

This instrument prepared by (and after
recording return to):

Eve A. Boutsis
Deputy City Attorney
City of Miami Beach
1700 Convention Center Drive
Fourth Floor
Miami Beach, Florida 33139

(Reserved for Clerk of Court)

DECLARATION OF RESTRICTIONS AND EASEMENT AGREEMENT

THIS DECLARATION OF RESTRICTIONS AND EASEMENT AGREEMENT ("Agreement") is made and entered into as of the 22 day of July, 2015, by and between the CITY OF MIAMI BEACH, a municipal corporation of the State of Florida (the "City"), with an address of 1700 Convention Center Drive, Miami Beach, Florida 33139, and South Bay Club Condominium Association, Inc., a Florida ("Owner"), having an address of 800 West Avenue, Miami Beach, Florida 33139.

R E C I T A L S:

A. Pursuant to that certain development order under Design Review Board Order dated May 7, 2013, under File No: 22960, Owner has agreed to open to the public a pedestrian walkway within the property legally described or depicted in Exhibit A attached hereto (the "Easement Area"), subject to the terms, conditions, reservations and restrictions set forth herein.

B. Owner is the owner in fee simple of the Easement Area, which is a portion of the residential apartment project located 800 West Avenue and commonly known as the "South Bay Club Condominium" project, as legally described or depicted on Exhibit B attached hereto (the "Property").

NOW, THEREFORE, in consideration of the premises, agreements and covenants set forth hereinafter, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Owner hereby agree that the foregoing recitals are true and correct and further agree as follows:

1. Grant of Easements. Owner hereby grants to the City, for the use of the City, its agents, employees, contractors, representatives and licensees and the members of the general public (collectively, the "Easement Beneficiaries"), commencing on the Effective Date (as defined below), a permanent, non-exclusive easement through the Easement Area, subject to the terms, conditions, reservations and restrictions set forth below. The Easement Area is a segment of a publicly accessible baywalk planned by the City to extend from 5th Street to Lincoln Road (the "Baywalk"). The Easement Beneficiaries shall have access to the Easement Area solely from the portions of the Baywalk located directly north and south of, and contiguous to, the

Easement Area. In no event shall the Easement Beneficiaries, by virtue of this Agreement, have access to the Easement Area by, through, across, under or over any other portion of the Property; it being agreed that the sole points of access to the Easement Area are the locations noted in the immediately preceding sentence.

2. Easement Area. At the time this Agreement is recorded, the "Easement Area" shall temporarily refer to a meandering strip of land that is fourteen (14') feet in width within the portion of the Property described or depicted in Exhibit A attached hereto. On the Effective Date (as defined below), the final and actual "Easement Area" shall refer to and shall be a strip of land that runs immediately adjacent and parallel to the entire westernmost boundary of the Property, including the seawall cap, and that extends to the easternmost edge of either the pedestrian walkway actually constructed within the foregoing fourteen (14') foot strip of land or if a fence, wall or other barrier shall be installed east of the pedestrian walkway and within the foregoing fourteen (14') foot strip of land, then to the westernmost edge of such fence, wall or other barrier. The Easement Area shall be located west of the existing seawall along the rear of the Property, and shall commence at the northwest corner of the property, via a direct pedestrian connection to the future Baywalk at the southwest corner of 910 West Avenue, Southgate Towers. The Easement shall continue south along the rear of the Owner's property to the south west corner of the Property. The minimum width of the walkway to be installed in the Easement Area shall be ten (10) feet. All other portions of the Property, including without limitation any portion of the aforementioned fourteen (14') foot strip of land lying outside of the final and actual Easement Area, shall be excluded from the Easement Area for purposes of this Agreement. The Baywalk will be located partially over the existing seawall and partially over-water westward of the seawall along the western boundary of the Property. The City shall be responsible for mitigating possible impacts relating to the individual South Bay Club docks to ensure functionality of the boat slips after construction of the Baywalk which is the equivalent to the current use of the slips (same number of slips, same size and type of watercraft fitting within the marina, etc.). The City shall be responsible for all costs relating to the design, permitting, and construction of the Baywalk. The City shall be responsible for all landscaping design, installation and maintenance, for all landscaping and foliage across the Easement Area. Each party shall be responsible for its own consultant fees. Owner shall have the right to record a notice, substantially in the form attached hereto as Exhibit D, of the actual location and legal description of the Easement Area upon final determination thereof in accordance with this paragraph. Prior to recording, the City Attorney will be provided with a copy of the proposed notice for comment (which must be reasonable) as to form. If the City Attorney fails to provide comments in accordance with this paragraph within five (5) business days, Owner may freely record the notice.

3. Effective Date. The easements granted herein shall become effective immediately upon execution.

4. Use of the Easement Area. The easements granted hereunder shall be for the sole purposes of (i) providing the Easement Beneficiaries public with a non-exclusive way of passage through the Easement Area solely for the permitted public uses described in paragraph 4.a. below, and (ii) allowing ingress and egress only for police, maintenance/sanitation personnel and/or emergency personnel of the City for the purposes described in (and the City's

performance of its obligations under) this Agreement, in each case subject to the terms, conditions and restrictions set forth herein.

a. Permitted Public Uses. Owner and the City acknowledge and agree that the permitted uses of the Easement Area by the Easement Beneficiaries during Operating Hours are as follows: jogging, walking, hiking along the bay, biking (non-motorized vehicles) and fishing; periodic and reasonable respites by the Easement Beneficiaries using the Baywalk to enjoy the view or to rest.

b. Prohibited Public Uses. Owner and the City acknowledge and agree that the following uses of the Easement Area are expressly prohibited: Easement Beneficiaries loitering and consuming alcohol on the Easement Area; Easement Beneficiaries using the Easement Area for destination activities including, but not limited to, picnicking and camping; Easement Beneficiaries and Owner's residents using chairs, tents, or other temporary or permanent furniture during the Operating Hours, as defined in paragraph 4.c. below; dogs not on leashes; operation of motorized vehicles, skateboards, and scooters (except by policing authorities, maintenance/sanitation personnel and/or emergency personnel as contemplated hereunder). It is understood and agreed by the parties that use of the Easement Area by the Easement Beneficiaries is limited to the permitted public uses expressly stated in this Agreement and that no other use by members of the general public shall be implied or construed, irrespective of whether or not such use is expressly prohibited by the terms hereof.

c. Operating Hours. The Easement Area shall be open to the general public every day from sunrise to sunset ("Operating Hours"). Owner may install operable fence, gate or other operable barrier on the utmost northern and southern ends of the Easement Area to restrict Easement Beneficiaries access to the Baywalk, subject to the review and approval of City staff, such operable fence, gate or barrier, shall include some form of automatic timing device, in order to ensure that the Baywalk is open between sunrise and sunset, seven days a week. The City shall pay all expenses associated with fabrication and installation of any fence, gate or operable barrier at the northern and southern ends of the Easement Area, with said materials and design subject to consent and approval by the Owner. Access by the Easement Beneficiaries to the Baywalk, shall only be restricted between sunset and sunrise, and otherwise as determined by the City's Planning Director, in the event of an emergency, dangerous condition or other circumstance that would render usage of the Baywalk a safety risk. Owner shall neither open the gates later than sunrise, nor close the gates before sunset, seven days a week. Temporary closures of the Easement Area during Operating Hours for the purpose of maintenance and repair; or closures of the Easement Area during Operating Hours when there is a Force Majeure Event (as defined in paragraph 13 below); or temporary closures of the Easement Area during Operating Hours pursuant to paragraphs 6.a. or 6.c. of this Agreement, shall not be deemed a breach of this Agreement by Owner. Owner shall provide the City with reasonable advance notice of any scheduled maintenance and repair that will result in a temporary closure of the Easement Area during Operating Hours, and shall re-open the Easement Area immediately following the conclusion of any such maintenance or repair. Owner shall also provide the City with notice of any closure of the Easement Area during Operating Hours due to a Force Majeure Event as soon as reasonably practicable under the circumstances.

Any violation of this condition shall be subject to a notice of violation and enforcement by the City's Special Master or any alternative remedy available to the City. Upon

completion of a continuous publicly accessible Baywalk from 5th Street to 10th Street, the City Commission may adopt uniform rules and regulations concerning hours of operation of the Baywalk, affecting the use of that portion of the Baywalk within the Easement Area identified herein. At such time as the Baywalk becomes open to the Public the installation of fences, gates or other barriers, which permanently block Easement Beneficiary access to the Baywalk shall be prohibited.

5. Maintenance of Easement Area. Except as otherwise expressly provided herein, Owner shall, at its sole cost and expense, maintain, repair and replace, in whole or in part, the Baywalk west of the existing seawall, including the seawall included within the Easement Area and abutting seawall in accordance with all applicable laws, codes, rules, orders, approvals and regulations of Miami-Dade County, the City of Miami Beach and any other governmental or quasi-governmental agency or authority with jurisdiction over the Easement Area, and shall keep the Easement Area in good condition, reasonable wear and tear excepted. Notwithstanding the foregoing, the City shall be responsible for the maintenance and repair of the Easement Area and/or abutting seawall necessitated by or required as a result of the negligence or willful misconduct of the City, its agents, employees, contractors, vendors, operators, representatives or licensees, in its or their use of the Easement Area pursuant to the terms of this Agreement, or exercise of rights or performance of obligations hereunder. Owner shall establish reserves and insurance to accomplish the obligation of maintenance, repair and replacement as delineated herein. Insurance provisions delineated in Section 15.

6. City's Obligations.

a. Police. The City will police the Easement Area in a manner consistent with the other sections of baywalks owned by the City, or on which the City has obtained rights of access through easement, covenant or otherwise, and which are open to the general public (hereinafter referred to as "publicly accessible baywalks in the City"). Owner agrees to submit legitimate complaints about any alleged noncompliance by the City with this requirement to the City Manager, in writing, for his/her review and appropriate action. If the parties are still unable to resolve disputes regarding the policing of the Easement Area, the parties agree that an independent mutually agreed upon neutral arbitrator will resolve such disputes under American Arbitration Association rules, as is provided in paragraph 10 of this Agreement. If the independent arbitrator concludes that the City has breached its duty to police the Easement Area, Owner shall be temporarily relieved of the obligation to provide public access to the Easement Area until the City's failure to police is remedied to the satisfaction of the arbitrator. The City's adoption of and reasonable good faith efforts to enforce security measures consistent with that used in or on other sections of the publicly accessible baywalks in the City shall be accepted as satisfaction of the City's obligations under this paragraph 6.a. Any noncompliance by Owner and/or its officers, employees, contractors, residents or authorized guests with any rules, regulations, ordinances or statutes applicable to the baywalk within the Easement Area shall not be a basis for any legitimate complaint about alleged City noncompliance with, or for temporary closure of the Easement Area pursuant to, this paragraph 6.a.

b. Sanitation. The City will, at its expense, provide removal of rubbish from the Easement Area on a twice weekly basis not including fecal matter and vegetative debris that are the responsibility of adjacent property owner as applicable under the City Code. Owner will

be responsible for cleaning the Easement Area after any private events that occur during non-Operating Hours.

c. Rules and Regulations. Following completion of a continuous publicly accessible Baywalk from 5th Street to Lincoln Road, the City Commission may adopt uniform rules and regulations concerning the hours of operation, the opening and closing of gates and the permitted uses of the Baywalk (including the baywalk within the Easement Area) not materially inconsistent with the terms and provisions of this Agreement. In the event of any conflict between an existing City ordinance, rule and/or regulation concerning the hours of operation, the opening and closing of gates and the permitted uses of the Baywalk (including the baywalk within the Easement Area), the provisions of this Agreement shall prevail as to the Baywalk within the Easement Area.

d. FDEP licensure. Any application, either current or future, for the reconstruction, construction, alteration, renovation, or expansion of any water dependent structure west of the seawall of the Property, including, but not limited to docks, piers, platforms, davits and mooring piles, shall also include a public Baywalk to ensure the construction of the Baywalk within the Easement Areas, which shall run the entire length of the rear of the subject property, and which has a direct connection to the properties to the immediate north (Southgate Towers at 900 West Avenue) and South (Floridian Condominium at 640 West Avenue). The dimensions, material, access points, and design of such Baywalk, shall be subject to the review and approval of staff. To build the Baywalk within the Easement Area, and towards the existing dock area and waters under the jurisdiction of FDEP, Owner agrees to execute any necessary applications or authorizations with the Florida Department of Environmental Protection, Division of State Lands, and with any other applicable state, county, or local administrative agencies to modify any licensure to include the Baywalk, as an authorized extension, or authorized amendment to the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, Sovereignty Submerged Lands Lease (BOT File No.: 130004296). Each party shall make a good faith effort to obtain all required permits, which shall include a joint application to the FDEP for the proposed the Baywalk.

7. Signage. Owner shall post signs at all access points to the Easement Area that display the Operating Hours and summarize the use restrictions described in this Agreement as contemplated by the Settlement Agreement.

8. Reservation. Owner hereby reserves all rights of ownership in and to the Easement Area which are not inconsistent with the easement and rights granted herein, including, without limitation, the right to grant further easements on, over and/or across such area and all other uses not interfering with the uses permitted herein.

9. City's Liability. The City will assume and defend all liability of Owner, as set forth in this paragraph 9, within the Easement Area, except for any liability arising from the gross negligence or willful acts of the Owner, its officers and employees, and except for activities that occur from sunset to sunrise (while the baywalk within the Easement Area is closed to the public in accordance with paragraph 4.c. above). Nothing contained in this paragraph 9 or elsewhere in this Agreement is in any way intended to be a waiver of the limitations on the City's liability to third parties as set forth in Section 768.28, Florida Statutes; however, the limitations under said statutory provision shall not apply to the City's contractual

obligations to defend Owner and to cover, pay and/or reimburse any and all costs, expenses, liabilities, claims, actions, causes of action, losses, demands and damages, including, without limitation, reasonable attorneys' fees (including the cost of in-house counsel) and disbursements at the trial level and all levels of appeal, relating to death of or injury to persons, or loss of or damage to property, incurred by Owner and occurring within the Easement Area, resulting from, arising out of, or incurred in connection with, use of the Easement Area by Easement Beneficiaries.

10. Enforcement. No action to enforce this Agreement through arbitration or through filing suit shall be pursued by any party to this Agreement absent 30 days prior written notice of the alleged breach, followed by an opportunity to cure, which shall be no less than 60 days in length. If the alleged breach is not cured to the satisfaction of the complaining party, the parties shall attempt in good faith to mediate the dispute. As to paragraphs 6.a. and 6.c. of this Agreement, when and if mediation fails, the sole remedy for such a dispute shall be binding arbitration. The dispute shall be administered in accordance with the then-current Commercial Arbitration Rules of the American Arbitration Association ("AAA") and Florida substantive law shall apply. The parties shall attempt to designate one neutral arbitrator from the AAA or elsewhere. If they are unable to do so within 30 days after written demand therefor, then the AAA shall designate a neutral arbitrator. No arbitration hearing may proceed without a representative of all parties present. In the event the AAA's expedited procedures are used, notice by telephone must be supplemented immediately by facsimile or electronic mail. No dispute shall be resolved on documents alone except by agreement between the parties. The arbitration shall be final and binding, and enforceable in a Court with jurisdiction in Miami-Dade County, Florida. The arbitrator shall provide a written explanation of the basis of any award. The arbitrator shall award reasonable attorneys' fees (including but not limited to those of in-house counsel, or outside special counsel to the City) and costs to the substantially prevailing party and charge the cost of arbitration to the party which is not the substantially prevailing party. For all other provisions of this Agreement, when and if mediation fails, enforcement shall be with a Court of competent jurisdiction in and for Miami-Dade County, unless City and Owner agree in writing to utilize arbitration.

11. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon Owner, and its successors and assigns, except that Owner or such successor or assignee, as the case may be, shall be released from all future obligations hereunder upon conveyance of its interest in the Easement Area; provided, however, that any such transferee of Owner or its successor or assignee, as the case may be, shall be bound by all terms and conditions of this Agreement. The easements hereby granted and the requirements herein contained are intended as, and shall be, covenants running with the land with respect to and binding on the Easement Area. This Agreement shall inure to the benefit of and be binding upon the City, and the City shall not be permitted to assign, transfer or convey all or any part of its rights and interests under this Agreement (including its rights and interests in and to the easements granted hereunder), except to a successor municipal corporation; provided, however, that nothing herein shall be deemed a limitation on the City's right to permit the Easement Beneficiaries to use the Easement Area, subject to and in accordance with the terms of this Agreement.

12. Amendments; Termination. This Agreement may not be amended, modified or terminated except by written agreement of the City and all of the then fee owner(s) of the Easement Area, and the holders of any mortgages of record encumbering same, provided that with respect to any portion of the Easement Area for which a condominium, property owner's or master association then exists, the written agreement of such association (and its mortgagee, if any) shall be required in lieu of the fee owner(s) thereof and their mortgagees. No modification or amendment of this Agreement shall be effective unless in writing and recorded in the Public Records of Miami-Dade County, Florida.

13. Force Majeure. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, riot, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform (each such event is referred to herein as a "Force Majeure Event"), excluding the financial inability of such party to perform, shall excuse the performance by such party for a period of time equal to any such period of prevention, delay or stoppage. Any party seeking to invoke this paragraph shall provide written notice to the other party as soon as reasonably practicable under the circumstances.

14. Miscellaneous.

a. Closures. No breach of the terms set forth in this Agreement shall result in the closure or reverter of the public access to the Easement Area provided for herein, except for temporary closure as provided in paragraphs 6.a. and 6.c. above.

b. Counterparts. This Agreement may be executed in any number of counterparts and by the separate parties hereto in separate counterparts, each of which shall be deemed an original, but all of which (when taken together) shall constitute one and the same instrument.

c. Construction. Reference to any paragraph, section, exhibit, or subpart thereof, unless otherwise provided, shall refer to this Agreement. In construing this Agreement, the singular shall be held to include the plural, the plural shall be held to include the singular, and reference to any particular gender shall be held to include every other and all genders. Use of the term "including" shall mean "including, without limitation". Each of the parties hereto and their counsel have reviewed and revised, or requested revisions to, this Agreement, and the usual rule of construction that any ambiguities are to be resolved against the drafting party shall be inapplicable in the construction and interpretation of this Agreement and any amendments or exhibits to this Agreement.

d. Titles of Paragraphs and Sections. The titles of the several parts, paragraphs and sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

e. Estoppel Certificates. Upon the prior written request of either party, the other party hereto shall furnish the requesting party an estoppel certificate reasonably satisfactory to the requesting party.

f. Notices. Any notices required or permitted to be given under this Agreement 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 1700 Convention Center Drive Miami Beach, Florida 33139 Attn: City Manager |
| With a copy to: | City of Miami Beach 1700 Convention Center Drive Miami Beach, Florida 33139 Attn: City Attorney Tel: 305-673-7470 ext 6471 Fax: 305-673-7002 Eveboutsis@miamibeachfl.gov |
| If to the Owner: | Property Manager South Bay Club Condo Assn., Inc. 800 West Avenue Miami Beach, FL 33139 |
| With a copy to: | Registered Agent, currently Jonathan A. Yellin The Yellin Law Firm 11760 West Sample Road, Suite 105 Coral Springs, Florida 33065 Telephone: (954) 376-4812 Fax (954) 333-3562 jay@yellinlawfirm.com |

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. Mail.

g. Governing Laws. The laws of the State of Florida shall govern the interpretation, validity, performance and enforcement of this Agreement. Venue for any action brought hereunder shall be proper exclusively in Miami-Dade County, Florida.

h. Exhibits. All of the Exhibits attached to this Agreement are incorporated in, and made a part of, this Agreement.

i. Conflicts. In the event of any inconsistencies, ambiguities or contradictions between this Agreement and the Settlement Agreement, the provisions of the Settlement Agreement shall control and prevail.

15. INSURANCE. Owner shall provide to City certificates of insurance evidencing that Owner has the required comprehensive general liability insurance required of Owner under the Agreement. In addition, Owner shall provide to City certificates of insurance evidencing that Owner's general contractor has in effect (and shall maintain at all times during the course of the work hereunder) workers' compensation insurance to cover full liability under workers' compensation laws of the State of Florida with employers' liability coverage; comprehensive general liability insurance for the hazards of operations, independent contractors, products and completed operations (for two (2) years after the date of acceptance of the work by City and Owner); and contractual liability specifically covering the indemnification provision in the construction contract, such comprehensive general liability to include broad form property damage and afford coverage for explosion, collapse and underground hazards, and "personal injury" liability insurance and an endorsement providing that the insurance afforded under the contractor's policy is primary insurance as respects City and Owner and that any other insurance maintained by City or Owner is excess and non-contributing with the insurance required hereunder, provided that such insurance may be written through primary or umbrella insurance policies with a minimum policy limit of \$2,000,000.00. City and Owner are to be included as an additional insured for insurance coverages required of the general contractor. Owner shall, throughout the Lease Term (and any other period when Owner is in possession of the Premises), maintain at its sole cost the following insurance:

(a) All risks property insurance, containing a waiver of subrogation rights which Owner's insurers may have against City and against those for whom City is in law responsible including, without limitation, its directors, officers, agents, and employees, and (except with respect to Owner's chattels) incorporating a standard Florida mortgagee endorsement (without contribution). Such insurance shall insure property of every kind owned by Owner in an amount not less than the full replacement cost thereof (new), with such cost to be adjusted no less than annually. Such policy shall include, as additional insureds, City and its affiliates and any mortgagee of City, the City, and any mortgagee of the City in connection with a mortgage on the Facility.

(b) Comprehensive general liability insurance. Such policy shall contain inclusive limits per occurrence of not less than \$2,000,000; provide for severability of interests; and include as additional insureds City and its affiliates and any mortgagee of City, and any mortgagee of City in connection with a mortgage on the Facility.

(c) Any other form of insurance which Owner or City, acting reasonably, requires from time to time in form, in amounts, and for risks against which a prudent Owner would

insure, but in any event not less than that carried by comparable retail establishments in Dade County, Florida.

(e) All policies referred to above shall: (i) be taken out with insurers licensed to do business in Florida and reasonably acceptable to City; (ii) be in a form reasonably satisfactory to City; (iii) be noncontributing with, and shall apply only as primary and not as excess to any other insurance available to City or any mortgagee of City; (iv) contain an undertaking by the insurers to notify City by certified mail not less than thirty (30) calendar days prior to any material change, cancellation, or termination, and (v) with respect to subsection (A), contain replacement cost, demolition cost, and increased cost of construction endorsements. Certificates of insurance on City's standard form or, if required by a mortgagee, copies of such insurance policies certified by an authorized officer of Owner's insurer as being complete and current, shall be delivered to City promptly upon request. If Owner fails to take out or to keep in force any insurance referred to in this section, or should any such insurance not be approved by either City or any mortgagee, and Owner does not commence and continue to diligently cure such default within two (2) business days after written notice by City to Owner specifying the nature of such default, then City has the right, without assuming any obligation in connection therewith, to effect such insurance at the sole cost of Owner and all outlays by City shall be paid by Owner to City as additional rent without prejudice to any other rights or remedies of City under this Agreement. Owner shall not keep or use in the Premises any article which may be prohibited by any fire or casualty insurance policy in force from time to time covering the Premises or the Retail Space.

(f) The Owner shall furnish the Certificates of Insurance to the City prior to commencing any operations under this Contract, which certificates shall clearly indicate that the Owner has obtained insurance, in the type, amount and classifications, in strict compliance with this Section.

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

EXECUTED as of the date and year first above written.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

THE CITY OF MIAMI BEACH,
FLORIDA, a Florida municipal corporation

Althea Peacock

Name: ALTHEA PEAcock

Guadalupe C Ramos

Name: GUADALUPE CRAMOS

By: *[Signature]*

Approved as to form and language
and for execution:

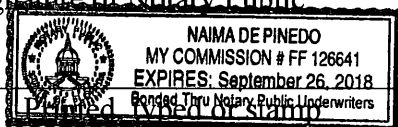
Joe A. Burt 7-22-15
City Attorney Dated

STATE OF FLORIDA)

COUNTY OF MIAMI-DADE)


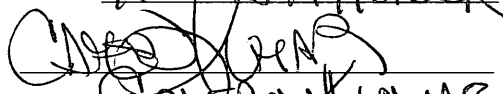
The foregoing instrument was acknowledged before me this 22nd day of July,
2015 by Jimmy Morales, City Manager, , respectively, for the City of Miami Beach, Florida, on
behalf of the City.

By: *Naima De Lina*
Signature of Notary Public




My Commission Expires:

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

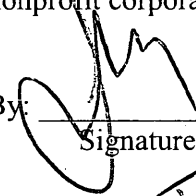

Name: KAREN A HOTECK

Name: CAMERON KUMAR

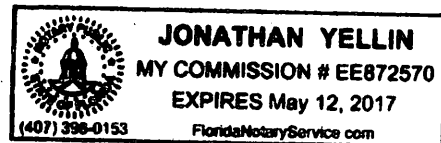
**SOUTH BAY CLUB CONDOMINIUM
ASSOCIATION, INC.** a Florida nonprofit
corporation

By: 
Name: Richard Bellew
Title: President

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 18 day of June, 2015 by Richard Bellew, as President and on behalf of South Bay Club Condominium Association, Inc., a Florida nonprofit corporation, on behalf of the corporation.

By: 
Signature of Notary Public
J. Yellin
Printed, typed or stamp



My Commission Expires:

EXHIBIT A

LOCATION OF EASEMENT AREA

At the time the Agreement is recorded, the "Easement Area" shall temporarily refer to a meandering strip of land that is fourteen (14') feet in width that lies immediately adjacent and parallel to the entire westernmost boundary of the Property, including the seawall cap, and that extends to the easternmost edge of either the pedestrian walkway actually constructed within the foregoing fourteen (14') foot strip of land or if a fence, wall or other barrier shall be installed east of the pedestrian walkway and within the foregoing fourteen (14') foot strip of land, then to the westernmost edge of such fence, wall or other barrier. The Easement Area shall be located west of the existing seawall along the rear of the Property, and shall commence at the northwest corner of the property, via a direct pedestrian connection to the future Baywalk at the southwest corner of 910 West Avenue, Southgate Towers. The Easement shall continue south along the rear of the Owner's property to the south west corner of the Property. The minimum pavement width of the walkway to be installed in the Easement Area shall be ten (10) feet. The above described fourteen (14') foot strip of land is in the general location depicted in Exhibit A-1 attached hereto. On the Effective Date, the final and actual "Easement Area" shall refer to and shall be a strip of land that runs immediately adjacent and parallel to the entire westernmost boundary of the Property, including the seawall cap, and that extends to the easternmost edge of either the pedestrian walkway actually constructed within the foregoing fourteen (14') foot strip of land or if a fence, wall or other barrier shall be installed east of the pedestrian walkway and within the foregoing fourteen (14') foot strip of land, then to the westernmost edge of such fence, wall or other barrier. All other portions of the Property, including without limitation any portion of the aforementioned fourteen (14') foot strip of land lying outside of the final and actual Easement Area, shall be excluded from the Easement Area for purposes of the Agreement.

EXHIBIT A-1

SKETCH OF 14 FOOT AREA

EXHIBIT B

LEGAL DESCRIPTION OF PROPERTY

Folio number: 02-4203-155-0001

Address: 800 West Avenue, Miami Beach Fl 33139

SOUTH BAY CLUB CONDO; FLEETWOOD SUB PB 28-34, LOT 9 & RIP RTS & LOT 10 BLK 1 & LOT 1 LESS E 10FT & W 150FT OF N 24.95FT OF PRIVATE DR AS MEASURED ON W/L BLK 3 & LOTS 2 & 3 BLK 3 AND PROP INT IN & TO COMMON ELEMENTS NOT DEDICATED TO PUBLIC & LOT 29 LESS W 10FT & E 150FT OF N 24.95FT OF PRIVATE DR ON W/L AS MEASURED & PROP INT IN & TO COMMON ELEMENTS NOT DEDICATED TO PUBLIC

COMPOSITE EXHIBIT C

PUBLIC BAYWALK MASTER PLAN
AND LTC 088-2009

EXHIBIT D

NOTICE REGARDING FINAL EASEMENT AREA

This instrument was prepared by
and after recording return to:

[]

NOTICE REGARDING EASEMENT AREA

THIS NOTICE REGARDING EASEMENT AREA (the "Notice") is made this _____ day of _____ 20____, by South Bay Club Condominium Association, Inc., a Florida Nonprofit corporation (the "Owner"), whose mailing address is 800 West Avenue, Suite 300, Miami Beach, FL 33139.

RECITALS

WHEREAS, The City of Miami Beach, a municipal corporation of the State of Florida (the "City"), and South Bay Club Condominium Association, Inc., a Florida nonprofit corporation, entered into that certain Declaration of Restrictions and Easement Agreement dated _____, 2015 and recorded in Official Records Book ___, Page ___ of the Public Records of Miami-Dade County, Florida (the "Easement Agreement"). Capitalized terms not defined herein shall have the meanings ascribed thereto in the Easement Agreement.

WHEREAS, Owner is the fee owner of the Easement Area, as defined in the Easement Agreement.

WHEREAS, the actual and final location of the Easement Area has been determined pursuant to the terms and conditions of the Easement Agreement.

WHEREAS, Owner, pursuant to paragraph 2 of the Easement Agreement, desires to execute and record this Notice to provide record notice of the actual and final Easement Area.

NOW, THEREFORE, pursuant to the terms and condition of the Easement Agreement, Owner hereby provides notice of the following:

The final and actual "Easement Area," as defined in the Easement Agreement, shall permanently refer to and shall be that certain land described on Exhibit "A" attached hereto.

[THE REST OF THIS PAGE WAS INTENTIONALLY LEFT BLANK]

Signed, witnessed, executed and acknowledged on this 18 day of June, 2015.

WITNESSES:

OWNER:

**SOUTH BAY CLUB CONDOMINIUM
ASSOCIATION, INC.**, a Florida nonprofit
corporation

Karen A. Hoteck
Signature

Print Name: KAREN A HOTECK

Cameron Kumar
Signature

Print Name: CAMERON KUMAR

By: *[Signature]*

Name: Richard Bellew President

Title: President

STATE OF Florida

COUNTY OF FL

SS:

The foregoing instrument was acknowledged before me on this 18 day of June, 2009, by Richard Bellew, as President of and, on behalf of South Bay Club Condominium Association, Inc. He (check one) ☒ is personally known to me or ☐ has produced as identification.



[Signature]
Notary Public, State of Florida

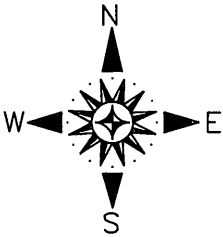
Print Name J. Yellin

My Commission Expires:

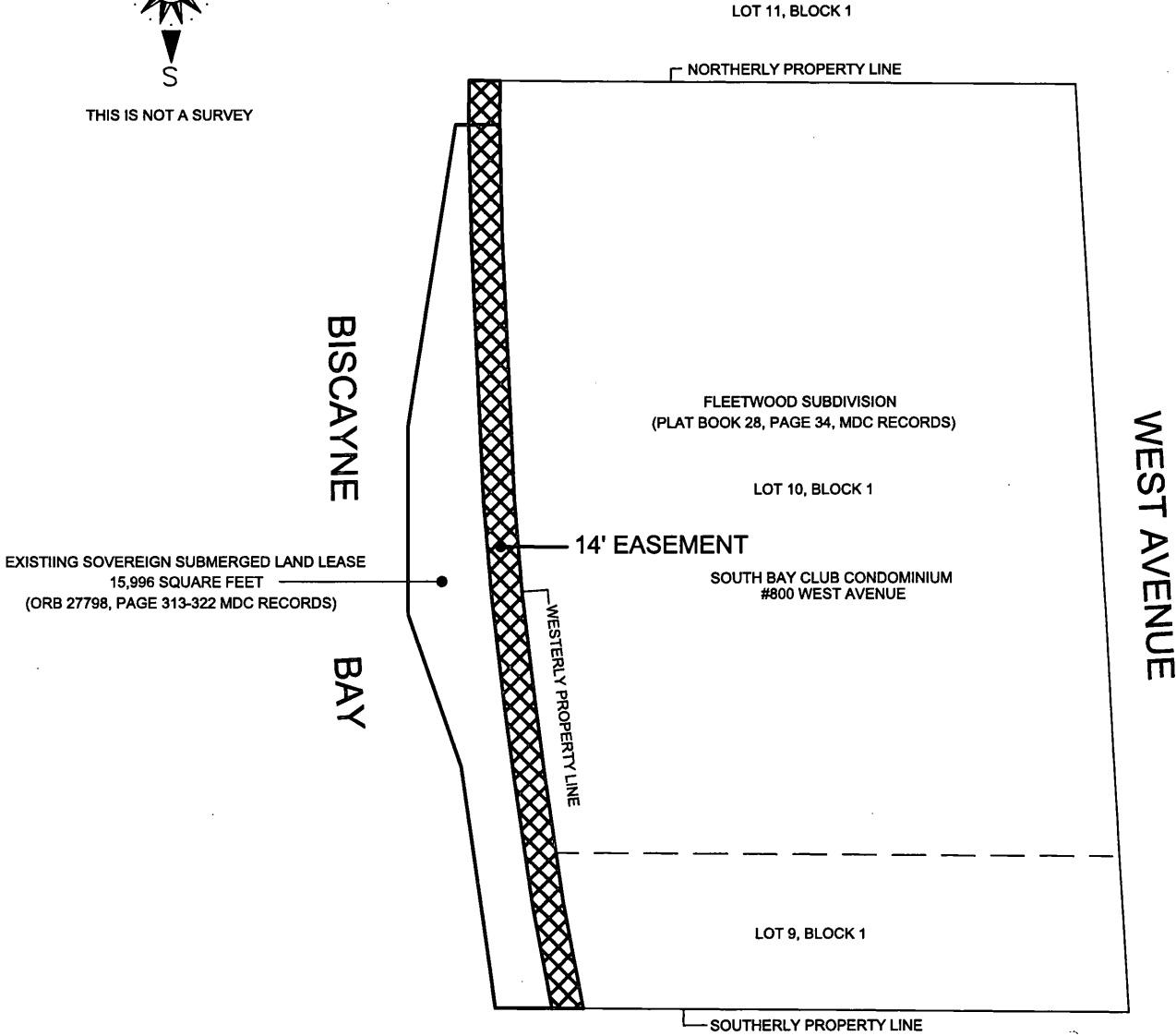
EXHIBIT "A"

LEGAL DESCRIPTION OF EASEMENT AREA

EXHIBIT A-1
SKETCH OF 14' EASEMENT AREA



THIS IS NOT A SURVEY





MIAMI BEACH

OFFICE OF THE CITY MANAGER

NO. LTC # 088-2009

RECEIVED

2009 APR -1 AM 9:51

CITY CLERK'S OFFICE

LETTER TO COMMISSION

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: March 30, 2009

SUBJECT: Update on Public Baywalk Along West Avenue

The purpose of this LTC is to update the Mayor and City Commission on the status of public bay walks at the rear of the properties along West Avenue from 5th Street to Lincoln Road.

1. 520 – 540 West Avenue: Bentley Bay Condominium (DRB File 9802)

A baywalk has been constructed upland and is accessible, but it is not connected to the Floridian property to the north due to existing wall. According to building permit plans on file, this baywalk is publicly accessible. Discussions with project representatives are ongoing to provide the connection and confirm public accessibility.

2. 650 West Avenue: Floridian Condominium (DRB File 5517)

A bay walk has been constructed upland and is accessible, but it is not connected to the neighboring properties. According to the plans approved by the County's Shoreline Development Review Committee, this baywalk is publicly accessible. Regarding the connection to the south, such SDRC plans show an anticipated connection to the south, but see discussion about wall above. To the north, no baywalk presently exists.

3. 800 West Avenue: South Bay Club Condominium

No development order on this property was ever imposed as it pre-dates the creation of the design review process, and no bay walk exists. Staff has evaluated the feasibility of a baywalk in this location and it appears that an overwater, as opposed to upland, connection would be the most feasible option at some point in the future.

4. 900 West Avenue: Southgate Towers Apartments (Rentals)

No development order on this property was ever imposed as it pre-dates the creation of the design review process, and no bay walk exists. Owners have begun discussions with the Planning Department regarding an upland public baywalk connection through their property, as part of a larger renovation project. However, there is no timetable for such renovation project.

5. Western Terminus of Tenth Street

Construction documentation for a proposed new streetscape, seawall and landscape project, with public bay walk access, has been completed and is waiting additional funding. Such funding was part of the design review approval provided as part of the Mondrian Hotel project (in the event their overwater baywalk was not approved by the State, and an upland baywalk were not approved by the adjoining condominium properties). This funding is presently also being challenged by the Mondrian Hotel on appeal to the City Commission (expected to be heard at the April City Commission meeting).

6. 1000-1200 West Ave: Mondrian Hotel/Mirador Condos

Pursuant to the Final Order for DRB File 20181, an overwater public bay walk has been designed and is part of the permit plans for the Mondrian Hotel project. The proposed overwater baywalk is currently going through the County & State permit review process, which is exceedingly complicated, and subject to strict state legislative standards for approval, and there is no indication that it will receive approval for construction. Alternatively, an upland baywalk east of the seawall is provided for in the DRB Final Order, yet this is subject to the approval of the immediately abutting condominium associations to the north and south of the Mondrian Hotel.

7. 1228 West Avenue: Bay View Terrace (Condo)

As part of a recent Conditional Use approval by the Planning Board for the reconstruction of a pier and dock lost during a hurricane, the Condominium Association agreed to design their replacement pier and dock so that it can accommodate an overwater baywalk connection behind its property. No arrangements were made for private funding of this connection.

8. 1250 West Avenue: Bay Garden Manor (Condo)

No development order on this property was ever imposed as it pre-dates the creation of the design review process, and no bay walk exists. Staff has evaluated the feasibility of a baywalk at this location and it appears that an overwater, as opposed to upland, connection would be the most feasible option. There is no timetable for this to be part of any future project.

9. Monad Terrace: Single Family Homes

No development order on this property was ever imposed as it pre-dates the creation of the design review process, and no bay walk exists. While these properties are single family homes, the properties are zoned for multi-family residential. Any future aggregation of the bayfront lots for a larger new development along the water would present an opportunity for an upland public baywalk that could connect directly to the property to the immediate north (Waverly). Staff has evaluated the feasibility of a baywalk at this location absent the aggregation of the bayfront lots and it appears that an overwater, as opposed to upland, connection would be the most feasible option, with cooperation by the homeowners.

10. 1330 West Avenue: Waverly (DRB File 9024)

An upland public bay walk has been constructed, pursuant to Design Review Board and County Shoreline Development Review Committee Orders. Litigation with the condominium association regarding public access has concluded in favor of the City, and the association has completed repairs to the seawall. The baywalk is now open to the public.

11. Western Terminus of Fourteenth (14th) Street

Public Park and accessible public bay walk are completed and open.

12. 1500 Bay Road: Flamingo (DRB File 9191)

The Grand Flamingo project was approved by the Design Review Board (DRB) on November 4, 1997. Since the original approval, the subject project has become legal non-conforming in terms of overall height, FAR, parking, and with regard to the parking pedestal design. Condition 9 of the Final Order for the project states the following:

A baywalk extension, from the south side of the property north into the future park area, shall be required.

Although the bay walk was constructed, with direct access from the 14th Street Park, the above noted condition has not been complied with as a fence has been constructed along the north and south property lines prohibiting public access to the bay walk, as required by the DRB Final Order.

The owners of the Flamingo have sued the City on issues involving public baywalk access and the case is pending in Federal Court. The City has retained outside counsel and is actively defending the case.

13. 1445 16th Street & 1491 Lincoln Terrace: Mae Capri Condominium (DRB File 17716)
Pursuant to the Final Design Review Board Order, an upland public bay walk has been completed and is open to the public. The public bay walk is operating independent of any north or south connections.

14. 1450 Lincoln Road: Lincoln Bay Towers Condominium
No development order on this property was ever imposed as it pre-dates the creation of the design review process, and no bay walk exists. The existing rear pool deck extends over the seawall and projects into the bay. Consequently the only method of connection from the western street-end of Lincoln Road to the north side of the Mae Capri baywalk is to construct an overwater connection. The Public Works Department is working with an environmental consultant to determine the feasibility of and preliminarily design this option.

15. Lincoln Road Street End
Permitting is complete and construction of street end is anticipated to be completed by September 2009.

16. Baywalk Master Plan
A Notice to Proceed (NTP) was issued to Coastal Systems International on March 9th, 2009 to engage in the development of a Baywalk Master Plan that will include the above properties between 5th Street and Lincoln Road. In addition, a conceptual design for the specific connection between the Lincoln Road Street-end and the Mae Capri Condominium baywalk will be developed after ascertaining permitting feasibility from the appropriate regulatory agencies.

JMG:JGG:TRM
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ATTACHMENT

C: Jose Smith, City Attorney
Gary Held, First Assistant City Attorney
Bob Parcher, City Clerk
Robert Middaugh, Assistant City Manager
Fernando Vazquez, City Engineer
Jorge G. Gomez, Planning Director
Thomas R. Mooney, Design and Preservation Manager
Lisa Botero, Environmental Resource Manager



- Existing Upland Baywalk
- Potential Baywalk Overwater Solution
- Potential Baywalk Upland Solution
- Existing Public Streetends