

This Instrument Prepared By:  
**Stephanie J. Toothaker, Esq.**  
Stephanie J. Toothaker, Esq., P.A.  
501 SW 2<sup>nd</sup> Avenue, Suite 1  
Fort Lauderdale, FL 33301

## **PUBLIC BEACH ACCESS EASEMENT AND DEDICATION AGREEMENT**

**THIS PUBLIC BEACH ACCESS EASEMENT AND DEDICATION AGREEMENT** (this “Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 2024 by 1380 OCEAN ASSOCIATES LLC, a Florida limited liability company (hereinafter referred to as the “Grantor”), and the City of Pompano Beach, a Florida municipal corporation (hereinafter referred to as “City”), hereinafter referred to collectively as the “Parties” and individually referred to as a “Party.”

### **WITNESSETH**

**WHEREAS**, Grantor is the owner of the real property located at 1380 South Ocean Boulevard, Pompano Beach, Broward County, Florida, more specifically and legally described in **Exhibit “A”** (“Property”); and

**WHEREAS**, Grantor has voluntarily agreed to provide a public beach access easement on the Property to allow the public pedestrian access to the beach, consistent with its approved PD-I (Planned Development-Infill) zoning district, described in City Ordinance No. 2018-54, recorded as Instrument #115097764 in the Public Records of Broward County, Florida (“**PD-I Plan**”) and the approved Major Site Plan, Planning and Zoning No. 18-12000019 (“**Site Plan**”); and

**WHEREAS**, the City desires to obtain access to the beach for the general public;

**NOW THEREFORE**, in consideration of the mutual covenants and promises, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

1. **Recitals.** The recitals contained are true and correct and are incorporated by reference.
2. **Grant of Easement; Purpose and Use.** Grantor dedicates, grants and conveys to the City, its successors and assigns, a perpetual non-exclusive public beach access easement in that strip of land eight feet (8’) in width, legally described and depicted in **Exhibit “B”** attached hereto, (hereinafter “**Easement Area**”), for the benefit of the general public, including individuals with disabilities, for the purposes of public pedestrian ingress and egress to and from the beach. The intent and purpose of the dedication granted to the general public on the Easement Area is to provide non-exclusive and perpetual unrestricted and year-round pedestrian access to and from the beach. The City shall have the right to temporarily close or restrict use and access of the Easement Area solely in cases where the beach is being closed; provided, the City provides Grantor with written advance reasonable notice of such closure (and in the event of emergency situations requiring immediate closure, no notice by the City shall be required).
3. **Improvements; Maintenance and Repair.** Grantor shall construct and install, at its sole cost and expense, certain improvements on the Easement Area, in accordance with the PD-I Plan and Site Plan approved by the City as part of the development of the Property, to make the Easement Area

suitable for pedestrian access including the construction and installation of (i) an ADA accessible pathway and (ii) a foot shower station (hereinafter collectively referred to as the “**Improvements**”). Grantor agrees, prior to the installation or any improvements to the Easement Area, to submit all proposed improvements to the City and, to the extent possible, incorporate revisions to the proposed improvements as proposed by the City, provided that, such revisions are consistent with or in furtherance of the current Site Plan, as determined through the City’s minor deviation or permitting process.

Grantor shall maintain and repair the Easement Area and Improvements, at its sole cost and expense, in safe and good working condition and such that pedestrian access is not impaired or obstructed. The Grantor shall keep the Easement Area clear and free of trash, debris and rubbish and free of obstructions of every nature, and shall provide adequate lighting. Unless otherwise approved by the City, no walls, fences, barriers, building, structure or any other sort of temporary or permanent obstruction shall be constructed or erected on or over the Easement Area that would impede, impair, block or obstruct any portion of the Easement Area or prevent or limit the reasonable movement of pedestrians on the Easement Area and access to and from the beach. Grantor reserves the right to assign maintenance and repair responsibilities to any condominium association, property owners' association, or other entity governing such condominium or collective ownership structure owning, operating, or maintaining any part of the Easement Area. Upon assignment of maintenance and repair responsibilities to such entity, Grantor shall be released from all maintenance and repair obligations under this provision, and the assigned entity shall become responsible for all maintenance and repair obligations of the Easement Area as required by this Agreement.

4. **Indemnification; Sovereign Immunity.** The Grantor, its successors and assigns, shall indemnify, defend, save and hold harmless the City, its officers, officials, and employees, from and against any and all claims, demands, suit, damages, attorneys’ fees, fines, losses, penalties, litigation costs or liabilities suffered by the City arising directly or indirectly from any act, breach, omission, negligence, recklessness or misconduct of Grantor and/or any of its agents, officers, employees, successors or assigns, including any inaccuracy in or breach of any of the representations, warranties or covenants made by the Grantor, and/or any of its agents, officers, employees, successors or assigns, in the dedication, grant and conveyance of a perpetual non-exclusive public beach access easement in the Easement Area or related to the construction, installation or maintenance of improvements that are the subject of this Agreement. Similarly, to the extent permitted by law, the City shall indemnify and hold harmless Grantor, and/or any of its officers, board of directors, management, agents employees, successors or assigns, from and against any suits, demands, claims, liability, losses, penalties, damages, judgment, order, decrees, and cost and expenses (including attorney’s fees and all costs of litigation) for property damage, liability, or death resulting from any willful misconduct or negligent act, error, or omission of the City which occurred or is alleged to have occurred with respect to the City’s temporary closure or its restricted use and access of the Easement Area. Nothing in this Agreement shall constitute a waiver by the City of its sovereign immunity limits as set forth in section 768.28, Florida Statutes. Nothing in this Agreement shall be construed as consent from either party to be sued by third parties.
5. **Unavailability During Development.** It is understood and agreed that during the period of the Property’s development, the Easement Area will not be available for use by the public due to safety concerns during construction. However, as soon as practicable, as determined jointly by the Grantor and the City, the Easement Area shall be opened to the public, but in no event later than the Certificate of Occupancy issued for the Principal Building on the Property.

6. **Governing Laws.** This Agreement shall be construed in accordance with the laws of the State of Florida, and jurisdiction and venue for any proceeding arising between the Parties in any manner pertaining to this Agreement shall, to the extent permitted by law, be held in Broward County, Florida. BY ENTERING INTO THIS AGREEMENT, THE PARTIES EXPRESSLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY FOR ANY MATTERS ARISING UNDER THIS AGREEMENT.
7. **Severability.** Each provision of this Agreement is declared to be independent of and severable from the remainder of this Agreement. If any provision contained shall be held to be invalid or unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Agreement. In the event the validity or enforceability of any provision in this Agreement is held to be dependent upon the existence of a specific legal description, the Parties agree to promptly cause such legal description to be prepared.
8. **Enforcement/Litigation.** In the event of any litigation between the Parties under this Agreement for a breach, the prevailing Party shall be entitled to reasonable attorney's fees and court costs at all trial and appellate levels.
9. **Warranties and Representations; Covenant Running with the Land; Successors and Assigns.** Grantor covenants and represents to City that it is lawfully seized and possessed of the Easement Area. This Agreement shall constitute a covenant running with the Property for the benefit of the City, its successors and/or assigns, and shall bind Grantor, its successors or assigns, including any condominium association, property owners' association or other entity governing such condominium or collective ownership structure owning, operating and/or maintaining any part of the Easement Area. Upon assignment of the Easement Area to such entity, Grantor shall be released from all obligations of the Easement Area in this Agreement and the assigned entity shall become responsible for all obligations of the Easement Area under this Agreement.
10. **Amendments, Termination.** This Agreement shall not be amended or terminated except by written instrument, executed by the Parties to this Agreement and recorded in the Public Records of Broward County, Florida.
11. **Notices.** Whenever either Party desires to give notice to the other, it must be given by written notice, sent by certified United States mail, with return receipt requested, hand delivered or by e-mail, addressed to the Party for whom it is intended, at the place last specified, and the place for giving of notice in compliance with the provisions of this paragraph. Notice shall be deemed given upon receipt by any method of delivery authorized above. For the present, the Parties designate the following as the respective places for giving of notice:

**To Grantor:** Eduardo Imery  
1380 OCEAN ASSOCIATES, LLC  
1300 Brickell Avenue  
Miami, FL 33131  
[eimery@fortuneintlgroup.com](mailto:eimery@fortuneintlgroup.com)

**With a copy to:** Stephanie J. Toothaker, Esq.  
501 SW 2<sup>nd</sup> Avenue, Suite 1  
Fort Lauderdale, FL 33301  
[stephanie@toothaker.org](mailto:stephanie@toothaker.org)

**To City:** City Manager  
100 West Atlantic Boulevard  
Pompano Beach, FL 33060  
[greg.harrison@copbfl.com](mailto:greg.harrison@copbfl.com)

**With a copy to:** City Attorney  
100 West Atlantic Boulevard  
Pompano Beach, FL 33060  
[mark.berman@copbfl.com](mailto:mark.berman@copbfl.com)

**12. Effective Date; Recordation.** The Effective Date of this Agreement shall be upon recordation in the Public Records of Broward County, Florida. Grantor shall be responsible for recording this Agreement in the Public Records of Broward County, Florida.

**[SIGNATURE PAGES TO FOLLOW]**

**IN WITNESS WHEREOF**, the Grantor and the City have executed this Agreement.

Witnesses:

CITY OF POMPANO BEACH

(Signature)

By: \_\_\_\_\_  
Rex Hardin, Mayor

\_\_\_\_\_  
(Print Name)

Date: \_\_\_\_\_

(Signature)

By: \_\_\_\_\_  
Gregory P. Harrison, City Manager

\_\_\_\_\_  
(Print Name)

Date: \_\_\_\_\_

Attest:

(SEAL)

Kervin Alfred, City Clerk

Approved As To Form:

Mark E. Berman, City Attorney

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instruments were acknowledged before me, by means of  physical presence or  online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by REX HARDIN as Mayor, GREGORY P. HARRISON as City Manager and KERVIN ALFRED as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

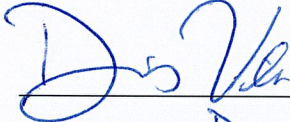
(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

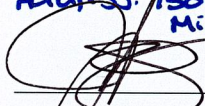
Witnesses:

GRANTOR:

1380 OCEAN ASSOCIATES, LLC,  
a Florida limited liability company

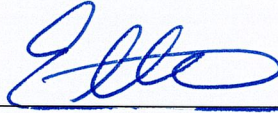


Print Name: Dennis Vila  
Address: 1306 Brickell Avenue  
Miami, FL 33131



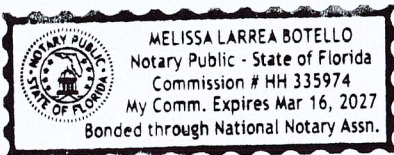
Print Name: Jennie King  
Address: 1300 Brickell Avenue  
Miami, FL 33131

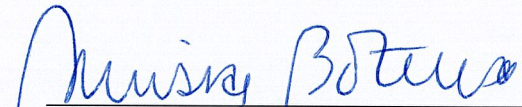
STATE OF FLORIDA  
COUNTY OF MIAMI-DADE

By:   
Print Name: Eduardo Imery  
Title: Authorized Signatory

The foregoing instrument was acknowledged before me by means of  physical presence or \_\_\_ online notarization this 9<sup>th</sup> day of April 2024, by Eduardo Imery as Authorized Signatory of **1380 OCEAN ASSOCIATES, LLC**, a Florida limited liability company. He/she is personally known to me or has produced \_\_\_\_\_ as identification,

(SEAL)



  
Notary Public, State of Florida  
Print Name: Melissa Bote llo  
My Commission Expires: 3/16/2027

**Exhibit A**  
**Property Legal Description**

Parcel "A" of BF POMPANO PLAT, according to the Plat thereof as recorded in Plat Book 180, at Page 1, of the Public Records of Broward County, Florida.

**Folio No. 494306580010**

**Exhibit B**  
**Public Beach Access Easement Sketch and Legal Description**



# EXHIBIT "B"

## LEGAL DESCRIPTION:

The South 8.0 feet of Parcel "A", BF POMPANO PLAT, according to the Plat thereof, as recorded in Plat Book 180 at Page 1 of the Public Records of Broward County, Florida.

## SURVEYOR'S NOTES:

- This site lies in Section 6, Township 49 South, Range 43 East, City of Pompano Beach, Broward County, Florida.
- All documents are recorded in the Public Records of Broward County, Florida unless otherwise noted.
- Bearings hereon are referred to an assumed value of S 10°32'45" W for the centerline of South Ocean Boulevard (State Road A-1-A).
- Lands shown hereon were not abstracted for easements and/or rights-of-way of records.
- This is not a "Boundary Survey" but only a graphic depiction of the description shown hereon.
- Dimensions shown hereon are based on Fortin, Leavy, Skiles, sketch #2020-009.

## SURVEYOR'S CERTIFICATION:

I hereby certify that this "Sketch of Description" was made under my responsible charge on June 16, 2023, and meets the applicable codes as set forth in the Florida Administrative Code, pursuant to Section 472.027, Florida Statutes.

"Not valid without the signature and the original raised seal or a digital signature of the Florida Licensed Surveyor and Mapper shown below"

FORTIN, LEAVY, SKILES, INC., LB3653

Digitally signed by Daniel C Fortin  
DN: c=US, o=Florida,  
dnQualifier=A01410D000001867E5  
31E56000A6E7A, cn=Daniel C Fortin  
Date: 2023.07.14 07:44:22 -04'00'

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

Daniel C. Fortin, Jr., For The Firm  
Surveyor and Mapper, LS6435  
State of Florida.

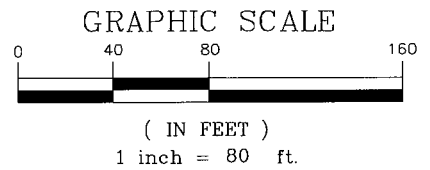
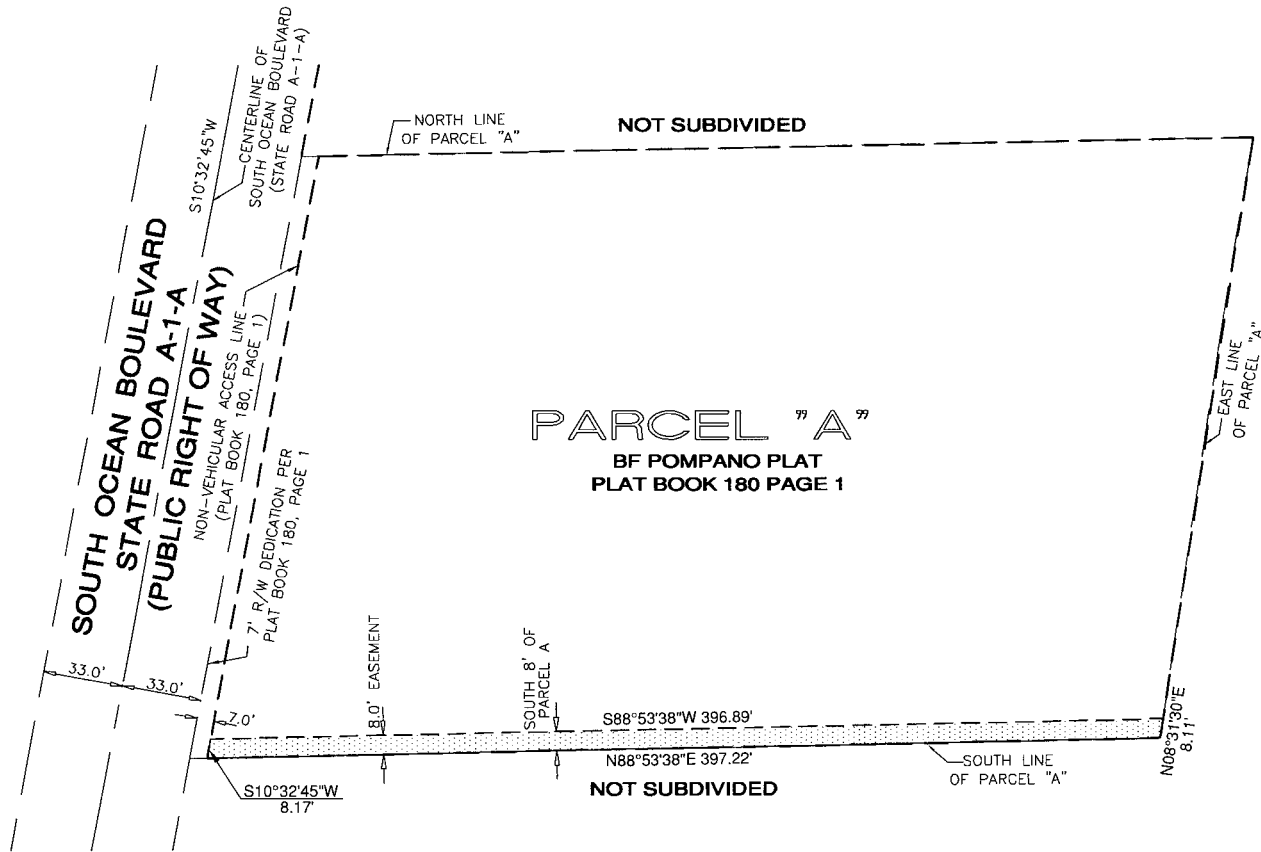
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Cad. No.	230446
Ref. Dwg.	1022-043-2
Plotted:	6/21/23 9:21a

### LEGAL DESCRIPTION, NOTES & CERTIFICATION

**FORTIN, LEAVY, SKILES, INC.**  
CONSULTING ENGINEERS, SURVEYORS & MAPPERS  
FLORIDA CERTIFICATE OF AUTHORIZATION NUMBER: 00003653  
180 Northeast 168th. Street / North Miami Beach, Florida. 33162  
Phone: 305-653-4493 / Fax 305-651-7152 / Email fls@flssurvey.com

Date	6/16/23
Scale	NOT TO SCALE
Job. No.	230446
Dwg. No.	1022-043-3
Sheet	1 of 3

# EXHIBIT "B"



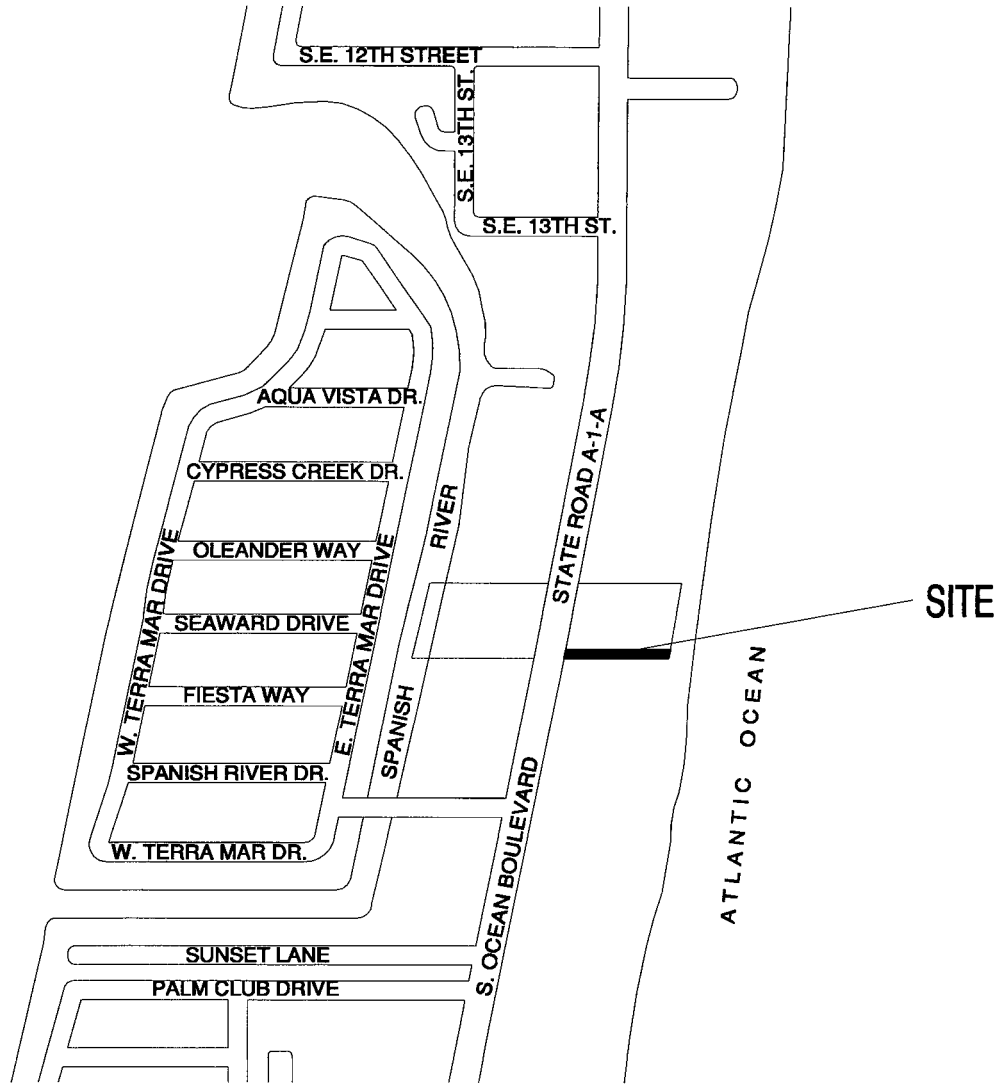
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Cad. No.	230446
Ref. Dwg.	1022-043-2
Plotted:	6/21/23 9:21a

**SKETCH OF DESCRIPTION**

**FORTIN, LEAVY, SKILES, INC.**  
 CONSULTING ENGINEERS, SURVEYORS & MAPPERS  
 FLORIDA CERTIFICATE OF AUTHORIZATION NUMBER: 00003653  
 180 Northeast 168th. Street / North Miami Beach, Florida. 33162  
 Phone: 305-653-4493 / Fax 305-651-7152 / Email fls@flssurvey.com

Date	6/16/23
Scale	1"=80'
Job. No.	230446
Dwg. No.	1022-043-3
Sheet	2 of 3

# EXHIBIT "B"



Drawn By	MLR
Cad. No.	230446
Ref. Dwg.	1022-043-2
Plotted:	6/21/23 9:21a

## LOCATION SKETCH

**FORTIN, LEAVY, SKILES, INC.**  
 CONSULTING ENGINEERS, SURVEYORS & MAPPERS  
 FLORIDA CERTIFICATE OF AUTHORIZATION NUMBER: 00003653  
 180 Northeast 168th. Street / North Miami Beach, Florida. 33162  
 Phone: 305-653-4493 / Fax 305-651-7152 / Email fls@flssurvey.com

Date	6/16/23
Scale	NOT TO SCALE
Job. No.	230446
Dwg. No.	1022-043-3
Sheet	3 of 3

**WRITTEN CONSENT OF THE MANAGER  
OF  
1380 OCEAN ASSOCIATES, LLC**

The undersigned, as the sole Manager of 1380 OCEAN ASSOCIATES, LLC, a Florida limited liability company (the "Company"), does hereby take the following actions by written consent in accordance with the operating agreement of the Company and the Florida Revised Limited Liability Company Act:

**WHEREAS**, the undersigned deems it to be in the best interests of the Company to appoint each of Edgardo Defortuna and Eduardo Imery as authorized signatories of the Company for day-to-day operations in accordance with the Operating Agreement of the Company (the "Authorized Signatories") be, and

**NOW, THEREFORE, BE IT RESOLVED**, that each of Edgardo Defortuna and Eduardo Imery, as Authorized Signatories, each acting alone, is hereby authorized and directed to execute and deliver, on behalf of the Company, such documents, agreements, certificates, affidavits and instruments in connection with the general day-to-day operations of the Company, to expend and disburse company funds, and to do such other acts and things, and to cause the Company to do such other acts and things, as may be necessary or desirable in accordance with the preceding resolutions; and be it

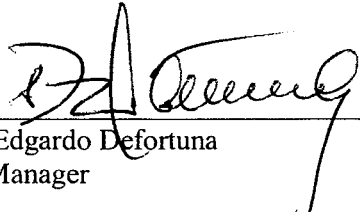
**FURTHER RESOLVED**, that the omission from these resolutions of any agreement or other arrangement contemplated by any of the agreements or instruments described in the foregoing resolutions or any action to be taken in accordance with any requirement of any of the agreements or instruments described in the foregoing resolutions shall in no manner derogate from the authority of the Company to take all actions necessary, desirable, advisable or appropriate to consummate, effectuate, carry out or further the transactions contemplated by, and the intent and purposes of, the foregoing resolutions.

30<sup>th</sup> IN WITNESS WHEREOF, the undersigned has executed this consent effective as of the day of October 2020.

**MANAGER:**

1380 OCEAN DEVELOPER, LLC,  
a Florida limited liability company

By: FORTUNE 1380 DEVELOPER, LLC,  
a Florida limited liability company, as Administrative Member

By:   
Name: Edgardo Defortuna  
Title: Manager