

This Instrument Prepared By:
Adam G. Gutin, Esq.
Nason, Yeager, Gerson, Harris & Fumero, P.A.
3001 PGA Blvd, Suite 305
Palm Beach Gardens, FL 33410

BEACH ACCESS AND FACILITIES AGREEMENT

THIS BEACH ACCESS AND FACILITIES AGREEMENT (“**Agreement**”) is made as of the 28th day of August, 2020, by and between OCEANFRONT D & M LLC, a Florida limited liability company (“**Residential Owner**”), having an address of 119 Signature Drive, Melbourne Beach, Florida 32951, and PHOENIX PARK FUND V, LP, a Florida limited partnership, having an address of 119 Signature Drive, Melbourne Beach, Florida 32951 (“**Club Owner**”).

RECITALS:

A. Residential Owner owns that certain real property described on the attached **Exhibit A** (“**Residential Property**”).

B. Club Owner, pursuant to those certain Club Covenants of Harbor Island Beach Club (“**Club Covenants**”) recorded in Official Records Book 8756, Page 2747, in the public records of Brevard County, Florida, owns and operates that certain club generally referred to as Harbor Island Beach Club (“**Club**”) and, in connection therewith, Club Owner owns that certain real property more particularly described on **Exhibit C** attached hereto (“**Club Property**”).

C. To permit Club Owner and Club Owner’s Permitted Parties to use that certain portion of the Residential Property more particularly described on the attached **Exhibit B** (“**Easement Area**”), Residential Owner and Club Owner desire to enter into this Agreement.

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

1. **Recitals.** The foregoing recitals are true.

2. **Definitions.** The terms listed below shall have the respective meanings given to them as set forth adjacent to each term within this Section 2 (all references to a “Section” hereinafter refer to sections within this Agreement).

(a) “**Approval(s)**” means any applicable license, permit, certificate or similar approval or consent necessary to be obtained from a Governmental Authority prior to taking a specified action.

(b) “**Facilities**” means any landscaping, improvements and/or facilities constructed in, above and/or below the Easement Area by, or on behalf of, Club Owner, which

may include, without limitation, a beach access pathway, gazebo, cabana, restrooms, fence(s), wall(s), gate(s), landscaping and signage.

(c) **“Governmental Authority”** means any local, state or federal governmental or quasi-governmental authority and/or their respective agencies, departments and designees.

(d) **“Laws”** means local, state and federal rules, regulations, ordinances, codes, statutes and laws.

(e) **“Owner”** means Residential Owner or Club Owner, individually, and as the context so requires.

(f) **“Owners”** means Residential Owner or Club Owner, collectively.

(g) **“Members”** means members of the Club.

(h) **“Permitted Parties”** means (i) all contractors, employees, agents, customers, licensees, invitees and tenants of an Owner, (ii) the subtenants, contractors, employees, agents, customers, licensees and invitees of such tenants of an Owner, (iii) the heirs, administrators, successors, and assigns of an Owner, and (iv) Members and their invitees.

3. Easements and Easement Area.

(a) **Access.** Residential Owner hereby grants to Club Owner and Club Owner’s Permitted Parties, for the benefit of the Club Property, an access easement over and through the Easement Area for (i) pedestrian ingress and egress to and from the roadways and other areas that are generally located to the west of the Easement Area and the beach that is generally located to the east of the Easement Area, and (ii) pedestrian ingress and egress to and from, and use of, the Facilities.

(b) **Construction, Maintenance, Operation, Repair and Replacement.** Residential Owner hereby grants to Club Owner and Club Owner’s contractors, subcontractors, employees and agents, for the benefit of the Club Property, an easement under, on, through and/or above the Easement Area to construct, maintain, operate, repair and replace the Facilities together with such rights of vehicular or pedestrian access over the Easement Area as is necessary to fully utilize the rights granted by this subpart (b).

(c) **No Use of Easement Area by Residential Owner.** Club Owner may, but shall not be obligated to, permit Residential Owner or its Permitted Parties to use the Easement Area and Facilities; provided, however, until such time as Club Owner, pursuant to a separate written agreement, permits Residential Owner or its Permitted Parties to use the Easement Area and the Facilities, Residential Owner shall not use, access or damage (or permit its Permitted Parties to use, access or damage) the Easement Area or the Facilities (except as expressly set forth in Section 3(e) below). Residential Owner shall be responsible for the cost to repair any damage to the Easement Area and/or the Facilities caused by Residential Owner or its Permitted Parties. Except as required by Law or as reasonably necessary to facilitate the delivery of utility services to the balance of the Residential Property, Residential Owner will not grant any other party any easement or other right of entry under, over or through the Easement Area, and to the extent

Residential Owner intends to grant another party any easement or other right of entry under, over or through the Easement Area in accordance with this paragraph, the Owners shall reasonably cooperate to minimize any interference on the Club Owner's use and enjoyment of the Easement Area and the rights granted by this Agreement that may result from the granting of any such rights to another party.

(d) Permitted Parties. Any rights granted to any Permitted Parties of Club Owner under this Agreement are subject to such additional terms and conditions that Club Owner, in its sole and absolute discretion, may hereafter impose on the exercise of such rights by such Permitted Parties of Club Owner.

(e) Common Pathway Over Beach Dunes. Residential Owner hereby reserves to the Residential Owner and the residents of the Residential Property and their tenants, guests and invitees, for the benefit of the Residential Property, an access easement for pedestrian ingress and egress over the portion of any current or future pathway and/or boardwalk (i) that is located on the Easement Area through the beach dunes located on the Easement Area ("**Beach Dunes**") and (ii) that provides pedestrian ingress and egress to and from the portion of the Easement Area located immediately to the west of the Beach Dunes to the portion of the Easement Area located immediately to the east of the Beach Dunes and adjacent to the Atlantic Ocean (such pathway and/or boardwalk, a "**Dune Path**"). Residential Owner also hereby reserves the right to connect a pathway extending from a residential building (or backyard thereof) located within the Residential Property but outside of the Easement Area into any such Dune Path; provided, however, that no more than four residential buildings shall have such a connection to the Dune Path, no residential building shall have more than one such connection to the Dune Path and any such connection to the Dune Path shall be made within a reasonable proximity to the Beach Dunes. This Section 3(e) shall not be construed to grant any rights to Residential Owner or the residents of the Residential Property and their tenants, guests and invitees to access or use any restrooms, gazebos or other structures or improvements (except such limited portions of the pathway(s) on the Easement Area as are reasonably necessary to connect into and access the Dune Path as contemplated above) located on the Easement Area to the west of the Beach Dunes.

4. Facilities

(a) Design/Construction of Facilities. The design of the Facilities (including, but not limited to, location, aesthetic components, type, size, construction, development and use of the Facilities) shall be determined by Club Owner, in its sole and absolute discretion. Club Owner, at its sole cost and expense, shall be solely responsible for the cost of designing and constructing the Facilities and for seeking and obtaining any Approvals related to the Facilities.

(b) Maintenance. Except as otherwise set forth in Section 3(c) above, Club Owner, at its sole cost and expense, will cause the Easement Area and the Facilities to be maintained in good condition and repair (subject to casualty, condemnation and ordinary wear and tear) and in compliance with applicable Laws and, subject to applicable Laws, will take such steps as are reasonably necessary to mitigate erosion from the Easement Area.

(c) Repair of Damage. In the event Club Owner or any of Club Owner's Permitted Parties damages the Residential Property in connection with the performance of any

obligations under this Agreement or the enjoyment of any of the benefits granted under this Agreement, Club Owner, at its sole cost and expense, shall promptly repair all such damage and restore the damaged area to the same condition as existed prior to such disturbance or damages, subject to reasonable wear and tear.

(d) No Obligation to Construct Facilities. This Agreement establishes the manner in which the Easement Area is to be maintained and, to the extent Club Owner actually elects to install and/or construct Facilities on the Easement Area, this Agreement also establishes the manner in which such Facilities are to be constructed, maintained and repaired. Notwithstanding anything in this Agreement to the contrary, so long as the Easement Area is maintained in compliance with Section 4(b) above, this Agreement shall not be construed to impose any obligation on Club Owner to actually install or construct any particular Facilities on the Easement Area or, once installed or constructed, to keep any particular Facilities on the Easement Area.

5. Approvals and Support for Approvals. Club Owner, at its sole cost and expense, shall be responsible for seeking to obtain the Approvals required for fulfilling Club Owner's obligations under this Agreement and to otherwise enjoy the rights granted to Club Owner by this Agreement. Subject to the terms and conditions of this Agreement, Residential Owner shall: (i) reasonably support, at Club Owner's sole cost and expense, any application filed with an applicable Governmental Authority to obtain any such Approvals; provided, however, Club Owner shall not be responsible for the fees of any attorneys or other consultants hired by Residential Owner to advise Residential Owner as to any such Approvals or Approvals related requests made of Residential Owner by Club Owner pursuant to this Section 5; (ii) promptly execute all reasonable documents or legal instruments necessary to obtain such Approvals, and (iii) not take any action to interfere with, hinder, obstruct or delay Club Owner from obtaining any such Approvals.

6. Taxes. Upon either Owner's written request, Club Owner and Residential Owner shall request that the Governmental Authority responsible for assessing and/or collecting the Taxes ("**Taxing Authority**", which may be a combination of more than one Governmental Authority) identify the Easement Area as a separately assessed tax parcel and each Owner shall use good faith, commercially reasonable efforts to cause such request to be granted by the Taxing Authority (including, but not limited to, executing such documents as may be reasonably required by the Taxing Authority to review and grant such request; however, neither such Owner shall be required to file an appeal or institute any legal proceeding against the Taxing Authority). Should the Taxing Authority deny such request based on its merits (as opposed to a correctable non-substantive failure), neither Owner shall be required to resubmit such request to the Taxing Authority for a period of three (3) calendar years following such denial. To the extent the Easement Area is not a separately assessed tax parcel, taxes and assessments applicable to the Residential Property ("**Taxes**") shall be allocated between Club Owner and Residential Owner as follows:

(a) Allocation of Taxes between Land and Buildings. The parties will use good faith, diligent efforts to obtain from the Taxing Authority the portion of the Taxes applicable to the land constituting the Residential Property ("**Land Taxes**") and the portion of the Taxes applicable to any building(s) located on the Easement Area (such Taxes being the "**Club Building Taxes**" and such building(s) on the Easement Area being, collectively, the "**Club Building**").

(b) Land. The portion of the Land Taxes that Club Owner shall be responsible for will be determined by multiplying the Land Taxes for the applicable calendar year by the quotient of the square footage contained within the Easement Area divided by the total square footage contained in the entire Residential Property (i.e. the Easement Area square footage plus the square footage of the balance of the Residential Property). To the extent the Land Taxes are not separately established by the Taxing Authority, but the assessed value of the Land is established by the Taxing Authority, then the Land Taxes shall be understood to be determined by multiplying the assessed value of the land constituting the Residential Property for the applicable calendar year by the total millage rate applicable to the Residential Property for the applicable calendar year. In the event Land Taxes cannot be determined as contemplated in this Section 6 due to a lack of information available from the Taxing Authority, Club Owner and Residential Owner will use good faith, diligent efforts to agree upon an equitable method to determine the Land Taxes.

(c) Club Building. Club Owner will be responsible for the Club Building Taxes. To the extent the Club Building Taxes are not separately established by the Taxing Authority, but the assessed value of the Club Building is established by the Taxing Authority, then the Club Building Taxes shall be understood to be determined by multiplying the assessed value of the Club Building for the applicable calendar year by the total millage rate applicable to the Residential Property for the applicable calendar year. In the event the Club Building Taxes for any calendar year cannot be determined as contemplated by this Section 6 due to a lack of information available from the Taxing Authority, Club Owner and Residential Owner will use good faith, diligent efforts to agree upon an equitable method to determine the Club Building Taxes.

(d) Homestead for Residential Property. Club Owner, at no cost or expense to Club Owner, will reasonably cooperate with Residential Owner as necessary to allow Residential Owner to claim homestead for the Residential Property (or portion thereof that may be lawfully claimed as homestead property) so long as this Agreement and the rights granted to Club Owner and Club Owner's Permitted Parties under this Agreement are not adversely affected by any such homestead claim made by Residential Owner.

7. Default. If either Owner fails to comply with its obligations under this Agreement, the other Owner shall inform such noncomplying Owner of its failure in writing. In the event such noncompliance is not remedied within thirty (30) days of receipt of such written notice, the noncomplying Owner shall be deemed in default under this Agreement and the non-defaulting Owner shall be entitled to pursue any remedy in equity or at law; provided, however, both Owners hereby waive the right to any punitive, special, extraordinary and/or consequential damages. In the event any noncompliance cannot be reasonably cured within such initial thirty (30) day cure period, the noncomplying Owner shall have such additional time as is as reasonably necessary to cure the noncompliance so long as such noncomplying Owner commences curing such noncompliance in the initial thirty (30) day cure period and thereafter diligently prosecutes the same to completion. So long as Club Owner uses good faith, diligent efforts to fulfill its obligations under this Agreement, failure to fulfill such obligations due to delays caused by or prohibitions imposed by applicable Laws or applicable Governmental Authority shall not be deemed a Club Owner default of this Agreement. Notwithstanding anything in this Agreement to the contrary, no default by Club Owner under this Agreement will entitle Residential Owner to terminate this Agreement.

8. Indemnity & Liens.

(a) Club Owner, for itself and on behalf of its Permitted Parties shall indemnify, defend and hold Residential Owner harmless from any and all claims, damages, liens, liabilities, judgments and/or expenses arising in connection with performance or non-performance by Club Owner of this Agreement and/or the use of the Easement Area by Club Owner or its Permitted Parties, including court costs and reasonable attorney's fees, unless caused by the negligence or misconduct of Residential Owner or any of its Permitted Parties.

(b) All parties with whom Club Owner may deal are put on notice that Club Owner has no power to subject Residential Owner's interest in the Residential Property to any mechanics' or materialmen's lien of any kind or character, and all such persons so dealing with Club Owner must look solely to the credit of Club Owner, and not to Residential Owner's said interest in the Residential Property or assets. Club Owner shall provide written notice to each contractor, subcontractor, materialman, mechanic and laborer performing work under, on or above the Easement Area of the foregoing. In the event that any mechanic's, materialman's or other lien or any notices of claim, including without limitation, stop notices (collectively, "Lien") is filed against the Residential Property (or portion thereof) as a result of any work, labor, services or materials performed or furnished, or alleged to have been performed or furnished to or for Club Owner or to or for anyone holding the Easement Area through or under Club Owner, then Club Owner, at Club Owner's expense, shall cause the Lien to be discharged or fully bonded within thirty (30) days after notice of the filing thereof. Failure to discharge or bond against said Lien within thirty (30) days after Club Owner receives written notice of such Lien is a default under this Agreement and Residential Owner may, in addition to any other remedies Residential Owner may have, but without obligation to do so, bond against or pay the Lien without inquiring into the validity or merits of such Lien and all sums so advanced, including reasonable attorney fees incurred by Residential Owner in defending against such Lien, procuring the bond or in the discharge of such Lien, shall be paid by Club Owner within fifteen (15) business days' of Residential Owner's demand.

9. **Enforcement.** Enforcement of this Agreement may be by proceedings at law or in equity against any Owner or Owners violating or attempting or threatening to violate any covenant herein, either to restrain or prevent such violation or proposed violation by an injunction, either prohibitive or mandatory, or to obtain any other relief (except termination of this Agreement by Residential Owner). In the event any Owner(s) should bring suit to enforce its rights hereunder, the prevailing Owner(s) will be entitled to recover its/their costs, including reasonable attorneys' fees (in all trial, appellate, bankruptcy and post judgment proceedings) from the non-prevailing Owner(s).

10. **Duration/Covenants to Run With the Land.** The easements, covenants and restrictions in this Agreement shall run with the Residential Property and Club Property. Any person acquiring fee or leasehold title to any portion of the Residential Property or the Club Property shall be bound by this Agreement. In addition, such person shall be bound by this Agreement only during the period such person is the fee or leasehold owner of such Residential Property or Club Property (or any portion thereof), except as to obligations, liabilities or responsibilities that accrue during said period.

11. Non-Merger/Subdivision of Residential Property.

(a) Now or in the future the same person, entity or other party may own the Residential Property and the Club Property. Notwithstanding the foregoing, in furtherance of the cohesive operation of the Club and the operation of the Easement Area, Club Owner hereby declares that all of the terms, covenants, and easements set forth herein shall apply as if the Club Property and the Residential Property each had separate Owners and that there shall be no merger of the same. It is intended that each of the easements, covenants, conditions, restrictions, and rights and obligations set forth herein shall run with the Residential Property and Club Property and shall bind every Owner and any other party having any fee, leasehold or other interest in the Residential Property or Club Property and shall inure to the benefit of such respective parties and their successors, assigns, heirs and personal representatives, including, without limitation, all subsequent owners of the Residential Property or Club Property.

(b) In the event of any subdivision of the Residential Property, only the parcel(s) containing the Easement Area (or any portion thereof) or benefitting from the easement set forth in Section 3(e) shall remain subject to this Agreement, such that upon such a subdivision, "Residential Property" shall be automatically amended, without the requirement of any further action of any Owner, to mean only the certain parcel(s) containing the Easement Area (or any portion thereof) or benefitting from the easement set forth in Section 3(e). In furtherance of the foregoing, following such a subdivision, each Owner, upon the request of any other Owner, will execute an amendment to this Agreement clarifying the definition of "Residential Property"; provided, however, the failure to execute or record such an amendment will not alter the automatic modification of the "Residential Property" contemplated by this subpart (b) following a subdivision of the Residential Property.

12. Miscellaneous.

(a) **THIS AGREEMENT SHALL NOT ESTABLISH ANY RIGHTS IN OR FOR THE BENEFIT OF THE GENERAL PUBLIC. THE EASEMENTS GRANTED BY THIS AGREEMENT ARE NOT INTENDED AND WILL NOT BE CONSTRUED AS A DEDICATION OF ANY PORTION OF THE RESIDENTIAL PROPERTY FOR PUBLIC USE. EACH OWNER SHALL TAKE SUCH ACTIONS AS MAY BE REASONABLE AND NECESSARY TO PREVENT THE EASEMENTS GRANTED BY THIS AGREEMENT FROM CONSTITUTING DEDICATIONS TO THE PUBLIC.**

(b) Nothing in this Agreement shall be construed to make the Owners partners or joint venturers or render any of them liable for the debts or obligations of another Owner.

(c) If any term or provision of this Agreement or the application thereof to any Owner, person or circumstance should to any extent be invalid or unenforceable, the remainder of the Agreement and the application of such term or provision to Owners, persons or circumstances other than those to which it is held invalid or unenforceable will not be affected thereby, and each term and provision of this Agreement will be valid and enforceable to the fullest extent permitted by law.

(d) Failure of any Owner to insist upon or enforce its rights under this Agreement will not constitute a waiver of such rights. Any Owner hereto may waive the benefit of any provision or condition for its benefit contained in this Agreement. Time is of the essence.

(e) Any holder of a lien on any Property, and any assignee or successor in interest of such lienholder, shall be subject to the terms and conditions of this Agreement, and any modification of this Agreement shall not require lender or lienholder consent.

(f) This Agreement contains the sole agreement between the Owners and supersedes, merges, combines and completely integrates any prior understandings or written or oral agreements between the Owners respecting the subject matter. No other representations, promises or oral agreements have been made with respect to the subject matter herein.

(g) The provisions of this Agreement may not be modified, in whole or in part, without the consent of all the Owners by an instrument in writing executed and acknowledged by all such Owners.

(h) This Agreement shall be construed under the laws of the State of Florida. Venue for any lawsuit, action, or other legal proceeding arising out of or related to this Agreement shall be in the courts of record of the State of Florida in Brevard County, Florida or the District Court of the United States, Middle District of Florida, sitting in Orange County, Florida and each Owner consents to the jurisdiction of such court in any such lawsuit, action, or proceeding and waives any objection that it may have to the laying of venue of any such lawsuit, action or proceeding in any such court.

(i) EACH OWNER WAIVES RIGHT TO A JURY IN ANY LITIGATION IN CONNECTION WITH THIS AGREEMENT. EACH OWNER ACKNOWLEDGES THAT THIS WAIVER HAS BEEN FREELY GIVEN AFTER CONSULTATION BY SUCH OWNER WITH COMPETENT COUNSEL.

(j) An Owner under this Agreement will, from time to time and upon not less than thirty (30) days' notice from another Owner, execute and deliver a certificate stating that this Agreement is unmodified and in full force and effect, or if modified, stating the modifications and stating whether or not to the best of its knowledge, the said requesting Owner is in default in any respect under this Agreement, and if in default, specifying such default.

(k) All notices required under the terms of this Agreement shall be given in writing and delivered by certified mail, overnight courier or hand delivery to such Owner's address as set forth in the introductory paragraph to this Agreement, or to such other address as any Owner may designate from time to time to the other Owners by notice as herein provided. All notices provided hereunder shall be deemed delivered upon receipt.

(l) All pronouns and any variation thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identity of the Owner or Owners, or their successors and assigns may require. The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document nor in any way affect the terms and provisions hereof. Each Owner agrees to give

further assurances to each other Owner, by way of executing such other and further instruments and documents as may be reasonably necessary to effectuate and carry out the intents and purposes of this Agreement and the agreements contained herein.

(m) The Owners acknowledge that each has retained legal counsel to review and negotiate this Agreement, and the rule that any ambiguity is to be construed against the drafting party shall not apply to this Agreement.

(n) Notwithstanding anything in this Agreement to the contrary, the rights granted to Club Owner by this Agreement shall be freely assignable by Club Owner and any successor or assign of Club Owner and Club Owner and any successor and/or assign of Club Owner may execute and record in the Public Records notice of any such assignment(s) from time to time without the consent of Residential Owner.

(o) This Agreement may be executed in several counterparts, each of which shall be deemed to be an original copy and all of which together shall constitute one Agreement. Any signatures electronically delivered (i.e. PDF via email) by or on behalf of an Owner shall be deemed an original that the other Owner may rely upon.

[SIGNATURES ON NEXT TWO PAGES]

IN WITNESS WHEREOF, Residential Owner has executed this instrument as of the day and year set forth above.

Signed, sealed and delivered in the presence of:

OCEANFRONT D & M LLC

Kelly Frazier
(Signature of Witness #1)

By: [Signature]
Name: Dan Winkler

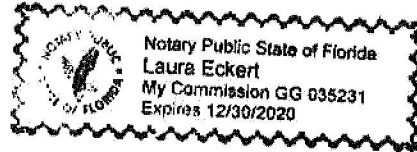
Karli Frazier
(Print Name of Witness #1)

Title: Manager

[Signature]
(Signature of Witness #2)

(SEAL)

Laura Eckert
(Print Name of Witness #2)



STATE OF FLORIDA

COUNTY OF BREVARD

The foregoing instrument was acknowledged by means of physical presence or online notarization, before me this 29th day of August, 2020, by Dan Winkler, as Manager of Oceanfront D & M LLC, a Florida limited liability company, on behalf of the _____, [] who is personally known to me or [] has produced NA as identification.

[Signature]
Signature



Laura Eckert
(Print or Type Name)

NOTARY PUBLIC

My Commission Expires: 12/30/20

IN WITNESS WHEREOF, Club Owner has executed this instrument as of the day and year set forth above.

Signed, sealed and delivered
in the presence of:

PHOENIX PARK FUND V, LP,
a Florida limited partnership

By: Phoenix Park LLC,
a Florida limited liability company,
its General Partner

[Signature]
(Signature of Witness #1)

Karli Frazier
(Print Name of Witness #1)

[Signature]
(Signature of Witness #2)

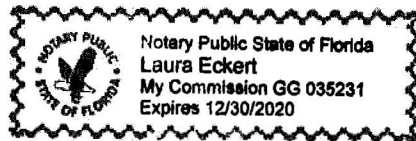
Laura Eckert
(Print Name of Witness #2)

By: [Signature]

Name: Dan Winkler

Title: Manager

(SEAL)



STATE OF FLORIDA

COUNTY OF BREVARD

The foregoing instrument was acknowledged by means of physical presence or online notarization, before me this 29 day of August, 2020, by Dan Winkler, as Manager of Phoenix Park LLC, the General Partner of Phoenix Park Fund V, LP, on behalf of the limited partnership, [] who is personally known to me or [] has produced -NA- as identification.

[Signature]
Signature

Laura Eckert
(Print or Type Name)

NOTARY PUBLIC

My Commission Expires: 12/30/20

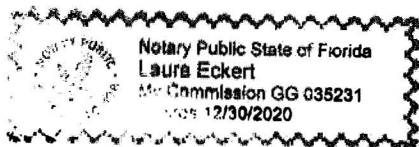


EXHIBIT A

RESIDENTIAL PROPERTY

THE NORTH 97 FEET OF THE SOUTH 103 FEET OF GOVERNMENT LOT 1 IN FRACTIONAL SECTION 21, TOWNSHIP 28 SOUTH, RANGE 38 EAST, BREVARD COUNTY, FLORIDA, LYING EAST OF THE EAST RIGHT OF WAY LINE OF STATE ROAD A1A, AS SAID RIGHT OF WAY IS DESCRIBED IN OFFICIAL RECORDS BOOK 1301, PAGE 38, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA

AND

THE NORTH 97 FEET OF THE SOUTH 200 FEET OF GOVERNMENT LOT 1 IN FRACTIONAL SECTION 21, TOWNSHIP 28 SOUTH, RANGE 38 EAST, BREVARD COUNTY, FLORIDA, LYING EAST OF THE EAST RIGHT OF WAY LINE OF STATE ROAD A1A, AS SAID RIGHT OF WAY IS DESCRIBED IN OFFICIAL RECORDS BOOK 1301, PAGE 38, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.

**EXHIBIT B
EASEMENT AREA**

DESCRIPTION: PREPARED BY BRIEL & ASSOCIATES LAND SURVEYORS, INC.
 AN EASEMENT PARCEL BEING A PORTION OF GOVERNMENT LOT 1, SECTION 21,
 TOWNSHIP 28 SOUTH, RANGE 38 EAST, BREVARD COUNTY, FLORIDA BEING MORE
 PARTICULARLY DESCRIBED AS FOLLOWS:
 FROM THE INTERSECTION OF THE SOUTH LINE OF SAID GOVERNMENT LOT 1 AND THE
 EASTERLY RIGHT OF WAY LINE OF STATE ROAD A1A (A 100-FOOT WIDE RIGHT OF WAY)
 RUN N23°27'37"W ALONG SAID RIGHT OF WAY LINE 187.80 FEET TO THE POINT OF
 BEGINNING OF THE HEREIN DESCRIBED EASEMENT PARCEL; THENCE CONTINUE ALONG
 THE RIGHT OF WAY LINE N23°27'37"W 29.94 FEET TO THE NORTH LINE OF THE SOUTH
 200 FEET OF GOVERNMENT LOT 1; THENCE RUN N89°49'17"E ALONG SAID NORTH LINE
 257.70 FEET TO THE MEAN HIGH WATER LINE OF THE ATLANTIC OCEAN; THENCE RUN
 ALONG SAID MEAN HIGH WATER LINE THE FOLLOWING COURSES; S22°45'06"E 26.70
 FEET; THENCE S21°54'32"E 3.06 FEET; THENCE DEPARTING FROM SAID MEAN HIGH
 WATER LINE RUN S89°49'17"W 256.25 FEET TO THE POINT OF BEGINNING.

NOTES:
 1. THIS SKETCH OF DESCRIPTION IS NOT INTENDED TO REPRESENT A LAND BOUNDARY
 SURVEY.
 2. BEARINGS ARE BASED ON THE STATE PLANE COORDINATE SYSTEM FOR THE EAST ZONE
 OF FLORIDA. DATUM IS NAD 83 (2011).

SHEET 1 OF 2

SKETCH & DESCRIPTION FOR: OKEE BOY LLC

This Map or Report conforms to the Standards of Practice for professional surveyors and mappers as outline in Chapter 5J-17, F.A.C.

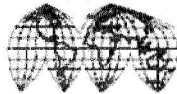
ROBERT R. BRIEL, Florida Professional Surveyor & Mapper, No. 3599

This survey is prepared and certified for the exclusive use of the client or clients named hereon. Not valid without the signature and original raised seal of a Florida licensed surveyor and mapper. Additions or deletions to survey maps or reports by other than the signing party is prohibited.

SKETCH OF		
DESCRIPTION	JANUARY 14, 2020	19005
TYPE	DATE	JOB NO.

EASEMENT PARCEL

OWN BY: RRB | CHK BY: RRB | SCALE: 1" = 50'



BRIEL & ASSOCIATES
 Land Surveyors, Inc. LB 3869

1790 Hwy A1A, Suite 208 • Satellite Bch., Florida 32937 • (321) 773-7775

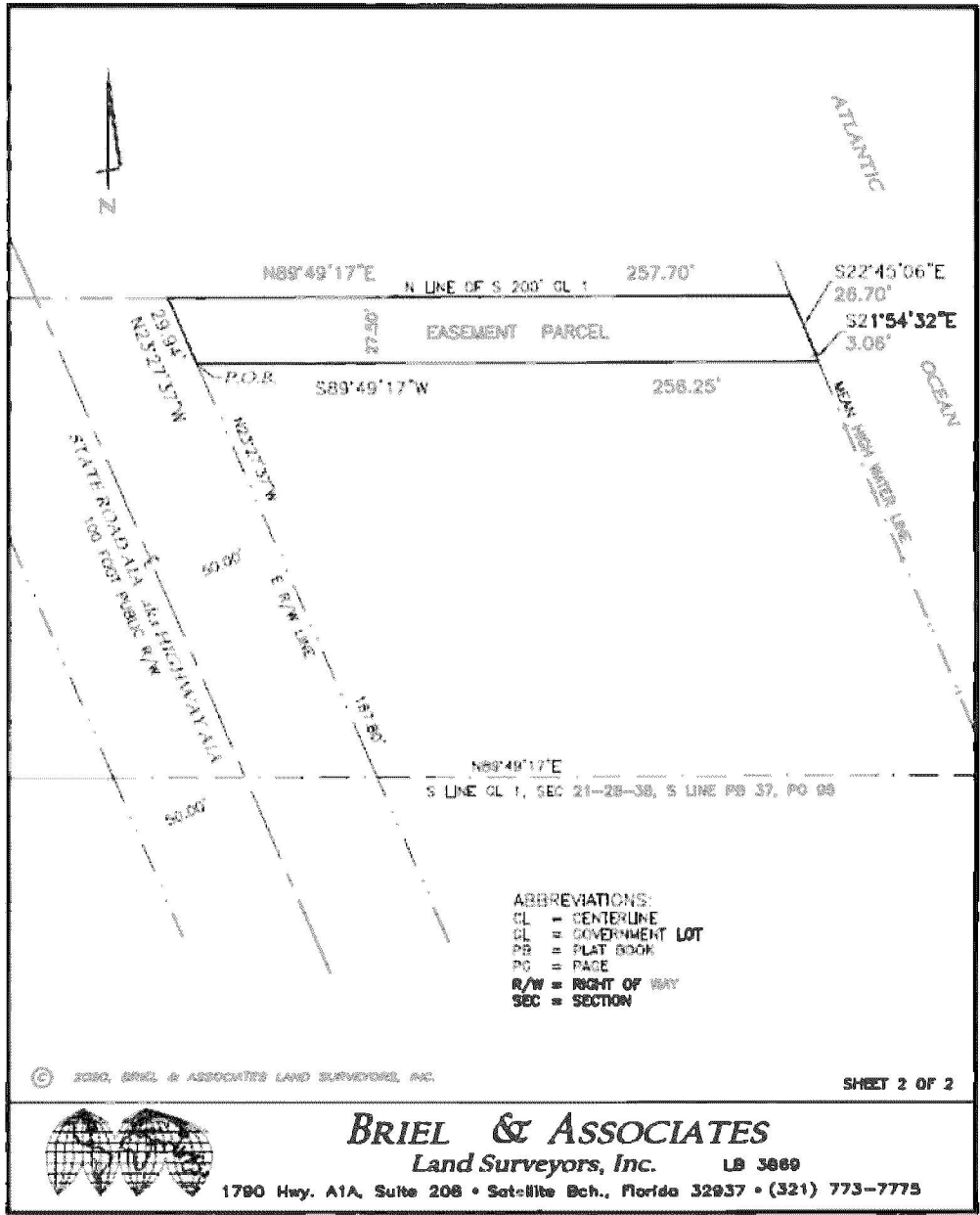


EXHIBIT C

CLUB PROPERTY

Tracts D-1 and D-2 of Harbor Island Beach Club, as shown on that certain plat for Harbor Island Beach Club recorded in Plat Book 68, Page 22, in the public records of Brevard County, Florida.

This Instrument Prepared By
Adam G Gutn, Esq
Nason, Yeager, Gerson, Harris & Fumero, P A
3001 PGA Blvd, Suite 305
Palm Beach Gardens, FL 33410

Cross-Reference. OR BK 8840, PG 1820

FIRST AMENDMENT TO BEACH ACCESS AND FACILITIES AGREEMENT

THIS FIRST AMENDMENT TO BEACH ACCESS AND FACILITIES AGREEMENT ("**Amendment**") is made as of the 11 day of SEPTEMBER, 2022, by and between OCEANFRONT D & M LLC, a Florida limited liability company ("**Residential Owner**"), and PHOENIX PARK FUND V, LP, a Florida limited partnership ("**Club Owner**").

RECITALS.

A. Residential Owner and Club Owner are parties to that certain Beach Access and Facilities Agreement ("**Agreement**") recorded in Official Records Book 8840, Page 1820, in the public records of Brevard County, Florida

B. Residential Owner is the owner of that certain property more particularly described on **Exhibit A** attached hereto ("**Residential Property**").

C. Club Owner is the owner of that certain property more particularly described on **Exhibit C** attached hereto ("**Club Property**").

D. Residential Owner and Club Owner desire to amend the Agreement as more particularly set forth below for purposes of clarifying the legal description of the Easement Area (as defined in the Agreement).

NOW THEREFORE, in consideration of Ten Dollars (\$10 00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Recitals** The foregoing recitals are true and correct. Capitalized terms not defined in this Amendment shall have the meaning ascribed to them in the Agreement.

2. **Easement Area.** **Exhibit B** to the Agreement is hereby deleted in its entirety and replaced with **Exhibit B** attached to this Amendment.

3. **Miscellaneous**

(a) All pronouns and any variation thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identity of the Owner or Owners, or their

successors and assigns may require. The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.

(b) The Owners acknowledge that each has retained legal counsel to review and negotiate this Amendment, and the rule that any ambiguity is to be construed against the drafting party shall not apply to this Amendment.

(c) The Agreement (as hereby amended) is in full force and effect and except as set forth in this Amendment, the Agreement has not been modified. In the event of any conflict between the Agreement and this Amendment, this Amendment shall control.

(d) This Amendment may be executed in several counterparts, each of which shall be deemed to be an original copy and all of which together shall constitute one Amendment. Any signatures electronically delivered (i.e. PDF via email) by or on behalf of an Owner shall be deemed an original that the other Owner may rely upon.

[SIGNATURES ON NEXT TWO PAGES]

IN WITNESS WHEREOF, Residential Owner has executed this instrument as of the day and year set forth above.

Signed, sealed and delivered in the presence of.

OCEANFRONT D & M LLC

[Signature]
(Signature of Witness #1)

By: [Signature]
Name: Dan Winkler

Karli Frazier
(Print Name of Witness #1)

Title: Manager

(SEAL)

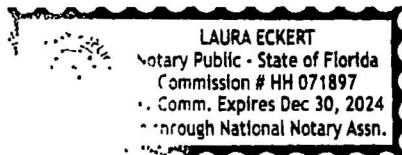
[Signature]
(Signature of Witness #2)

Laura Eckert
(Print Name of Witness #2)

STATE OF FLORIDA

COUNTY OF BREVARD

The foregoing instrument was acknowledged by means of physical presence or online notarization, before me this 11 day of January, 2022, by Dan Winkler, as Manager of Oceanfront D & M LLC, a Florida limited liability company, on behalf of the LLC, who is personally known to me or has produced _____ as identification



[Signature]
Signature

Laura Eckert
(Print or Type Name)

NOTARY PUBLIC

My Commission Expires: 12/30/24

IN WITNESS WHEREOF, Club Owner has executed this instrument as of the day and year set forth above

Signed, sealed and delivered in the presence of

PHOENIX PARK FUND V, LP, a Florida limited partnership

By. Phoenix Park LLC, a Florida limited liability company, its General Partner

[Handwritten Signature]
(Signature of Witness #1)

By: [Handwritten Signature]

Karli Frazier
(Print Name of Witness #1)

Name: Dan Winkler

[Handwritten Signature]
(Signature of Witness #2)

Title: Manager

Laura Eckert
(Print Name of Witness #2)

(SEAL)

STATE OF FLORIDA

COUNTY OF BREVARD

The foregoing instrument was acknowledged by means of physical presence or online notarization, before me this 11 day of January, 2022, by Dan Winkler, as Manager of Phoenix Park LLC, the General Partner of Phoenix Park Fund V, LP, on behalf of the limited partnership, [] who is personally known to me or [] has produced _____ as identification.

[Handwritten Signature]
Signature

Laura Eckert
(Print or Type Name)

NOTARY PUBLIC

My Commission Expires. 12/30/24

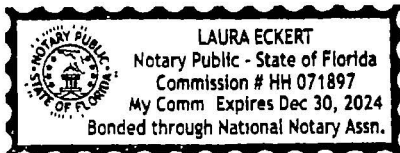


EXHIBIT A

RESIDENTIAL PROPERTY

Lots 1, 2, 3 and 4, Block A, MELBOURNE BEACH HOMES, as shown on the plat thereof recorded in Plat Book 69, Page 43, in the public records of Brevard County, Florida.

**EXHIBIT B
EASEMENT AREA**

DESCRIPTION: PREPARED BY BRIEL & ASSOCIATES LAND SURVEYORS, INC.
 THE 27.50 FOOT WIDE "PRIVATE ACCESS EASEMENT R/W TO MHWL" ACROSS
 LOT 1, BLOCK A, MELBOURNE BEACH HOMES AS RECORDED IN PLAT BOOK 69, PAGES
 42 - 43 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.

NOTES:
 1 THIS SKETCH OF DESCRIPTION IS NOT INTENDED TO REPRESENT A LAND BOUNDARY SURVEY.
 2 BEARINGS ARE BASED ON THE STATE PLANE COORDINATE SYSTEM FOR THE EAST ZONE OF FLORIDA. DATUM IS NAD 83 (2011).

SHEET 1 OF 2

SKETCH & DESCRIPTION FOR: OCEANFRONT D & M, LLC

This Map or Report conforms to the Standards of Practice for professional surveyors and mappers as outlined in Chapter 5J-17, F.A.C. Digitally signed by Robert R Briel Date: 2021.07.30 14:18:49 -0400 ROBERT R. BRIEL, Florida Professional Surveyor & STATE OF Mapper, No. 3699 This survey is prepared and certified for the exclusive use of the client or clients named hereon. Not valid without the signature and original raised seal of a Florida Licensed Surveyor and mapper. Additions or deletions to survey maps or reports by other than the signing party is prohibited.	ADD FLAT		
	RECORDING	JULY 30, 2021	19005
	SKETCH OF		
	DESCRIPTION	JANUARY 14, 2020	19005
	TYPE	DATE	JOB NO.
EASEMENT PARCEL PART OF LOT 1, BLOCK A MELBOURNE BEACH HOMES PLAT BOOK 69, PAGES 42-43			
DWN BY: RRB		CHK BY: RRB	SCALE: 1" = 50'



BRIEL & ASSOCIATES
 Land Surveyors, Inc. LB 3869
 1790 Hwy A1A, Suite 208 • Satellite Bch., Florida 32937 • (321) 773-7775

EXHIBIT C

CLUB PROPERTY

Tracts D-1 and D-2 of Harbor Island Beach Club, as shown on that certain plat for Harbor Island Beach Club recorded in Plat Book 68, Page 22, in the public records of Brevard County, Florida.

