

Prepared and Return To:

City Attorney's Office
200 N.W. 1st Avenue
Delray Beach, FL 33444

PCN# 12-43-46-16-06-122-0060

PERPETUAL SIDEWALK EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT is made this ____ day of _____, 20____, by and between **AZURE 233 NE 7TH, LLC, a Florida limited liability company**, with a mailing address of 290 S.E. 6th Avenue, Suite #5, Delray Beach, FL 33483, Delray Beach, Florida 33483, hereinafter referred to as "Grantor," and the **CITY OF DELRAY BEACH**, with a mailing address of 100 N.W. 1st Avenue, Delray Beach, Florida 33444, a municipal corporation in Palm Beach County, State of Florida, hereinafter described as "Grantee" or "City".

WITNESSETH: That Grantor, for and in consideration of ten dollars (\$10.00), the mutual promises herein contained, and other valuable consideration, the receipt whereof is hereby acknowledged, hereby grants unto Grantee, its successors and assigns, a **PERPETUAL SIDEWALK EASEMENT** ("Easement") over, upon, under, through, and across the following described land, situate in Palm Beach County, Florida, to-wit:

See Exhibit "A"

Grantee, its officers, employees, and/or agents shall have the non-exclusive right to access and use the Easement property, as described in Exhibit "A," hereinafter the "Easement Area," for the public purposes of constructing, installing, and maintaining certain public improvements, including but not limited to, sidewalk, pathways, lighting, curbing, drainage facilities, street furniture, handicap access, underground drainage, utilities, and landscaping in Grantee's sole and absolute discretion. It is the express intent of the Grantor and Grantee that this Easement shall continue and exist in perpetuity after the completion of construction activities, including the right of the public for ingress and egress over and through the Easement Area. Additionally, Grantor shall not install or construct any improvements within easement area without City's prior written consent.

It is further understood and agreed that upon completion of construction of public improvements, the City shall maintain, at its sole cost and expense, any such public improvements that the City constructs, installs, or places or causes to be placed within the Easement Area in accordance with the City's standards for such maintaining such improvements. Notwithstanding the foregoing, if the City, its successors or assigns, determines that no public purpose exists for the continued use of the Easement Area for the purposes herein expressed, the Easement shall be null and void, and all right, title and interest in and to the Easement Area shall revert to Grantor. In such event, the City will provide written notice to Grantor by executing and recording a termination of rights under this Easement.

Each party to this Easement shall be liable for its own actions and negligence and, to the extent permitted by law, the Grantor shall indemnify, defend and hold harmless the City against any actions, claims or damages arising out of the Grantor's negligence in connection with this Easement; and the City shall indemnify, defend and hold harmless the Grantor against any actions, claims or damages arising out of the negligence of the City in connection with this Easement. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth at Sec. 768.28, Florida Statutes. Furthermore, in no case, whatsoever, shall such limits extend beyond \$200,000 for any one person or beyond \$300,000 for any judgment which, when totaled with all other judgments, arises out of the same incident or occurrence. These provisions shall not be construed to constitute agreement by either party to indemnify the other for such other's negligent, willful or intentional acts or omissions. Grantor acknowledges a duty to notify the City of a known or reasonably knowable, hazardous condition(s) within the Easement Area.

FURTHERMORE, this Grant of Perpetual Sidewalk Easement does in no way convey fee simple title to the Easement Area but is only a Perpetual Sidewalk Easement for the uses and public purposes stated herein. This Easement shall be applicable to and binding upon the successors and assigns of Grantor and the City. The Easement granted shall run with the land.

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IN WITNESS WHEREOF, the parties, along with their successors or assigns to this Perpetual Sidewalk Easement, set their hands and seals the day and year first above written.

GRANTOR: AZURE 233 NE 7TH, LLC, a Florida limited liability company

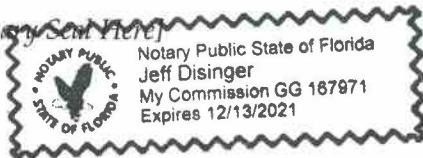
By: AZURE DEVELOPMENT, LLC, a Florida limited liability company, as Manager

By: *Brian T. Grossberg*
Brian T. Grossberg, as Manager

STATE OF FLORIDA }
 }SS:
COUNTY OF PALM BEACH }

I HEREBY CERTIFY that on this 13 day of Feb, 2019, before me, the undersigned officer, duly authorized to take acknowledgments, personally appeared **BRIAN T. GROSSBERG, as Manager of AZURE DEVELOPMENT, LLC, a Florida limited liability company, as Manager of AZURE 233 NE 7TH, LLC, a Florida limited liability company**, in whose name(s) the foregoing instrument was executed, and that he acknowledged executing the same for such limited liability companies, freely and voluntarily, under authority duly vested in him by said limited liability companies, and that said individual [X] is personally known to the undersigned or [] produced _____ for identification purposes.

[Notary Seal Here]



[Signature]
NOTARY PUBLIC - State of Florida
My Commission Expires: 12/13/21

GRANTEE: CITY OF DELRAY BEACH, FLORIDA

By: _____
City Clerk

By: _____
Shelly Petrolia, Mayor

Approved as to Form:

By: _____
City Attorney

MORTGAGEE'S JOINDER AND CONSENT

_____ **BANK**, having an address of _____, Fort Lauderdale, FL _____, being the Owner and holder of that Mortgage and Security Agreement dated _____, 2019, and recorded _____, 2019, in O.R. Book _____, at Page _____; that Assignment of Leases and Rents dated _____, 2019, and recorded _____, 2019, in O.R. Book _____, at Page _____; and that UCC-1 Financing Statement recorded _____, 2019, in O.R. Book _____, at Page _____ (collectively, the "Loan Documents") (all recording references to the public records of Palm Beach County, Florida), all of which Loan Documents secure that certain Promissory Note dated _____, 2019, and executed and delivered by AZURE 233 NE 7TH, LLC, in the original principal amount of \$_____, and which Loan Documents encumber the Easement Area, does hereby join and consent to the granting of the Perpetual Sidewalk Easement and subordinates the Loan Documents to such easement to which this Joinder and Consent is attached. However, it is expressly understood and agreed that this Joinder and Consent shall in no way diminish the security interest in favor of _____ BANK otherwise created in the above-referenced Loan Documents.

IN WITNESS WHEREOF, the above-named lender has caused these presents to be executed in its name on this _____ day of _____, 2019.

_____ **BANK**, a _____
banking corporation

By: _____
XXXX, as _____

STATE OF FLORIDA }
 } SS:
COUNTY OF _____ }

I HEREBY CERTIFY that on this _____ day of _____, 2019, before me, the undersigned officer, duly authorized to take acknowledgments, personally appeared **XXXX**, as _____ of _____ **BANK**, a _____ banking corporation, in whose name the foregoing instrument was executed, and that he acknowledged executing the same for such corporation, freely and voluntarily, under authority duly vested in him by said corporation, and that said individual [] is personally known to the undersigned or [] produced _____ for identification purposes.

[Notary Seal Here]

NOTARY PUBLIC – State of Florida
My Commission Expires: