

## LEASE AGREEMENT

THIS IS A LEASE AGREEMENT (hereinafter "Lease"), made and entered into this 15th day of September, 2016, by and between:

**DOWNTOWN DEVELOPMENT AUTHORITY OF THE CITY OF FORT LAUDERDALE**, a body public and corporate established under the laws of Florida, 305 South Andrews Avenue, Suite # 301, Fort Lauderdale, FL 33301 (hereinafter "LESSOR" or "DDA"),

and

**CITY OF FORT LAUDERDALE**, a municipal corporation of the State of Florida, 100 North Andrews Avenue, Fort Lauderdale, FL 33301 (hereinafter "LESSEE" or "CITY").

### WITNESSETH:

WHEREAS, the DDA owns a redevelopment parcel of land located on the south east corner of East Las Olas Boulevard and South Andrews Avenue within the city limits of the CITY.

WHEREAS, the DDA for many years has utilized this 1.79 acre +/- parcel as a public park and recreational area known as Huizenga Plaza (hereinafter "Park" or "Leased Premises").

WHEREAS, the Park provides passive recreational amenities to residents of and visitors to the CITY'S downtown, and also serves as an active park for sponsored special events.

WHEREAS, the City Commission of CITY finds the continued use and operations of the Park a valid municipal purpose.

WHEREAS, the CITY desires to assume the operations and maintenance of the Park, and agrees to maintain the Park and offer Park programs and sponsorships in a similar manner as has been provided by the DDA.

WHEREAS, the DDA desires the CITY to assume the operations and maintenance of the Park upon the terms and conditions set forth herein in the Lease; and

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

## ARTICLE 1.

### LEASE OF LEASED PREMISES

**1.1. Lease.** On the terms and conditions set forth in this Lease, and in consideration of the LESSEE's annual payment of rent and performance of all other obligations and terms of this Lease, as of the Effective Date (hereinafter defined) the LESSOR hereby leases to LESSEE and LESSEE hereby leases from LESSOR and LESSOR grants LESSEE a possessory interest in and to the Leased Premises described below for the Term of the Lease subject to the terms and conditions set forth in this Lease.

**1.2. Leased Premises.** The Leased Premises that LESSOR leases to LESSEE and LESSEE rents from LESSOR is described as follows:

A portion of Block 31 located within Fort Lauderdale, Florida, according to the Plat thereof, recorded in Plat Book 2, Page 16, of the Public Records of Broward County, Florida, and as shown on **Exhibit "A"**, attached to and incorporated in this Lease.

(Street Address: 300 South Andrews Avenue, Fort Lauderdale, FL 33301)

Whenever used herein, the term "Leased Premises" shall include the real estate described above and all attachments and improvements and appurtenances thereto now existing or hereafter constructed. The term "Leased Premises" shall also include portions thereof.

**1.3. Limitations on Grant of Possessory Interest.** LESSEE hereby leases the Leased Premises from LESSOR subject to, and LESSEE hereby agrees to comply with: (i) all applicable building codes, zoning regulations, and municipal, county, state and federal laws, ordinances and regulations governing or regulating the Leased Premises or its use by LESSEE; (ii) all covenants, easements and restrictions of record; and (iii) the terms, conditions and restrictions contained herein.

**1.4. Quiet Enjoyment.** Except as otherwise expressly set forth herein, LESSOR represents and warrants that it has full right and authority to enter into this Lease and that LESSEE, while paying the Rent and performing its other covenants, conditions and agreements herein set forth, shall peaceably and quietly have, hold and enjoy the Leased Premises for the term hereof without hindrance or molestation from Landlord subject to the terms and provisions of this Lease.

## ARTICLE 2.

### TERM OF LEASE

**2.1. Term.** The Term of this Lease runs for a period of five (5) years, unless the parties terminate earlier. The Term of the Lease starts with the Commencement Date, but no sooner than September 1, 2016. LESSEE shall have the option to renew the term of this lease

for three (3) additional five (5) year terms.

**2.2. Effective Date.** The Effective Date of this Lease shall be the first day of the month following execution of this Lease by both parties but no later than September 1, 2016.

**2.3 Commencement Date.** Attached to this Lease is a Punch List Schedule of items that LESSOR is obligated to repair or replace to the satisfaction of the LESSEE's Director of Parks & Recreation. When the punch list items have been repaired or replaced to the satisfaction of LESSEE's Director of Parks & Recreation, the Director of Parks & Recreation shall prepare and deliver a Memorandum certifying completion of the punch list items to his satisfaction. The date that the Director certifies the punch list items have been completed to his satisfaction is the Commencement Date for this Lease. The Director shall provide copies of the Memorandum to LESSEE's City Manager, City Attorney and Director of Finance. No rent is to be paid prior to the Commencement Date of this Lease.

**2.4 Renewal Option.** No sooner than twelve (12) months nor later than two (2) months prior to the expiration of the original term or the applicable renewal term, LESSEE shall notify LESSOR's Executive Director, in writing, of its intention to exercise such renewal option ("**Extension Option**") as set forth in Section 2.1 above, provided that the Lease is in full force and effect, and LESSEE is not in default of any of the terms, covenants, or conditions of the Lease. Upon timely notice under the Extension Option, this Lease shall be extended upon the same terms and conditions as the underlying Lease.

**2.5 Recordation Memorandum of Lease.** A Memorandum of Lease, to be executed by both parties contemporaneous with the execution of this Lease, shall be recorded by LESSOR, at LESSOR's expense, in the Public Records of Broward County, Florida on or about the Effective Date of this Lease and the Lease shall terminate and be of no further force and effect on the last day of the Lease Term or Extended Option Term, except for those provisions which are intended to survive termination of the Lease.

## **ARTICLE 3.**

### **RENT AND ADDITIONAL PAYMENTS**

#### **3.1. Amount and Payment of Rent.**

(a) **Annual Base Rent.** The LESSEE shall pay to LESSOR the Annual Base Rent of one hundred thousand and no/100 (\$100,000.00) dollars in its entirety commencing with the Effective Date of this Lease, and thereafter payable in equal annual installments of one hundred thousand and no/100 (\$100,000.00) dollars on the first day of each anniversary of the Lease Term.

(b) **Grace Period For Payment Of Rent.** The LESSEE shall have a grace period of thirty (30) days within which to pay any and all sums of rent due by this Lease, which sums shall be due and payable without notice or demand, which Lessee

hereby waives.

**(c) Failure to Appropriate For Rent Payment.** In the event that the City Commission of LESSEE fails to appropriate the annual rent due in any succeeding installment after the Effective Date, this Lease shall terminate on the expiration date of the fully paid installment year. Notwithstanding this provision, the LESSEE shall remain responsible for and liable to LESSOR to repair or replace damages to the Leased Premises found by LESSOR to exist on the date of early lease termination for failure of LESSEE to appropriate annual funds for succeeding installment payments of rent.

**3.2. Sales Tax.** To the extent required by law, LESSEE shall pay to LESSOR the equivalent of six percent (6%) of all amounts paid as Rent hereunder, which sum is to be paid to the State of Florida by the LESSOR in respect of sales or use taxes. Should such tax rate change under the Florida Sales Tax Statute or other applicable statutes, LESSEE shall pay LESSOR the amounts reflective of such changes. To the extent applicable, LESSEE shall pay LESSOR in conjunction with all sums due hereunder, any and all applicable sales, use or other similar tax and any interest or penalties assessed therein ("Sales Tax") simultaneously with such payment.

**3.3. Taxes, Fees, Special Assessments, etc.** Beginning on the Effective Date, LESSEE shall pay all costs, expenses, sales or use taxes, or taxes of any nature or kind, special assessments, connection fees, and any other charges, fees or like impositions incurred or imposed against the Leased Premises, to the extent applicable, or any use thereof, including revenue derived therefrom, and any costs, expenses, fees, taxes or assessments in or upon the Leased Premises or improvements constructed thereon shall be made and paid by LESSEE in accordance with the provisions of this Lease, it being the intent of the parties that, except as may be specifically provided for herein, LESSEE is responsible for paying all the expenses and obligations that relate to the Leased Premises or any improvements thereon and that arise or become due during the Term of this Lease.

**3.4. Security Deposit.** [This Paragraph is intentionally left blank.]

**3.5. Operating Costs.** LESSEE agrees promptly to pay when due all operating, maintenance and servicing charges and costs, including those associated with telephone, gas, electricity, garbage, trash or refuse removal services, water & sewer, the monthly servicing of the fountain, and all other expenses incurred in the use and operation of the Leased Premises.

**3.6. Receipts.** LESSEE shall, upon written demand by the LESSOR, obtain and deliver to the LESSOR receipts, satisfactions and discharges showing the payment of any obligation required of LESSEE by this Lease.

**3.7. Brokerage Commission.** Both the LESSOR and the LESSEE affirm that neither has engaged or utilized the services of any licensed real estate person or firm ("Broker") in connection with the negotiations and approval of this Lease.

## ARTICLE 4.

### USE OF PREMISES

#### 4.1. Permissible Uses.

(a) LESSEE shall use the Leased Premises to operate a public park and recreational area for residents of and visitors to the downtown of the City of Fort Lauderdale. LESSEE shall be responsible for conducting activities and programs offered at the Park, which such activities and programs may include, but shall not necessarily be limited to, special events promoted or sponsored by third party private individuals, not-for-profit organizations or for profit companies limited licensees of LESSOR as provided in Section 4.2.

(b) Except with respect to the suspension of possessory interest under force majeure as provided by Section 10.21, in the event the Leased Premises cease being used for such purposes as stated herein, this Lease shall terminate.

#### 4.2. Special Events Sponsored by Limited Licensees.

(a) LESSEE may accept, process, approve or deny special event applications from persons, organizations or companies wishing to use the Park for a limited period for fundraising, public awareness, recreation, or other civic oriented events as determined by LESSEE.

(b) LESSEE shall notify the Executive Director of LESSOR at least five (5) calendar days before a special event application is scheduled for approval by the City Commission of LESSEE.

(c) LESSEE shall collect and retain special event fees from applicants in amounts established from time-to-time by the City Commission of LESSEE.

(d) LESSEE shall also collect from LESSEE's approved limited licensees a reasonable damage deposit by which damages that may be caused from the event may be deducted before the balance of the deposit, if any, is returned. The LESSEE shall collect the greater of: 1) the amount required by the policies of LESSEE, or 2) one thousand and no/100 (\$1,000.00) dollars per event day. The LESSEE shall not return damage deposits or portions thereof until a qualified representative of the LESSEE inspects the Park for damages, and if damages are found to exist, determines the amount of funds required to be held back to pay for repairs.

(e) Insurance required by LESSEE from its limited licensees shall equal or exceed the amount and coverage provided in Section 8.3 and shall, in addition to LESSEE, name as additional insured the Downtown Development Authority of the City of Fort Lauderdale.

(f) Notwithstanding the provision of Sections 4.2 (d) and 4.2 (e), the LESSEE shall remain fully liable to LESSOR to promptly repair damages to the Park caused by LESSEE's limited licensees.

## ARTICLE 5.

### IMPROVEMENTS, REPAIRS AND MAINTENANCE OF PREMISES

**5.1. Compliance With Regulations of Public Bodies.** LESSEE covenants and agrees that it shall, at its own cost and expense, make such improvements on the Leased Premises, perform such acts and do such things as shall be lawfully required by any public body having jurisdiction over the Leased Premises, in order to comply with the requirements relating to sanitation, fire hazard, zoning, setbacks, environmental requirements and other similar requirements designed to protect the public safety and welfare. LESSEE shall not use the Leased Premises, nor shall the Leased Premises suffer any such use during the Term of this Lease, which is in violation of any of the statutes, laws, ordinances, rules or regulations of the federal, state, county, municipal government or any other governmental authority having jurisdiction over the Leased Premises.

**5.2. Improvements By Lessee.** LESSEE shall not construct any improvements, nor perform any alteration, modification or demolition of improvements upon the Leased Premises without first (i) providing the Executive Director of LESSOR with a complete set of plans and specifications of the proposed improvement, alteration, modification or demolition, and (ii) securing from the Executive Director of LESSOR written approval indicating that the proposed construction, alteration, modification or demolition is acceptable. The Executive Director of LESSOR shall have absolute discretion over whether or not to approve or approve with conditions LESSEE's plan. Any improvements placed, installed or constructed upon the Leased Premises shall be at the LESSEE's sole cost and expense. Upon expiration or termination of this Lease, any improvements constructed on the Leased Premises shall remain with the Leased Premises, unless the Executive Director of LESSOR directs that such improvements or portions thereof be demolished or otherwise removed from the Leased Premises, in which case LESSEE shall demolish or remove such improvements or portions thereof as directed by the Executive Director of LESSOR and shall do so at its own cost and expense.

### **5.3. Repairs and Maintenance.**

(a) LESSEE shall, at its own cost and expense, at all times during the term of this Lease cause the Leased Premises and improvements thereto to be safely and securely maintained, kept in a neat and orderly condition, repair, clean, and free of rubbish and other hazards. LESSEE 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 Leased Premises, as improved pursuant to the Improvements by LESSEE as set forth in Section 5.2 hereof and to similarly maintain said improvements as originally installed or constructed during the term of the Lease. When making such repairs, replacements and maintenance LESSEE shall comply with all laws, ordinances, codes, regulations and standards then in effect. The Leased Premises shall be maintained in a neat and orderly appearance at all times.

(b) In the event LESSEE defaults in making required repairs or maintenance to the Leased Premises, LESSOR shall provide notice thereof to LESSEE

and LESSEE shall cure such default within the time provided in such Notice, which such time for cure shall be reasonable in light of all the circumstances.

(c) In the event LESSEE fails to timely cure the default in maintenance or repair, LESSOR may take such curative action(s) as outlined in the Notice and the cost and expense incurred in LESSOR's curative actions shall be passed on to and owed by LESSEE, in which case LESSEE shall be liable for payment to the LESSOR for all reasonable and necessary costs and expenses incurred by LESSOR in connection the performance of the action or actions. LESSEE shall reimburse LESSOR in accordance with the terms and conditions set forth in the Local Government Prompt Payment Act, Florida Statutes §§ 218.70 through 218.80, as same may be amended from time to time.

**5.4 No Liens Created On Leased Premises.** LESSEE shall have no power or authority to incur any indebtedness giving a right to a lien of any kind or character upon the right, title or interest of LESSOR in and to the Leased Premises, and no person shall ever be entitled to any lien, directly or indirectly derived through or under the LESSEE, or its agents, servants, employees, contractors or officers or on account of any act or omission of said LESSEE as to LESSOR's right, title or interest in and to the Leased Premises. All Persons contracting with the LESSEE, or furnishing materials, labor or services to said LESSEE, or to its agents or servants, as well as all persons shall be bound by this provision of the Lease Agreement. Should any such lien be filed, LESSEE shall discharge the same within thirty (30) days thereafter, by paying the same or by filing a bond, or otherwise, as permitted by law. LESSEE shall not be deemed to be the agent of LESSOR, so as to confer upon a laborer bestowing labor upon or within the Leased Premises or upon materialmen who furnish material incorporated in the construction and improvements upon the foregoing, a construction lien pursuant to Chapter 713, Florida Statutes or an equitable lien upon the LESSOR's right, title or interest in and to the Leased Premises and real property underlying the Leased Premises. These provisions shall be deemed a notice under Section 713.10(2), Florida Statutes, as same may be amended from time to time of the "non-liability" of the DDA.

**5.5 Liability for Personal Property.** All personal property placed or moved onto the Leased Premises is at the sole risk of LESSEE or other owner of such personal property. LESSOR shall not be liable for any damage to such personal property, or for personal injuries to LESSEE or any of LESSEE's subtenants, agents, servants, employees, contractors, guests or invitees or to trespassers on the Leased Premises that arise from any person's tortious acts or omissions, regardless of the status of the person; provided, however, that if the damage or injury is caused by the negligent acts or omissions of LESSOR or LESSOR'S agents, employees, or officials while acting within the scope of their employment, then, to the extent the damage or injury in question is caused by the negligent acts or omissions of LESSOR or LESSOR's agents, employees, or officials while acting within the scope of their employment, then LESSEE's liability to LESSOR hereunder shall be proportionately abated.

**5.5 Liability for Damages or Injuries.** LESSOR shall not be liable for any damage or injury incurred or sustained in, on or about the Leased Premises when such damage or injury results from the tortious acts or omissions of any person, including invitees or trespassers and also including LESSEE's agents, servants, employees or contractors acting within the scope and course of their duties; provided, however,

that if the damage or injury is caused by LESSOR's tortious acts or omissions, then, to the extent the damage or injury in question is caused by LESSOR's tortious acts or omissions, then LESSEE's liability to LESSOR hereunder shall be proportionately abated.

## ARTICLE 6.

### CONDITION OF PREMISES

#### 6.1. LESSEE'S Acceptance and Maintenance of Leased Premises.

(a) **"AS IS" Condition.** LESSEE acknowledges that prior to the Effective Date hereof it has performed sufficient inspections of the Leased Premises in order to fully assess and make itself aware of the condition of the Leased Premises, and that LESSEE is leasing the Leased Premises in an "AS IS" condition, except as to those items listed in the attached Punch List Schedule which will be repaired or replaced by LESSOR as referenced in Paragraph 2.3 hereof. As of the Effective Date, a representative of both LESSEE and LESSOR have performed in the presence of each other an inspection and walkthrough of the Leased Premises and have found all improvements, except as to those items found in the Punch List Schedule attached hereto, to be in good working order or in good condition as to: (i) the grounds, concrete walkways and the irrigation system located throughout the Leased Premises, and (ii) the above ground improvements or amenities as follows:

- Interactive Fountain with Speakers
- 1 Pump House (houses all the equipment and pumps for fountain)
- 34 Cast Iron Tree Grates
- 68 LED Lights in Tree Pits (2 per tree)
- 102 Acrylic Light Covers (covers that go on the tree grates, 3 per tree)
- Utility Cabinets with Power Outlets
- 1 Amphitheater with Awning and 8 Lights
- 48 Oak Trees
- 2 Bougainvillea
- 10 Crape Myrtles Trees
- 6 Medjool Palm Trees
- 1 Yellow Tabebuia Tree
- 15 Benches
- 7 Trash Cans

(b) LESSEE acknowledges that the LESSOR has made no other representations or warranties as to the condition or status of the Leased Property and that LESSEE is not relying on any other representations or warranties of the LESSOR, any employee, or any agent of LESSOR in leasing the Leased Premises.

(c) LESSEE shall maintain the Leased Premises in a good state of repair and in a condition consistent with the Permissible Uses for the Leased Premises as set forth in Section 4.1 hereof. LESSEE shall not suffer or permit the commission of any



waste or neglect of the grounds, landscaping, walkways, structures, fixtures and equipment located on the Leased Premises as of the Effective Date or thereafter constructed or placed on the Leased Premises by LESSEE in accordance with Section 5.2. LESSEE shall repair, replace and maintain the Leased Premises and all the improvements located thereon as often as is necessary to keep these items in a good state of repair.

**6.2. Damage To Leased Premises.** On LESSOR's demand, LESSEE shall pay for all damages to the Leased Premises that are incurred or sustained during the Lease Term, where such damages are not caused by LESSOR or any of its agents, servants, employees, contractors or licensees; provided, however, that if the damage or injury is caused by LESSOR's negligent acts or omissions, or if the negligent acts or omissions of LESSOR's agents, servants, employees, contractors or licensees acting within the scope and course of their duties, then, to the extent the damage or injury in question is caused thereby, LESSEE's liability to LESSOR hereunder shall be proportionately abated to the limits of LESSOR's liability as set forth in Section 768.28, Florida Statutes, as same may be amended from time to time. If LESSEE fails to repair any damage or destruction not caused by LESSOR or otherwise fails to maintain the Leased Premises after fifteen (15) days advance notice from LESSOR, then LESSOR may peaceably enter upon the Leased Premises during normal business hours and repair the damage or destruction or may conduct any maintenance that LESSOR deems necessary in its sole discretion. Under such circumstances, the cost of such repair or maintenance is considered additional rent.

**6.3. Condition At End Of Lease Term.** At the earlier of the expiration of the Lease Term or Extension Term(s) or termination of this Lease, LESSEE shall quit the Leased Premises and surrender them to LESSOR. The Leased Premises must be in good order and condition at the time of surrender thereof. At the time of surrender all landscaping shall be in a healthy and vibrant condition. LESSEE shall remove all personal property that belongs to LESSEE or any of LESSEE'S agents, servants, employees, independent contractors or subtenants and shall repair all damage to the Leased Premises caused by such removal.

## **ARTICLE 8.**

### **ENTRY AND INSPECTION OF PREMISES**

**7.1. LESSOR'S Inspection and Entry Rights.** LESSOR, or any agent thereof, shall be entitled to enter the Leased Premises during any reasonable business hours for any of the following reasons:

- (i) To examine the Leased Premises;
- (ii) To make all repairs, addition(s) or alteration(s) that LESSOR deems necessary for safety or preservation of the Leased Premises or improvements located thereon, after fifteen (15) days advance written notice to LESSEE that the Leased Premises or any portion thereof is in need of maintenance or repair and LESSEE fails to take appropriate curative actions; or

- (iii) To remove signs, fixtures, alterations or additions that do not conform to the terms of this Lease after fifteen (15) days advance written notice to LESSEE that the Leased Premises or any portion thereof is not in compliance with the terms of the Lease and LESSEE fails to take appropriate curative actions;

Provided that nothing herein shall be construed in such a manner as to impose upon LESSOR the obligation to so enter the Leased Premises and perform any act referenced above.

**7.2. Liability For Entry.** LESSEE, nor any agent, servant, employee, independent contractor, licensee or subtenant claiming by, through or under LESSEE, or any invitees thereof shall have no claim or cause of action against LESSOR because of LESSOR's entry or other action taken under this Article, except to the extent that any such claim or cause of action is due to the negligent conduct of LESSOR, its agents, servants, employees, contractors or licensees acting within the scope and course of their duties.

## **ARTICLE 8.**

### **INSURANCE AND INDEMNIFICATION**

#### **8.1 Indemnity.**

(a) LESSEE shall protect, defend, indemnify and hold harmless the LESSOR, 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, nature or degree arising out of or in connection with the rights, responsibilities and obligations of LESSEE under this Lease, conditions contained therein, the location, construction, repair, maintenance use or occupancy of the Leased Premises or improvements located thereon, or the breach or default by LESSEE of any covenant or provision of this Lease except for any occurrence arising out of or resulting from the negligent acts or omissions of the LESSOR, its officers, agents and employees acting within the scope and course of their duties.

(b) 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 Leased Premises, alleged infringement of any patents, trademarks, copyrights 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.

(c) LESSEE 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 LESSOR, LESSEE shall assume and defend not only itself but also the LESSOR, its officers, employees and agents for negligent acts or omissions while acting within the scope and course of their duties in connection with any claims, suits or causes of action, and any such defense as provided above shall be at

no cost or expense whatsoever to LESSOR, provided that the LESSEE (exercisable by the LESSEE's Risk Manager) shall retain the right to select counsel of its own choosing.

**8.2 Insurance by Lessee.** LESSOR acknowledges that LESSEE is self-insured, and LESSEE acknowledges and affirms to LESSOR that it shall promptly and fully pay without deduction all claims and damages arising out of the use of the Leased Premises by LESSEE, its employees, officers, agents, contractors and licensees for their negligent acts or omissions committed within the scope and course of their duties..

**8.2 Insurance by Agents, Contractors and Licensees of Lessee.** LESSOR acknowledges that it is adequately informed of the policies of LESSEE regarding minimum insurance types and coverage that LESSEE requires of third party agents, contractors and licensees providing services to the CITY or using CITY property for approved special events. LESSOR accepts during the term of this Lease Agreement, the determination of the LESSEE in the insurance to be required of agents, contractors and licensees that the LESSEE may employ, authorize or approve to provide services or sponsorships in connection with the Leased Premises. LESSEE shall require that certificates of insurance name both the LESSEE and LESSOR as an additional insured. In any case where the original policy of any such insurance shall be delivered to LESSEE, a duplicate original of such policy shall thereupon be delivered to LESSOR's Executive Director.

**8.3 Collection of Insurance.** Any and all net insurance proceeds received by or on account of LESSEE under the Lease shall be deposited with the primary depositor of LESSEE, to be held in escrow for the benefit of the LESSEE and LESSOR, and said funds shall be used for the purpose of reconstruction or repair, as the case may be, of any of the structures, improvements or fixtures located within the Leased Premises so damaged or destroyed. Such reconstruction and repair work shall be done in strict conformity with all applicable building and zoning codes and regulations or standards promulgated by any governmental agency having subject matter jurisdiction. Should the costs of regulations or repair exceed the amount of funds available from the proceeds of such insurance policy, then, and in such event, such funds shall be used as far as the same will permit in paying the costs of reconstruction or repair, and the LESSEE shall pay any shortage from its funds.

## **ARTICLE 9.**

### **LESSOR'S REMEDIES**

**9.1 Accord and Satisfaction.** If LESSEE pays or LESSOR receives an amount that is less than the amount stipulated to be paid under any Lease provision, that payment is considered to be made only on account of an earlier payment of that stipulated amount. No endorsement or statement on any check or letter may be deemed an accord and satisfaction. LESSOR may accept any check or payment without prejudice to LESSOR's right to recover the balance due or to pursue any other available remedy.

**9.2 Abandonment Of Leased Premises Or Delinquency In Rent.** If LESSEE abandons or vacates the Leased Premises before the end of the Lease Term, or if LESSEE is

in arrears in rent, LESSOR may cancel this Lease, subject to the notice and opportunity to cure provisions set forth in Section 9.3. On cancellation, LESSOR shall be entitled to peaceably enter and regain possession of the Leased Premises.

### **9.3 Dispossession On Default; Notice and Opportunity to Cure.**

(a) If LESSEE defaults in the performance of any covenant or condition of this Lease, LESSOR may give LESSEE written notice of that default. If LESSEE fails to cure a default in payment of rent within thirty (30) days after notice is given, LESSOR may terminate this LEASE. For defaults other than nonpayment of rent, LESSEE shall cure such default within thirty (30) days after notice is given or within such greater period of time as specified in the notice; provided, however, if a greater period of time is not specified in the notice, then the period for curing such default shall be thirty (30) days.

(b) If the default (other than for nonpayment of rent) is of such a nature that it cannot be completed cured within time specified, LESSOR may terminate this Lease only if LESSEE fails to proceed with reasonable diligence and in good faith to cure the default. Thereafter, termination of this Lease may occur only after LESSOR gives not less than fifteen (15) days' advance notice to LESSEE. On the date specified in the notice, the term of this Lease will end, and, LESSEE shall quit and surrender the Leased Premises to LESSOR, except that LESSEE will remain liable as provided under this Lease.

(c) On termination of the Lease, LESSOR may peaceably re-enter the Leased Premises without notice to dispossess LESSEE, any legal representative of LESSEE, or any other occupant of the Leased Premises. LESSOR may retain possession through summary proceedings or otherwise and LESSOR shall then hold the Leased Premises as if this Lease had not been made.

**9.4 Damages On Default.** If LESSOR retakes possession under Section 9.4, LESSOR shall be entitled to rent or that portion thereof that is due and unpaid, and those payments will become due immediately, and will be paid up to the time of the re-entry, dispossession or expiration, plus any expenses (including, but not limited to attorneys' fees, advertising, administrative time, labor, etc.) that LESSOR incurs in returning the Leased Premises to good order, plus interest in accordance with the terms and conditions set forth in the Local Government Prompt Payment Act, Florida Statutes §§ 218.70 through 218.80, as same may be amended from time to time on rent when due.

**9.5 Insolvency or Bankruptcy.** Subject to the provisions hereof respecting severability, should LESSEE at any time during the Lease Term suffer or permit the appointment of a receiver to take possession of all or substantially all of the assets of LESSEE, or an assignment of LESSEE for the benefit of creditors, or any action taken or suffered by LESSEE under any insolvency, bankruptcy, or reorganization act, shall at LESSOR's option, constitute a breach and default of this Lease by LESSEE and LESSEE agrees to provide adequate protection and adequate assurance of future performance to the LESSOR which will include, but not be limited to the following:

(a) All monetary and non-monetary defaults existing prior to the breach or

default referenced above shall be cured within the time specified above that shall include all costs and attorneys' fees expended by LESSOR to the date of curing the default.

(b) All obligations of the LESSEE must be performed in accordance with the terms of this Lease.

If at any time during the pendency of the bankruptcy proceeding the LESSEE or its successor in interest fails to perform any of the monetary or non-monetary obligations under the terms of this Lease, or fails to cure any pre-filing default, or fails to make additional security deposit required under the Lease for the adequate assurance of future performance clause above, the LESSEE HEREBY STIPULATES AND AGREES TO WAIVE ITS RIGHTS TO NOTICE AND HEARING AND TO ALLOW THE LESSOR TOTAL RELIEF FROM THE AUTOMATIC STAY UNDER 11 U.S.C. § 362 TO ENFORCE ITS RIGHTS UNDER THIS LEASE AND UNDER STATE LAW INCLUDING BUT NOT LIMITED TO ISSUANCE AND ENFORCEMENT OF A JUDGMENT OF EVICTION, WRIT OF ASSISTANCE AND WRIT OF POSSESSION.

**9.6 Subrogation.** The LESSEE shall have the option, without waiving or impairing any of its rights hereunder, to pay any sum or perform any act required of the LESSOR, and the amount of any such payment and the value of any such performance, together with interest thereon, shall be secured by this Lease, and shall be promptly due and payable to the LESSOR.

**9.7 Condemnation.** LESSEE waives any claim of loss or damage, and any right or claim to any part of an award that results from the exercise of eminent domain power of any governmental body, regardless of whether the loss or damage arise because of condemnation of all or part of the Leased Premises. If any eminent domain power that is exercised interferes with LESSEE's use of the Lease Premises, the rentals under this Lease will be proportionately abated. If a partial taking or condemnation renders the Leased Premises unsuitable for LESSEE's purposes under this Lease, the Lease Term will cease as of the date the condemning authority requires possession. If an eminent domain power is exercised, LESSEE has not claim against LESSOR for the value of an unexpired term of this Lease.

**9.8 Cumulative Remedies.** LESSOR's remedies contained in the Lease are in addition to the right of a Landlord under Florida Statutes governing non-residential Landlord-Tenant relationships and to all other remedies available to a Landlord at law or in equity.

## ARTICLE 10.

### MISCELLANEOUS

**10.1 Requirement for Notice.** LESSEE shall give LESSOR prompt written notice of any accidents on, in, over, within, under and above the Lease Area in which damage to property or injury to a person occurs.

#### 10.2 Notices.

(a) All notices, requests and consents hereunder to any party, shall be

deemed to be sufficient if in writing and (i) delivered in person, (ii) delivered via facsimile or via e-mail, if a confirmatory transmittal from the addressee in accordance herewith is also contemporaneously made, (iii) duly sent by first class registered or certified mail, return receipt requested, and postage prepaid or (iv) duly sent by overnight delivery service, addressed to such party at the address set forth below (or at such other addresses as shall be specified by like notice):

AS TO LESSOR:

Executive Director  
Fort Lauderdale Downtown  
Development Authority  
305 South Andrews Avenue, Suite 301 Fort  
Lauderdale, FL 33301

With copy to:

John M. Milledge, Esq.  
200 S.W. First Avenue, Suite 800  
Fort Lauderdale, FL 33301

AS TO LESSEE:

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

With copy to:

City Attorney  
City of Fort Lauderdale 100  
N. Andrews Avenue Fort  
Lauderdale, FL 33301

(b) All such notices and communications shall be deemed to have been given when transmitted in accordance herewith to the foregoing persons at the addresses set forth above; provided, however, that the time period in which a response to any such notice must be given shall commence on the date of receipt thereof; provided, further, that rejection or other refusal to accept or inability to deliver because of changed address for which no notice has been received shall also constitute receipt. The respective attorneys for LESSOR and LESSEE are authorized to send notices and demands hereunder on behalf of their respective clients.

**10.3 Time Is Of The Essence.** Time is of the essence as to the performance of all terms and conditions under this Lease.

**10.4 LESSOR'S Cumulative Rights.** LESSOR's rights under the Lease are cumulative, and, LESSOR's failure to promptly exercise any rights given under this Lease shall not operate of forfeit any of these rights.

**10.5 Modifications, Releases and Discharges.** No modification, release, discharge or waiver of any provision of this Lease will be of any effect unless it is in writing and signed by the LESSOR and LESSEE.

**10.6 Time.** In computing any period of time expressed in day(s) in this Lease, 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.

**10.7 Captions.** The captions, headings and title of this Lease are solely for convenience of reference and are not to affect its interpretation.

**10.8 Survival.** All obligations of LESSEE hereunder not fully performed as of the expiration or earlier termination of the Term of this lease shall survive the expiration or earlier termination of the Term hereof.

**10.9 LESSOR Delays; Causes beyond Control of LESSOR.** Whenever a period of time is herein prescribed for action to be taken by LESSOR, LESSOR shall not be liable or responsible for, and there shall be excluded from the computation for any such period of time, any delays due to causes of any kind whatsoever which are beyond the control of LESSOR.

**10.10 Assignment, Pledge, Security Interest.** Except as may otherwise be provided herein, LESSEE shall not voluntarily, involuntarily or by operation of law, assign, sell, pledge, grant a security interest, or in any manner transfer its leasehold interest herein or any interest therein or grant any right under the Lease without the prior written consent of LESSOR, which such consent may be granted or withheld in LESSOR's absolute discretion.

**10.11 Interpretation of Lease; Severability.** This Lease shall be construed in accordance with the laws of the State of Florida. 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 Lease, or the application of the remainder of the provisions, shall not be affected. Rather, this Lease is to be enforced to the extent permitted by law. Each covenant, term, condition, obligation or other provision of the Lease 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 Lease, unless otherwise expressly provided. All terms and words used in this Lease, 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.

**10.12 Successors.** This Lease shall be binding on and inure to the benefit of the parties, their successors and assigns.

**10.13 No Waiver of Sovereign Immunity.** Nothing contained in this Lease is intended to serve as a waiver of sovereign immunity by any agency to which sovereign immunity may be applicable.

**10.14 No Third Party Beneficiaries.** Except as may be expressly set forth to the contrary herein, 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 Lease. None of the parties intend to directly or substantially benefit a third party by this Lease. The parties agree that there are no third party beneficiaries to this Lease and that no third party shall be entitled to

assert a claim against any of the parties based on this Lease. 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.

**10.15 Non-Discrimination.** LESSEE shall not discriminate against any Person in the performance of duties, responsibilities and obligations under this Lease because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

**10.16 Records.** Each party shall maintain its own respective records and documents associated with this Lease in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Chapter 119, Florida Statutes, as same may be amended from time to time and any resultant award of attorney's fees of non-compliance with that law.

**10.17 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 Lease 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.

**10.18 Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advise and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Lease Agreement has been their joint effort.

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

**10.20 Governing Law; Jurisdiction; Venue; Waiver of Jury Trials.** This Lease 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 Lease and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida or to the jurisdiction of the federal courts of the Southern District of Florida. To that end, LESSEE expressly waives whatever other privilege to venue it may otherwise have. **BY ENTERING INTO THIS LEASE, LESSOR AND LESSEE HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATING TO, ARISING FROM OR IN CONNECTION WITH THIS LEASE.**

**10.21 Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Lease if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either





party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds alone on the part of LESSEE be deemed Force Majeure.

**10.22 Radon Gas.** Radon is a naturally occurring radioactive gas that, when it has 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 state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

**10.23 Incorporation of Recitals.** The parties mutually acknowledge and agree that the recitals first set forth in this Lease Agreement are true and correct and that the same are incorporated herein as if fully set forth at length and form the basis for the terms and conditions stated above

[THE BALANCE OF THIS PAGE REMAINS INTENTIONALLY BLANK.]

A handwritten signature in black ink, appearing to be 'GAB' or similar, located in the bottom right corner of the page.

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

**AS TO LESSOR:**

**DOWNTOWN DEVELOPMENT  
AUTHORITY OF THE CITY OF FORT  
LAUDERDALE, a Florida Independent  
Special District**

By: \_\_\_\_\_

Dennis O'Shea, Chairman

Tim Petriello Vice Chairman

Chadwick Blue

Chad Blue

[Witness type or print name]

Chris Wren

[Witness type or print name]

CORPORATE SEAL

ATTEST:

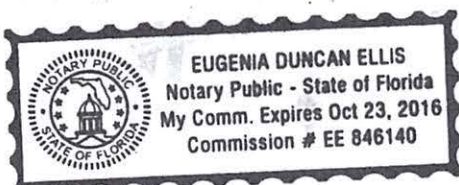
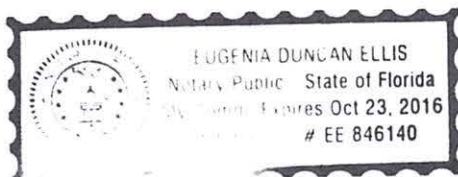
Marti Brown

Marti Brown, administrative  
[Type or Print Name and Title] auditor/secretary

STATE OF FLORIDA: COUNTY  
OF BROWARD:

August The foregoing instrument was acknowledged before me this 26 day of August, 2016, by Tim Petriello, V Chair Dennis O'Shea, Chairman of DOWNTOWN DEVELOPMENT AUTHORITY OF THE CITY OF FORT LAUDERDALE, a Florida Independent Special District. He is personally known to me or produced as identification and did take an oath.

(SEAL)

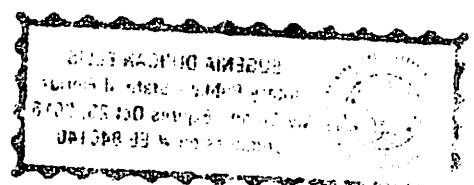
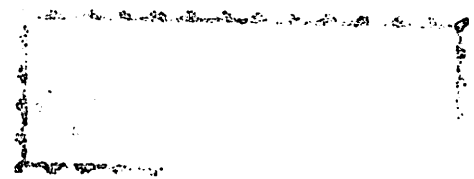
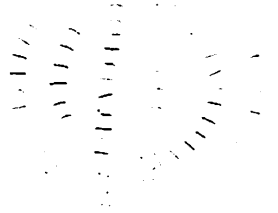


Eugenia Duncan Ellis  
Notary Public, State of Florida  
(Signature of Notary taking acknowledgment)

Eugenia Duncan Ellis  
Name of Notary Typed, Printed or Stamped

My Commission Expires:

EE 846140 10/23/16  
Commission Number



AS TO LESSEE:

WITNESSES:

Sahar Ali  
Sahar Ali

[Witness print or type name]

Carla Foster  
Carla Foster

[Witness print or type name]

(CORPORATE SEAL)

CITY OF FORT LAUDERDALE

By:

John P. ("Jack") Seiler  
John P. ("Jack") Seiler, Mayor

Lee R. Feldman  
Lee R. Feldman, City Manager

ATTEST:

Jeffrey A. Modarelli  
Jeffrey A. Modarelli, City Clerk

APPROVED AS TO FORM:

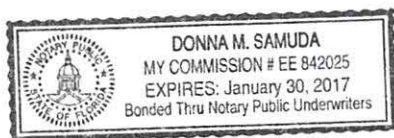
Cynthia A. Everett, City Attorney

Robert B. Dunckel  
Robert B. Dunckel  
Assistant City Attorney

STATE OF FLORIDA: COUNTY  
OF BROWARD:

The foregoing instrument was acknowledged before me this 15th day of September 2016, by JOHN P. ("JACK") SEILER, Mayor of the City of Fort Lauderdale, a municipal corporation of Florida. He is personally known to me and did not take an oath.

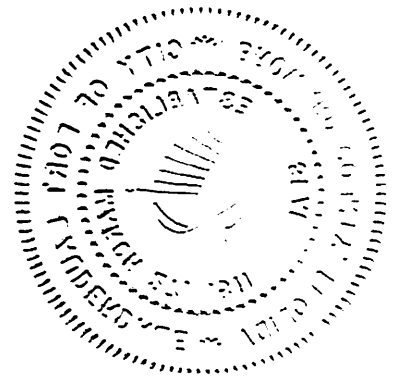
(SEAL)



Donna M. Samuda  
Notary Public, State of Florida  
(Signature of Notary taking Acknowledgment)

DONNA M. SAMUDA  
Name of Notary Typed, Printed or Stamped

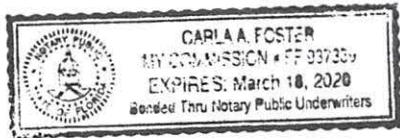
My Commission Expires: January 30, 2017  
EE 842025  
Commission Number



STATE OF FLORIDA: COUNTY  
OF BROWARD:

The foregoing instrument was acknowledged before me this  
8<sup>th</sup> day of September, 2016, by LEE R. FELDMAN, City Manager of the City of Fort  
Lauderdale, a municipal corporation of Florida. He is personally known to me and did not take  
an oath.

(SEAL)



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

Name of Notary Typed, Printed or Stamped

My Commission Expires:

\_\_\_\_\_  
Commission Number

**EXHIBIT A  
LEGAL DESCRIPTION  
AND  
SURVEY**

A portion of an amended plot of an un-numbered block, commonly designated 31, FORT LAUDERDALE, FLORIDA, as recorded in Plat Book 2, Page 16, of the Public Records of Broward County, Florida. TOGETHER WITH a portion of Block 27, TOWN OF FORT LAUDERDALE, as recorded in Plat Book B, Page 40, of the public records of Dade County, Florida, TOGETHER WITH that portion of North Second Street (East Las Olas Boulevard) lying between the above said blocks and being all more fully described as follows:

Commencing at the Northeast corner of Lot 6, of said Block 31; thence North 89°53'00" West, along the North line of Lot 6, a distance of 10.00 feet to the Point of Beginning; thence due North, along the line 10.00 feet West of and parallel with the East line of said Block 31, a distance of 160.19 feet; thence North 39°35'14" West, a distance of 31.86 feet to a point on a curve; thence Northwesterly, along a curve to the right, whose tangent bears North 79°10'28" West, with a radius of 270.16 feet, and a central angle of 37°34'46" on an arc distance of 177.19 feet to a point of reverse curve; thence Northwesterly, along a curve to the left, with a radius of 190.16 feet and a central angle of 17°13'17", an arc distance of 57.16 feet; thence South 60°34'36" West, a distance of 52.28 feet; thence South 00°01'49" East, a distance of 291.44 feet; thence South 70°48'00" East, a distance of 130.34 feet; thence South 64°46'00" East, a distance of 83.86 feet; thence South 62°56'30" East a distance of 69.38 feet; thence due North along a line 10.00 feet West of and parallel with the said East line of Block 31, a distance of 119.80 feet to the Point of Beginning.

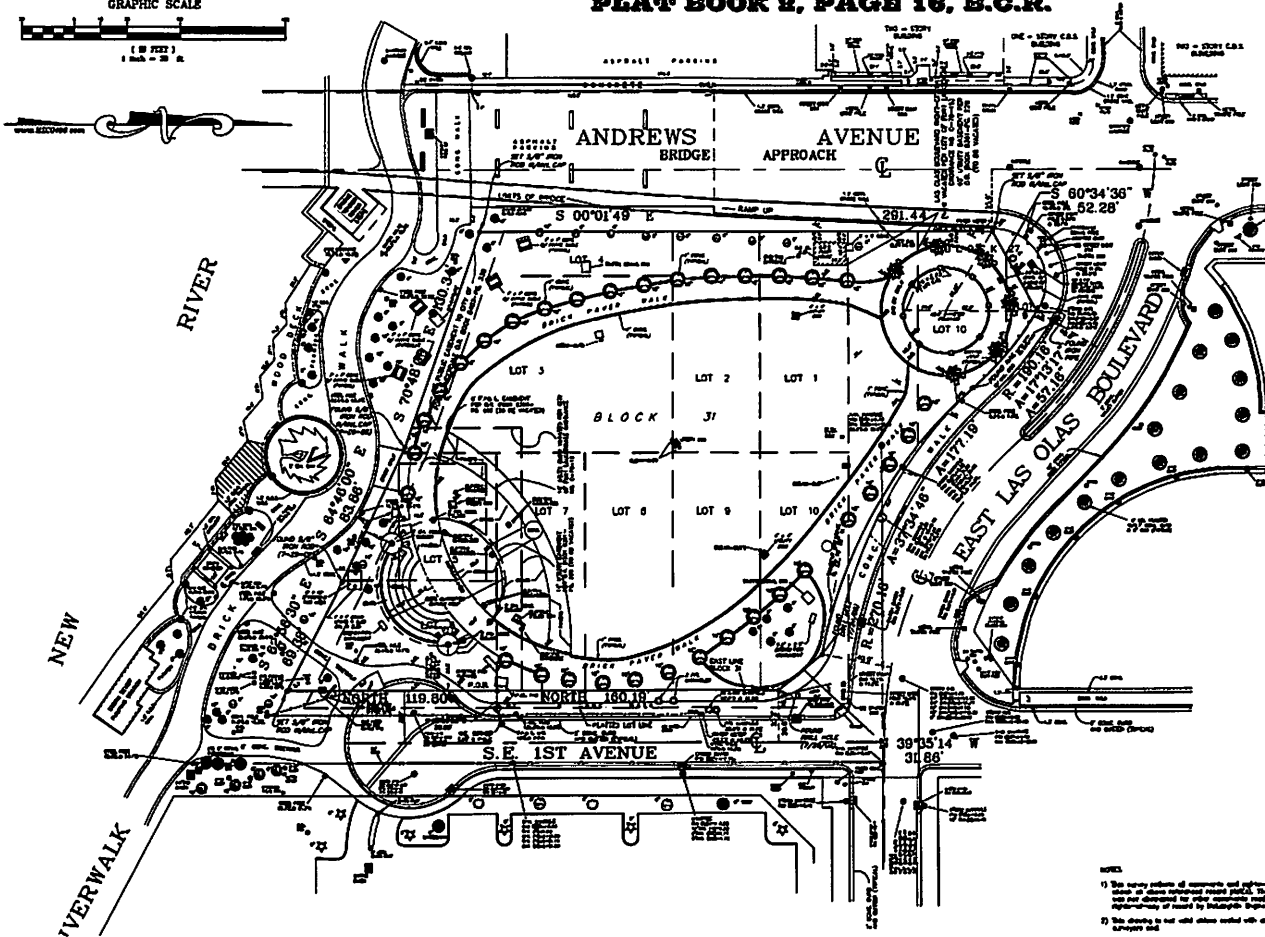
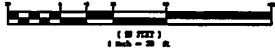
Said lands situate, lying and being in the City of Fort Lauderdale, Broward County, State of Florida and containing 77,975 square feet of 1.7901 acres, more or less.

DESIGNED BY  
 McLAUGHLIN ENGINEERING COMPANY (LBP 285)  
 400 N.E. 3rd AVENUE, FORT LAUDERDALE, FLORIDA  
 PHONE: (304) 763-7611  
 FAX: (304) 763-7613

# **RECORD LAND SURVEY**

**PORTION OF BLOCK 31, FORT LAUDERDALE, FLORIDA.**  
**PLAT BOOK 2, PAGE 16, B.C.R.**

GRAPHIC SCALE



- NOTES:
- 1) The survey reflects all easements and rights-of-way as shown on the plat and as shown on the map.
  - 2) The drawing is not valid unless sealed with a surveyor's seal.

*Handwritten signature/initials*



## PUNCH LIST SCHEDULE

Below is a list of repair items that the Downtown Development Authority (DDA) has agreed to repair prior to the Commencement Date of the Lease.

1. Remove all trip-hazards around tree rings
2. Remove ADA obstacle on South entrance to the Plaza (Raise pavers to the height of the concrete border.
3. Repair broken concrete sections on amphitheater stage.
4. Anchor all seating benches around the walking path to the concrete surface.
5. Replace missing brick pavers.
6. Repack loose brick pavers.
7. Repair broken light fixture cover located around the stage area.