

This instrument prepared by:

Name: Raul J. Aguila, City Attorney
Address: Office of the City Attorney
1700 Convention Center Drive
Miami Beach, FL 33139

(Space reserved for Clerk)

UTILITY EASEMENT AGREEMENT

THIS GRANT OF A UTILITY EASEMENT AGREEMENT (the "Agreement") is made this _____ day of _____, 2020 ("Effective Date"), between **MONAD TERRACE PROPERTY OWNER LLC**, a Delaware limited liability company, as owner and grantor, and its successors and assigns (hereinafter called "Grantor") and the **CITY OF MIAMI BEACH, FLORIDA**, a municipal corporation of the State of Florida (the "City"), as grantee, and its successors and assigns (hereinafter called "Grantee").

WITNESSETH:

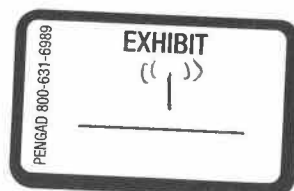
WHEREAS, Grantor is the owner of that certain improved real property located within the City's municipal jurisdiction, with a street address of 1300 Monad Terrace, and more particularly described in **EXHIBIT "A"**, attached hereto and made a part hereof (the "Grantor's Property").

WHEREAS, Grantor obtained approval from the City's Design Review Board ("DRB") (under DRB File No. 23249 and File No. DRB16-0103 a/k/a DRB0416-0015) for the construction of a 15-story residential condominium on the Grantor's Property (the "Development"); and

WHEREAS, in connection with the Development, Grantor has agreed to convey to the City a perpetual, non-exclusive Easement (as defined in Section 2 below) for the City to access, construct, install, operate, maintain, repair, replace and upgrade the following two (2) water meters and related meter boxes (collectively, the "Water Meters") for: (1) a 2 inch irrigation line and (2) a 4 inch domestic service line; and

WHEREAS, on _____, the Mayor and City Commission adopted Resolution No. _____, authorizing the City Manager to accept this Easement (as defined in Section 2) on the Grantor's Property.

NOW THEREFORE, for and in consideration of ten and no/100 dollars (\$10.00) and other good and valuable consideration, the receipt of which is acknowledged, the parties hereby mutually covenant and agree as follows:



GRANT OF EASEMENT

1. **Recitals.** The above recitals are true and correct and are hereby incorporated into this Agreement.

2. **Consideration and Description.** the Grantor, for and in consideration of the City's DRB approvals related to Grantor's Development, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants to the Grantee, a perpetual, non-exclusive easement (the "Easement") on, over, and under a portion of Grantor's Property, as such property is more specifically described and delineated in **EXHIBIT "B,"** attached hereto and made a part hereof (the "Easement Area") to access, construct, install, operate, maintain, repair, replace and upgrade the Water Meters, together with the non-exclusive right of ingress, egress and regress on, over and through Grantor's Property for access to the Easement Area.

3. **Uses.**

3.1 The Grantee shall use the Easement and the Easement Area during the Term provided herein for the express purposes provided in Section 2 hereof, which will include, without limitation, use of the Easement Area for taking readings, inspecting the Water Meters, and performing work in connection with the construction, installation, operation, maintenance, repair, replacement and upgrade the Water Meters for: (1) a 2 inch irrigation line and (2) a 4 inch domestic service line. Grantee may utilize the Easement Area during the Term without Grantor's prior written approval at any time or times.

3.2 The Grantor shall have the right to full use and enjoyment of Grantor's Property, except for such use as may unreasonably interfere with the exercise by the Grantee of the rights granted under this Agreement. Grantor shall be prohibited from obstructing Grantee's access to, or use of, the Easement Area. Grantor shall not construct, or permit to be constructed, any structure or improvement, on or over the Easement Area.

4. **Inspection.** It is hereby agreed that any City official has the right, during normal business hours, to enter and investigate the use of the Grantor's Property to verify compliance with the conditions of this Agreement and the requirements of the City's Building, Public Works, Zoning and Land Development Regulations.

5. **Term.** This Agreement shall remain in full force and effect and shall be binding upon the Grantor, its successors in interest and assigns, for a period of thirty (30) years, and for successive ten (10) year periods thereafter, from the date of this Agreement is recorded in the Public Records of Miami-Dade County, Florida ("Term"). This time period will be automatically renewed unless released upon a petition for removal, modification or amendment of condition is approved by an act of the City Commission. The Easement and rights granted herein shall be perpetual and shall be possessed and enjoyed by the Grantee, its successors and assigns, for the purposes stated herein.

6. **Maintenance.** At all times during the Term, the Water Meters shall remain property of the Grantee and Grantee, at its sole cost and expense, shall maintain the Water Meters and

shall make all repairs as deemed necessary by Grantee, in its reasonable discretion; provided, however, that Grantor shall be responsible for reimbursing Grantee for any damage caused by Grantor, its officers, employees, contractors, agents and invitees. The maintenance, repair and replacement of any other portions of the Easement Area including, without limitation, the repair and replacement of any other attachments, including the irrigation and water service lines shall remain Grantor's responsibility.

7. **Notices**. All notices, requests, consents and other communications required or permitted under this Agreement shall be in writing and shall be (as elected by the person giving such notice) hand-delivered by messenger or courier service; or mailed (airmail, if international) by registered or certified mail (postage prepaid), return receipt requested; or sent by any form of overnight mail service, addressed to:

AS TO GRANTOR: JDS Development Group
Attn: Michael Stern
104 5th Avenue, 9th Floor
New York, NY 10011

AS TO GRANTEE: City of Miami Beach
Attn: City Manager
1700 Convention Center Drive, 4th Floor
Miami Beach, FL 33139

WITH COPIES TO: City of Miami Beach
Attn: City Attorney
1700 Convention Center Drive, 4th Floor
Miami Beach, FL 33139

Or to such other address as any party may designate by notice complying with the terms of this Section. Each such notice shall be deemed delivered: (i) on the date delivered if by personal delivery; (ii) on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed; and (iii) on the day after mailing by any form of overnight mail service.

8. **Miscellaneous Terms and Conditions**

8.1 **Sovereign Immunity**. Nothing contained herein shall be construed as a waiver of Grantee's Right of sovereign immunity.

8.2 **Construction**. For purposes of construction by a Court, the parties hereto acknowledge that both parties hereto participated in the drafting of this document.

8.3 **City's Governmental Capacity/No Waiver of City Police Powers**. Grantor confirms that it has full power and authority to grant this Easement. Nothing in this Agreement or in the parties' acts or omissions in connection herewith shall be deemed in any manner to waive, impair, limit, or otherwise affect the authority of the Grantee in the discharge of its police or governmental powers.

8.4 Remedies. An action to enforce the terms and conditions of this Agreement may be brought by the Grantee and may be, at law or in equity, against any party or person violating or attempting to violate any provision of this Agreement or provisions of the Building, City Code, Zoning or Land Development Regulations, either to restrain violations or to recover damages.

8.5 Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, Grantor and Grantee and their respective successors and assigns.

8.6 Entire Agreement; Modifications. This Agreement sets forth the entire agreement between the parties specifically relating to the subject matter of the Easement granted hereby and there are no other agreements or understandings between them relating to Grantee's use of the Easement Area. This Agreement may not be modified, released or terminated, except by agreement in writing executed by the parties hereto or their respective successors and/or assigns, and in the case of Grantee, approved by the Mayor and City Commission of the City of Miami Beach.

8.7 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida, both substantive and remedial, without regard to principles of conflict of laws. The exclusive venue for any litigation arising out of this Agreement shall be Miami-Dade County, Florida, if in state court, and the U.S. District Court for the Southern District of Florida, if in federal court.

8.8 Grantor Representations. Grantor covenants, warrants and represents (i) that Grantor is the fee simple owner of Grantor's Property and has the right title and capacity to grant the perpetual Easement granted herein, and (ii) there are no lienholders on the Grantor's Property.

8.9 Easements and Covenants Run with the Land. Each and all of the easements, covenants, obligations and rights granted or created under the terms of this Agreement are appurtenant to Grantor's Property.

8.10 Recording. This Agreement shall be recorded in the Public Records of Miami-Dade County, Florida by Grantee at the cost of Grantor.

TO HAVE AND TO HOLD the same unto Grantee, its successors and assigns forever, and Grantor will defend the title to Grantor's Property against the lawful claims of all persons whomsoever.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the Grantor herein has caused these presents to be executed in its name on the day and year first above written.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Signature

Print Name

Signature

Print Name

**MONAD TERRACE PROPERTY
OWNER LLC**, a Delaware limited
liability company

By: _____

Name: Michael Stern

Title: Authorized Signatory

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

The forgoing instrument was acknowledged before me by means of ____ physical presence or ____ online notarization this ____ day of _____, 2020, by Michael Stern, as Authorized Signatory of Monad Terrace Property Owner LLC, a Delaware limited liability company, on behalf of said corporation, who is personally known to me or produced _____ as identification.

Print Name:

Notary Public, State of Florida

My Commission Expires:

[NOTARIAL SEAL]

**Mortgagee Joinder and Consent
to
Utility Easement Agreement**

1300 MONAD TERRACE LLC, as Administrative Agent for various lenders, a Delaware limited liability company ("Mortgagee"), pursuant to that certain Amended and Restated Construction Loan Mortgage, Security Agreement, Assignment of Rents and Fixture Filing, Notice of Future Advance and Extension Agreement by and among **MONAD TERRACE PROPERTY OWNER LLC**, a Delaware limited liability company ("Mortgagor"), and Mortgagee, recorded on April 19, 2018, in Official Records Book 30947, at Page 2349, as corrected by Mortgage Correction Agreement recorded in Official Records Book 31237, Page 2825, as assigned by Assignment of Mortgage recorded in Official Records Book 31237, Page 2833, and as further corrected by Correction of Assignment of Mortgage recorded in Official Records Book 31268, Page 1487 in the Public Records of Miami-Dade County, Florida (the "Mortgage"), hereby joins in and consents to the granting of this Utility Easement Agreement (the "Agreement") in favor of the City of Miami Beach, Florida, a municipal corporation organized and existing under the laws of the State of Florida, all in accordance with the terms and conditions set forth in this Agreement. Mortgagee agrees that in the event Mortgagee or any other party shall obtain title to the Grantor's Property through foreclosure or deed-in-lieu of foreclosure, the Agreement shall be binding upon the entity obtaining title as the then owner of Grantor's Property.

Witnesses

1300 MONAD TERRACE LLC, as Administrative Agent for various lenders, a Delaware limited liability company

By: _____
Print Name: _____

By: _____
Print Name: _____
Title: _____

By: _____
Print Name: _____

State of _____
County of _____

The foregoing instrument was acknowledged before me by means of () physical presence or () online notarization on this _____ day of May, 2020 by _____ as _____ on behalf of 1300 MONAD TERRACE LLC, as Administrative Agent for various lenders, a Delaware limited liability company, on behalf of said company. He or she is () personally known to me or, () produced a _____ driver's license as identification.

Notary Public – State of _____

Print Name: _____
My Commission Expires: _____

Exhibit "A"

Grantor's Property

PARCEL 1: (1300)

The East 79.00 feet of Lot 2, of Subdivision of Block Eighty of The Alton Beach Realty Company A Part of Alton Beach Bay Front Subdivision, according to the Plat thereof, as recorded in Plat Book 6, Page 12, of the Public Records of Miami-Dade County, Florida.

TOGETHER WITH:

An undivided one-sixth (1/6th) interest in and to Lot 2, of Subdivision of Block Eighty of The Alton Beach Realty Company A Part of Alton Beach Bay Front Subdivision, according to the Plat thereof, as recorded in Plat Book 6, Page 12, of the Public Records of Miami-Dade County, Florida, LESS the East 399.00 feet thereof.

PARCEL 2: (1305)

The East 65 feet of the South 70 feet of Lot 1, of Subdivision of Block Eighty of The Alton Beach Realty Company A Part of Alton Beach Bay Front Subdivision, according to the map or plat thereof, as recorded in Plat Book 6, Page(s) 12, of the Public Records of Miami-Dade County, Florida.

PARCEL 3: (1310)

The West 64.00 feet of the East 143.00 feet of Lot 2, of Subdivision of Block Eighty of The Alton Beach Realty Company A Part of Alton Beach Bay Front Subdivision, according to the Plat thereof, as recorded in Plat Book 6, Page 12, of the Public Records of Miami-Dade County, Florida.

TOGETHER WITH:

An undivided one-sixth (1/6th) interest in and to Lot 2, of Subdivision of Block Eighty of The Alton Beach Realty Company A Part of Alton Beach Bay Front Subdivision, according to the Plat thereof, as recorded in Plat Book 6, Page 12, of the Public Records of Miami-Dade County, Florida, LESS the East 399.00 feet thereof.

PARCEL 4: (1315)

The West 50.00 feet of the East 115.00 feet of the South 70.00 feet of Lot 1, of Subdivision of Block Eighty of The Alton Beach Realty Company A Part of Alton Beach Bay Front Subdivision, according to the Plat thereof, as recorded in Plat Book 6, Page 12, of the Public Records of Miami-Dade County, Florida.

PARCEL 5: (1320)

The West 64.00 feet of the East 207.00 feet of Lot 2, of Subdivision of Block Eighty of The Alton Beach Realty Company A Part of Alton Beach Bay Front Subdivision, according to the Plat thereof, as recorded in Plat Book 6, Page 12, of the Public Records of Miami-Dade County, Florida.

TOGETHER WITH:

An undivided one-sixth (1/6th) interest in and to Lot 2, of Subdivision of Block Eighty of The Alton Beach Realty Company A Part of Alton Beach Bay Front Subdivision, according to the Plat thereof, as recorded in Plat Book 6, Page 12, of the Public Records of Miami-Dade County, Florida, LESS the East 399.00 feet thereof.

PARCEL 6: (1325)

The West 50 feet of the East 165 feet of the South 70 feet of Lot 1, of Subdivision of Block Eighty of The Alton Beach Realty Company A Part of Alton Beach Bay Front Subdivision, according to the Plat thereof, as recorded in Plat Book 6 at Page 12, lying and being in Miami-Dade County, Florida.

PARCEL 7: (1340)

The West 64.00 feet of the East 271.00 feet of Lot 2, of Subdivision of Block Eighty of The Alton Beach Realty Company A Part of Alton Beach Bay Front Subdivision, according to the Plat thereof, as recorded in Plat Book 6, Page 12, of the Public Records of Miami-Dade County, Florida.

TOGETHER WITH:

An undivided one-sixth (1/6th) interest in and to Lot 2, of Subdivision of Block Eighty of The Alton Beach Realty Company A Part of Alton Beach Bay Front Subdivision, according to the Plat thereof, as recorded in Plat Book 6, Page 12, of the Public Records of Miami-Dade County, Florida, LESS the East 399.00 feet thereof.

PARCEL 8: (1345)

The West 50 feet of the East 265 Feet of the South 70 feet of Lot 1, of Subdivision of Block Eighty of The Alton Beach Realty Company A Part of Alton Beach Bay Front Subdivision, according to the Plat thereof, as recorded in Plat Book 6, Page 12, of the Public Records of Miami-Dade County, Florida.

PARCEL 9: (1355)

The West 50.00 feet of the East 315.00 feet of the South 70.00 feet of Lot 1, of Subdivision of Block Eighty of The Alton Beach Realty Company A Part of Alton Beach Bay Front Subdivision,

according to the Plat thereof, as recorded in Plat Book 6, Page 12, of the Public Records of Miami-Dade County, Florida.

PARCEL 10: (1360)

The West 64.00 feet of the East 335.00 feet of Lot 2, of Subdivision of Block Eighty of The Alton Beach Realty Company A Part of Alton Beach Bay Front Subdivision, according to the Plat thereof, as recorded in Plat Book 6, Page 12, of the Public Records of Miami-Dade County, Florida.

TOGETHER WITH:

An undivided one-sixth (1/6th) interest in and to Lot 2, of Subdivision of Block Eighty of The Alton Beach Realty Company A Part of Alton Beach Bay Front Subdivision, according to the Plat thereof, as recorded in Plat Book 6, Page 12, of the Public Records of Miami-Dade County, Florida, LESS the East 399.00 feet thereof.

PARCEL 11: (1365)

The West 50 feet of the East 365 feet of South 70 feet of Lot 1, of Subdivision of Block Eighty of The Alton Beach Realty Company A Part of Alton Beach Bay Front Subdivision, according to the Plat thereof, as recorded in Plat Book 6, at Page 12, of the Public Records of Miami-Dade County, Florida.

PARCEL 12: (1370)

The West 64.00 feet of the East 399.00 feet of Lot 2, of Subdivision of Block Eighty of The Alton Beach Realty Company A Part of Alton Beach Bay Front Subdivision, according to the Plat thereof, as recorded in Plat Book 6, Page 12, of the Public Records of Miami-Dade County, Florida.

TOGETHER WITH:

An undivided one-sixth (1/6th) interest in and to Lot 2, of Subdivision of Block Eighty of The Alton Beach Realty Company A Part of Alton Beach Bay Front Subdivision, according to the Plat thereof, as recorded in Plat Book 6, Page 12, of the Public Records of Miami-Dade County, Florida, LESS the East 399.00 feet thereof.

PARCEL 13: (1375)

The West 135.04 feet of the South 70.00 feet of Lot 1, of Subdivision of Block Eighty of The Alton Beach Realty Company A Part of Alton Beach Bay Front Subdivision, according to the Plat thereof, as recorded in Plat Book 6, Page 12, of the Public Records of Miami-Dade County, Florida; ALSO KNOWN As the South 70.00 feet of Lot 1, LESS the East 365.00 feet thereof, of Subdivision of Block Eighty of The Alton Beach Realty Company A Part of Alton Beach Bay Front Subdivision,

according to the Plat thereof, as recorded in Plat Book 6, Page 12, of the Public Records of Miami-Dade County, Florida.

PARCEL 14: (1335)

The West 50 feet of the East 215 Feet of the South 70 feet of Lot 1, of Subdivision of Block Eighty of The Alton Beach Realty Company A Part of Alton Beach Bay Front Subdivision, according to the Plat thereof, as recorded in Plat Book 6, Page 12, of the Public Records of Miami-Dade County, Florida.

Exhibit "B"
Easement Area