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3 **RESOLUTION NO. 2014-14**
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5 **A RESOLUTION OF THE VILLAGE COMMISSION**
6 **OF THE VILLAGE OF BISCAYNE PARK, FLORIDA;**
7 **AUTHORIZING THE MAYOR TO EXECUTE THE**
8 **PROFESSIONAL SERVICES AGREEMENT**
9 **BETWEEN R.J. HEISENBOTTLE ARCHITECTS P.A.**
10 **AND THE VILLAGE OF BISCAYNE PARK FOR**
11 **PROFESSIONAL SERVICES RELATING TO A**
12 **COMPREHENSIVE ASSESSMENT FOR THE**
13 **RENOVATION AND RESTORATION OF THE**
14 **HISTORICAL VILLAGE HALL LOG CABIN;**
15 **PROVIDING FOR AN EFFECTIVE DATE.**
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17
18 WHEREAS, in June 2012, the Village submitted a grant application to the Florida
19 Department of State, Division of Historic Resources under the 2014 Small Matching Grant
20 Program, and was awarded a \$20,000 matching grant; and
21

22 WHEREAS, the matching grant amount of \$20,000 was approved in the adopted Fiscal
23 Year 2013-14 Budget; and
24

25 WHEREAS, on March 15, 2013, the Village advertised Request for Qualifications
26 (RFQ) 2013-01 for Architectural Services – Historic Log Cabin Restoration and New Village
27 Hall, whereby four (4) proposals were received; and,
28

29 WHEREAS, after a review of all proposals by the Evaluation Committee, the firm of
30 R.J. Heisenbottle Architects, P.A. (hereinafter referred to as “R.J.H.”) was ranked the highest;
31 and,
32

33 WHEREAS, the Village desires to retain the services R.J.H. for the development of an
34 architectural and historical assessment of the Village’s historic log cabin.
35

36 NOW THEREFORE BE IT RESOLVED BY THE VILLAGE COMMISSION OF THE
37 VILLAGE OF BISCAYNE PARK, FLORIDA:
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40 **Section 1.** The foregoing "Whereas" clauses are hereby ratified and confirmed as
41 being true and correct and hereby made a specific part of this Resolution upon adoption hereof.
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43 **Section 2.** The Village Commission of the Village of Biscayne Park hereby
44 authorizes the Mayor to execute the professional services agreement for professional services
45 relating to the development of an architectural and historical assessment of the Village’s
46 historic log cabin with R.J. Heisenbottle Architects, P.A. The agreement, in substantial form, is
47 attached and incorporated by reference into this resolution as exhibit 1.
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49 **Section 3.** This Resolution shall become effective upon adoption.

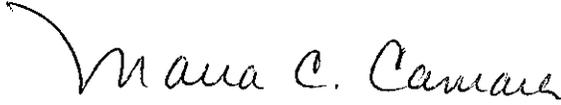
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PASSED AND ADOPTED this 4th day of February, 2014



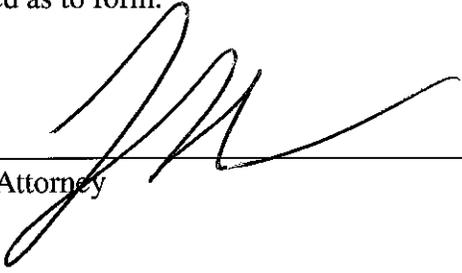
David Coviello, Mayor

Attest:



Maria C. Camara, Village Clerk

Approved as to form:



Village Attorney

The foregoing resolution upon being put to a vote, the vote was as follows:

- Mayor Coviello: Yes
- Vice Mayor Watts: Yes
- Commissioner Anderson: Yes
- Commissioner Jonas: Yes
- Commissioner Ross: Yes

**PROFESSIONAL CONSULTANT
SERVICES AGREEMENT**

THIS IS AN AGREEMENT, dated the 9 day of April, 2014, between:

THE VILLAGE OF BISCAYNE PARK, a municipal corporation, hereinafter referred to as "VILLAGE",

and

R. J. HEISENBOTTLE ARCHITECTS, P.A., a Florida corporation, hereinafter referred to as "CONSULTANT".

WITNESSETH:

In consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, VILLAGE and CONSULTANT agree as follows:

**ARTICLE 1
PREAMBLE**

In order to establish the background, context and form of reference for this Agreement and to generally express the objectives, and intentions of the respective parties herein, the following statements, representations and explanations shall be accepted as predicates for the undertakings and commitments included within the provisions which follow and may be relied upon by the parties as essential elements of the mutual considerations upon which this Agreement is based.

1.1 The VILLAGE advertised its request for proposals (hereinafter, "RFP") which set forth the VILLAGE's desire to hire a firm to perform consulting services related to the restoration of the Historic Log Cabin.

1.2 Consistent with the RFP requirements, the VILLAGE selected CONSULTANT to render the professional services more particularly described herein below.

**ARTICLE 2
SERVICES AND RESPONSIBILITIES**

2.1 CONSULTANT hereby agrees to perform the following professional consultant services for the VILLAGE:

Phase 1 Scope of Basic Services

1. **Historic Research and Documentation of Existing Conditions.** Work will include historic research and field measurement of the existing building and development of a detailed set of existing conditions architectural and structural framing drawings in AutoCAD format. These

drawings will include an architectural floor plan, building section, and building elevations. These plans will form the basis for future restoration and renovation plans.

2. **Building Evaluation and Recommendations Report.** CONSULTANT will, in concert with its structural and MEP engineering consultants, prepare a written building evaluation report of the log cabin building that will set the direction for all restoration, repairs, and possible enhancements of the existing log cabin building. Thoroughness of documentation will be contingent on the extent to which architectural and engineering elements are observable.

As part of the report, Douglas Wood & Associates (DWA) structural engineers, will prepare an assessment of present condition of existing structural systems utilizing visual observations identifying primarily specific locations of significant damage or deterioration where readily observable without the use of lifts and scaffolds (or other specialized equipment) and without damaging existing finishes or other construction. When this report is completed, it will form the basis for preparation of restoration construction documents and a preliminary cost estimate for a later date.

3. **Schematic Design/Renovation Plans.** Upon completion of the Historic Research, Documentation of Existing Conditions and the Building Evaluation Report outlined above, CONSULTANT will prepare schematic design drawings that will include the proposed floor plan, building elevations and a building section to illustrate the design intent of the overall restoration project. The schematic design drawings along with the recommendations contained in the building evaluation report will form the basis for preparation of the preliminary budget cost estimate at a later date.

2.2 Deliverables will include three (3) color copies of all documents and one (1) PDF. Electronic files of all existing conditions in CADD and PDF. Color renderings of the restored buildings are an additional option at a cost of four thousand dollars (\$4,000.00) each.

2.3 VILLAGE understands that it may be necessary for CONSULTANT's investigation to include some sampling and testing of existing materials by certified testing laboratories. If required, this testing laboratory would need to be hired by the VILLAGE. Sampling and testing may include concrete sampling and testing for compression strength, depth of carbonation and chloride content.

2.4 VILLAGE understands that it may be necessary for it to obtain the services of a materials testing laboratory and a geotechnical engineer to perform concrete testing, soils exploration, and analysis and to prepare written reports of their findings and recommendations. CONSULTANT and DWA will coordinate with these consultants to provide suggested testing locations and provide projected structural requirements if required. Additionally, it will be necessary for the VILLAGE to supply the architectural/engineering team with a complete site survey in AutoCAD format.

2.5 CONSULTANT shall furnish all services, labor, equipment, and materials necessary and as may be required in the performance of this Agreement and all work performed under this Agreement shall be done in a timely and professional manner.

2.6 CONSULTANT hereby represents to VILLAGE, with full knowledge that VILLAGE is relying upon these representations when entering into this Agreement with CONSULTANT, that CONSULTANT has the professional expertise, experience and manpower to perform the services to be provided by CONSULTANT pursuant to the terms of this Agreement.

2.7 CONSULTANT assumes professional and technical responsibility for performance of its services to be provided hereunder in accordance with recognized professional standards of good engineering practice. If within one year following completion of its services, such services fail to meet the aforesaid standards, and the VILLAGE promptly advises CONSULTANT thereof in writing, CONSULTANT agrees to re-perform such deficient services without charge to the VILLAGE.

2.8 CONSULTANT shall not utilize the services of any sub-consultant without the prior written approval of VILLAGE.

ARTICLE 3 TIME FOR PERFORMANCE

CONSULTANT shall perform the services as identified in Section 2.1 as soon as is reasonably practicable; however, CONSULTANT has estimated that it will take approximately three (3) to four (4) months to complete the entire scope of work outlined in Section 2.1.

ARTICLE 4 COMPENSATION AND METHOD OF PAYMENT

4.1 VILLAGE agrees to compensate CONSULTANT for the services performed by CONSULTANT, a lump sum fee of Forty Thousand Dollars (\$40,000.00), as more particularly set forth in Exhibit "1", attached hereto and incorporated herein.

4.2 VILLAGE agrees to compensate CONSULTANT for reasonable out-of-pocket expenses.

4.3 CONSULTANT shall be entitled to invoice VILLAGE on a monthly basis which will be based on CONSULTANT's estimated percent complete of the Phase 1 Services, plus any appropriate charge for reasonable out-of-pocket expenses. The invoice shall include, but not be limited to, the time period covered, the percentage of the contract completed, a description of the services performed, and any other information reasonably required by VILLAGE.

4.4 VILLAGE will make its best efforts to pay CONSULTANT within thirty (30) days of receipt of proper invoice the total shown to be due on such invoice.

4.5 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation.

4.6 Payment will be made to CONSULTANT at:

R.J. Heisenbottle Architects, P.A.
2199 Ponce de Leon Boulevard, Suite 400
Coral Gables, Florida 33134

ARTICLE 5
CHANGES TO SCOPE OF WORK AND ADDITIONAL WORK

VILLAGE or CONSULTANT may request changes that would increase, decrease or otherwise modify the Scope of Services to be provided under this Agreement. Such changes or additional services must be in accordance with the provisions of the Code or Ordinances of the VILLAGE and must be contained in a written amendment, executed by the parties hereto, with the same formality and with equality and dignity prior to any deviation from the terms of this Agreement, including the initiation of any additional or extra work. In no event will the CONSULTANT be compensated for any work which has not been described in a separate written agreement executed by the parties hereto.

ARTICLE 6
LIMITATIONS

6.1 VILLAGE understands that CONSULTANT's review of the existing building construction will be only for the purposes stated in the description of the project and in the Phase 1 scope of services. In the absence of original building drawings, CONSULTANT will use its best efforts to confirm the existing building systems. However, while CONSULTANT is performing observations of the existing building systems, CONSULTANT's observations will be limited by time constraints and what can be readily observed in the completed building where many of those systems are not readily visible.

6.2 A structural condition is hidden if concealed by existing finishes or if it cannot be investigated by reasonable visual observation. If CONSULTANT has reason to believe that such a condition may exist, CONSULTANT will notify VILLAGE which shall obtain authorization for payment for all costs associated with the investigation of such a condition and, if necessary, all costs necessary to correct said condition. If VILLAGE fails to obtain such authorization for investigation or correction after due notification or CONSULTANT has no reason to believe that such a condition exists, VILLAGE will be responsible for all risks associated with this condition and CONSULTANT and its consulting engineers shall not be responsible for the existing condition nor any resulting damages to persons or property. CONSULTANT and its engineering consultants shall have no responsibility for the discovery, presence, handling, removal, disposal or exposure of persons to hazardous materials of any form.

ARTICLE 7
TERM AND TERMINATION

7.1 This Agreement shall take effect as of the date of execution as shown herein below and continue for such time as is contemplated by the VILLAGE project.

7.2 This Agreement may be terminated by either party for cause, or by either party for convenience, upon thirty (30) days written notice by the terminating party to the other party in which event the CONSULTANT shall be paid its compensation for services performed to termination date. In the event that the CONSULTANT abandons this Agreement or causes it to be terminated, it shall indemnify the VILLAGE against any loss pertaining to this termination. All finished or unfinished documents, data, studies, plans, surveys, reports and PDF and CADD files of the drawings prepared by CONSULTANT shall become the property of VILLAGE and shall be delivered by CONSULTANT to VILLAGE immediately.

ARTICLE 8
PUBLIC RECORDS AND AUDIT

8.1 CONSULTANT shall keep books and records and require any and all subcontractors to keep books and records as may be necessary in order to record complete and correct entries as to personnel hours charged to this engagement, and any expenses for which CONSULTANT expects to be reimbursed. Such books and records will be available at all reasonable times for examination and audit by VILLAGE and shall be kept for a period of three (3) years after the completion of all work to be performed pursuant to this Agreement. Incomplete or incorrect entries in such books and records will be grounds for disallowance by VILLAGE of any fees or expenses based upon such entries.

8.2 CONSULTANT understands, acknowledges and agrees that it shall, pursuant to Section 119.0701, Florida Statutes, as amended from time to time, do the following:

8.2.1 Keep and maintain public records that ordinarily and necessarily would be required by VILLAGE in order to perform the same service being rendered within this Agreement;

8.2.2 Provide the public with access to public records and at a cost that does not exceed the cost provided within Chapter 119, Florida Statutes, as amended from time to time, or as otherwise provided for by law;

8.2.3 Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and

8.2.4 Meet all requirements for retaining public records and transfer, at no cost, to VILLAGE all public records in possession of CONSULTANT upon termination of this Agreement. Further, CONSULTANT shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to VILLAGE in a format that is compatible with the then current VILLAGE computer systems.

8.3 CONSULTANT understands, acknowledges and agrees that CITY is required, pursuant to Section 119.0701, Florida Statutes, as amended from time to time, to ensure compliance with this section by enforcing the terms of this Agreement. As a result of the foregoing, any violation of this section shall be a material breach and this Agreement may be terminated by VILLAGE without any penalty.

8.4 Prior to termination, VILLAGE shall give written notice to CONSULTANT that it is in violation of this section. CONSULTANT shall have five (5) business days to cure a violation of this section.

8.5 Notwithstanding any other provisions in this Agreement to the contrary, CONSULTANT shall be liable for any and all damages, including but not limited to, consequential and incidental damages, that may arise out of breach of this section of the Agreement.

ARTICLE 9 INDEMNIFICATION

9.1 CONSULTANT shall indemnify and save harmless and defend the VILLAGE, its trustees, elected and appointed officials, agents, servants and employees from and against any and all claims, demands, or causes of action of whatsoever kind or nature sustained by the VILLAGE or any third party arising out of, or by reason of, or resulting from acts, error, omission, or negligent act of CONSULTANT, its agents, servants or employees in the performance under this Agreement, for all costs, losses and expenses, including but not limited to, damages to persons or third party property, judgments and attorneys' fees arising out of or in connection with the performance by CONSULTANT pursuant to this Agreement.

9.2 CONSULTANT shall indemnify VILLAGE for all loss, damage, expense or liability including, without limitation, court costs and attorneys' fees that may result by reason of any infringement or claim of infringement of any patent, trademark, copyright, trade secret or other proprietary right due to services furnished pursuant to this Agreement. CONSULTANT will defend and/or settle at its own expense any action brought against the VILLAGE to the extent that it is based on a claim that products or services furnished to VILLAGE by CONSULTANT pursuant to this Agreement, or if any portion of the services or goods furnished in the performance of the service becomes unusable as a result of any such infringement or claim.

ARTICLE 10 INSURANCE

10.1 The CONSULTANT shall not commence work under this Agreement until it has obtained all insurance required under this paragraph and such insurance has been approved by the Village Manager of the VILLAGE nor shall the CONSULTANT allow any subcontractor to commence work on his subcontract until all similar such insurance required of the subcontractor has been obtained and approved.

10.2 Certificates of insurance, reflecting evidence of the required insurance, shall be filed with the VILLAGE Manager prior to the commencement of the work. These Certificates shall contain a provision that coverage afforded under these policies will not be canceled until at least thirty days (30) prior written notice has been given to the VILLAGE. Policies shall be issued by companies authorized to do business under the laws of the State of Florida.

10.3 Policyholders and Financial Ratings must be no less than "A" and Class X respectively in the latest edition of "Best's Key Rating Guide", published by A.M. Best Guide.

10.4 Insurance shall be in force until all work required to be performed under the terms of this Agreement is satisfactorily completed as evidenced by the formal acceptance by the VILLAGE. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Agreement, then in that event, the CONSULTANT shall furnish, at least thirty (30) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of this Agreement and extension thereunder is in effect. The CONSULTANT shall not continue to work pursuant to this Agreement unless all required insurance remains in full force and effect.

10.5 REQUIRED INSURANCE

10.5.1 COMPREHENSIVE GENERAL LIABILITY insurance to cover liability bodily injury and property damage. Exposures to be covered are: premises, operations, products/completed operations, and certain contracts. Coverage must be written on an occurrence basis, with the following limits of liability:

A.	Comprehensive General Liability	
1.	Each Occurrence	\$1,000,000
2.	Annual Aggregate	1,000,000

10.5.2 WORKERS COMPENSATION insurance shall be maintained during the life of this Agreement to comply with statutory limits for all employees, and in the case any work is sublet, the CONSULTANT shall require the Subcontractors similarly to provide Workers Compensation Insurance for all the latter's employees unless such employees are covered by the protection afforded by the CONSULTANT. The CONSULTANT and his subcontractors shall maintain during the life of this policy Employers Liability Insurance. The following limits must be maintained:

A.	Workers Compensation	Statutory
B.	Employer's Liability	\$500,000 per occurrence

10.5.3 The CONSULTANT shall hold the VILLAGE, their agents, and employees, harmless on account of claims for damages to persons, property or premises arising out of the operations to complete this Agreement and name the VILLAGE as an additional insured under their policy.

10.5.4 The VILLAGE reserves the right to require any other insurance coverage it deems necessary depending upon the exposures.

10.5.5 PROFESSIONAL LIABILITY insurance in the amount of \$500,000.00

ARTICLE 11
NOTICE

11.1 Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by registered United States mail, with return receipt requested, addressed to the party for whom it is intended and the remaining party, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this section. For the present, the CONSULTANT and the VILLAGE designate the following as the respective places for giving of notice:

VILLAGE: Heidi Shafran, Village Manager
640 NE 114 Street
Biscayne Park, FL 33161

Copy To: John J. Hearn, Village Attorney
1917 NW 81st Avenue
Coral Springs, Florida 33071

CONSULTANT: R.J. Heisenbottle, FAIA, President
RJ Heisenbottle Architects, P.A.
2199 Ponce de Leon Boulevard, Suite 400
Coral Gables, Florida 33134

ARTICLE 12
MISCELLANEOUS

12.1 Ownership of Documents. Reports, surveys, plans, studies and other data provided in connection with this Agreement, including all PDF and CADD files of the drawings, are and shall remain the property of VILLAGE whether or not the project for which they are made is completed. VILLAGE hereby agrees to use CONSULTANT's work product for its intended purposes.

12.2 Independent Contractor. This Agreement does not create an employee/employer relationship between the parties. It is the intent of the parties that the CONSULTANT is an independent contractor under this Agreement and not the VILLAGE's employee for all purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Workers Compensation Act, and the State unemployment insurance law. The CONSULTANT shall retain sole and absolute discretion in the judgment of the manner and means of carrying out CONSULTANT's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of CONSULTANT, which policies of CONSULTANT shall not conflict with VILLAGE, H.U.D., or United States policies, rules or regulations relating to the use of CONSULTANT's Funds provided for herein.. The CONSULTANT agree that it is a separate and independent enterprise from the VILLAGE, that it has full opportunity to find other business, that it has make its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be

construed as creating any joint employment relationship between the CONSULTANT and the VILLAGE and the VILLAGE will not be liable for any obligation incurred by CONSULTANT, including but not limited to unpaid minimum wages and/or overtime premiums.

12.3 Assignments. This Agreement, or any interest herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances, by CONSULTANT without the prior written consent of VILLAGE. For purposes of this Agreement, any change of ownership of CONSULTANT shall constitute an assignment which requires VILLAGE approval. However, this Agreement shall run to the VILLAGE and its successors and assigns.

12.4 Amendments. It is further agreed that no modification, amendment or alteration in the terms or conditions contained here shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

12.5 No Contingent Fees. CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONSULTANT any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, the VILLAGE shall have the right to terminate the Agreement without liability at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

12.6 Binding Authority. Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

12.7 Legal Representation. It is acknowledged that each party was represented by counsel in the preparation of and contributed equally to the terms and conditions of this Agreement and, accordingly, the rule that a contract shall be interpreted strictly against the party preparing same shall not apply herein due to the joint contributions of both parties.

12.8 Headings. Headings herein are for convenience of reference only and shall not be considered on any interpretation of this Agreement.

12.9 Exhibits. Each Exhibit referred to in this Agreement forms an essential part of this Agreement. The exhibits if not physically attached should be treated as part of this Agreement and are incorporated herein by reference.

12.10 Severability. If any provision of this Agreement or application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

12.11 Governing Law. This Agreement shall be governed by the laws of the State of Florida with venue lying in Dade County, Florida.

12.12 Extent of Agreement. This Agreement represents the entire and integrated agreement between the VILLAGE and the CONSULTANT and supersedes all prior negotiations, representations or agreements, either written or oral.

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

ATTEST:

VILLAGE OF BISCA YNE PARK, FLORIDA



MARIA CAMARA, VILLAGE CLERK



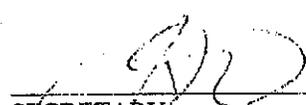
DAVID COVIELLO, MAYOR

APPROVED AS TO FORM.

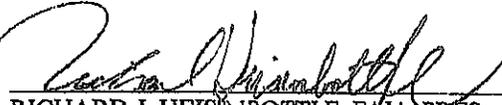
JOHN J. HEARN, VILLAGE ATTORNEY

ATTEST:

R.J. HEISENBOTTLE ARCHITECTS, P.A.



SECRETARY

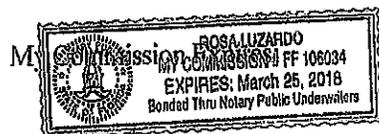


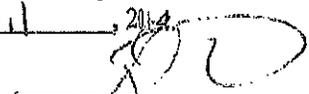
RICHARD J. HEISENBOTTLE, F.A.I.A, PRES.

STATE OF FLORIDA)
COUNTY OF DADE)

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared Richard J. Heisenbottle, President of R.J. Heisenbottle Architects, P.A. and acknowledged he executed the foregoing Agreement as the proper official of CONSULTANT, for the use and purposes mentioned in it and that the instrument is the act and deed of CONSULTANT.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal at in the State and County aforesaid on this 9th day of April, 2014.





NOTARY PUBLIC