This instrument prepared by:
Name: Raul J. Aguila, City Attorney
Address: Office of the City Attorney
1700 Convention Center Drive, 4th Floor
Miami Beach, FL 33139

(Space reserved for Clerk)

UTILITY EASEMENT AGREEMENT
FOR WATER METER AND RELATED METER BOX

THIS GRANT OF A UTILITY EASEMENT AGREEMENT FOR WATER METER AND RELATED METER BOX (the "Agreement") is made this __ day of _____, _____2020 ("Effective Date"), between the **1212 LINCOLN ROAD COMMERCIAL CONDOMINIUM ASSOCIATION, INC.**, a Florida not for profit corporation, and its successors and assigns (hereinafter called "Grantor") and the **CITY OF MIAMI BEACH, FLORIDA** (the "City"), a municipal corporation of the State of Florida, and its successors and assigns (hereinafter called "Grantee").

WITNESSETH:

WHEREAS, the property located at 1614-1624 Alton Road (Folio Nos. 02-3234-018-0130, 0140, 0150, and 0160), in the City of Miami Beach, Florida (the "City"), as more particularly described in **EXHIBIT "A"** hereto (the "Grantor's Property"), was submitted to the condominium form of ownership by 1212 Lincoln, LLC, a Florida limited liability company ("Developer") and ARRP 1600 Alton, LLC, a Florida limited liability company ("ARRP") (collectively, "Grantor's predecessors in interest"), under the name of *1212 Lincoln Road Commercial Condominium* (the "Condominium"), pursuant to that certain Declaration of Condominium (the "Declaration"), recorded in Official Records Book 31786, at Page 3233, of the Public Records of Miami-Dade County, Florida; and

WHEREAS, pursuant to the Declaration, Grantor has authority to enter into this Agreement and bind the property/unit owners; and

WHEREAS, Grantor's predecessors in interest obtained approval by the City's Design Review Board ("DRB") (DRB File No. 0416-0015) for the construction of a new five-story mixed-use building with accessory parking to replace five (5) one and two-story buildings on the Grantor's Property; and

WHEREAS, pursuant to DRB File No. 0416-0015, the DRB also approved the demolition of one (1) two-story bank building located at 1628-1634 Alton Road (Folio Nos. 02-3234-018-0170 and 0180), owned by Developer; and

WHEREAS, during the installation process, the contractor discovered that existing facilities near the right of way line prevented the installation of the City's water meter and accompanying meter box (hereinafter collectively referred to as the "Water Meter") within the public right of way, requiring installation to be on Grantor's Property; and



WHEREAS, in order to address this development issue, Grantor offered to convey to the City a perpetual, non-exclusive utility easement on the Grantor's Property for the City to access, construct, install, operate, maintain, repair, replace and upgrade the Water Meter; and

WHEREAS, on May 12, 2020, the Mayor and City Commission adopted Resolution No. _____, authorizing the City Manager to accept this Easement (as defined in Section 2), along with a companion easement for access and use of two (2) sanitary sewer clean-outs 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 approval of the City to allow the City's Water Meter to be installed on the Grantor's Property, 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 Meter, together with the non-exclusive right of ingress, egress and regress over 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 Meter, and performing work in connection with the construction, installation, operation, maintenance, repair, replacement and upgrade of the Water Meter. 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 Meter shall be the property of the Grantee and Grantee, at its sole cost and expense, shall maintain the Water Meter and make all repairs 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 the remaining portions of the Easement Area including, without limitation, the repair and replacement of any other attachments, including the water service line 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:	1212 Lincoln Road Commercial Condominium Association, Inc. Attn: Legal Department 2200 Biscayne Boulevard Miami, Florida 33137
WITH COPIES TO:	Bercow, Radell Fernandez Larkin & Tapanes Attn: Graham Penn, Esq. 200 S. Biscayne Boulevard, Suite 850 Miami, Florida 33131
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 written agreement, 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.

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:

Witnesses:

_____
Signature

_____
Print Name

_____
Signature

_____
Print Name

1212 Lincoln Road Commercial Condominium Association, Inc., a Florida not for profit corporation
Address: 2200 Biscayne Boulevard
Miami, Florida 33137

By: _____
David B. Smith, President

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

The foregoing instrument was acknowledged before me by means of ___ physical presence or ___ online notarization this ___ day of _____, 2020, by David Smith, as President of the 1212 Lincoln Road Commercial Condominium Association, Inc., a Florida not for profit corporation, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
NOTARY PUBLIC, State of Florida at Large
(NOTARY SEAL)

My Commission Expires:

IN WITNESS WHEREOF, the Grantee 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:

_____
Print Name:

_____
Print Name:

CITY OF MIAMI BEACH, FLORIDA, a municipal corporation of the State of Florida

By:_____
Name:_____
Title: _____

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 _____, as _____ of the **CITY OF MIAMI BEACH, FLORIDA**, a municipal corporation of the State of Florida, on behalf of said municipal corporation, who is personally known to me or produced _____ as identification.

_____
Print Name: _____

Notary Public, State of Florida

My Commission Expires: [NOTARIAL SEAL]

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

_____ _____
City Attorney Date

Mortgagee Joinder and Consent
to
Utility Easement Agreement for Water Meter and Related Meter Box

Truist Bank, a North Carolina banking corporation, as successor by merger to SunTrust Bank ("Mortgagee"), as owner and holder of that certain Mortgage, Assignment of Rents, Security Agreement and Fixture Filing by and among 1212 Lincoln, LLC, a Florida limited liability company ("1212 Lincoln"), ARRP 1600 Alton, LLC, a Florida limited liability company ("ARRP 1600") and Mortgagee, recorded on June 4, 2019, in Official Records Book 31470, at Page 91, of the Public Records of Miami-Dade County, Florida (the "Mortgage"), including the following related security instruments: Assignment of Leases and Rents, recorded on June 4, 2019, in Official Records Book 31470, at Page 113, of the Public Records of Miami-Dade County, Florida , and Uniform Commercial Code Financing Statement Form, recorded on June 4, 2019, in Official Records Book 31470, at Page 125, of the Public Records of Miami-Dade County, Florida, hereby joins in and consents to the granting of this Utility Easement Agreement for Water Meter and Related Meter Box (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 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

By:_____
Print Name:_____

By:_____
Print Name:_____

Truist Bank

By:_____
Print Name:_____
Title:_____

State of_____
County of _____

The foregoing instrument was acknowledged before me by means of ___ physical presence or ___ online notarization on this _____ day of _____, 2020 by _____ as _____on behalf of Truist Bank, a North Carolina banking corporation. He or she is ___ personally known to me or, ___ produced _____ as identification.

Notary Public – State of _____

_____
Print Name;_____
My Commission Expires:_____

Exhibit "A"

Grantor's Property

CONDOMINIUM PARCEL

THE WEST 47.50 FEET OF LOTS 1 AND 2, BLOCK 45, "COMMERCIAL SUBDIVISION OF THE ALTON BEACH REALTY COMPANY", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK6, PAGE 5, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, LYING IN THE CITY OF MIAMI BEACH, FLORIDA, SAID PARCEL BEING THAT CERTAIN AIRSPACE LYING BELOW A HORIZONTAL PLANE AT ELEVATION 24.83 FEET NATIONAL GEODETIC VERTICAL DATUM OF 1929. (N.G.V.D. 29).

TOGETHER WITH:

LOTS 3, 4, 5, 6 AND 7, BLOCK 45, "COMMERCIAL SUBDIVISION OF THE ALTON BEACH REALTY COMPANY", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 6, PAGE 5, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, LYING IN THE CITY OF MIAMI BEACH, FLORIDA

TOGETHER WITH:

THE WEST 84.05 FEET OF LOTS 1 AND 2, BLOCK 45, "COMMERCIAL SUBDIVISION OF THE ALTON BEACH REALTY COMPANY", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 6, PAGE 5, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, LYING IN THE CITY OF MIAMI BEACH, FLORIDA, SAID PARCEL BEING THAT CERTAIN AIRSPACE STARTING AT AND LYING ABOVE A HORIZONTAL PLANE AT ELEVATION 24.83 FEET NATIONAL GEODETIC VERTICAL DATUM OF 1929. (N.G.V.D. M29).

TOGETHER WITH:

THE NORTH 42.30 FEET OF LOT 2, BLOCK 45, LESS THE WEST 84.05 FEET THEREOF, "COMMERCIAL SUBDIVISION OF THE ALTON BEACH REALTY COMPANY", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 6, PAGE 5, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, LYING IN THE CITY OF MIAMI BEACH, FLORIDA, SAID PARCEL BEING THAT CERTAIN AIRSPACE STARTING AT AND LYING ABOVE A HORIZONTAL PLANE AT ELEVATION 24.83 FEET NATIONAL GEODETIC VERTICAL DATUM OF 1929. (N.G.V.D. 29).

AND TOGETHER WITH:

ALL RIGHTS BENEFITTING THE "CONDOMINIUM PARCEL" UNDER THAT CERTAIN EASEMENT AGREEMENT BETWEEN ARRP 1600 ALTON, LLC, A FLORIDA LIMITED LIABILITY COMPANY AND 1212 LINCOLN, LLC, A FLORIDA LIMITED LIABILITY COMPANY, DATED JANUARY 17, 2020, RECORDED ON JANUARY 17, 2020, IN OFFICIAL RECORDS BOOK 31784, AT PAGE 2711, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

Exhibit "B"

Easement Area

COUSINS SURVEYORS & ASSOCIATES, INC.
3921 SW 47TH AVENUE, SUITE 1011
DAVIE, FLORIDA 33314
CERTIFICATE OF AUTHORIZATION : LB # 6448
PHONE (954) 689-7766 FAX (954) 689-7799

PROJECT NUMBER : 8101-16

CLIENT :
1212 LINCOLN, LLC

LAND DESCRIPTION AND SKETCH

LAND DESCRIPTION:

A PORTION OF LOT 3, BLOCK 45, OF COMMERCIAL SUBDIVISION, ALTON BEACH REALTY COMPANY, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 6, PAGE 5, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS A STRIP OF LAND TEN (10) FEET WIDE, THE CENTERLINE OF WHICH BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 3;

THENCE NORTH 00°00'00" EAST ALONG THE WEST LINE OF SAID LOT 3, A DISTANCE OF 14.50 FEET TO THE POINT OF BEGINNING OF SAID CENTERLINE;

THENCE NORTH 90°00'00" EAST, A DISTANCE OF 6.50 FEET TO THE POINT OF TERMINATION OF SAID CENTERLINE.

THE SIDE LINES OF THESE EASEMENTS ARE TO BE SHORTENED OR LENGTHENED, SO AS TO INTERSECT THE RELEVANT LOT, BLOCK, TRACT, BUILDING OR EASEMENT LINES.

SAID LAND SITUATE, LYING AND BEING IN THE CITY OF MIAMI BEACH, MIAMI-DADE COUNTY, FLORIDA.

REVISIONS	DATE	FB/PG	DWN	CKD
LAND DESCRIPTION & SKETCH	02/13/20	----	AM	REC

LAND DESCRIPTION & SKETCH FOR 10' WATER LINE EASEMENT

PROPERTY ADDRESS :
1600-1624 ALTON ROAD

SCALE: N/A

COUSINS SURVEYORS & ASSOCIATES, INC.

3921 SW 47TH AVENUE, SUITE 1011
DAVIE, FLORIDA 33314
CERTIFICATE OF AUTHORIZATION : LB # 6448
PHONE (954) 689-7766 FAX (954) 689-7799

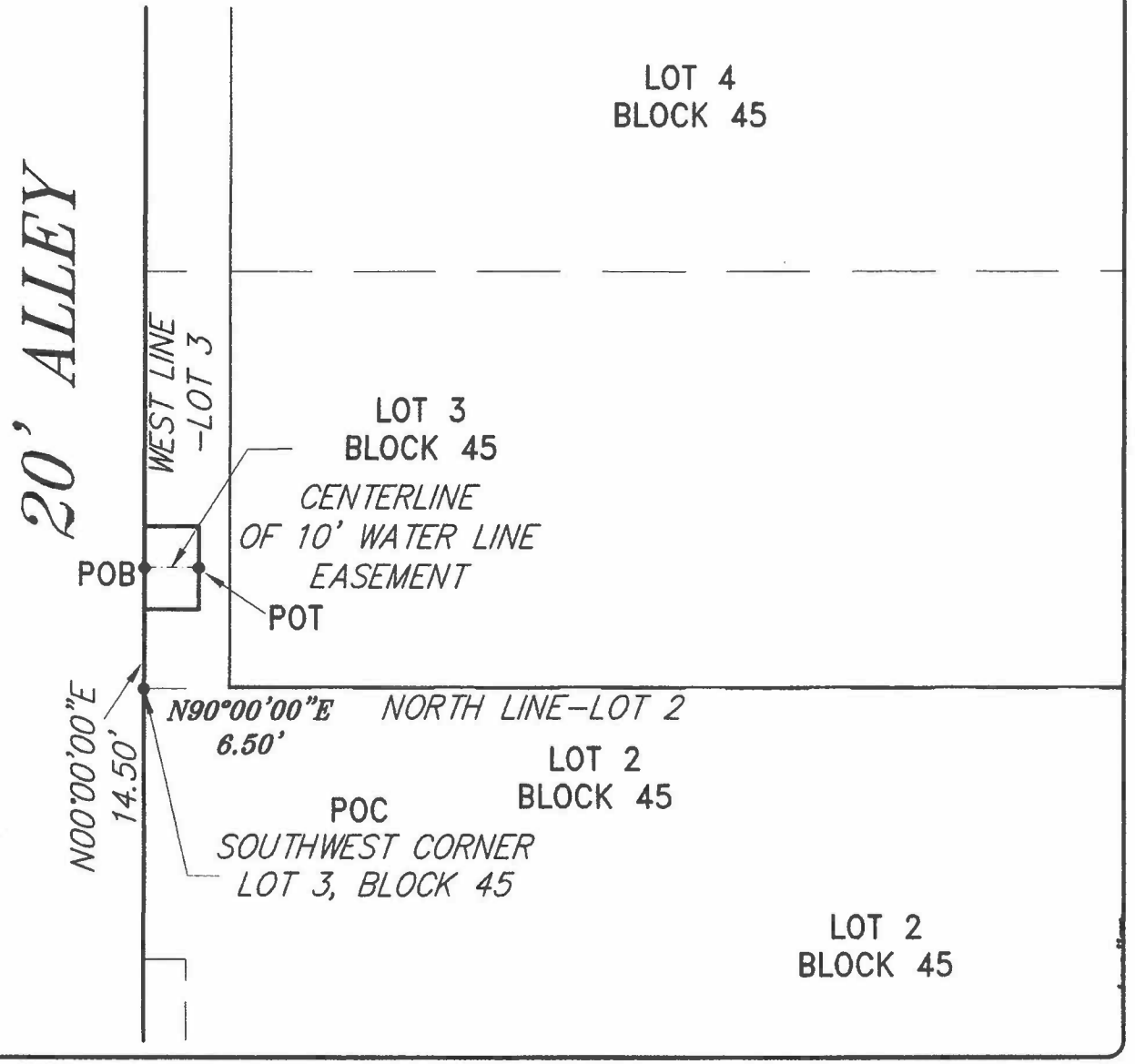
PROJECT NUMBER : 8101-16

CLIENT :
1212 LINCOLN, LLC

LAND DESCRIPTION AND SKETCH

LEGEND:

CKD	CHECKED BY
DWN	DRAWN BY
FB/PG	FIELD BOOK AND PAGE
POB	POINT OF BEGINNING
POC	POINT OF COMMENCEMENT
P.B.	PLAT BOOK
M/D.C.R.	MIAMI/DADE COUNTY RECORDS



REVISIONS	DATE	FB/PG	DWN	CKD
LAND DESCRIPTION & SKETCH	02/13/20	----	AM	REC

LAND DESCRIPTION & SKETCH FOR 10' WATER LINE EASEMENT

PROPERTY ADDRESS :
1600-1624 ALTON ROAD

SCALE: 1" = 20'

SHEET 2 OF 3

COUSINS SURVEYORS & ASSOCIATES, INC.
3921 SW 47TH AVENUE, SUITE 1011
DAVIE, FLORIDA 33314
CERTIFICATE OF AUTHORIZATION : LB # 6448
PHONE (954) 689-7766 FAX (954) 689-7799

PROJECT NUMBER : 8101-16

CLIENT :
1212 LINCOLN, LLC

LAND DESCRIPTION AND SKETCH

NOTES:

1. NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
2. LANDS SHOWN HEREON WERE NOT ABSTRACTED FOR RIGHTS-OF-WAY, EASEMENTS, OWNERSHIP, OR OTHER INSTRUMENTS OF RECORD.
3. DATA SHOWN HEREON DOES NOT CONSTITUTE A FIELD SURVEY AS SUCH.
4. THE LAND DESCRIPTION SHOWN HEREON WAS PREPARED BY THE SURVEYOR.
5. BEARINGS SHOWN HEREON ARE ASSUMED.
6. THIS "LEGAL DESCRIPTION AND SKETCH" IS CERTIFIED TO THE CITY OF MIAMI BEACH.

I HEREBY CERTIFY THAT THE ATTACHED "LAND DESCRIPTION AND SKETCH" IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AS PREPARED UNDER MY DIRECTION IN FEBRUARY, 2020. I FURTHER CERTIFY THAT THIS "LAND DESCRIPTION AND SKETCH" MEETS THE STANDARD OF PRACTICE FOR SURVEYING IN THE STATE OF FLORIDA ACCORDING TO CHAPTER 5J-17 OF THE FLORIDA ADMINISTRATIVE CODE. PURSUANT TO SECTION 472.027, FLORIDA STATUTES. SUBJECT TO THE QUALIFICATIONS NOTED HEREON.

Digitally signed by
Richard E. Cousins
Date: 2020.05.07
12:48:36 -04'00'

FOR THE FIRM, BY: ----------

RICHARD E. COUSINS
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA REGISTRATION NO. 4188

THE SEAL ON THIS DOCUMENT WAS AUTHORIZED BY RICHARD E. COUSINS PSM#4188 OR ELECTRONICALLY SEALED PER FS.

REVISIONS	DATE	FB/PG	DWN	CKD
LAND DESCRIPTION & SKETCH	02/13/20	----	AM	REC

LAND DESCRIPTION & SKETCH FOR 10' SEWER LINE EASEMENT

PROPERTY ADDRESS :
1600-1624 ALTON ROAD

SCALE: N/A