

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING AND AUTHORIZING THE CITY MANAGER TO ACCEPT THE TRANSFER TO THE CITY, VIA QUIT CLAIM DEEDS, WITH AN ACCOMPANYING EASEMENT AGREEMENT FOR THE PRIOR UPLAND OWNER, SO THAT THE PRIOR UPLAND OWNER MAY HAVE FOR ACCESS TO THE SEAWALL TO DEVELOP A DOCK; ALONG THE APPROXIMATELY 4, 000 LINEAR FEET OF SEAWALL ALONG INDIAN CREEK DRIVE; SO THAT THE CITY AND THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) MAY UNDERTAKE THE CONSTRUCTION OF A 5.7 NAVD ELEVATION SEAWALL BARRIER WALL, WHICH WOULD IMPROVE STREET DRAINAGE, AND RAISE THE ROAD ELEVATION FOR INDIAN CREEK DRIVE, BETWEEN 26TH STREET AND 41 ST STREET.

WHEREAS, on September 27, 2016, the City Commission adopted Resolution 2016-29584, which authorized the City Manager to accept the transfer to the City, via quit claim deeds, of approximately 4,000 linear feet of seawall along Indian Creek Drive from the Private Property Owners adjacent to Indian Creek Drive, so that the City and the Florida Department of Transportation (FDOT) may undertake the construction of a 5.7 NAVD elevation seawall barrier wall to improve street drainage and raise the road elevation for Indian Creek Drive between 26th and 41st Streets; and

WHEREAS, during the September 27, 2016 City Commission meeting, several property owners along Indian Creek Drive requested to work with the City to develop a quit claim deed that would also provide easement rights to the upland property owners, to be able to build a dock, or similar structure, in the future, on the water-ward side of the seawalls; and

WHEREAS, the Mayor and City Commission had no objection to said request but requested that the form document be brought back to the City Commission for approval; and

WHEREAS, the City has worked with the various land use lawyers to develop a template quit claim deed and easement agreement to allow the dock usage, which template document is attached hereto as Exhibit 1; and

WHEREAS, the proposed form of the modified quit claim deed and easement agreement is attached hereto as Exhibit 1.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, the Mayor and City Commission approve and authorize the City Manager to accept the transfer to the City, via quit claim deeds, with an accompanying easement agreement provided to the prior upland owners, so that the prior upland owners may have for access to the seawall to develop a dock; along the

approximately 4, 000 linear feet of seawall along Indian Creek Drive; so that the City and the Florida Department of Transportation (FDOT) may undertake the construction of a 5.7 NAVD elevation seawall barrier wall, which would improve street drainage, and raise the road elevation for Indian Creek Drive, between 26th Street and 41 St Street.

PASSED AND ADOPTED this ____ day of February, 2017.

ATTEST:

Philip Levine, Mayor

Rafael E. Granado, City Clerk

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

Rafael E. Granado
City Attorney

1-26-17
Date

This instrument was prepared by and after recording should be returned to:

Raul J. Aguila, City Attorney
City of Miami Beach, Florida
1700 Convention Center Drive
Miami Beach, Florida 33139

(Reserved for Clerk of Court)

QUIT-CLAIM DEED AND EASEMENT AGREEMENT

THIS QUIT-CLAIM DEED, made as of this ____ day of _____, 2017 (the Effective Date), by _____, a _____ company, whose address is _____ ("First Party"), to the City of Miami Beach, a Florida municipal corporation, whose address is 1700 Convention Center Drive, Miami Beach, Florida 33139 ("Second Party"):

(Wherever used herein the terms First Party and Second Party shall include singular and plural, heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, wherever the context so admits or requires).

WHEREAS, First Party wishes to sell the Property, as more particularly described herein, to Second Party, which Property has an adjoining seawall that is in disrepair, and Second Party is authorized to accept title to the Property and undertake the necessary repairs to the adjoining seawall, as authorized pursuant to City of Miami Beach Resolution No. 2016-29584.

WITNESSETH, that the said First Party, for and in consideration of the sum of Ten Dollars and other good and valuable consideration (\$10.00) in hand paid by the said Second Party, the receipt whereof is hereby acknowledged, does hereby remise, release and quit-claim unto the said Second Party forever, all the right, title, interest, claim and demand which the said First Party has in and to the following described land, situate, lying and being in Miami-Dade County, Florida, (the "Property") and legally described as follows:

TO HAVE AND TO HOLD the same together with all the tenements, hereditaments and appurtenances thereunto belonging.

The First Party reserves for itself, its successors and assigns a perpetual, non-exclusive easement of ingress and egress in, over, on, and through the Property, specifically for the benefit of First Party's property (as defined in the Easement Agreement), pursuant to the terms and conditions set forth in the Easement Agreement, incorporated herein by reference and attached hereto as Exhibit "A".



IN WITNESS WHEREOF, the said First Party has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered
in the presence of:

a _____ company

Witnesses:

By: _____

Print Name: _____

Print Name: _____

Print Name: _____

Title: _____

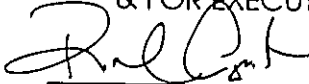
STATE OF FLORIDA)
) ss:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017 by _____, as _____, on behalf of _____, a _____ company, who is personally known to me or who has produced _____ as identification.

My Commission Expires:

Notary Public, State of Florida

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney

1-26-17

Date

Exhibit "A"

Easement Agreement

This Easement Agreement ("Easement Agreement") is made this ____ day of _____, 2017, by and between the City of Miami Beach, a Florida municipal corporation, whose address is 1700 Convention Center Drive, Miami Beach, Florida 33139 (the "City") and _____, a _____ company, whose address is _____ ("Company") (the City or Company may be referred to herein individually as a "party" or collectively as "parties");

WHEREAS, the City is the owner of that land, situate, lying and being in Miami-Dade County, Florida ("City's Property") legally described as:

WHEREAS, the Company is the owner of that land, situate, lying and being in Miami-Dade County, Florida ("Company's Property") legally described as:

WHEREAS, Company desires to preserve a perpetual, non-exclusive easement for ingress and egress on, in and over the City's Property, with the exact location(s) to be determined at a future date, in connection with any future development of Marine Related Uses, as defined in Section 2, which uses are anticipated to be developed adjacent to or near the seawall adjacent to the City's Property, specifically for the benefit of Company's Property;

WHEREAS, the City has the authority and capacity to grant the perpetual, non-exclusive easement granted herein pursuant to City of Miami Beach Resolution Number _____;

WHEREAS, the City Manager as referenced in this Easement Agreement shall mean the chief executive officer of the City or such person (the City Manager's designee) as may from time to time be authorized in writing by such administrative official to act for him/her with respect to any or all matters pertaining to this Easement Agreement.

NOW THEREFORE, in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The above recitals are true and correct and are incorporated herein as part of this Easement Agreement.
2. the City does hereby grant to Company, its successors and assigns, a perpetual, non-exclusive easement for ingress and egress in, over, on, and through the City's Property, for the benefit of the Company Property, in connection with the construction, operation and maintenance of Marine Related Uses and subject to the terms and conditions set forth herein.
3. As referred to herein, Marine Related Uses shall include water transportation stops, wet dockage for pleasure craft, kiosks, walkways and decks, the operation of watercraft rental, and other similar improvements and activities associated with the use of the waterway.
4. Company will have the right to construct, maintain and operate, at its sole cost and expense, improvements in connection with a Marine Related Use ("Marine Improvement"). All Marine Improvements shall require the City Manager's prior written

consent, which consent shall not be unreasonably withheld, and provided that the proposed Marine Improvement does not interfere with the City's use of the City's Property; does not pose a public health, safety or welfare risk; or does not pose a risk of damage to the improvements at the City's Property, which City improvements may include, but are not limited to the seawall/retaining wall, utilities, public access and pedestrian walkway, or other City improvements.

5. All approved Marine Improvements shall be constructed, operated and maintained in compliance with all applicable regulations of the Federal, State, County, City of Miami Beach Code of Ordinances, and any other regulations governing the Marine Related Use (collectively, "Laws"). Following completion of any Marine Improvement, Company, at its sole cost and expense, shall have the sole responsibility for repairing and maintaining the Easement Area and the Marine Improvements, including any surrounding area, which may include the seawall, if applicable. Company shall provide the same level of maintenance for the Easement Area and Marine Improvements as the City currently provides for similar areas and similar improvements, but at minimum, the Marine Improvements shall be maintained and operated in a safe, clean and orderly manner.
6. Should Company fail to maintain the Easement Area or any Marine Improvements constructed in connection with any Marine Related Uses, upon receipt of thirty (30) days written notice from the City, and Company's failure to remedy the condition to the City Manager or City Manager's designee's satisfaction, the City may, but without an obligation to do so, undertake Company's repair obligation and Company shall reimburse the City for said expense within thirty (30) days from presentment of the invoice.
7. Subject to the limitations set forth in Section 4, Company shall have the right to access any portion of the City's Property which may be reasonably necessary to grant Company access to the Marine Improvements or in connection with the operation of the Marine Related Use. Upon the City approving a Marine Improvement, the parties shall execute an amendment to this Easement Agreement, attaching a sketch of the Marine Improvement and the legal description of the easement area ("Easement Area"), describing the location of the Marine Improvement and access locations at the City's Property for ingress and egress related to the Marine Improvement or Marine Related Use.
8. The City shall not withhold or obstruct Company's access to the Easement Area through the installation of a fence or other similar means; except as may be necessary in connection with any repairs or improvements to the City's Property, such as the installation of a new seawall/retaining wall; or as may be necessary for the health, safety, or welfare of the general public.
9. The Easement may be modified, amended, or released as to any portion of the Easement by a written instrument executed by both parties hereto or their successors or assigns, providing that same has been approved by the City Commission.
10. It is understood and agreed that any City official has the right to enter and investigate the use of the Property, to verify compliance with the conditions of this Easement Agreement or any applicable Laws.

11. Company, its employees, agents, servants, partners, principals or subcontractors (collectively, "Indemnifying Parties") shall indemnify and hold harmless the City, its officers, employees, agents and instrumentalities (collectively, "Indemnified Parties") from any and all liability, losses or damages, including the costs of any suits, attorney's fees and other expenses in connection therewith, including trial and appeals therefrom, which the Indemnified Parties may incur as a result of claims, demands, suits, causes of action, or proceedings of any kind or nature arising out of, relating to, or resulting from the negligence of the Indemnifying Parties; use of the Easement Area or Marine Improvement; or in connection with the Maritime Related Use.

12. Insurance.

a. Construction Insurance. Upon approval of a Marine Improvement by the City, but no later than the date Company secures all required governmental approvals to commence construction, Company shall purchase insurance, as may be requested by the City Manager or his designee, based upon insurance coverages customary for the construction of the approved Marine Improvement, which may include, without limitation, Builder's Risk insurance; Payment and Performance Bond for the value of the construction of the Marine Improvement and Commercial General Liability insurance for the Contractor, reflecting the City as an additional insured (collectively "Construction Insurance").

b. Upon completion of the first approved Marine Improvement, Company shall secure and thereafter maintain, at all times, insurance covering the Easement Area and all completed Marine Improvements, as may be requested by the City Manager or his designee, based upon insurance coverages customary for the completed Marine Improvement, but in any event, Company shall maintain the following minimum insurance requirements:

1. Commercial General Liability: \$1,000,000 per occurrence; \$2,000,000 in the aggregate.
2. Property: Full replacement value for any completed Marine Improvements within the Easement Area.

Such insurance policies shall name the City as an additional insured and loss payee thereunder; shall be written by insurance companies licensed to do business in Florida and with general policyholder rating of no less than A- and a financial rating of at least VII; and shall provide for waiver of subrogation. Company shall provide the City with a certificate of insurance evidencing said coverages.

Company shall provide the City with written notice of any cancellation of coverage within two (2) days from receipt of any notification of cancellation to:

The City of Miami Beach
Attention of Risk Manager
1700 Convention Center Drive
Miami Beach, Florida 33139

The City reserves the right to modify the insurance requirements, in the City Manager or his designee's reasonable discretion, based upon any change in the type or number of Marine Improvements constructed.

13. Any notices required or permitted to be given under this Easement shall be in writing and shall be deemed to have been given if delivered by hand, sent by recognized overnight courier (such as Federal Express) or mailed by certified or registered mail,

return receipt requested, in a postage prepaid envelope, and addressed as follows:

If to the City at: City of Miami Beach, City Hall
1700 Convention Center Drive
Miami Beach, Florida 3313
Attention: City Manager

With a copy to: City of Miami Beach, City Hall
1700 Convention Center Drive
Miami Beach, Florida 3313
Attention: City Attorney

If to Grantee at: _____

With a copy to: _____

Notices personally delivered or sent by overnight courier shall be deemed given on the date of delivery and notices mailed in accordance with the foregoing shall be deemed given three (3) days after deposit in the U.S. mails. The terms of this Section shall survive the termination of this Easement Agreement.

14. Either party may bring an action, at law or in equity, to enforce the terms and conditions of this Easement Agreement against any party or person violating or attempting to violate any provision of this Easement Agreement, either to restrain violations or to recover damages.
15. This Easement Agreement shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms and conditions herein, exclusive venue for the enforcement of same shall be Miami-Dade County, Florida. This Easement 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 Easement Agreement shall be Miami Dade County, Florida, if in state court, and the U.S. District Court, Southern District of Florida, if in federal court. BY ENTERING INTO THIS EASEMENT AGREEMENT, COMPANY AND THE CITY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS EASEMENT AGREEMENT.
16. Entire Agreement. This Easement Agreement 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.
17. City Representations. City covenants, warrants and represents (i) that City is the fee simple owner of the City's Property and has the right, title and capacity to grant the

perpetual, non-exclusive easement granted herein, and (ii) there are no lienholders on the Easement Property.

18. 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 Easement Agreement are appurtenant to the City's Property. The provisions hereof shall run with the land, shall be binding on the parties hereto, their successors and assigns, and shall inure to the benefit of Company's Property.

[Signature Pages Follow]

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

Raul Cortez 1-26-17
City Attorney Date

Signed, witnessed, executed and acknowledged this ____ day of _____, 2017.

Signed, sealed and delivered
in the presence of:

Company _____,
a _____ company

Witnesses:

By: _____

Print Name: _____

Print Name: _____

Print Name: _____

Title: _____

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

The foregoing instrument was acknowledged before me this ____ day of _____, 2017 by _____, as _____, on behalf of _____, a _____ company, who is personally known to me or who has produced _____ as identification.

My Commission Expires:

Notary Public, State of Florida

Signed, witnessed, executed and acknowledged this ____ day of _____, 2017.

Signed, sealed and delivered
in the presence of:

City of Miami Beach,
a Florida municipal corporation

Witnesses:

By: _____

Print Name: _____

Print Name: _____

Print Name: _____

Title: _____

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

The foregoing instrument was acknowledged before me this ____ day of _____, 2017 by _____, as _____, on behalf of the City of Miami Beach, a Florida municipal corporation, who is personally known to me or who has produced _____ as identification.

My Commission Expires:

Notary Public, State of Florida