

This Instrument Was Prepared By

And Should be Returned To:

Raul J. Aguila, City Attorney  
City of Miami Beach  
1700 Convention Center Drive  
4<sup>th</sup> Floor  
Miami Beach, FL 33139

[For Clerk's Use Only]

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**MAINTENANCE AND USE EASEMENT AGREEMENT**

**THIS IS A MAINTENANCE AND USE EASEMENT AGREEMENT (“Easement”)** dated this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by and between the City of Miami Beach, Florida, whose address is 1700 Convention Center Drive, Miami Beach, Florida, 33139 (hereinafter referred to as the “Grantor” or “City”) and Sunset Islands Property Owners, Inc. (“Grantee” or “HOA”) (each, a “Party” and collectively, the “Parties”).

**WHEREAS**, the Grantor is the owner of the Gate House located at 1356 W 29 Street, Miami Beach Florida 33140-4273 (folio # 9388353583 ROW) (the “Gate House”), as well as the other improvements located in the public right of way along W 29 Street, as more particularly described in Exhibit “1” hereto (the “Easement Area”); and

**WHEREAS**, the Grantee serves as the homeowners association for Sunset Islands 1 and 2; and

**WHEREAS**, on or about \_\_\_\_\_, 2018, the Mayor and City Commission adopted Resolution No. 2018-\_\_\_\_\_, approving an agreement between the City and the HOA for the funding of certain improvements to the existing Gate House, and the construction of a new Gate House Kiosk along the center median of West 29<sup>th</sup> Street (“Kiosk”), among other specified improvements (the “Agreement”); and

**WHEREAS**, Grantor has agreed to convey a non-exclusive easement to the HOA to memorialize the HOA’s agreement to maintain, operate and use the Easement Area, including the Gate House and the Kiosk, for purposes of providing general security guard services for the benefit of Sunset Islands 1 and 2.

**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, Grantor and the Grantee hereby agree as follows:

1. Recitals. The foregoing recitals are true and correct and incorporated herein by reference.

2. Grant of Easement; Use. Grantor hereby grants, bargains, sells and conveys to the Grantee, its successors and assigns, a perpetual, non-exclusive easement in gross, in, on, over, through, and across the Easement Area described on Exhibit "A" attached hereto and incorporated herein by reference, for the operation, maintenance, repair and use of the Easement Area for the limited purpose of providing security guard services and management of the structures or other elements of the entrance features thereon. The easement granted hereunder shall be subject to all matters of record and all applicable laws, and shall be subordinate to any public utility easement dedicated to the public, as the term "public utility" is defined in Section 177.031(7)(b), Florida Statutes, including, without limitation, the FPL easement referenced in Exhibit "1."

3. Grantee Responsibility for Costs and Expenses. Grantee shall operate, maintain, repair and use the Easement Area at its sole cost and expense. Grantee shall be solely responsible for the operation and maintenance of the Gate House, Kiosk, security arms and any related security guard services or equipment provided within the Easement Area, including, without limitation, providing or contracting with a third-party vendor to provide security services, security systems and software and repairs thereof, maintenance or repairs of the gate arm and access control system, and the personal property or other equipment located within the Easement Area, janitorial, utilities, telephone, removal of trash or other waste or debris material, hardscape, lighting and landscaping, if any, within the Easement Area. Grantee shall maintain the Easement area in a clean and neat condition.

**In no event shall the Grantor have any responsibility whatsoever for the operation or day-to-day maintenance or repairs of the Easement Area and the improvements included therein, or to provide for any security guard services or management of the entrance features within the Easement Area, including, without limitation, the operation of the security arms, the Gate House, and Kiosk.**

4. Access. Grantee shall be solely responsible for providing card readers, remote controls, or other means of access for residents of Sunset Islands 1 and 2, as may be determined by Grantee, and shall further ensure that access to the general public and emergency vehicles is not impeded or denied (except for the reasonably limited period of time as necessary to maintain the visitors log and/or activate the security arms).

5. Alterations to Easement Area. The Grantor shall have the right and privilege from time to time to alter, improve, enlarge, add to, change the nature or physical characteristics, and replace, remove or relocate any improvements provided that they are located in, upon, over, through and across the Easement Area only, along with all rights and privileges necessary or convenient for the full benefit and use thereof for the purposes described in the Easement, including but not limited to the right to clear obstructions within and to the Easement Area. Grantee shall not alter the exterior of the structures located in the Easement Area, except with the prior written approval of the Grantor's City Manager.

6. Responsibility for Damages. Each Party shall be responsible for damage caused to the Easement Area, if and to the extent such damage is due to that Party's own negligence or willful misconduct in the operation, maintenance or use of the Easement Area, or the negligence or willful misconduct of its employees, contractors, or agents with respect to the operation, maintenance or use of the Easement Area.

7. Insurance by Grantee. Grantee shall maintain a general liability insurance policy with coverage sufficient to cover Grantee's liability exposure related to its operation, maintenance or use of the Easement Area, provided, however, that such general liability policy shall be in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage. Grantee shall cause for its third-party contractors to maintain general liability insurance sufficient to cover its liability exposure related to the performance of any services within the Easement Area, provided, however, that such general liability policy shall be in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage. The City shall be named as an additional insured on such policies. Grantee shall provide City with a certificate of insurance evidencing the City's additional insured status upon request. Notwithstanding any provision to the contrary herein, the Grantee shall be solely responsible for any personal property or equipment maintained within the Easement Area, and

8. Property Insurance by Grantor; Repairs. Grantor shall insure the Gate House and Kiosk structure as part of its master property insurance policy. In the event the Gate House and Kiosk is damaged or destroyed by fire, windstorm or other casualty not due to Grantee's negligence, and such damage is covered by the Grantor's insurance policy, Grantor shall, as soon as practicable thereafter, utilize any insurance proceeds (if any) to cause such damage to be repaired. Grantor shall have no obligation to identify additional funding for such repairs (beyond application of insurance proceeds, if any), and any such funding appropriation, if any, shall be at the sole and absolute discretion of the Grantor's City Commission and subject to availability of funds. If, following any such casualty, the available insurance proceeds, if any, are insufficient to complete the repairs, Grantee may, at its sole discretion, identify additional funds to complete the repairs and continue the operation and use of the Easement Area. In the event the Parties cannot mutually identify sufficient funding to complete any such repairs within 180 days following any casualty, this Easement shall terminate, and neither Party shall have or owe any further obligation to the other Party. Notwithstanding the provisions herein, in no event shall Grantor insure any personal property or equipment located in the Easement Area, as Grantee shall be solely responsible for any such personal property or equipment located in the Easement Area.

9. Grantor's Sovereign Immunity. No provision contained in this Agreement shall be construed or deemed a waiver of Grantor's sovereign immunity, or of the limitations set forth in Section 768.28 of the Florida Statutes.

10. Indemnity. In consideration for this Easement, Grantee expressly agrees to indemnify, defend, protect and hold harmless Grantor against any and all claims, losses, damages, injuries, arising from Grantee's operation, maintenance and/or use of the Easement

Area. However, nothing herein shall be deemed to indemnify Grantor from any liability or claim arising out the negligence of Grantor.

11. Covenant Running with the Land. All of the benefits, burdens, easements, and agreements contained herein shall constitute covenants running with the land, shall be binding upon the Grantor and shall inure to the benefit of the Grantee, provided the Grantee is not in default of the terms hereof.

12. Default; Remedies. In the event either Party fails or refuses to perform any term, covenant, or condition of this Easement, then the non-breaching Party shall give the other Party written notice specifying the nature of the default, and the breaching Party shall have thirty (30) days after receipt of such notice, within which to cure the specified default; provided, however, if the nature of such default is such that the same cannot reasonably be cured within such thirty (30) day period, the breaching Party shall not be deemed to be in default if, within such period, it commences a cure and thereafter diligently prosecutes the same to completion; provided further, however, that the maximum cure period for any default hereunder shall not exceed one hundred twenty (120) days from the date of the initial written notice of default. If the default is not cured within the applicable cure period, then the non-breaching Party may, on written notice to the City, terminate this Agreement, and may avail itself of any other remedies that may be available at law and in equity.

13. Governing Law. This Easement shall be governed by, construed and enforced in accordance with the laws of the State of Florida. Venue in an action, suit or proceeding in connection with this Easement shall be in a state court of competent jurisdiction in Miami-Dade County, Florida. BY ENTERING INTO THIS AGREEMENT, CITY AND GRANTOR EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.

14. Entire Agreement. This Easement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings and arrangements, both oral and written, between the parties with respect thereto.

15. Notices. All notices and communications in writing required or permitted hereunder may be delivered personally to the representatives of the Grantor and the Grantee listed below or may be mailed by registered mail, postage prepaid (or airmailed if addressed to an address outside of the city of dispatch).

Until changed by notice in writing, all such notice and communications shall be addressed as follows:

TO CITY:                      City of Miami Beach  
                                     Attn: City Manager  
                                     1700 Convention Center Drive  
                                     Miami Beach, Florida 33139  
                                     Tel: 305-673-7010

TO GRANTEE:                Sunset Islands Property Owners, Inc.

Attn: \_\_\_\_\_, President of HOA  
Guard House, \_\_\_\_\_ Drive  
Miami Beach, Florida 33140  
(\_\_\_\_) \_\_\_\_\_

Notices hereunder shall be effective if delivered by certified mail, return receipt requested, personal delivery, courier service, evidenced by a delivery receipt or by an overnight express delivery service addressed to the parties for whom it is intended at the place last specified; and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph.

16. No Joint Venture. It is not intended by this Easement to, and nothing contained in this Easement shall, create any partnership, joint venture, limited liability company or other arrangement between the Grantor and Grantee, other than that of owner and independent contractor. No term or provision of this Easement is intended to be, or shall be, for the benefit of any person not a party hereto, and no such other person shall have any right or cause of action thereunder.

17. Termination. Either Party may terminate this Easement for its convenience, upon 365 days advance written notice to the other Party.

18. Amendments. Subject to the other provisions hereof, this Easement may not be amended or modified except by written agreement of the Grantor and the Grantee.

19. Counterpart Signatures. This Easement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

*[The remainder of this page is intentionally left blank.]*

IN WITNESS WHEREOF, each of the Parties hereto has caused this Easement to be executed and delivered as of the date first above written.

Witnesses:

**CITY OF MIAMI BEACH, FLORIDA  
(GRANTOR):**

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Dan Gelber, Mayor

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Rafael Granado, City Clerk

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2011 by \_\_\_\_\_, who is the \_\_\_\_\_ who is either personally known to me or who has produced \_\_\_\_\_ as identification.

(NOTARY SEAL)

\_\_\_\_\_  
Signature of Notary Public of Florida

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Date

Witnesses:

**SUNSET ISLANDS PROPERTY  
OWNERS, INC. (GRANTEE):**

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_

Print: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2011 by \_\_\_\_\_, who is the \_\_\_\_\_ who  
is either personally known to me or who has produced \_\_\_\_\_ as identification.

(NOTARY SEAL)

\_\_\_\_\_  
Signature of Notary Public of Florida

EXHIBIT “1”

LEGAL DESCRIPTION

DRAFT



"SKETCH OF LEGAL DESCRIPTION"  
SCALE: NOT TO A SCALE

LOCATION SKETCH

CANAL

LOT 1, BLOCK 10  
SUNSET LAKE SUBDIVISION  
(PLAT BOOK 8, PAGE 52)

BRIDGE

CANAL

N.BAY ROAD  
(60' R/W)

W.29th STREET  
(70' R/W)

LOCATION SKETCH  
NOT TO SCALE

LEGEND & ABBREVIATIONS:

ASPH.	ASPHALT	PAV.	PAVEMENT
BM	BENCH MARK	P.B.	PLAT BOOK
(C)	CALCULATED DIMENSION	PCC	POINT OF COMPOUND CURVATURE
C&G	CURB AND GUTTER	PG.	PAGE
CL	CENTER LINE	PI	POINT OF INTERSECTION
CLF	CHAIN LINK FENCE	PL	PROPERTY LINE
CONC.	CONCRETE	POB	POINT OF BEGINNING
(D)	DEED DIMENSION	POC	POINT OF COMMENCE
DH	DRILL HOLE	PRC	POINT OF REVERSE CURVE
E+I	EASTING COORDINATE	PT	POINT OF TANGENCY
FD	FOUND	R	RADIUS
IP	IRON PIPE	R/W	RIGHT-OF-WAY
N=	NORTHING COORDINATE	V.G.	VALLEY GUTTER
(P)	PLAT DIMENSION	Δ	CENTRAL ANGLE

SURVEYORS NOTES:

- THIS IS NOT A BOUNDARY SURVEY. RIGHT OF WAY LINES SHOWN HEREON WERE CALCULATED FROM THE SUBDIVISION PLAT OF "SUNSET LAKE SUBDIVISION" ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 8, PAGE 52 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY FLORIDA.
- THIS "SKETCH AND LEGAL DESCRIPTION HAS BEEN PREPARED RELATIVE TO THE PLANNED SITE IMPROVEMENTS OF THE GUARDHOUSE/ENTRY AREA LOCATED WITHIN THE RIGHT OF WAY OF W.29TH STREET SAID IMPROVEMENTS SHOWN HEREON ARE BASED UPON ON THE ARCHITECTURAL PLANS PREPARED BY OTHERS.
- COORDINATES (NORTHING AND EASTING) AND/OR BEARINGS IF DEPICTED ON THIS SURVEY MAP OR IN THE CAD FORMAT ARE BASED UPON THE FLORIDA STATE PLANE COORDINATE SYSTEM, FLORIDA EAST ZONE, RELATIVE TO THE NORTH AMERICAN DATUM (NAD) 1983/2011 ADJUSTMENT. (GPS) MEASUREMENTS WERE CONDUCTED IN THE FIELD TO ACQUIRE LOCATIONS OF IMPROVEMENTS AND ARE REFERENCED TO THE FLORIDA DEPARTMENT OF TRANSPORTATION, FLORIDA PERMANENT REFERENCE NETWORK (FPRN). BASED ON THE FOLLOWING CONTINUOUSLY OPERATING REFERENCE STATIONS: MIAMI BEACH (FLMB) AND DISTRICT 6 (FLD6).
- UNDERGROUND UTILITIES OR IMPROVEMENTS HAVE NOT BEEN LOCATED.
- THIS LEGAL DESCRIPTION AND SKETCH OF LEGAL DESCRIPTION WAS PERFORMED ON APRIL 10, 2018.

LEGAL DESCRIPTION:

BEING A PARCEL OF LAND LYING IN A PORTION OF SECTION 27, RANGE 53 SOUTH, RANGE 42 EAST, AMENDED PLAT OF SUNSET LAKE SUBDIVISION ACCORDING TO THE PLAT THEREOF AS RECORDED N PLAT BOOK 8, PAGE 52, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE POINT OF INTERSECTION OF THE NORTHERLY RIGHT OF WAY LINE OF W. 29TH STREET (RIGHT OF WAY BEING 70 FEET IN WIDTH) WITH THE WESTERLY RIGHT OF WAY LINE OF NORTH BAY ROAD (RIGHT OF WAY BEING 60 FEET IN WIDTH); THENCE S88°04'14"W, ALONG THE SAID NORTHERLY RIGHT OF WAY LINE OF W. 29TH STREET, A DISTANCE OF 300.60 FEET; THENCE S01°55'46"E A DISTANCE OF 8.00 FEET TO THE POINT OF BEGINNING; THENCE S01°39'08"E A DISTANCE OF 40.70 FEET; THENCE S87°51'46"W A DISTANCE OF 38.15 FEET; THENCE S02°08'14"E A DISTANCE OF 6.00 FEET; THENCE S87°51'46"W A DISTANCE OF 4.00 FEET; THENCE N02°08'14"W A DISTANCE OF 27.00 FEET; THENCE S87°51'46"W A DISTANCE OF 12.15 FEET; THENCE N02°08'14"W A DISTANCE OF 27.00 FEET; THENCE S87°51'46"W A DISTANCE OF 14.40 FEET; THENCE N01°59'34"W A DISTANCE OF 20.99 FEET; THENCE N87°58'11"E A DISTANCE OF 29.59 FEET; THENCE S02°08'14"E A DISTANCE OF 7.41 FEET; THENCE N87°51'46"E A DISTANCE OF 9.97 FEET; THENCE N02°08'14"E A DISTANCE OF 4.00 FEET; THENCE N87°51'46"E A DISTANCE OF 4.00 FEET; THENCE S02°08'14"E A DISTANCE OF 4.00 FEET; THENCE 87°51'46"E A DISTANCE OF 25.10 FEET TO THE POINT OF BEGINNING.

CONTAINING 2,656.4 SQUARE FEET MORE OR LESS.

LINE	BEARING	DISTANCE
L1	S02°08'14"E	6.00'
L2	S87°51'46"W	4.00'
L3	N02°08'14"W	6.00'
L4	S87°51'46"W	14.40'
L5	N01°59'34"W	20.99'
L6	N87°58'11"E	29.59'
L7	S02°08'14"E	7.41'
L8	N87°51'46"E	9.97'
L9	N02°08'14"W	4.00'
L10	N87°51'46"E	4.00'
L11	S02°08'14"E	4.00'

CERTIFICATION:

I HEREBY CERTIFY: THAT THIS "SKETCH AND LEGAL DESCRIPTION" IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AS SURVEYED AND DRAWN UNDER MY DIRECTION, AND THAT THIS SURVEY MEETS THE STANDARDS OF PRACTICE AS SET FORTH BY THE FLORIDA STATE BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER 5J-17 FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027 FLORIDA STATUTES.