

## **ASSUMPTION OF LIABILITY AND HOLD HARMLESS AGREEMENT**

THIS ASSUMPTION OF LIABILITY AND HOLD HARMLESS AGREEMENT (“Agreement”) is entered into this **27** day of July, 2020, by and between:

**RAHN BAHIA MAR WALKWAY LLC**, a Florida limited liability company, whose principal address is 1175 N.E. 125<sup>th</sup> Street, Suite 102, North Miami, FL 33161 (“BAHIA MAR”)

and

**RAHN BAHIA MAR L.L.C.**, a Delaware limited liability company, whose principal address is 1175 N.E. 125<sup>th</sup> Street, Suite 102, North Miami, FL 33161 (“RAHN”)

and

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

## **RECITALS**

WHEREAS, the CITY is the owner of the “Bridge” (as hereinafter defined); and

WHEREAS, the CITY and RAHN are Parties to an Amended and Restated Lease dated January 4, 1995, as same may be amended and/or replaced from time to time (“Lease”), whereby RAHN leases property as described in the Lease (“Premises”) to the west of the Bridge and has a walkway on the Premises connected to the Bridge; and

WHEREAS, the CITY, BAHIA MAR, and RAHN desire that the CITY grant BAHIA MAR an exclusive easement for the use of the Bridge for ingress, egress, and all other lawful uses; and

WHEREAS, the Bridge is located adjacent to and east of the Premises, whereby the Bridge extends from the Premises over State Road A1A (“A1A”) to Fort Lauderdale Beach, a right-of-way which is under the jurisdiction of the State of Florida Department of Transportation (“FDOT”); and

WHEREAS, BAHIA MAR has committed to the payment of all costs for the reconstruction, repair and maintenance of the Bridge, including but not limited to: permit fees, bonds, deposits, materials, and maintenance costs as provided in this Agreement; and

WHEREAS, in order to permit the reconstruction and repair of the Bridge, the FDOT requires the CITY to enter into an agreement entitled “District Four Maintenance Memorandum of Agreement” (“MMOA”) which is attached hereto and incorporated herein as **Exhibit “B”**; and

WHEREAS, the terms and conditions set forth in the MMOA impose the responsibility for payment, repair, restoration and general maintenance of all architectural elements of the Bridge on the CITY; and

WHEREAS, as a condition to the CITY executing the MMOA, BAHIA MAR agrees to perform certain of the CITY's responsibilities, pay the CITY's obligations, and protect and indemnify the CITY with respect to certain liabilities under the MMOA as provided in this Agreement; and

WHEREAS, RAHN has agreed to guaranty all monetary obligations of BAHIA MAR owed to the CITY as set forth in this Agreement; and

WHEREAS, reconstruction and repair of the Bridge would serve a legitimate public purpose of improving safety and enhancing the architectural structure within the 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, BAHIA MAR and the CITY hereby agree as follows:

1. **Recitals.** The foregoing Recitals are true and correct and are incorporated herein.
2. **Terms.** The following terms, as used and referred to herein, shall have the meanings set forth below, unless the context indicates otherwise. Terms not otherwise defined herein shall have the meaning set forth in the MMOA.

*Bridge* means that certain pedestrian bridge extending from the west side of A1A, across A1A, across the CITY's property on the east side of A1A, to its terminus in the sand of Fort Lauderdale Beach, Florida due east from the eastern terminus of the walkway on the Premises, all as reflected on Exhibit "A" attached hereto and made a part hereof, as such Improvement, may be amended, modified, and/or relocated from time to time.

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

*CITY Engineer* means the CITY Engineer, or his or her designee. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the CITY Engineer. For the purposes hereof, the CITY Engineer's designee shall be the Urban Design Engineer.

*Day(s).* In computing any period of time expressed in day(s) in this Agreement, 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.

*Easement* shall mean an easement from the CITY to BAHIA MAR granting BAHIA MAR (its successors, assigns and invitees) the exclusive right to use the Bridge for ingress, egress and all other lawful use, which Easement is substantially in the form of **Exhibit "C"**.

*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 BAHIA MAR, RAHN and the CITY and (ii) the MMOA is executed by the FDOT and the CITY.

*Party* shall mean the CITY, RAHN and BAHIA MAR and *Parties* are collectively the CITY, RAHN and BAHIA MAR.

*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.

*Property* shall mean the Bridge.

### **3. BAHIA MAR Obligations.**

(a) BAHIA MAR shall oversee and pay for the Improvements as provided in Sections 2 and 6 of the MMOA.

(b) After completion of the Improvements, BAHIA MAR agrees to maintain the facilities as provided in Section 3 of the MMOA and, upon timely receipt of notice from the CITY and/or the FDOT of any deficiencies as contemplated in Section 4 of the MMOA, BAHIA MAR agrees, to the extent permitted by the FDOT to perform the obligations of CITY under the MMOA to correct such deficiencies unless the CITY has wrongfully caused such deficiencies to exist in which event the CITY agrees to timely correct such deficiencies.

(c) BAHIA MAR agrees to provide the Cash Deposit to be delivered to the FDOT as set forth in Sections 7 and 8 of the MMOA, which Cash Deposit shall be paid directly by BAHIA MAR to the FDOT or, to the extent necessary, by BAHIA MAR to the CITY and the CITY will promptly remit same to the FDOT. BAHIA MAR shall have all rights with regard to such Cash Deposit and, to the extent that the Cash Deposit is returned pursuant to the MMOA, BAHIA MAR shall be entitled to such Cash Deposit or any portion thereof which is to be returned under the MMOA.

(d) BAHIA MAR and its agents, consultants, subconsultants, contractors, or subcontractors performing work at the request of BAHIA MAR shall provide (and provide the CITY with reasonable evidence thereof) the indemnification and insurance required of the CITY as set forth in Sections 10 and 14 of the MMOA as to any of their respective acts.

(e) BAHIA MAR agrees to promptly provide the CITY with copies of any written notices received by BAHIA MAR from the FDOT with regard to any breach of BAHIA MAR's or the CITY's obligations to repair or maintain the Bridge pursuant to the MMOA.

**4. CITY Obligations.** The CITY agrees as follows:

(a) The CITY shall promptly notify BAHIA MAR and provide BAHIA MAR with copies of all notices or other documentation received by the CITY from the FDOT in connection with the MMOA and/or the Bridge.

(b) The CITY hereby grants to BAHIA MAR the Easement and within forty-five (45) business days after the Effective Date, the CITY agrees to execute and deliver the Easement and the Memorandum to BAHIA MAR to enable BAHIA MAR to record the Easement and the Memorandum in the Public Records of Broward County, Florida;

(c) The CITY agrees to cooperate with BAHIA MAR to provide, to the extent within the CITY's control, the right of BAHIA MAR to access the CITY's property, including the Bridge and other CITY property adjacent to the Bridge, in order to perform BAHIA MAR's obligations under this Agreement. Additionally, to the extent that BAHIA MAR is not permitted access to the Bridge (or the CITY's property adjacent to the Bridge) or otherwise perform under the MMOA pursuant to the MMOA, then the CITY agrees that it shall, at the request of BAHIA MAR, perform such work on behalf of BAHIA MAR, provided that BAHIA MAR shall pay all reasonable costs and expenses in connection with performing such acts.

(d) The CITY hereby grants to BAHIA MAR all rights of the CITY under the MMOA to perform its obligations under the MMOA, including the rights of access to the Bridge and all rights with respect to the permits and approvals contemplated by the MMOA in order to install the facilities as contemplated in Paragraph 2 of the MMOA, maintain the facilities as contemplated in Paragraph 3 of the MMOA and otherwise perform the obligations of the CITY as contemplated by the MMOA.

(e) The CITY agrees that it shall not amend or terminate the MMOA without the prior written consent of BAHIA MAR if same would adversely affect Bahia Mar's rights or obligations under this Agreement.

(f) The CITY agrees that to the extent that the CITY is entitled to the return of the Cash Deposit, that upon its receipt of same, the CITY shall promptly remit same to BAHIA MAR.

(g) The CITY shall comply with the obligations of the CITY set forth in Section 15 of the MMOA.

**5. No Waiver.** The CITY, RAHN, and BAHIA MAR acknowledge and agree that neither BAHIA MAR nor RAHN waives any rights that either may have with respect to eminent domain with regard to the Premises or either of their respective other rights available at law or in equity, including but not limited to neither BAHIA MAR nor RAHN waiving their respective rights to eminent domain as set forth in Section 9 of the MMOA.

**6. Indemnification and Hold Harmless**

BAHIA MAR shall protect, defend, indemnify, and hold harmless the CITY, its officials, officers, employees, volunteers, and agents from and against any and all claims, 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 BAHIA MAR under the MMOA and this Agreement, the use of the Bridge by BAHIA MAR pursuant to the Easement, or the material breach or default by BAHIA MAR of any covenant or provision of BAHIA MAR under this Agreement, provided however that BAHIA MAR shall not protect, defend, indemnify or hold harmless the CITY, its officials, officers, employees, volunteers, and agents for: (a) any occurrence arising out of or resulting from the wrongful acts or negligence of the CITY, the FDOT, or their respective officials, officers, volunteers, agents and employees; or (b) any liability resulting from the CITY's material breach of its obligations in Sections 4(a), (b), (c), (d) and (e) of this Agreement; or (c) any liability arising from any breach of CITY's covenants or obligations under this Agreement that materially prejudices BAHIA MAR in relation to the claim at issue and for which indemnification is sought. Any liability of BAHIA MAR to the CITY shall be limited to compensatory damages suffered by the CITY, and the CITY shall, in connection with any claim made against the CITY for liability pertaining to this Agreement or the MMOA, assert its right of sovereign immunity in connection with such claim, if applicable.

Subject to the limitations set forth above, BAHIA MAR further agrees that upon delivery of proper and timely notice of a violation under the MMOA, it shall investigate, handle, respond to, provide defense for, and defend any such violation at its sole expense. The CITY retains the right to object to counsel selected by BAHIA MAR, and BAHIA MAR shall only be obligated to reimburse the CITY for any alternate counsel, if CITY deems that separate legal counsel is necessary due to a conflict of interest. This indemnification shall survive termination, revocation or expiration of the MMOA and this Agreement for the shorter of: (a) any statute of limitations for any claim giving rise to such indemnification; or (b) five (5) years from the termination of this Agreement and, subject to the terms of this Agreement, shall cover the wrongful acts or omissions of BAHIA MAR occurring during the term of the MMOA and this Agreement.

**7. Insurance.** At all times during the term of the MMOA and this Agreement, BAHIA MAR, at its expense, shall keep or cause to be kept in effect the insurance coverages set forth in Section 14 of the MMOA and BAHIA MAR shall cause such coverage to be extended to the CITY as an additional insured and shall furthermore provide Certificates of Insurance to the CITY prior to commencing work by the contractor retained by BAHIA MAR to perform the work set forth in Section 2 of the MMOA and annually thereafter on the anniversary date of the policies during the period such insurance is required under the MMOA.

**8. Removal of Improvements and Restoration of Improvement Area.** Except as may otherwise be expressly provided herein, it is agreed that upon termination of the MMOA, in whole or in part, whereby pursuant to the MMOA the CITY is required to remove such Improvements, BAHIA MAR shall remove all or any part of the Improvements in accordance with the terms and conditions of the MMOA, and BAHIA MAR shall restore any damage to the right of way and any impacted public utilities caused by such removal to conditions acceptable to the FDOT. Such removal and restoration shall be at BAHIA MAR's sole cost and expense. In the event BAHIA MAR fails to begin to remove all or any part of the Improvements in accordance with the MMOA within thirty (30) days after written demand by the FDOT or the CITY to BAHIA MAR, as such time may be extended for a reasonable period of time if BAHIA MAR commences such removal (including hiring an architect or contractor to prepare any plans required to pull any

permit and/or obtain any approvals from either the CITY or the FDOT and including the time to obtain such permit or approval) and is proceeding diligently to complete such demolition and removal, the CITY is hereby authorized to remove such Improvements that are required to be removed under the MMOA, restore the A1A right of way and any public utilities located therein to conditions acceptable to the FDOT (but only to the extent damaged by such removal of the Improvements), BAHIA MAR shall promptly reimburse the CITY within ten (10) days of written demand, together with reasonably supporting documentation of the reasonable costs incurred by the CITY associated with the removal and restoration thereof.

**9. Event of Default; Remedy.** In the event BAHIA MAR fails to perform or violates any of the terms or conditions of this Agreement, the CITY shall notify BAHIA MAR of the specific failure or violation of this Agreement or the MMOA in writing and BAHIA MAR shall thereafter have a period of thirty (30) days to cure any such failure or violation to the CITY'S reasonable satisfaction, provided as to non-monetary breach, the cure period shall be extended for a reasonable period of time to permit completion of such cure if BAHIA MAR commences such cure (including hiring an architect or contractor to prepare any plans required to pull any permit and/or obtain any approvals from either the CITY or the FDOT and including the time to obtain such permit or approval) within such thirty (30) day period and proceeds diligently to complete such cure (an "Event of Default"). Upon the occurrence of an Event of Default until such Event of Default is cured, the CITY shall have the right (1) to take any equitable action to enforce the terms and conditions of the MMOA or this Agreement, it being stipulated by the parties that since the MMOA and this Agreement deal with the right to use public easements and rights-of-way of the FDOT used for a governmental purpose, a violation or breach by BAHIA MAR of any term or condition of the MMOA or this Agreement not cured within the cure period, constitutes an irreparable injury to the public and the CITY for which there is no adequate remedy at law, or (2) take such curative action that was required to be taken by BAHIA MAR under the MMOA or this Agreement and the cost and expense incurred in the CITY's curative actions shall be passed on to and owed by BAHIA MAR, in which case BAHIA MAR shall be liable for payment to the CITY for all reasonable and necessary costs and expenses incurred by the CITY in connection with the performance of the action or actions associated with curing such Event of Default by BAHIA MAR and BAHIA MAR shall reimburse the CITY within thirty (30) days following written demand (together with supporting documentation of the costs incurred by the CITY associated with such demand for payment) for payment thereof. Interest shall begin to accrue on the unpaid amount of BAHIA MAR's obligations to the CITY thirty (30) days after the CITY sends the written demand for payment to BAHIA MAR, at a rate of twelve percent (12%) per annum simple interest but in no event shall interest exceed the highest amount allowed by Florida law. If a dispute between the CITY and BAHIA MAR arises as to the need for, or amount due to the CITY for, repairs or maintenance undertaken by the CITY in accordance with the MMOA or this Agreement, and such dispute is not resolved within thirty days (30) days after the date that the CITY makes the written demand (together with supporting documentation of the costs incurred by the CITY associated with such demand for payment) for payment, BAHIA MAR shall pay to the CITY the undisputed amount and shall be responsible for the balance of such sums to the extent determined to be due. The CITY shall have all other rights and remedies granted to it at law or in equity for BAHIA MAR's failure to pay the monies owed by BAHIA MAR to the CITY as provided in this Agreement. The remedies found within this Section are cumulative. The exercise of one does not preclude the exercise of any other remedy, provided no Party shall be liable for consequential or punitive damages.

**10. Emergencies.** If an emergency situation arises with respect to the MMOA or this Agreement with respect to the CITY's and BAHIA MAR's obligation to each other under this Agreement which presents an imminent threat to the health or safety of Persons or property, the CITY shall make reasonable efforts to provide telephone and email notice to BAHIA MAR's Contact Person. If actual notice of the emergency is given to BAHIA MAR and BAHIA MAR shall thereafter fail to take timely action to correct the emergency situation, then, to the extent the continuance of the emergency situation would pose an imminent threat to health or safety to Persons or property, the CITY may undertake such limited actions as are necessary to eliminate the emergency; and the CITY shall be entitled to recover its reasonable costs of cure to resolve the emergency from BAHIA MAR in accordance with provisions hereof. For the purposes of this Paragraph, BAHIA MAR's Contact Person shall be James D. Tate, telephone number (305) 987-2773, and e-mail address: jimmy@tatecapital.com. In the event BAHIA MAR's Contact Person or any other information pertaining to BAHIA MAR's Contact Person shall change, such change shall be provided in writing per Section 12 below.

**11. Damage to Public Property.** In the event the use, operation, maintenance, repair, construction, demolition, painting, or reconstruction of the Bridge caused by the wrongful acts or failure to act of BAHIA MAR pursuant to this Agreement that causes any damage to any other public property, then BAHIA MAR shall be responsible for the reasonable cost of repair and shall, at CITY's option, make said repairs, subject to CITY's satisfaction.

**12. Notices.**

(a) Except as provided in subparagraph (c) below, 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 any matter set forth in the MMOA, each such notice, demand, request or other communication shall be in writing and, any law or statute to the contrary, notice shall be sent as provided in subsection (b) below.

(b) All notices, demands, requests or other communications hereunder shall be deemed to have been given or served for all purposes hereunder (i) upon receipt if by hand delivery, (ii) (2) business days after deposit with the United States mail, postage prepaid, (iii) one (1) business day after being sent by overnight courier service such as Federal Express or similar carrier shall be utilized, if available, or (iv) upon delivery if sent by electronic mail (i.e., email).

AS TO CITY:

Christopher J. Lagerbloom, ICMA-CM  
City Manager  
City Fort Lauderdale  
100 North Andrews Avenue  
Fort Lauderdale, FL 33301  
Email: CLagerbloom@fortlauderdale.gov  
Telephone: (954) 828-5959

With a copy to:

Alain E. Boileau  
City Attorney  
City of Fort Lauderdale  
100 North Andrews Avenue  
Fort Lauderdale, FL 33301  
Email: [aboileau@fortlauderdale.gov](mailto:aboileau@fortlauderdale.gov)  
Telephone: (954) 828-8038

With a copy to:

Benjamin Rogers  
Director of the Transportation and Mobility  
City of Fort Lauderdale  
290 NE 3rd Ave,  
Fort Lauderdale, FL 33301  
Email: [brogers@fortlauderdale.gov](mailto:brogers@fortlauderdale.gov)  
Telephone: (954) 828-3781

AS TO BAHIA MAR:

Rahn Bahia Mar Walkway LLC  
ATTN: James D. Tate, President  
1175 N.E. 125<sup>th</sup> Street, Suite 102  
North Miami, FL 33161  
Email: [jimmy@tatecapital.com](mailto:jimmy@tatecapital.com)  
Telephone: (305) 891-1107 x 202

With a copy to:

Greenspoon Marder LLP  
ATTN: Barry E. Somerstein, Esq.  
200 E. Broward Boulevard, Suite 1800  
Fort Lauderdale, FL 333014  
Email: [barry.somerstein@gmlaw.com](mailto:barry.somerstein@gmlaw.com)  
Telephone: (954) 527-2405

AS TO RAHN:

Rahn Bahia Mar L.L.C.  
ATTN: James D. Tate, President  
1175 N.E. 125<sup>th</sup> Street, Suite 102  
North Miami, FL 33161  
Email: [jimmy@tatecapital.com](mailto:jimmy@tatecapital.com)  
Telephone: (305) 891-1107 x 202

With a copy to:

Greenspoon Marder LLP  
ATTN: Barry E. Somerstein, Esq.  
200 E. Broward Boulevard, Suite 1800  
Fort Lauderdale, FL 333014  
Email: [barry.somerstein@gmlaw.com](mailto:barry.somerstein@gmlaw.com)  
Telephone: (954) 527-2405

Any Party may change such information for notices by delivering such notice to the other Party as set forth herein.

(c) As to activities under Section 10, notice need not be given in accordance with subparagraph (a) above, but notice shall be sufficient if given to the Contact Person pursuant to Section 10 as long as such notice is followed up within two (2) Days of such emergency with written notice as provided in subsection (b) above.

**13. Independent Contractor.** As between the CITY, RAHN, and BAHIA MAR, RAHN and BAHIA MAR are independent contractors under this Agreement. In providing such services, neither BAHIA MAR nor RAHN nor their agents shall act as officers, employees, or agents of the CITY. No partnership, joint venture, or other joint relationship is created hereby. Except as set forth in this Agreement with respect to the MMOA, the CITY does not extend to BAHIA MAR, RAHN, or their respective agents any authority of any kind to bind the CITY in any respect whatsoever.

**14. Joint Preparation.** Each Party and its counsel have participated fully in the review and revision of this Agreement and acknowledge that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any Party.

**15. Interpretation of Agreement; Severability.** If any provision hereof, or its application to any person or situation, is deemed invalid or unenforceable for any reason and to any extent, the remainder of this Agreement or the application of the remainder of the provisions, shall not be affected. Rather, this Agreement is to be enforced to the extent permitted by law. The captions, headings and title of this Agreement are solely for convenience of reference and are not to affect its interpretation. Each covenant, term, condition, obligation or other provision of this Agreement is to be construed as a separate and independent covenant of the Party who is bound by or who undertakes it, and each is independent of any other provision of this Agreement, unless otherwise expressly provided. All terms and words used in this Agreement, regardless of the number or gender in which they are used, are deemed to include any other number and other gender, as the context requires.

**16. Successors.** This Agreement shall be binding on and inure to the benefit of the Parties, their successors and assigns. It is intended that this Agreement and the rights and obligations set forth herein shall run with the land and shall bind every person or entity having any fee, leasehold or other interest therein and shall inure to the benefit of the respective Parties and their successors, assigns, heirs, and personal representatives.

**17. No Waiver of Sovereign Immunity.** Nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity by the CITY to which sovereign immunity may be applicable and the CITY agrees to assert its sovereign immunity in any claim made against the CITY by the FDOT or other third party with respect to the MMOA or this Agreement, if applicable.

**18. Third Party Beneficiaries.** The Parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the Parties intend to directly or substantially benefit a third party by this

Agreement. The Parties agree that there are no third-party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the Parties based on this Agreement. Nothing herein shall be construed as consent by any agency or political subdivision of the State of Florida to be sued by third parties in any manner arising out of any contract.

**19. Non-Discrimination.** Neither BAHIA MAR nor RAHN shall discriminate against any Person in the performance of duties, responsibilities and obligations under this Agreement because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

**20. Records.** Each Party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records to the extent applicable to such Party. Each Party shall be responsible for compliance with any public documents request served upon it pursuant to Chapter 119, Florida Statutes to the extent applicable to such Party, and any resultant award of attorney's fees for non-compliance with that law.

**21. Entire Agreement.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

**22. Waiver.** The Parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any Party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

**23. Governing Law.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder, shall be brought exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. **By entering into this Agreement, the CITY and BAHIA MAR hereby expressly waive any rights either party may have to a trial by jury of any civil litigation related to the MMOA and/or this Agreement or any acts or omissions in relation thereto.**

**24. Recording.** This Agreement shall not be recorded in the Public Records of Broward County, but the Easement shall be recorded in the Public Records of Broward County, Florida, the costs of which shall be borne by BAHIA MAR. BAHIA MAR shall record the Easement and a copy of the recorded Easement shall be provided to the CITY and filed with the CITY Clerk's Office.

**25. Term.** This Agreement shall continue in full force and effect until such time as (i) the MMOA is terminated or becomes null and void; (ii) the Lease is terminated; (iii) this Agreement is terminated by operation of law or in accordance with the terms of the MMOA; (iv) this Agreement is terminated by a court order; or (v) this Agreement is terminated by mutual agreement between the Parties and no obligations lying hereunder survive such termination.

**26. Prevailing Party.** In the event of any litigation with respect to this Agreement, the prevailing Party shall be entitled to recover from the other Party reasonable attorney fees and costs, through all local and appellate levels, subject to the limits set forth under Florida law.

**27. Police Power.** Nothing herein shall be construed as a waiver of the CITY'S police power. BAHIA MAR shall comply with the CITY'S codes, ordinances and regulations with respect to installation of the Improvements. BAHIA MAR shall construct, operate, and maintain the Improvements in compliance with all health, sanitary, fire, zoning and building code requirements and any other governing authority with jurisdiction over the Bridge. The CITY hereby confirms that the Bridge and the Improvements comply with all applicable zoning requirements as of the Effective Date.

**28. Guaranty.** For good and valuable consideration, the receipt, sufficiency and adequacy of which is hereby acknowledged, RAHN hereby guarantees to the CITY the full and timely payment of all monetary obligations owed by BAHIA MAR to the CITY not cured within the applicable cure period as set forth in this Agreement ("Monetary Event of Default"). In the event of a Monetary Event of Default, RAHN agrees to pay such sums evidenced by such Monetary Event of Default to the CITY within ten (10) business days after written demand from the CITY to RAHN specifying the amount owed pursuant to such Monetary Event of Default along with reasonable documentation supporting such unpaid monetary obligations.

RAHN hereby represents and warrants unto to the CITY that RAHN will derive substantial benefit, directly or indirectly, from the CITY entering into this Agreement with BAHIA MAR and that both RAHN and BAHIA MAR are duly authorized to execute and perform their respective obligations under this Agreement.

(SIGNATURES TO FOLLOW)

IN WITNESS WHEREOF, the undersigned do hereby warrant that they are authorized to enter into this Agreement by RAHN BAHIA MAR WALKWAY LLC, RAHN BAHIA MAR, LLC, and the CITY OF FORT LAUDERDALE.

Witnesses:

**BAHIA MAR:**

*Lilly Moreira*

(Witness #1 Signature)

Lilly Moreira

(Print Name)

**RAHN BAHIA WALKWAY LLC**, a Florida limited liability company

By: *J. Kenneth Tate, Vice President*

Print: J. Kenneth Tate

Title: Vice President

*Donna Badorf*

(Witness #2 Signature)

Donna Badorf

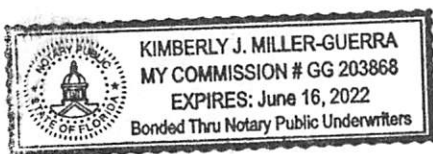
(Print Name)

### ACKNOWLEDGEMENT

STATE OF Florida )  
 ) SS:  
COUNTY OF Miami-Dade )

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 15<sup>th</sup> day of July, 2020, by J. Kenneth Tate, VP of RAHN BAHIA MAR WALKWAY LLC, a Florida limited liability company.

(NOTARY SEAL)



*Kimberly J. Miller-Guerra*  
Notary Public, State of Florida  
(Signature of Notary taking Acknowledgment)  
Kimberly J. Miller-Guerra  
Name of Notary Typed, Printed or Stamped

My Commission Expires: 6/16/2022

Personally Known ☒ OR  
Produced Identification \_\_\_\_\_  
Type of Identification Produced \_\_\_\_\_

UNITED STATES DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION  
WASHINGTON, D. C. 20535

MEMORANDUM

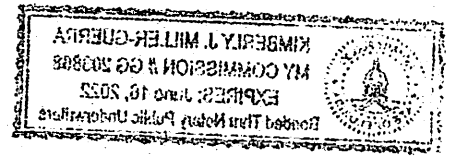
TO : DIRECTOR, FBI (100-441100)  
FROM : SAC, NEW YORK (100-100000)  
SUBJECT: [Illegible]

RE: [Illegible]

1. [Illegible]

2. [Illegible]

3. [Illegible]



AS TO CITY:

CITY OF FORT LAUDERDALE

By: Tarlesha W. Smith  
Tarlesha W. Smith  
Acting City Manager

ATTEST:

FOR Jeffrey A. Modarelli  
Jeffrey A. Modarelli, City Clerk

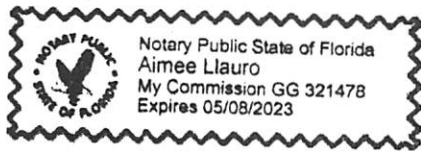
Approved as to form:

By: Alain Boileau  
Alain Boileau, City Attorney

STATE OF FLORIDA:  
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me by means of ☒ physical presence  
or ☐ online notarization this 29 day of July, 2020, by Tarlesha W.  
Smith, Acting City Manager of City of Fort Lauderdale, a municipal corporation of Florida. He is  
personally known to me.

(SEAL)



*Aimee Llauro*  
Notary Public, State of Florida  
(Signature of Notary taking  
Acknowledgment)

Aimee Llauro  
Name of Notary Typed,  
Printed or Stamped

My Commission Expires:  
\_\_\_\_\_

The undersigned joins in this Agreement to guaranty to the CITY the payment of all monies owed by Rahn Bahia Mar Walkway LLC as provided in Section 27 of this Agreement.

Witnesses:

RAHN:

*Lilly Moreira*  
(Witness #1 Signature)

Lilly Moreira  
(Print Name)

*Donna Budor*  
(Witness #2 Signature)

Donna Budor  
(Print Name)

RAHN BAHIA MAR, L.L.C., a Delaware limited liability company

By: *J. Kenneth Tate, Vice President*

Print: J. Kenneth Tate

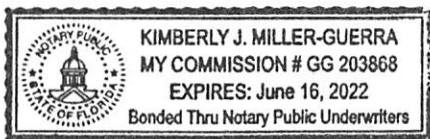
Title: Vice President

### ACKNOWLEDGEMENT

STATE OF Florida )  
 ) SS:  
COUNTY OF Miami-Dade )

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 15<sup>th</sup> day of July, 2020, by J. Kenneth Tate, VP of RAHN BAHIA MAR, L.L.C., a Delaware limited liability company.

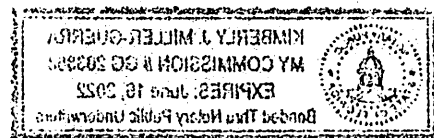
(NOTARY SEAL)



*Kimberly J. Miller-Guerra*  
Notary Public, State of Florida  
(Signature of Notary taking Acknowledgment)  
Kimberly J. Miller-Guerra  
Name of Notary Typed, Printed or Stamped

My Commission Expires: 6/16/2022

Personally Known ✓ OR  
Produced Identification \_\_\_\_\_  
Type of Identification Produced \_\_\_\_\_



**Exhibit A**

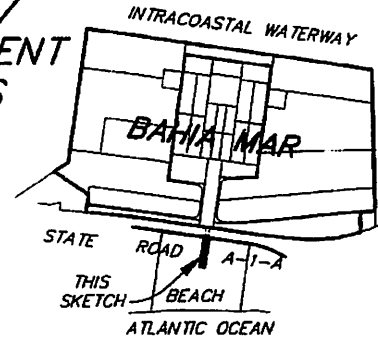
**Legal Description of the Bridge**



**McLAUGHLIN ENGINEERING COMPANY**  
**LB#285**

ENGINEERING \* SURVEYING \* PLATTING \* LAND PLANNING  
1700 N.W. 64th STREET, SUITE 400, FORT LAUDERDALE, FLORIDA 33301  
PHONE (954) 763-7611 \* FAX (954) 763-7615

**SKETCH AND DESCRIPTION**  
**BAHIA MAR, PARCEL 37**  
**BEACH OVERPASS EASEMENT**  
**SHEET 1 OF 2 SHEETS**



**SITE LAYOUT**  
**NOT TO SCALE**

**LEGAL DESCRIPTION:**

A portion of Parcel 37, BAHIA MAR, according to the plat thereof, as recorded in Plat Book 35, Page 39, of the public records of Broward County, Florida, more fully described as follows:

Commencing at the Northeast corner of Parcel 33 of said BAHIA MAR thence; North 07°38'43" East, on the West right-of-way line of said State Road A-1-A, a distance of 39.16; thence South 82°11'40" East, a distance of 58.00 feet to a point on the West line of said Tract 37, being a point on the East right-of-way line of State Road A-1-A and to the Point of Beginning; thence continuing South 82°11'40" East, a distance of 165.00 feet; thence North 07°38'43" East, a distance of 20.00 feet; thence North 82°11'40" West, a distance of 165.00 feet; thence South 07°38'43" West, on the said West line of Tract 37, being the East right-of-way line of State Road A-1-A, a distance of 20.00 feet to the Point of Beginning.

Said lands situate, lying and being in the City of Fort Lauderdale, Broward County, Florida and containing 3,300 square feet or 0.0758 acres more or less.

**NOTES**

- 1) This sketch reflects all easements and rights-of-way, as shown on above referenced record plat(s).

The subject property was not abstracted for other

easements road reservations or rights-of-way of record by McLaughlin Engineering Company

- 2) Legal description prepared by McLaughlin Engineering Co.

- 3) This drawing is not valid unless sealed with an appropriate surveyors seal

- 4) THIS IS NOT A BOUNDARY SURVEY

- 5) Bearings shown refer to record plat (35/39) and assume the West right-of-way line of A-1-A as North 07°38'43" East

**CERTIFICATION:**

Certified Correct. Dated at Fort Lauderdale, Florida this 17th day of July, 2020.

McLAUGHLIN ENGINEERING COMPANY

JERALD A. McLAUGHLIN  
Registered Land Surveyor No. 5269  
State of Florida.

FIELD BOOK NO. \_\_\_\_\_

DRAWN BY: JMMjr \_\_\_\_\_

JOB ORDER NO. V-5358 \_\_\_\_\_

CHECKED BY: \_\_\_\_\_

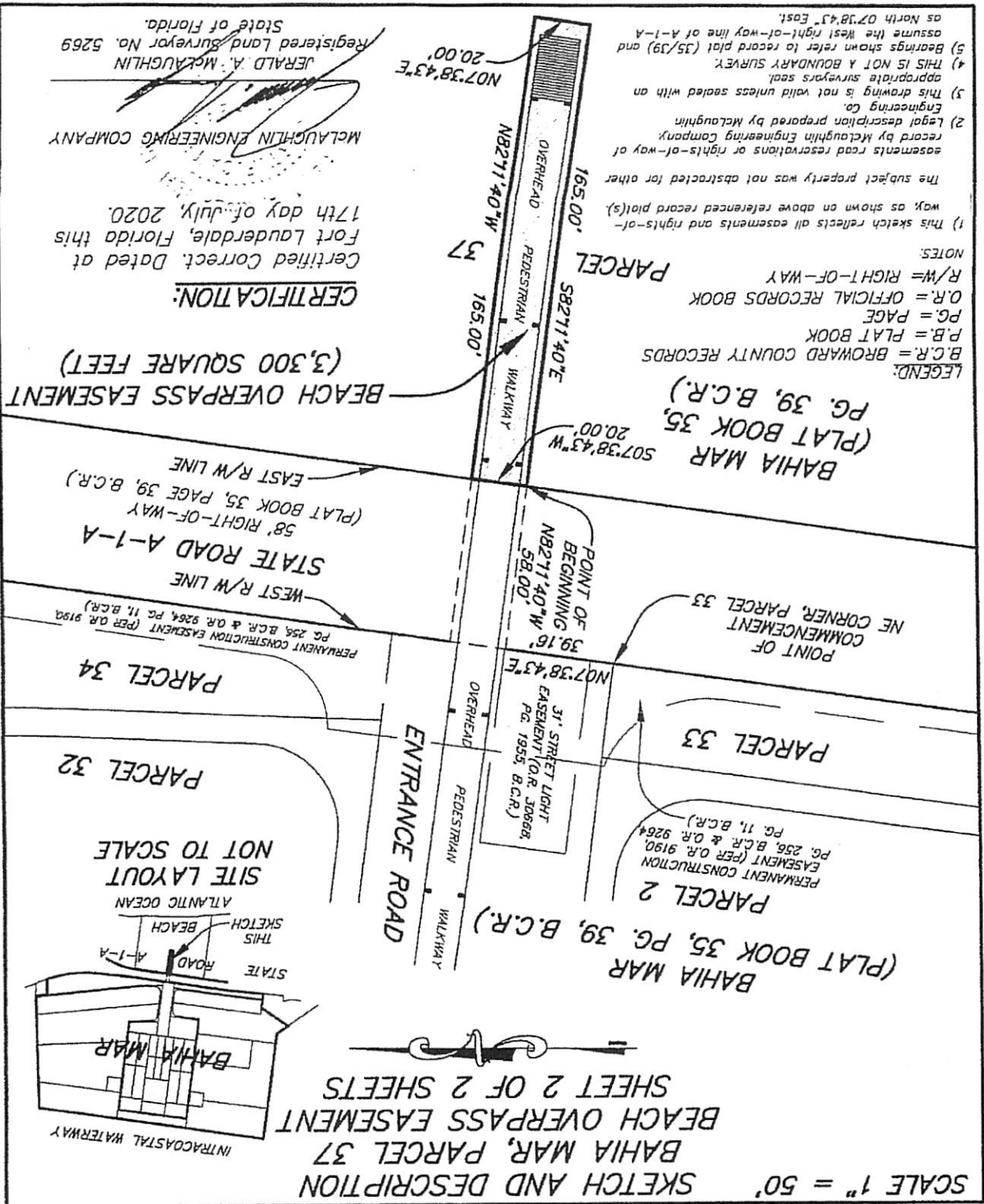
REF. DWG.: A-20(14)

C: \JMMjr\2020\V5358 (BRIDGE)

**McLAUGHLIN ENGINEERING COMPANY**  
**LB#285**  
 ENGINEERING \* SURVEYING \* PLATTING \* LAND PLANNING  
 1700 N.W. 64th STREET, SUITE 400, FORT LAUDERDALE, FLORIDA 33301  
 PHONE (954) 763-7611 \* FAX (954) 763-7615



**SCALE 1" = 50'**  
**SKETCH AND DESCRIPTION**  
**BAHIA MAR, PARCEL 37**  
**BEACH OVERPASS EASEMENT**  
**SHEET 2 OF 2 SHEETS**





# McLAUGHLIN ENGINEERING COMPANY

LB#285

ENGINEERING \* SURVEYING \* PLATTING \* LAND PLANNING  
1700 N.W. 64th STREET, SUITE 400, FORT LAUDERDALE, FLORIDA 33301  
PHONE (954) 763-7611 \* FAX (954) 763-7615

## SKETCH AND DESCRIPTION

### BAHIA MAR A-1-A OVERPASS EASEMENT SHEET 1 OF 2 SHEETS



#### LEGAL DESCRIPTION:

A portion of State Road A-1-A right-of-way lying West of and adjacent to Parcel 37 AND East of and adjacent to the Entrance Road, all as shown of the plat of BAHIA MAR, according to the plat thereof, as recorded in Plat Book 35, Page 39, of the public records of Broward County, Florida, above elevation 21.50 North American Vertical Datum (1988), more fully described as follows:

Commencing at the Northeast corner of Parcel 33 of said BAHIA MAR thence; North 07°38'43" East, on the West right-of-way line of said State Road A-1-A, a distance of 39.16 feet to the Point of Beginning; thence continuing North 07°38'43" East, on the said West right-of-way line, a distance of 20.00 feet; thence South 82°11'40" East, a distance of 58.00 feet; thence South 07°38'43" West, on the East right-of-way line of said State Road A-1-A, a distance of 20.00 feet; thence North 82°11'40" West, a distance of 58.00 feet to the Point of Beginning.

Said lands situate, lying and being in the City of Fort Lauderdale, Broward County, Florida and containing 1,160 square feet or 0.0266 acres more or less.

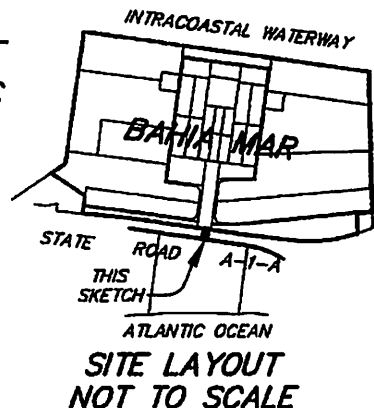
#### NOTES:

- 1) This sketch reflects all easements and rights-of-way, as shown on above referenced record plat(s).

The subject property was not abstracted for other

easements road reservations or rights-of-way of record by McLaughlin Engineering Company.

- 2) Legal description prepared by McLaughlin Engineering Co.
- 3) This drawing is not valid unless sealed with an appropriate surveyors seal.
- 4) THIS IS NOT A BOUNDARY SURVEY.
- 5) Bearings shown refer to record plat (35/39) and assume the West right-of-way line of A-1-A as North 07°38'43" East.



#### CERTIFICATION:

Certified Correct. Dated at Fort Lauderdale, Florida this 17th day of July, 2020.

McLAUGHLIN ENGINEERING COMPANY

JERALD A. McLAUGHLIN  
Registered Land Surveyor No. 5269  
State of Florida.

FIELD BOOK NO. \_\_\_\_\_

DRAWN BY: JMMjr \_\_\_\_\_

JOB ORDER NO. V-5358 \_\_\_\_\_

CHECKED BY: \_\_\_\_\_

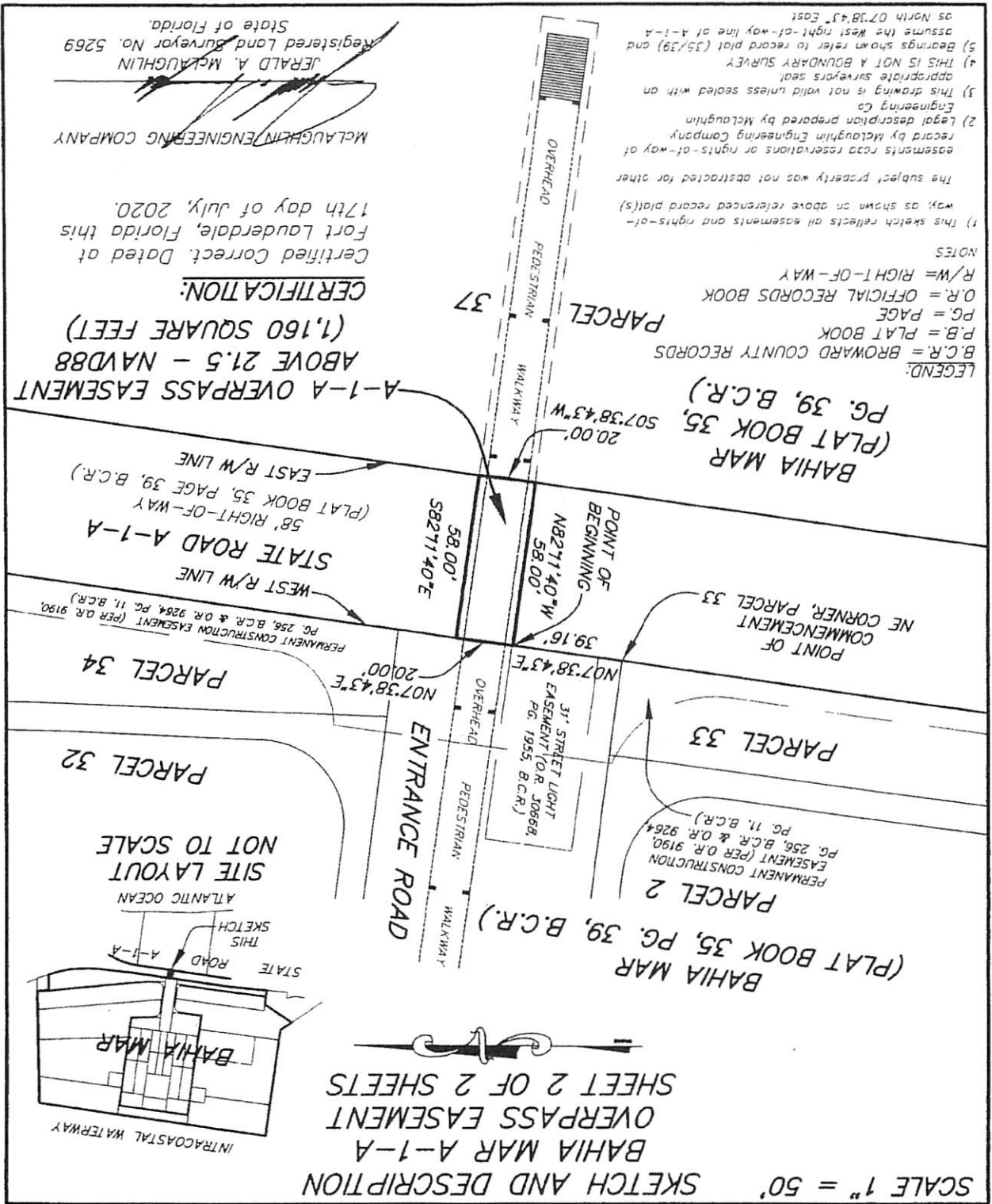
REF. DWG.: A-20(14)

C: \JMMjr/2020/V5358 (BRIDGE)



McLAUGHLIN ENGINEERING COMPANY  
LB#285

ENGINEERING \* SURVEYING \* PLATTING \* LAND PLANNING  
1700 N.W. 64th STREET, SUITE 400, FORT LAUDERDALE, FLORIDA 33301  
PHONE (954) 763-7611 \* FAX (954) 763-7615



FIELD BOOK NO. \_\_\_\_\_  
JOB ORDER NO. V-5358  
REF. DWG.: A-20(14)  
CHECKED BY: \_\_\_\_\_  
DRAWN BY: JMM/jr  
C:\JMM\jr\2020\V5358 (BRIDGE)

**Exhibit B**

**State of Florida Department of Transportation  
MMOA Agreement**