

This instrument was prepared by:

Return to:

Name: Rafael Paz, Esq., City Attorney
Address: City of Miami Beach
1700 Convention Center Drive, 4th Floor
Miami Beach, Florida 33139
Folio No: 02-4203-003-0500

RIGHT-OF-WAY EASEMENT AGREEMENT

THIS RIGHT-OF-WAY EASEMENT AGREEMENT (the “**Agreement**”), is made this ____ day of _____ 2023, by Ocean Park South Beach Condominium Association, Inc., a Florida corporation not-for-profit, having an address of 1451 Brickell Avenue, Suite 2750, Miami, Florida 33131, (the “**Association**”) in favor of the City of Miami Beach, a Florida municipal corporation (the “**City**”).

WITNESSETH:

WHEREAS, Ocean Park Condominium (the “**Condominium**” or the “**Property**”) has been constructed and created pursuant to that certain Declaration of Ocean Park Condominium recorded in Official Records Book 33521, Page 3284 of the Public Records of Miami-Dade County, Florida (as amended from time to time, the “**Declaration**”); and

WHEREAS, the Association is the entity responsible for the management and operation of the Condominium; and

WHEREAS, the portion of the Common Elements (as defined in the Declaration) of the Condominium more specifically described on **Exhibit “A”** attached hereto and incorporated herein by this reference (the “**Easement Area**”) is contained within the Property; and

WHEREAS, pursuant to the powers set forth in Florida Statutes, Section 718.111(10), the Board of Directors of the Association has the authority without the joinder of any Unit Owner, to grant, modify, or move any easement upon the Common Elements of the Condominium; and

WHEREAS, as authorized pursuant to Florida Statutes §718.111(10), the Association seeks to grant a perpetual, exclusive and irrevocable easement in, upon, under and through the Easement Area in favor of the City for the “**Easement Purposes**” (as hereinafter defined).

NOW THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto intending to be legally bound hereby agree as follows:

1. Recitals. The above recitals are true and correct and by this reference are hereby incorporated into the body of this Agreement as if fully set forth herein.

2. Grant of Easement. The Association hereby grants to the City a perpetual, exclusive and irrevocable easement in, upon, under and through the Easement Area for the purposes of (a) constructing, installing, operating, using, maintaining, repairing and replacing landscaping, sidewalks, street lighting, traffic or directional signage, underground utilities, drainage, roadways and related infrastructure with respect to each of the foregoing (the “**Improvements**”) within the Easement Area, (b) granting to any parties providing utilities services (the “**Utility Providers**”) the non-exclusive right to use and occupy the Easement Area for and in connection with the providing of any such utilities, subject to and in compliance with all laws, rules, regulations, ordinances, codes, and other requirements of governmental authorities and (c) unrestricted ingress and egress by the general public for pedestrian travel over and across the Easement Area (collectively, (a) through (c) are herein referred to as the “**Easement Purposes**”); however, Association reserves onto itself, its successors and/or assigns (including all condominium unit owners, and their respective tenants, guests, and invitees) the right to use the Easement Area for ingress and egress to and from the Property. The term “**utilities**” shall include, but not be limited to, water, sewer, stormwater, electrical, gas, telecommunications, telephone and cable.

3. Construction in Easement Area.

A. If the City elects to construct and/or install any Improvements within the Easement Area, the City hereby acknowledges and agrees that: (a) all fees, costs and expenses associated with the Improvements (including, without limitation, the design, permitting, construction, installation, operation, use, maintenance, repair and replacement thereof) shall be paid in full by the City; (b) the design and construction of all Improvements shall be performed

and completed by the City (i) in a good and workmanlike manner, (ii) free from liens and defects, and (iii) in full compliance with all laws, rules, regulations, ordinances, codes and other requirements of governmental and quasi-governmental authorities having jurisdiction; and (c) upon final completion of the Improvements, the City shall (i) remove all debris, equipment and materials from the Easement Area, (ii) fill, compact, grade and otherwise restore the Easement Area to substantially the same condition as existed prior to commencement of the Improvements, including harmonizing the soil levels within the Easement Area and the lands adjacent thereto, and (iii) keep and maintain the Improvements (and all parts and components thereof) in good condition, repair and working order at all times.

B. Association shall not be permitted to construct and/or install any infrastructure or other improvements within or above the Easement Area.

4. Miscellaneous.

4.1 This Agreement shall be governed by, enforced and construed under the laws of the State of Florida. Venue for all actions, litigation and/or other proceedings arising out of this Agreement shall be exclusively in Miami-Dade County, Florida. The parties hereby knowingly and voluntarily waive the right to a trial by jury of any claim, controversy or disputed matter between them arising under, out of or in connection with this Agreement. In any action, litigation or other proceeding that is based on any claim, controversy or other disputed matter arising under, out of or in connection with this Agreement, each party shall be responsible for its own fees, costs and expenses (including, without limitation, attorneys' fees and costs through all trial, appellate and post-judgment levels and proceedings) in connection with such action, litigation or other proceeding.

4.2 The parties hereby acknowledge and agree that each has had an opportunity to be represented by or consult with independent legal counsel and that any rule of construction which provides that ambiguities are to be construed against the drafter shall not apply in the interpretation or construction of this Agreement. If any term, provision or portion of this Agreement is for any reason held to be invalid, illegal or unenforceable by a court of competent

jurisdiction, then such term, provision or portion of this Agreement shall be given its nearest valid, legal and enforceable meaning, or construed as deleted, whichever such court may determine, and the same shall not invalidate the remaining terms, provisions and/or portions of this Agreement, which remaining terms, provisions and portions of this Agreement will remain in full force and effect.

4.3 This Agreement includes all exhibits attached hereto. This Agreement, together with all such exhibits, contains the entire agreement and understanding between the parties relating to the subject matter of this Agreement, and all prior or contemporaneous terms, covenants, conditions, representations, warranties, statements, agreements and understandings made by or on behalf of the parties, whether oral or written, are merged herein.

4.4 This Agreement may not be amended, modified or terminated except by a written instrument executed by the Association and the City through its Public Works Director, or his designee, or the successor administrative officer with jurisdiction over the matter, and which is recorded in the Public Records of Miami-Dade County, Florida. This Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns.

4.5 The failure of any party to insist in any one or more instances upon strict performance of any term, covenant, condition or other provision of this Agreement will not be construed as a waiver or relinquishment of the future enforcement of such term, covenant, condition or other provision of this Agreement.

4.6 Wherever appropriate in this Agreement, the singular shall be deemed to refer to the plural and the plural to the singular, and pronouns of each gender shall be deemed to comprehend either or both of the other genders. The section and paragraph headings in this Agreement are for convenience only and shall not affect the meaning, interpretation or scope of the terms or provisions set forth therein.

4.7 This Agreement may be executed in multiple counterparts, each of which individually shall be deemed an original, but when taken together shall be deemed to be one and

the same Agreement.

4.8 This Agreement shall never be construed as a conveyance in any manner whatsoever of fee simple title to any portion of the Property or the Easement Area; it being intended by the parties that this Agreement conveys only an easement interest with respect to the Easement Area for the specific uses and purposes set forth herein.

4.9 This Agreement and the rights, easements and interests herein created and granted shall only become effective upon the recordation of this Agreement in the Public Records of Miami-Dade County. This Agreement and the rights, easements and interests herein created and granted shall run with the land and shall be binding on all persons holding title to said lands.

5. Notice. All notices, demands, requests or other communications which may be or are required to be given, served, or sent by either the Association or the City pursuant to this Agreement shall be in writing and addressed as follows:

If to Association: Ocean Park South Beach Condominium Association, Inc.
Attention: President
1451 Brickell Avenue, Suite 2750
Miami, Florida 33131

If to the City: City of Miami Beach
Attention: City Manager
1700 Convention Center Drive, 4th Floor
Miami Beach, Florida 33139

With a copy to: City of Miami Beach
Attention: Public Works Director
1700 Convention Center Drive, 4th Floor
Miami Beach, Florida 33139

Each party may designate by notice in writing a new address to which any notice, demand, request or communication may thereafter be so given, served or sent.

6. Solely to the extent and limits permitted by Section 768.28 of the Florida Statutes, and without waiving any rights or defenses therein, the City shall indemnify, defend and

hold the Association harmless from and against all claims, demands, causes of action, suits, losses, damages, liabilities, liens, judgments, fees, costs, expenses and other charges (including, without limitation, reasonable attorneys' fees and costs through all trial, appellate and post judgment levels and proceedings) (collectively, the "**Claims**") commenced, incurred and/or paid by or against the Association to the extent the Claims arise from: (a) the negligent or wrongful act of the City or any successor, assign and/or grantee thereof (including, the Utility Providers) related to the use of the Easement Area; (b) and the design, construction, installation, operation, use, maintenance, repair and/or replacement of, or the failure to properly design, construct, install, operate, use, maintain, repair and/or replace, any Improvements by the City or any successor, assign and/or grantee thereof. Notwithstanding anything to the contrary contained in this Agreement: (y) nothing in this Agreement shall impair, limit or prohibit any rights or remedies the Association has against any person or entity using or occupying the Easement Area under, through or as an assignee or grantee of the City; and (z) the obligation of the City to indemnify, defend and hold the Association harmless as set forth herein shall not apply to the extent any such Claims arise from the negligence or wrongful act of the Association or any successor, assign and/or grantee thereof.

7. The Association shall indemnify, defend and hold the City harmless from and against all Claims commenced, incurred and/or paid by or against the City to the extent the Claims arise from the wrongful act or negligence of Association or any successor, assign and/or grantee thereof. Notwithstanding anything to the contrary contained in this Agreement, the obligation of the Association to indemnify, defend and hold the City harmless as set forth herein shall not apply to the extent any such Claims arise from the negligence or wrongful act of the City or any successor, assign and/or grantee thereof.

[EXECUTION PAGES TO FOLLOW]

APPROVED

Public Works Director

Date

APPROVED AS TO
FORM & LANGUAGE

City Attorney

Date

[EXECUTION PAGES TO FOLLOW]

EXHIBIT "A"

Sketch and Legal Description - Easement Area