

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: March 10, 2015	{X} Consent	{ } Regular
	{ } Workshop	{ } Public Hearing
Department:		
Submitted By:	Engineering & Public Works	
Submitted For:	Roadway Production Division	

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: a maintenance and removal agreement with Janus Hotels and Resorts, Inc. (Janus), for a proposed accessibility ramp within the right-of-way of Donald Ross Road.

SUMMARY: Approval of the maintenance and removal agreement will define Janus' responsibilities for operation and maintenance of the accessibility ramp, and future removal if required. The accessibility ramp will provide direct pedestrian access from a Holiday Inn Express hotel to the sidewalk on the south side of Donald Ross Road.

District 1 (MRE)

Background and Justification: Janus is pursuing a right-of-way permit from Palm Beach County (County) for the construction of an accessibility ramp on the south side of Donald Ross Road approximately 300' east of US 1. The accessibility ramp will provide direct pedestrian access from a Holiday Inn Express hotel to Donald Ross Road. Since the accessibility ramp will be a significant structure within County right-of-way it was deemed necessary to enter into an agreement defining Janus' responsibilities for operation and maintenance and, if required by the County, future removal of the accessibility ramp. The agreement also requires Janus to indemnify the County and maintain insurance coverage.

Attachments:

1. Location Map
2. Maintenance and Removal Agreement with Exhibit "A" (2)

Recommended by: *[Signature]* *Ornelis G. Fernandez* *2/10/15* *[Signature]*
Division Director Date

Approved By: *[Signature]* *A. T. Webb* *2/11/15*
County Engineer Date

LOCATION MAP
DONALD ROSS ROAD ACCESSIBILITY RAMP



**MAINTENANCE AND REMOVAL AGREEMENT BETWEEN
PALM BEACH COUNTY AND JANUS HOTELS AND RESORTS,
INC. (HOLIDAY INN EXPRESS) REGARDING ACCESSIBILITY
RAMP INSTALLATION WITHIN COUNTY RIGHT OF WAY**

THIS AGREEMENT is made and entered into this ____ day of _____, 2015, by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida, hereinafter “**COUNTY**” and the **JANUS HOTELS AND RESORTS, INC.**, registered corporation of the State of Florida, hereinafter referred to as the “**JANUS**”.

WITNESSETH:

WHEREAS, JANUS whose mailing address is 13950 US Highway 1, Juno Beach FL 33408, hereby warrants and represents that it is the fee simple owner of a parcel of land (**PROPERTY**), located in **COUNTY** and described as follows:

Parcel Control Number: 28-43-41-28-43-001-0010

Legal Description: Howard Johnsons – Juno Beach Tract A (PB 60/ PG97) LESS S 4.03 FT of E 150.06 FT & SLY 75.3 FT of ELY 48.23 FT of WLY 383.29 FT (OR Book 24931 PG1929).

WHEREAS, JANUS has petitioned and applied to **COUNTY** for a permit to construct an Accessibility Ramp (hereinafter **IMPROVEMENTS**) more particularly described in Exhibit “A” attached hereto and made part hereof, in the south right of way of the **COUNTY** maintained Donald Ross Road; and

WHEREAS, JANUS acknowledges **COUNTY’S** need to provide for future requirements for **COUNTY’S** Donald Ross Road right-of-way; and

WHEREAS, JANUS acknowledges the benefit granted to and received by it by the execution and delivery of this Maintenance and Removal Agreement to the **COUNTY** and the **COUNTY’S** right of removal of **IMPROVEMENTS** contained herein; and

WHEREAS, the mutual benefits to COUNTY and JANUS are recognized by each of the parties.

WHEREAS, COUNTY has jurisdiction and control of Donald Ross Road, within which **JANUS** requested to install **IMPROVEMENTS**; through a **COUNTY** Land Development Right of Way Permit;

WHEREAS, the **COUNTY** requires **JANUS** to maintain at their expense the **IMPROVEMENTS** until such time that the **IMPROVEMENTS** are removed from the **COUNTY'S** right of way;

WHEREAS, JANUS declares that maintenance will best serve the health, safety and welfare of the public.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements herein contained, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

The above recitals are true and correct and hereby adopted and incorporated herein.

Section 1. **JANUS** will apply for a permit to, receive a permit to, and install **IMPROVEMENTS** on Donald Ross Road as shown in Exhibit "A".

Section 2. **JANUS** will install and maintain the **IMPROVEMENTS** in such a manner that the safety of the public is preserved through maintenance of the ramp in accordance with current Florida Department of Transportation standards for said ramps.

Section 3.

- a) **JANUS** shall be responsible for installing and maintaining the **IMPROVEMENTS** to meet ADA requirements for wheel chair accessibility. The **IMPROVEMENTS** shall be maintained to prevent cracking, uneven surfaces or other unsafe conditions.

- b) The **COUNTY** may request certain repairs or further restoration be made to the **IMPROVEMENTS** based on inspections and/or new ADA regulations in which case, **JANUS** shall make such repairs or restoration within thirty (30) days of receiving written notice from the **COUNTY**.
- c) In the event **JANUS** fails to make such repairs within the time frame allowed or such repairs are inadequate after the thirty (30) day notice, or emergency repairs are required, the **COUNTY** may make such repairs as it deems necessary and invoice **JANUS** for the cost of such work. Upon receiving such invoice **JANUS** shall, within forty-five (45) days, make payment to the **COUNTY**.
- d) In the event **COUNTY** requires the **IMPROVEMENTS** to be removed due to a pending roadway project, the **COUNTY** shall provide written notice to **JANUS** requiring the removal of the **IMPROVEMENTS** within thirty (30) days of the notice. Should **JANUS** not remove the **IMPROVEMENTS** within that timeframe, the **COUNTY** may remove the **IMPROVEMENTS** and invoice **JANUS** for the cost of such work. Upon receiving such invoice **JANUS** shall, within forty-five (45) days, make payment to the **COUNTY**.
- e) Work involving restoration in the **COUNTY'S** thoroughfare roads, performed for **JANUS** by Contractors, having a value of more than \$200,000 shall be bonded under a Payment and Performance Bond and name the **COUNTY** as an obligee in accordance with Florida Statute Chapter 255.05.
- f) **JANUS** shall, at its sole expense, agree to maintain in full force and effect at all times during the life of this agreement, insurance coverage and limits (including endorsements) as described as follows: **JANUS** agrees to maintain, or self-insure, Worker's Compensation & Employer's Liability insurance in accordance with Florida Statute Chapter 440. **JANUS** agrees to provide a statement or Certificate of Insurance, evidencing insurance or self-insurance for the above required

coverages. **JANUS** agrees to maintain its self-insurance or insurance shall be primary as respects to any coverage afforded to or maintained by **COUNTY**. **JANUS** agrees that compliance with the foregoing insurance requirements is not intended to nor construed to relieve **JANUS** of its liability and obligations under this Agreement. **JANUS** shall agree to provide the **COUNTY** with at least ten days (10) prior notice of any cancellation, non-renewal or material change to the insurance coverage.

- g) In the event **JANUS** engages a contractor to perform work associated with this Agreement, **JANUS** will require each contractor engaged by **JANUS** to maintain:
- 1) Commercial General Liability or Business Auto Liability, at limits not less than \$500,000 each occurrence. **JANUS** agrees to have contractor endorse Palm Beach County Board of County Commissioners as an "Additional Insured" to the Commercial General Liability, but only with respect to negligence other than **COUNTY'S** negligence arising out of this Agreement. This paragraph does not apply to liability policies which afford only indemnity based claims-bill coverage.
 - 2) Worker's Compensation & Employer's Liability insurance in accordance with Florida Statute Chapter 440.
- h) **JANUS** is and shall be, in the performance of all work, services and activities under this Agreement, an Independent Contractor and not employees, agents or servants of the other party. All **COUNTY** employees engaged in the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to **COUNTY'S** sole direction, supervision, and control. All **JANUS** employees and/or contractors engaged in the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to **JANUS'** sole direction, supervision, and control. **JANUS** shall exercise control over the means and manner in which it and its employees and/or contractor perform the work, and in all respects **JANUS'** relationship and the relationship of its employees and/or

contractors to the **COUNTY** shall be that of an Independent Contractor and not as employees or agents of the **COUNTY**. **JANUS** does not have the power or authority to bind the **COUNTY** in any promise, Agreement or representation.

Section 4. **Area Subject to Agreement:** The area of this Agreement shall apply to the **IMPROVEMENTS** installed by **JANUS**, on the **COUNTY'S** thoroughfare road (Donald Ross Road) located in **JANUS 'S** frontage.

Section 5. **Indemnification:** In the event a claim or lawsuit is brought against the **COUNTY**, its officers, employees, servants or agents, **JANUS** agrees to save, defend, reimburse, indemnify and hold harmless the **COUNTY**, its officers, employees, servants and agents from any and all claims, demands, damages, liabilities, causes or actions, legal or administrative proceedings, judgments, interest, attorney's fees, costs and expenses of whatsoever kind or nature, whether arising in any manner directly or indirectly caused. **JANUS'** aforesaid indemnity and hold harmless obligations, or portions or applications thereof, shall in no event apply to liability caused by the negligence of the **COUNTY**, or its agents, servants, employees or officers. This indemnification is also mutual from **COUNTY** to **JANUS**.

Section 6. **Notice of Complaints or Suits:** Each party will promptly notify the other of any citizen complaint, claim, suit, or cause of action threatened or commenced against it which arises out of or relates, in any manner, to the performance of this agreement.

Section 7. **Breach and Opportunity to Cure:** The parties expressly covenant and agree that in the event either party is in default of its obligations under this agreement, the party not in default shall provide to the defaulting party thirty (30) days written notice before exercising any of its rights.

Section 8. **Enforcement Costs:** Any costs or expenses (including reasonable attorney's fees) associated with the enforcement of the terms and conditions of this Agreement shall be borne by the respective parties; provided, however, that this clause pertains only to the parties to

this Agreement.

Section 9. **Removal:** JANUS agrees to remove the **IMPROVEMENTS** at no cost to the **COUNTY** within thirty (30) days of a written request.

Section 10. **Term:** This Agreement shall be terminated by the County Engineer or his designee upon removal of the **IMPROVEMENTS** and restoration of the right of way in accordance with **COUNTY** standards.

Section 11. **Notice:** All notices required to be given under this Agreement shall be in writing, and deemed sufficient to each party when sent by United States Mail, postage prepaid, to the following: As to the **COUNTY**:

Palm Beach County Engineering Department
Land Development Division
Joanne M. Keller, P.E., Director
2300 North Jog Road
West Palm Beach, Florida 33411-2745

As to **JANUS** :

JANUS HOTELS AND RESORTS, INC.
13950 US Highway 1
Juno Beach, FL 33406

With a copy to:

JANUS HOTELS AND RESORTS, INC.
2300 Corporate Blvd NW, Suite 232
Boca Raton, FL 33431

Section 12. **Modification and Amendment:** Except as expressly permitted herein to the contrary, no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and equality of dignity herewith.

Section 13. **Remedies:** This Agreement shall be construed by and governed by the laws of the State of Florida. Any and all legal action necessary to enforce this Agreement shall be held in **COUNTY**. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof. To encourage prompt and equitable resolution of any litigation, each party hereby waives its rights to a trial by jury in any litigation related to this Agreement.

Section 14. **Joint Preparation:** The preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not, solely as a matter of judicial constraint, be construed more severely against one of the parties than the other.

Section 15. **Execution:** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 16. **Filing:** A copy of this Agreement shall be filed with the Clerk of the Circuit Court in and for Palm Beach County, Florida.

Section 17. **Effective Date:** This Agreement shall take effect upon execution.

Section 18. **Compliance with Codes and Laws:** Each party agrees to abide by all laws, orders, rules, policies and regulations.

Section 19. **Access and Audits:** JANUS shall maintain adequate records to justify all charges, expenses and costs incurred in estimating and performing work associated with this Agreement for at least three (3) years after completion or termination of this agreement. The COUNTY shall have access to such books, records and documents as required in this section for the purpose of inspection or audit during normal business hours, at JANUS.

The COUNTY has established the Office of the Inspector General in COUNTY Code Section 2-421 – 2-440, as may be amended. The Inspector General's duties include but are not limited to the power to review past, present and proposed COUNTY contracts, transactions, accounts and records to require the production of records and to audit, investigate, monitor and inspect the activities of JANUS, its officers, agents, employees and lobbyists in order to ensure compliance with Agreement requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of COUNTY Code Section 2-421 – 2-440 and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

Section 20. **Full Force and Effect:** In the event that any section, paragraph, sentence, clause or provision hereof is held invalid by a court of competent jurisdiction, such holding shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

Section 21. **Discrimination:** The COUNTY and JANUS agree that no person shall, on the grounds of race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression, or genetic information be discriminated against in performance of this agreement.

Section 22. **No Waiver:** Any waiver by either Party of its rights with respect to a default under this Agreement, or with respect to any other matters arising in connection with this

agreement, shall not be deemed a waiver with respect to any subsequent default or other matter. The failure of either Party to enforce strict performance by the other Party of any of the provisions of this Agreement or to exercise any rights under this Agreement shall not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provisions or rights in that or any other instance.

Section 23. **Entirety of Agreement:** COUNTY and JANUS agree that this Agreement sets forth the entire Agreement between the parties, and there are no promises or understandings other than those stated herein.

IN WITNESSES WHEREOF, the undersigned parties have executed this Agreement on the day and year first written above.

ATTEST:
Sharon R. Bock, Clerk
& Comptroller

PALM BEACH COUNTY, FLORIDA, BY
ITS BOARD OF COUNTY COMMISSIONERS

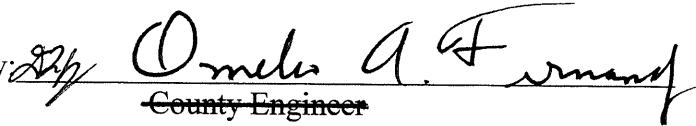
By: _____
Deputy Clerk

By: _____
Mayor Shelley Vana, Mayor


APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

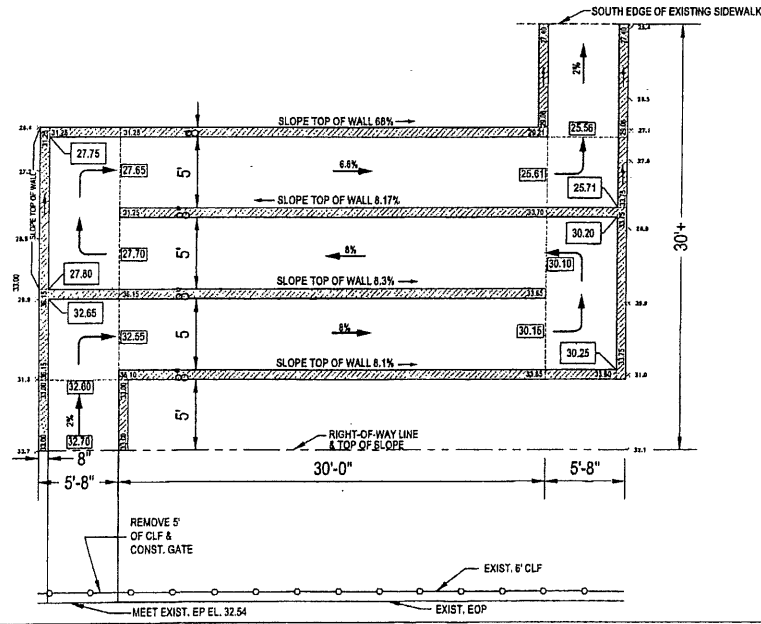
APPROVED AS TO TERMS AND CONDITIONS

By: _____
Assistant County Attorney

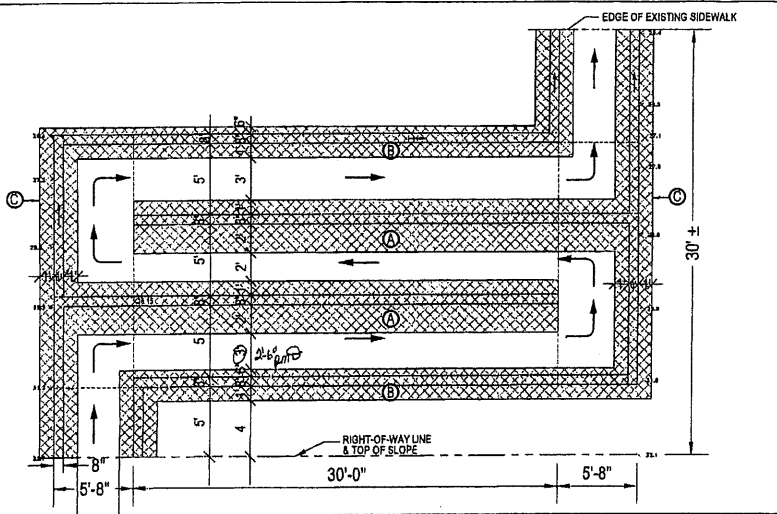
By:  _____
~~County Engineer~~

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

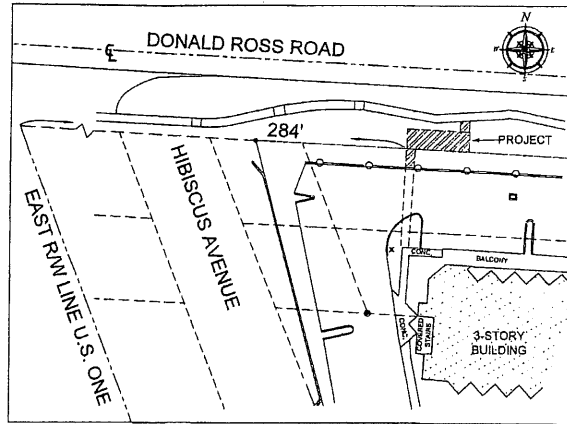
By:  _____
Janus Hotels and Resorts, Inc.
Mike Nanosky, President



RAMP PLAN
SCALE: 1/4" = 1'



FOOTING LOCATION DETAIL
SCALE: 1/4" = 1'



LOCATION MAP
NTS

This document was prepared under the direction of Ron Dixon, P.E., Florida P.E. #10314, Dixon and Associates Engineers, Inc., Florida CA #4086.
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SEAL
Ronald M. Dixon P.E.
JUL 20 2014
PE10104

DRAWING #13950
DRAWING #13950
DRAWING P. 3/4/14

REVISIONS
DATE

HOLIDAY INN EXPRESS/JUNO BEACH
HANDICAP ACCESS RAMP
13950 U.S. ONE
JUNO BEACH, FLORIDA

SCALE: AS SHOWN
DATE: 08-19-2014

SHEET
1
OF 1

GENERAL STRUCTURAL NOTES

1. CONCRETE: SHALL DEVELOP A 28 DAY CYLINDER STRENGTH OF 4000 PSI. MIX SHALL CONTAIN FLY ASH. MIX DESIGN SHALL BE SUBMITTED TO THE ENGINEER FOR REVIEW AND APPROVAL.
2. REINFORCING STEEL: SHALL BE GRADE 60.
3. FILL COMPACTION: COMPACT ALL FILL AND BACKFILL TO 95% MAXIMUM DRY DENSITY PER AASHTO T-180 CURRENT ISSUE.
4. CONSTRUCTION: ALL CONSTRUCTION SHALL COMPLY WITH ACI 318 CURRENT ISSUE.
5. BACKFILL: WHEN BACKFILLING DO NOT LET FILL BE HIGHER THAN FOUR FEET FROM OPPOSITE SIDE OF WALL.

INDEX OF STRUCTURAL SHEETS

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| 1. RAMP PLAN | SHEET 1 |
| 2. FOUNDATION PLAN | SHEET 1 |
| 3. EAST ELEVATION | SHEET 2 |
| 4. WEST ELEVATION | SHEET 2 |
| 5. SECTION THRU MIDDLE OF RAMP | SHEET 2 |
| 6. SECTIONS THRU WALLS AND FOOTINGS | SHEET 2 |

PLANS
8/20/14