation set forth herein.

WHEREAS, Section 8 of the RLA provides for indemnification of the COUNTY by the LICENSEE; and

WHEREAS, Section 8 of the RLA provides for the indemnification of the COUNTY by the LICENSEE for that acts or omissions of LICENSEE'S contractors; and

WHEREAS, Section 9 of the RLA obligates LICENSEE to provide certain insurance coverages; and

WHEREAS, by virtue of the clause in Section 4.5 obligating CITY to "be responsible for and assume LICENSEE'S responsibility and obligations . . . should LICENSEE fail to perform or comply with any terms or conditions of this Agreement" the RLA has placed obligations upon CITY that are tantamount to CITY being the guarantor of all of LICENSEE'S acts or omissions under the RLA, including those acts or omissions of any of LICENSEE'S third party contractors; and

WHEREAS, in order to induce the CITY into entering the RLA with the COUNTY and LICENSEE, as a condition precedent to executing the RLA, CITY is requiring LICENSEE to enter into this Agreement with CITY;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and other good and valuable considerations, the sufficiency and adequacy of which is hereby acknowledged, LICENSEE and CITY agree as follows:

1. Recitals. The foregoing recitals are true and correct and are hereby ratified and confirmed and incorporated herein.

2. Defined Terms. The following terms, as used and referred to herein, shall have the meanings set forth below, unless the context indicates otherwise.

City Manager means CITY's Chief Executive Officer, its CITY Manager, or his or her designee.

Contract Administrator means the City Engineer of the CITY, or his designee. In the administration of this Revocable License, as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the Contract Administrator.

Day(s). In computing any period of time expressed in day(s) in this Revocable License, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

Effective Date means the effective date of this Agreement, which shall be the date upon which both (i) this Agreement is executed by the proper corporate officials for LICENSEE and (ii) CITY and (iii) the RLA is executed by all parties thereto.

Florida Building Code means The Florida Building Code adopted pursuant to Chapter 553, Florida Statutes and includes the Broward County Amendments thereto.

License Area means that area identified as "Property" in the RLA, being more particularly described in that Sketch and Description attached thereto as **Exhibit "B"**.

LICENSEE means **ANDREWS SECOND STREET, LLC, a Florida limited liability company** organized and authorized to conduct business in the State of Florida, whose principal address is 17 West Las Olas Boulevard, Fort Lauderdale, Florida 33301.

Permit means either a Building Permit issued by the Building Official pursuant to the Florida Building Code and Broward County Administrative Amendments thereto or an Engineering Permit issued by the Office of the CITY Engineer, or both, whichever the case may be.

Person means any individual, firm, partnership (general or limited), corporation, company, association, joint venture, joint stock association, estate, trust, business trust,

cooperative, limited liability corporation, limited liability partnership, limited liability company or association, or body politic, including any heir, executor, administrator, trustee, receiver, successor or assignee or other person acting in a similar representative capacity for or on behalf of such Person.

Plans and Specifications means the signed and sealed engineering drawings, plans, specifications, schematics, drawings, details, and topographic survey for the Project Improvements to be installed, constructed, operated, maintained, repaired within and removed from the License Area(s).

Project means the implementation, construction, installation, operation, maintenance, repair and replacement from time to time of the Project Improvements within the designated License Area for the purpose of establishing, installing, operating, maintaining and repairing, from time to time the Project Improvements as more particularly identified in **Exhibit "C"** to the RLA. The term *Project* also includes the ongoing obligation of maintenance and repair of the Project Improvements within the designated License Area, including reconstruction, repair or reinstallation of Project Improvements from time to time and shall also include the operational activities involved in the Project Improvements as more particularly set forth in the RLA. The term *Project* shall not include the possession, use or occupancy of the designated License Areas for any other purpose, except as expressly authorized in this Revocable License. The term *Project* includes any portion thereof.

Project Improvements means the placement, installation, construction, fabrication of certain improvements within the License Area as more particularly identified in the RLA and **Exhibit "C"** to the RLA. The term *Project Improvements* includes any portion thereof. The Project Improvements are demonstrated schematically on **Exhibit "C"** to the RLA.

Property means the real property identified as the "Burdened Parcel" in the RLA, a Sketch and Description of which is attached as **Exhibit "A"** to the RLA.

Staging of Materials or Equipment means the placement of materials or equipment or parking of vehicles within the License Area or vehicular travel lanes adjacent thereto during the assembling or construction of the Project Improvements in any manner other than (a) temporarily and (b) for the purpose of and while actually engaged in the act of loading or off-loading materials or equipment from a vehicle. Staging of Materials or Equipment shall include equipment or materials off-loaded from a vehicle and placed within the License Area when not being removed from the License Area to LICENSEE's Property as soon as practicable.

Storage is synonymous with *Staging of Materials or Equipment* during the assembling or construction of the Project Improvements and shall mean the placement of materials or equipment within the License Area or any public right of way within two blocks of the Property in such a manner as would constitute *Staging of Materials or Equipment* if the materials or equipment were within the License Area.

3. Compliance and Default. LICENSEE shall comply with each and every term and condition set forth in the RLA and failure to so comply within the applicable cure period

shall constitute a default under this Agreement. Any acts or omissions by LICENSEE or LICENSEE'S contractors which are not in compliance with the terms and conditions of the RLA not cured within the applicable cure period shall constitute a default under this Agreement. Furthermore, LICENSEE shall comply with each and every term and condition set forth in this Agreement.

4. Conditions. The Revocable License granted herein is subject to the following conditions:

4.1 No construction of the Project Improvements shall be commenced prior to issuance of the required Permits.

4.2 For the License Area where the Project Improvements are to be placed, installed or constructed, prior to construction and installation of Project Improvements within the License Area CITY, at the discretion of the City Engineer shall perform, at its sole cost and expense, a sub-surface utility investigation.

4.2.1 In the event defects to any of the subterranean utilities are detected as a result of the sub-surface utility investigation, CITY shall cause to be repaired such defects prior to construction and installation of the Project Improvements.

4.2.2 In the event no defects to any of the subterranean utilities are detected as a result of the sub-surface utility investigation under 4.2.1., LICENSEE shall bear the cost of any repairs required after construction of the Project Improvements for a period of one (1) year after receiving a Certificate of Completion from the CITY Engineer.

4.3 Any damage to existing pavement or to any publicly owned property or rights-of-way, including sidewalk easement, caused by the installation, movement or removal of temporary barrier fencing shall be repaired to the satisfaction of the City Engineer and the cost of such repairs shall be borne by LICENSEE.

4.4 LICENSEE shall provide to the Office of the City Engineer as-built plans, specifications, details and surveys after construction of the Project Improvements.

4.5 LICENSEE shall be responsible for making all utility notifications and obtaining all locations and clearances prior to performing any excavation work, including for the installation of signs and fence posts.

4.6 Any damage to existing pavement or to any publicly owned property or rights-of-way caused by the installation, movement or removal of Project Improvements promptly upon notice from the CITY to LICENSEE shall be repaired to the satisfaction of the Office of City Engineer and the cost of such repairs shall be borne by LICENSEE.

4.7 At the conclusion of the construction and installation phase of the Project, all damage to any elements such as pavement, curbs, sidewalks, signs, markings, landscaping, trees, irrigation, parking meters, light poles, etc. located within the public right of way or License Area promptly upon notice from CITY to LICENSEE shall be repaired or restored to a condition equal to or better than that existing prior to commencement of construction of the Project.

4.8 Storage of construction materials or equipment shall be limited to the Property or other permissible area subject to the limitations referenced herein and shall not be stored within any of the public rights-of-way within a two-block radius of the Property. Staging of Materials and Equipment in the public right of ways is strictly prohibited.

4.9 Storage of dumpsters and debris shall be limited to the Property and shall not be stored, placed or collected within the any of the public rights-of-way within a two-block radius of the Property.

4.10 If needed, as determined by the Contract Administrator, LICENSEE shall provide labor to clean surrounding streets and sidewalks of dirt and debris.

4.11 All material or equipment deliveries shall be placed within the boundaries of the Property, inside the perimeter fencing for the Property, for off-loading to avoid conflicts with pedestrian or vehicular traffic.

4.12 LICENSEE shall be responsible for verifying all underground utilities prior to digging in any area. LICENSEE shall notify all necessary utility companies 48 hours minimum prior to digging for verification of all underground utilities, irrigation and all other obstructions and coordinate prior to initiating operations. No portion of the Project Improvements may be located any closer than ten (10) feet to any underground utility.

5. Cost Recovery and Fees.

5.1 **Annual Inspection Fees.** LICENSEE agrees to pay to CITY for each fiscal year that this Agreement is in effect, commencing with the Effective Date hereof and continuing annually on the first day of January of each year thereafter, an annual inspection fee to be determined by the City Manager which such fee shall be based on CITY'S reasonable projected cost of periodically inspecting the License Area for compliance with the terms and conditions set forth in this Agreement over the then current fiscal year (October 1st through September 30th), such reasonable projected cost of periodic inspections not to exceed \$200.00 per annum.

5.2 **Recovery of Additional Costs of Administration.** In addition to the annual inspection fees set forth above, LICENSEE shall also be obligated to pay additional fees to CITY amounting to the recovery of reasonable costs incurred by CITY in the creation, administration, monitoring and enforcement of this Agreement and the RLA, including, but not

limited to, staff time incurred relative thereto, and reasonable cost of CITY'S attorneys' services associated with the preparation and administration of this Agreement and any amendments thereto and including enforcement of the terms thereof, with such reasonable cost of services not to exceed \$500.00 per annum.

5.3 Rendition of Statement. Upon CITY providing a statement of fees and/or costs to LICENSEE, LICENSEE shall pay CITY within thirty (30) days the amounts owed in accordance with the Statement. The Statement shall provide sufficient detail as to the nature of the cost, services rendered, inclusive dates services rendered, time consumed and cost relating thereto. For each month beyond thirty (30) days from rendition of the Statement to LICENSEE for which the fee remains unpaid, simple interest of six percent (6%) per month shall be due CITY, but not to exceed the highest lawful amount allowed by law. If a dispute arises as to the fees owed CITY under the Statement, and such dispute is not resolved within ninety (90) days after the date of rendition of the Statement, LICENSEE shall pay the undisputed amount and shall provide CITY with a bond or other security acceptable to the City Manager 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 LICENSEE all costs of collection, including reasonable attorneys' fees and court costs incurred at all tribunal and appellate levels, provided CITY ultimately prevails.

6. ADA. LICENSEE shall have the continuing obligation of compliance with the Americans With Disabilities Act, as same may be amended from time to time, with respect to the Project as it is applicable.

7. Condition of License Areas. LICENSEE accepts the License Area in an "AS IS" condition as of the Effective Date of this Agreement. If LICENSEE finds any conditions altered after an initial inspection of the License Area, which have a material adverse effect on the Project, CITY shall be notified immediately.

8. Compliance with Regulations of Public Bodies. LICENSEE shall, at its sole cost and expense, possess, use, construct, operate, maintain and repair and replace, from time to time, the Project Improvements within the License Area of the Project and perform such acts and do such things as shall be lawfully required by any public body having jurisdiction over the License Area, Project Improvements and the Project in order to comply with health and sanitary requirements, fire hazard requirements, zoning requirements, building code requirements, City of Fort Lauderdale Engineering Standards, Americans With Disabilities Act requirements, environmental requirements and other similar regulatory requirements.

9. No Property or Contract Right. LICENSEE expressly acknowledges that pursuant to the terms hereof, it gains no property or contract right through this Agreement to the continued possession, use, operation and maintenance of the Project or Project Improvements within the License Area.

10. Repairs and Maintenance. LICENSEE shall not commit waste or injury to the License Area or the use, operation and maintenance of the Project Improvements maintained therein. LICENSEE shall, at its own cost and expense, at all times cause the Project

Improvements within the License Area to be safely and securely maintained, kept in good condition, repair, clean, and free of rubbish and other hazards to Persons using the License Area. LICENSEE 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 maintain the License Area and Project Improvements in their original condition at the time of the commencement of the term of the RLA. The Office of the CITY Engineer shall approve all structural repairs and replacements. When making repairs, replacements and maintenance LICENSEE shall comply with all laws, CITY or applicable County Codes, ordinances, Florida Building Code, regulations promulgated by federal, state, county, CITY or any other agency with jurisdiction over the Project and Project Improvements and CITY Engineering standards then in effect; provided, however, that LICENSEE shall only be responsible to make such repairs and replacements as required under the RLA. The License Area shall be maintained in a neat and orderly appearance at all times.

11. Emergencies. If an emergency situation arises with respect to the License Areas where the License Areas or any condition thereof presents an imminent threat to the health or safety of Persons or property, CITY shall make reasonable efforts to provide telephone and fax or e-mail notice to the LICENSEE's Contact Person. If, following that notice, LICENSEE 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 to Persons or property, CITY may undertake such limited actions as are necessary to eliminate the emergency; and CITY shall be entitled to recover its reasonable costs of cure from LICENSEE in accordance with provisions hereof. For the purposes of this Paragraph, LICENSEE's Contact Person shall be **Steve J. Halmos**, Andrews Second Street, LLC, 17 West Las Olas Boulevard, Fort Lauderdale, Florida 33301, telephone number **(954) 760-4980**; and e-mail address: steve.halmos@reuniongroup.com. In the event the LICENSEE's Contact Persons or any other information pertaining to the LICENSEE's Contact Person shall change, such change shall be provided to the CITY Engineer in writing.

12. Damage to Public Property. In the event the use, operation, maintenance, repair, construction, demolition or reconstruction of the Project Improvements cause(s) any damage whatsoever to any other public property, then LICENSEE shall be responsible for the cost of repair and shall, at CITY's option, make said repairs, subject to CITY's reasonable satisfaction.

13. Removal, Restoration and Security for Performance.

13.1 Except as may otherwise be expressly provided herein or in the RLA, it is agreed that upon termination of RLA, in whole or in part, as to the License Area, upon written request of CITY within thirty (30) days of such termination, LICENSEE shall remove all or any part of the Project Improvements and any components thereof upon revocation or termination of the RLA as aforesaid as to the License Area and upon demand of COUNTY or CITY for removal of all or any part of the Project Improvements as to the License Area and LICENSEE shall restore the surface of the such License Area to the conditions that existed prior to LICENSEE's installation of all or any of the Project Improvements within the License Area. Such removal shall be at LICENSEE's sole cost and expense. In the event LICENSEE fails to

begin to remove all or any parts of the Project Improvements contemplated herein with thirty (30) days after written demand by the COUNTY or CITY, CITY is hereby authorized to remove such Project Improvements that interfere with the easement rights or the public's use of dedicated rights-of-way and restore the respective License Area to the conditions that existed prior to the LICENSEE's construction of Project Improvements, and all reasonable costs associated with the removal and restoration thereof shall be fully reimbursed by LICENSEE. Notwithstanding the foregoing, LICENSEE shall have the obligation to immediately begin the process of removing any or all of the Project Improvements within the License Area upon termination, in whole or in part, of the RLA.

13.2. In the event LICENSEE fails to remove the Project Improvements and COUNTY or CITY finds it necessary to remove the Project Improvements in accordance with the foregoing, then the total expense incurred by CITY in removing the Project Improvements and the administrative costs associated therewith shall be considered a special assessment and lien upon the Property. LICENSEE shall have thirty (30) days from the date of the statement of the total expenses incurred by CITY and the administrative costs associated therewith within which to pay to CITY the full amount due. Failure to timely pay the amount due or serve upon the CITY Manager a written letter contesting the statement of assessed expenses and administrative costs will result in the matter being scheduled before the CITY Commission for consideration of and adoption of a Resolution assessing against the Property the expenses and administrative costs associated with CITY's removal of the Project Improvements. The Resolution may also impose a special assessment lien against the Property for the expenses and costs so assessed. A Notice of the Special Assessment assessed by the CITY Commission for the unpaid expenses and costs as stated above shall be recorded with the CITY Clerk and in the Public Records of Broward County, Florida. The assessed expenses and costs and the lien provided for herein may be foreclosed in the manner provided by law.

14. Damage and Destruction. LICENSEE shall not by its possession, use, occupancy, operation, maintenance or repair of the License Area, suffer or permit any damage to the License Area or to the adjacent real property. If during the term of the RLA or this Agreement, LICENSEE becomes aware that the Project Improvements within the License Area have been damaged, destroyed or deteriorated in whole or in part by fire, casualty, obsolescence, failure to maintain or any other cause, and whether or not such destruction or damage is covered by any insurance policy on the Project, LICENSEE shall give to CITY prompt notice thereof, and LICENSEE shall:

(a) seek the necessary Permits and approvals from the regulatory agencies with jurisdiction over the License Area, Project Improvements or adjacent real property to repair, replace and rebuild the same or cause the same to be repaired, replaced or rebuilt as nearly as possible to their original condition; or

(b) to the extent that such destruction or damage affected the Project Improvements within the License Area or real property adjacent thereto, or any part thereof, if LICENSEE elects to remove such Project Improvements consistent with the terms of the RLA, then LICENSEE shall seek the Permits and approvals, if any, required for such removal and cause such Project Improvements to be removed from the License Area and return the License Area to the condition that existed prior to the Effective Date of the RLA.

15. Indemnity.

15.1. LICENSEE shall protect, defend, indemnify and hold harmless CITY, its officers, employees and agents from and against any and all lawsuits, penalties, damages, settlements, judgments, decrees, costs, charges and other expenses charged or incurred, including reasonable attorney's fees actually incurred, or liabilities of every kind, nature or degree arising out of or in connection with the rights, responsibilities and obligations of LICENSEE under the RLA and this Agreement, conditions contained therein, the location, construction, repair, maintenance use or occupancy by LICENSEE of the License Area, Project Improvements or Project, or the breach or default by LICENSEE of any covenant or provision of the RLA or this Agreement, except for any occurrence arising out of or resulting from the intentional wrongful or gross negligence of CITY, its officers, agents and employees. Without limiting the foregoing, any and all such charges, claims, suits, causes of action relating to personal injury, death, damage to property, defects in construction, rehabilitation or restoration of the License Area by LICENSEE or others, alleged infringement of any patents, trademarks, copyrights or of any other tangible or intangible personal or real property right by LICENSEE, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation or decree of any court by LICENSEE, is included in the indemnity.

15.2. LICENSEE further agrees that upon proper and timely notice 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 CITY, LICENSEE shall assume and defend not only itself but also CITY in connection with any claims, suits or causes of action, and any such defense shall be at no cost or expense whatsoever to CITY, provided that CITY (exercisable by CITY's Risk Manager) shall retain the right to select counsel of its own choosing. This indemnification shall survive termination, revocation or expiration of the Revocable License and shall cover any acts or omissions occurring during the term of the Revocable License, including any period after termination, revocation or expiration of the Revocable License while any curative acts are undertaken.

15.3. CITY does not waive its sovereign immunity and the indemnify set forth above shall not expand the rights or remedies of any third parties.

16. Insurance. At all times during the term of the RLA and this Agreement, LICENSEE, at its expense, shall keep or cause to be kept in effect the insurance coverages set forth in the RLA and LICENSEE shall cause such coverage to be extended to CITY as an additional insured and shall furthermore provide Certificates of Insurance to CITY at least fourteen (14) days prior to the commencement of the License Term and annually thereafter on the anniversary date of the policies.

17. Remedies of CITY.

17.1 In the event the LICENSEE fails to perform or violates any of the terms or conditions of RLA or this Agreement or is in breach or default in any term or condition hereof,