

AIRSPACE AGREEMENT

575-060-32
RIGHT OF WAY
OGC - 08/09
Page 1 of 7ITEM/SEGMENT NO.: 227874-1 / 4110739MANAGING DISTRICT: FourF.A.P. NO.: 9210 001 RSTATE ROAD NO.: A-1-A / 17th Street CausewayCOUNTY: BrowardPARCEL NO.: TBD

THIS AGREEMENT, made this 22ND day of NOVEMBER, 2016, between
City of Fort Lauderdale at 100 North Andrews Avenue, Fort Lauderdale, Florida 33301
(Lessee) and the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (Department), an agency of the State of Florida
(State).

WITNESSETH:

WHEREAS, the Department may convey a leasehold in the name of the State, in any land, buildings, or other property, real or personal, acquired under Section 337.25, Florida Statutes; and

WHEREAS, the United States Department of Transportation, Federal Highway Administration (FHWA), requires any use of airspace above, and/or below the highway's established gradeline, lying within the approved right of way limits on a Federal Aid System, to be accomplished pursuant to an airspace agreement in accordance with 23 CFR, Part 710, and

WHEREAS, the Department has acquired sufficient legal right, title, and interest in the right of way of A-1-A / 17th Street Causeway which includes the property described in Exhibit "A" attached hereto and made a part hereof, which right of way is part of a highway on a Federal Aid System; and

WHEREAS, the Department desires to lease to Lessee the airspace above or below the gradeline of the property described in Exhibit "A", attached and made a part hereof for the following purpose: use of 42 linear feet of seawall to access a City-owned dock used by the Water Taxi or other similar service.

WHEREAS, the proposed use will not impair the full use and safety of the highway, require or permit vehicular access to such space directly from the established gradeline of said highway, or interfere with the free flow of traffic on said highway.

NOW, THEREFORE, in consideration of the premises made a part hereof, and the covenants, promises, understandings, and agreements made by each party to the other as set forth herein, the Department and the Lessee do hereby mutually agree as follows:

1. Premises

The premises hereto are true and correct and form an integral part of this Agreement.

2. Term

The Department does hereby lease unto Lessee the airspace above or below gradeline of the property for a period of Five (5) years beginning with the date of this Agreement. One renewal of this Agreement may be made for Five (5) years. However, except for a public purpose conveyance, such renewal may not exceed five years. Nothing herein shall be construed to in any way grant an interest in the property lying below said airspace.

3. Rent

a. Lessee shall pay to the Department as rent each ☐ month ☐ quarter ☒ year on or before the first day of each rent payment period, \$10,100.00 plus applicable sales tax. When this Agreement is terminated, any unearned rent and sales tax payment shall be refunded to Lessee. However, no such refund shall be made where termination is due to Lessee's violation of a term or condition of this Agreement.

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b. The Department reserves the right to review and adjust the rental fee biannually and at renewal to reflect market conditions.

c. All rental payments are to be made by check or money order, payable to the State of Florida Department of Transportation and delivered on or before the due date to: Florida Department of Transportation, R / W Property Management, 3400 West Commercial Boulevard, Fort Lauderdale, Florida 33309-3421

d. Lessee shall be responsible for all state, county, city, and local taxes that may be assessed, including real property taxes and special assessments. In the event that no rent is specified herein, then it has been determined that either the use by Lessee is a nonproprietary use by a governmental agency or an exception from the current fair market rental value requirement (23 U.S.C. Section 156) has been obtained for social, environmental, or economic mitigation (SEE) purposes. In the event that it should be determined at any time that the use is not a nonproprietary use by a governmental agency or that the SEE exception does not apply or has been revoked, Lessee agrees to pay, at that time, rent as determined to be the fair market rental value by an independent appraiser certified by the Department, and Lessee further agrees to pay such rent, under the remaining terms and conditions of this Paragraph 3, for the remaining term (including renewals) of this Agreement.

e. Any installment of rent not received within ten (10) days after the due date shall bear interest at the highest rate allowed by law from the due date thereof, per Section 55.03(1), Florida Statutes. This provision shall not obligate the Department to accept late rent payments or provide Lessee a grace period.

4. Use, Occupancy, and Maintenance

a. The Lessee shall be responsible for developing and operating the airspace as set forth herein.

b. The Lessee's proposed use of the airspace is as follows: use of 42 linear feet of seawall to access a City-owned dock used by the Water Taxi or other similar service.

c. The general design for the use of the airspace, including any facilities to be constructed, and the maps, plans, and sketches setting out the pertinent features of the use of the airspace in relation to the highway facility are set forth in composite Exhibit "B" attached hereto and by this reference made a part hereof. In addition, said composite Exhibit "B" also contains a three-dimensional description of the space to be used, unless the use is of a surface area beneath an elevated highway structure or adjacent to a highway roadway for recreation, public park, beautification, parking of motor vehicles, public mass transit facilities, or other similar uses, in which case, a metes and bounds description of the surface area, together with appropriate plans or cross sections clearly defining the vertical use limits, may be substituted for said three-dimensional description in said composite Exhibit "B".

d. Any change in the authorized use of the airspace or revision in the design or construction of the facility described in Exhibit "B" shall require prior written approval from the appropriate District Secretary of the Department, subject to concurrence by the FHWA.

e. The Department, through its duly authorized representatives, employees, and contractors, and any authorized FHWA representative, may enter the facility at any time for the purpose of inspection, maintenance, or reconstruction of the highway and adjacent facilities, when necessary; or for the purpose of surveying, drilling, monitoring well installations, sampling, remediation, and any other action which is reasonable and necessary to conduct an environmental assessment or to abate an environmental hazard.

f. Lessee, at Lessee's sole cost and expense, shall maintain the facility to occupy the airspace so as to assure that the structures and the area within the highway right of way boundaries will be kept in good condition, both as to safety and appearance. Such maintenance will be accomplished in a manner so as to cause no unreasonable interference with the highway use. In the event that Lessee fails to so maintain the facility, the Department, through its duly authorized representatives, employees, and contractors, may enter the facility to perform such work, and the cost thereof shall be chargeable to the Lessee and shall be immediately due and payable to the Department upon the performance of such work.

g. Portable or temporary advertising signs are prohibited.

h. The design, occupancy, and use of the airspace shall not adversely affect the use, safety, appearance, or enjoyment of the highway by smoke, fumes, vapors, odors, droppings, or any other objectionable discharges or emissions, or nuisances of any kind therefrom.

i. When, for the proposed use of the airspace, the highway requires additional highway facilities for the proper operation and maintenance of the highway, such facilities shall be provided by the Lessee without cost to either the Department or the FHWA and subject to both Department and FHWA approval.

j. The proposed use shall not cause or allow any changes in the existing drainage on the property under the airspace.

k. Lessee shall not occupy, use, permit, or suffer the airspace, the property, the facility, or any part thereof to be occupied or used for any illegal business use or purpose, for the manufacture or storage of flammable, explosive, or hazardous material, or any other hazardous activity, or in such manner as to constitute a nuisance of any kind, nor for any purpose or in any way in violation of any present or future federal, state, or local laws, orders, directions, ordinances, or regulations.

l. Any activities in any way involving hazardous materials or substances of any kind whatsoever, either as those terms may be defined under any state or federal laws or regulations, or as those terms are understood in common usage, are specifically prohibited. The use of petroleum products, pollutants, and other hazardous materials affecting the property is prohibited. Lessee shall be held responsible for the performance of and payment for any environmental remediation that may be necessary, as determined by the Department. Similarly, if any contamination either spread to or was released onto adjoining property as a result of Lessee's use of the airspace under lease, the Lessee shall be held similarly responsible. The Lessee shall indemnify, defend, and hold harmless the Department from any claim, loss, damage, cost, charge, or expense arising out of any such contamination.

m. Existing utilities and all corresponding easements shall remain in place and Lessee shall not disturb or interfere with the same.

5. Indemnification. (select applicable paragraph)

☒ **Lessee is a Governmental Agency**

To the extent provided by law, Lessee shall indemnify, defend, and hold harmless the Department and all of its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by Lessee, its officers, agents, or employees, during the performance of the Agreement, except that neither Lessee, its agents, or its employees will be liable under this paragraph for any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by the Department or any of its officers, agents, or employees during the performance of the Agreement.

When the Department receives a notice of claim for damages that may have been caused by Lessee in the performance of services required under this Agreement, the Department will immediately forward the claim to Lessee. Lessee and the Department will evaluate the claim and report their findings to each other within fourteen (14) working days and will jointly discuss options in defending the claim. After reviewing the claim, the Department will determine whether to require the participation of Lessee in the defense of the claim or to require that Lessee defend the Department in such claim as described in this section. The Department's failure to promptly notify Lessee of a claim shall not act as a waiver of any right herein to require the participation in or defense of the claim by Lessee. The Department and Lessee will each pay its own expenses for the evaluation, settlement negotiations, and trial, if any.

Note: No longer required for local governments.

☐ **Lessee is not a Governmental Agency**

Lessee shall indemnify, defend, save, and hold harmless the Department, its agents, officers, and employees, from any losses, fines, penalties, costs, damages, claims, demands, suits, and liabilities of any nature, including attorney's fees (including regulatory and appellate fees), arising out of or because of any acts, action, neglect, or omission by Lessee, or due to any accident, happening, or occurrence on the leased property or arising in any manner from the exercise or attempted exercise of Lessee's rights hereunder whether the same regards person or property of any nature whatsoever, regardless of the apportionment of negligence, unless due to the sole negligence of the Department.

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

Note: No longer required for local governments.

6. Insurance. Lessee at its expense, shall maintain at all times during the term of this Agreement, public liability insurance protecting the Department and Lessee against any and all claims for injury and damage to persons and property, and for the loss of life or property occurring in, on, or about the land arising out of the act, negligence, omission, nonfeasance, or malfeasance of Lessee, its employees, agents, contractors, customers, licensees, and invitees. Such insurance shall be carried in a minimum amount of not less than _____ (\$ _____) for bodily injury or death to any one person or any number of persons in any one occurrence and not less than _____ (\$ _____) for property damage, or a combined coverage of not less than _____ (\$ _____). All such policies shall be issued by companies licensed to do business in the State of Florida and all such policies shall contain a provision whereby the same cannot be canceled or modified unless the Department is given at least sixty (60) days prior written notice of such cancellation or modification. Lessee shall provide the Department certificates showing such insurance to be in place and showing the Department as additional insured under the

policies. If self-insured or under a risk management program, Lessee represents that such minimum coverage for liability will be provided for the property.

7. Termination

a. This Agreement may be terminated by either party without cause upon Thirty (30) days prior written notice to the other party.

b. It is understood and agreed to by the Lessee that the Department reserves the right to terminate this Agreement immediately without prior notice, in the event the Lessee violates any of the conditions of this Agreement and such violation is not corrected within a reasonable time after written notice of noncompliance has been given. In the event the Agreement is terminated and the Department deems it necessary to request the removal of the facility on the property, the removal shall be accomplished by the Lessee in a manner prescribed by the Department at no cost to the Department or the FHWA.

c. The Lessee must notify the Department of its intention to renew this Agreement not later than thirty (30) days prior to the expiration of the original term. Lessee's failure to comply with the foregoing notice provision may result in the Department's refusal to renew the Agreement.

d. Upon termination of this Agreement, Lessee shall deliver the property to the Department, or its agents, in the condition existing at the commencement of this Agreement, normal wear and tear excepted, unless a facility, any improvement, or any part thereof has been constructed on the property.

e. If removal of the facility, improvements, or any part thereof is requested by the Department, any such structures shall be removed by the Lessee at Lessee's expense by midnight of the day of termination of this Agreement and the property restored as nearly as practicable.

f. This Agreement is terminable by the Department in the event that the facility ceases to be used for its intended purpose or is abandoned.

8. Eminent Domain

Lessee acknowledges and agrees that its relationship with the Department under this Agreement is one of landlord and tenant and no other relationship either expressed or implied shall be deemed to apply to the parties under this Agreement. Termination of this Agreement for any cause shall not be deemed a taking under any eminent domain or other law so as to entitle Lessee to compensation for any interest suffered or lost as a result of termination of this Agreement, including any residual interest in the Agreement or any other facts or circumstances arising out of or in connection with this Agreement.

Lessee hereby waives and relinquishes any legal rights and monetary claims which it might have for full compensation, or damages of any sort, including special damages, severance damages, removal costs, or loss of business profits, resulting from Lessee's loss of occupancy of the property specified in this Agreement, or any such rights, claims, or damages flowing from adjacent properties owned or leased by Lessee as a result of Lessee's loss of occupancy of the property specified in this Agreement. Lessee also hereby waives and relinquishes any legal rights and monetary claims which it might have for full compensation, or damages of any sort as set out above, as a result of Lessee's loss of occupancy of the property, when any or all adjacent properties owned or leased by Lessee are taken by eminent domain proceedings or sold under the threat thereof. This waiver and relinquishment applies whether this Agreement is still in existence on the date of taking or sale or has been terminated prior thereto.

9. Miscellaneous

a. The airspace and Lessee's rights under this Agreement shall not be transferred, assigned, or conveyed to another party without the prior written consent of the Department, subject to concurrence by the FHWA.

b. In conformance with the Civil Rights Act of 1964 (Title VI, Appendix "C") and 49 CFR Part 21, Lessee agrees as follows:

1. That as a part of the consideration hereof, Lessee does hereby covenant and agree as a covenant running with the land that (1) no person, on the ground of race, color, sex, or national origin shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said property and facility; (2) that in connection with the construction of any improvements on said property and facility and the furnishing of services thereon, no discrimination shall be practiced in the selection of employees and contractors, by contractors; and (3) that the Lessee shall use the property and facility in compliance with all other requirements imposed pursuant to 15 CFR Part 8, Subpart A.

2. That in the event of breach of any of the above covenants, the Department shall have the right to terminate this Agreement and to re-enter and repossess said property and the facility thereon, and hold the same as if this Agreement had never been made or issued.

c. During the term of this Agreement Lessee shall, at Lessee's own cost and expense, promptly observe and comply with all present or future laws, requirements, orders, directions, ordinances, and regulations of the United States of America, the State of

Florida, county or local governments, or other lawful authority whatsoever, affecting the land, property, and facility or appurtenances or any part thereof, and of all insurance policies covering the property, land, and facility, or any part thereof.

d. In addition to or in lieu of the terms and conditions contained herein, the provisions of any Addendum of even date herewith which is identified to be a part hereof is hereby incorporated herein and made a part hereof by this reference. In the event of any conflict between the terms and conditions hereof and the provisions of the Addendum(s), the provisions of the Addendum(s) shall control, unless the provisions thereof are prohibited by law.

e. This Agreement constitutes the complete and final expression of the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, or negotiations with respect thereto. Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions hereof.

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

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

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

i. All notices to the Department shall be sent to the address for rent payments and all notices to Lessee shall be sent to the property address provided herein or otherwise provided in writing to the Department.


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

CITY OF FORT LAUDERDALE

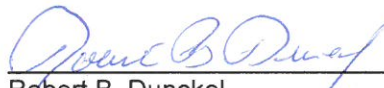
Lessee

By: 
Lee R. Feldman, City Manager

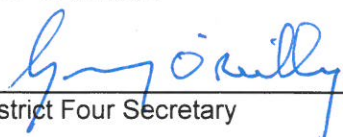
ATTEST:


Jeffrey A. Modarelli, City Clerk

APPROVED AS TO FORM:
Cynthia A. Everett, City Attorney


Robert B. Dunckel
Assistant City Attorney

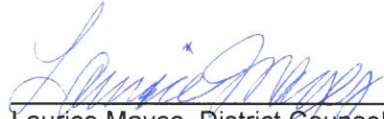
STATE OF FLORIDA DEPARTMENT OF
TRANSPORATION

By: 
District Four Secretary

ATTEST:

Alia Chanel, Executive Secretary

LEGAL REVIEW:


Laurice Mayes, District Counsel

AIRSPACE AGREEMENT ADDENDUM

This is an Addendum to that certain Airspace Agreement between the City of Fort Lauderdale, of 100 North Andrews Avenue, Fort Lauderdale, Florida 33301 (hereinafter referred to "City") and the State of Department of Transportation (hereinafter referred to "Department") dated the _____ day of _____, 2016.

In addition to the above the following shall apply as it relates to Exhibit "A":

1. The City shall install railing, approved by the Department, onto seawall to prevent accidental falls.
2. The City shall inspect, maintain and repair seawall in accordance with other seawalls within the City's jurisdiction to meet all federal, state, county, and city codes.
3. The City will ensure an annual inspection is performed by an accredited seawall inspector.
4. The Department shall have access to the leased area at all times for inspections.
5. NOTICES:

- a. All notices to Lessee shall be sent to: The City of Fort Lauderdale, Public Service Department, Engineering Division, 100 North Andrews Avenue, 5th Floor, Fort Lauderdale, Florida 33301
- b. All notices to Lessor shall be sent to: Florida Department of Transportation, R/W Property Management, 3400 West Commercial Boulevard, Fort Lauderdale, Florida 33309-3421

Date: 11/22/16

APPROVED AS TO FORM:

By: Laurice Mayes
Laurice Mayes, Senior Attorney

APPROVED AS TO FORM:
Cynthia A. Everett, City Attorney

By: Robert B. Dunckel
Robert B. Dunckel
Assistant City Attorney

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

By: Gerry O'Reilly
Gerry O'Reilly, P.E., District Four Secretary

ATTEST

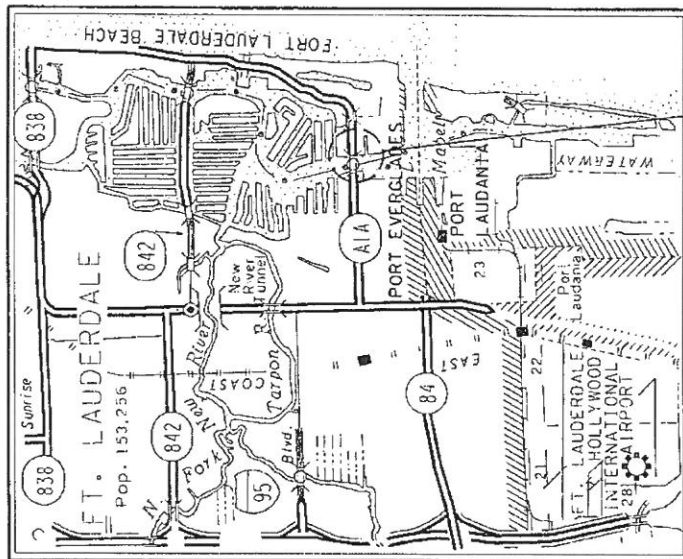
For Alia Chanel, Executive Secretary

CITY OF FORT LAUDERDALE

By: Lee R. Feldman
Lee R. Feldman, City Manager

ATTEST:

Jeffrey A. Modarelli, City Clerk



PARCEL LOCATION

DISTRICT 4 SURVEYING AND MAPPING
3400 WEST COMMERCIAL BLVD.
FT. LAUDERDALE, FL. 33309
(954) 777 - 4551

10779 1.31624 1000

FLORIDA DEPARTMENT OF TRANSPORTATION
PARCEL SKETCH - NOT A SURVEY

EXHIBIT "A"

GENERAL NOTES:

1. BEARINGS ARE BASED ON THE GRID BEARING OF S 02°00'28" E BETWEEN TRAVERSE STATIONS PEH-9 AND TRAVERSE STATION BROW OF THE FLORIDA STATE PLANE COORDINATE SYSTEM TRANSVERSE MERCATOR, EAST ZONE. MONUMENTS WERE ESTABLISHED BY THE DEPARTMENT OF THE ARMY FOR THE PORT EVERGLADES HARBOR.
2. INFORMATION SHOWN HEREON IS BASED ON THE FOOT RIGHT OF WAY MAP SECTION NO. 86180-2522 FOR STATE ROAD A-1-A (17TH ST. CAUSEWAY).
3. THIS SKETCH EXISTS SOLELY FOR THE PURPOSE OF ILLUSTRATING THE LEGAL DESCRIPTION TO WHICH IT IS ATTACHED.
4. ALL DIMENSIONS ARE CALCULATED UNLESS OTHERWISE NOTED.

LEGEND:

Q	= BASELINE	PG.	= PAGE
C	= CENTERLINE	POB	= POINT OF BEGINNING
A	= DELTA	POC	= POINT OF COMMENCEMENT
EXIST.	= EXISTING	RGE.	= RANGE
GOV'T.	= GOVERNMENT	RT	= RIGHT
LT	= LEFT	R/W	= RIGHT OF WAY
NTS	= NOT TO SCALE	SEC.	= SECTION
O.R.B.	= OFFICIAL RECORDS BOOK	S.R.	= STATE ROAD
(P)	= PLAT	STA.	= STATION
P.B.	= PLAT BOOK	TWP.	= TOWNSHIP

NOT A SURVEY

FLORIDA DEPARTMENT OF TRANSPORTATION										STATE ROAD NO. A-1-A		BROWARD COUNTY	
PARCEL SKETCH - NOT A SURVEY													
										BY		DATE	
										DRAWN		SEELEY	
										CHECKED		DIAZ	
										REVISION		BY	
										DATE		03-18-16	
										F.P. NO.		N/A	
										SECTION		86180-2522	
										SHEET		1 OF 3	


EXHIBIT "A"

That portion of land underlying State Road A-1-A (SE 17 the St. Causeway) Bridge, in Section 13, Township 50 South, Range 42 East, Broward County, Florida, lying west of and adjacent to the existing right of way for the Intercoastal Waterway, being more particularly described as follows:

Commence at the intersection of the westerly existing right of way line for the Intercoastal Waterway with the northerly existing right of way line for S.R. A-1-A (SE 17th St. Causeway) according to the Florida Department of Transportation Right of Way Map for Section 86180-2522; thence South 00°29'39" West, 44.00 feet along the east face of a Sea Wall to the POINT OF BEGINNING; thence North 89°30'21" West, 3.00 feet; thence South 00°29'39" West, 42.00 feet along a line 3.00 feet west of and parallel with said existing Sea Wall; thence South 89°30'21" East, 3.00 feet to the east face of said sea wall; North 00°29'39" East, 42.00 feet to the POINT OF BEGINNING.

Containing 126 square feet, more or less.

I hereby certify that the sketch and legal description was prepare under my direction and that said sketch and legal description is in compliance with the Standards of Practice as set forth by the Florida Board of Professional Surveyors & Mappers, in Chapter 5J-17.050-052 Florida Administrative Code pursuant to Section 472.027, Florida Statutes.

 03/23/2016
 Jeffrey P. Smith Date
 Florida Surveyor & Mapper No. 4805
 Florida Department of Transportation

This sketch and legal description or the copies thereof is not valid without the signature and original raised seal of Florida licensed surveyor and mapper.

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FLORIDA DEPARTMENT OF TRANSPORTATION				STATE ROAD NO. A-1-A				BROWARD COUNTY			
PARCEL SKETCH - NOT A SURVEY				DRAWN		BY		DATE		PREPARED BY:	
				CHECKED		SEELEY		03-18-16		FOOT DISTRICT 4	
				REVISION						DATA SOURCE:	
										N/A	
										F.P. NO. N/A	
										SECTION 86180-2522	
										SHEET 3 OF 3	