

## EASEMENT AND USE AGREEMENT

This Easement and Use Agreement (the "Agreement") is entered as of this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between **Palm Beach Biltmore Condominium Association, Inc.** ("Grantor") with an address at 150 Bradley Place, Palm Beach, Florida, 33480 and the **Town of Palm Beach**, a municipality existing under the laws of the State of Florida, with an address at 360 South County Road, Palm Beach, Florida 33480 (the "Grantee").

### RECITALS

**WHEREAS**, Grantor is the fee simple owner of certain real property more particularly described on Exhibit "A and B," attached hereto and by this reference incorporated herein (the "Property"); and

**WHEREAS**, Grantor is desirous of granting of two (2) non-exclusive easements on the Property to Grantee, solely for Grantee's use and operation of a Signal Mast Arm, Foundation, Pedestrian Signal and Pole, and electrical/communication wiring as described on Exhibit "A and B" attached hereto and by this reference made a part hereof as it will exist and will be situated, consistent with Grantee's governmental obligations and responsibilities and directly relating to the maintenance and operation of the Signal Mast Arm and equipment; and,

**WHEREAS**, Grantee is desirous of obtaining said easements; and,

**WHEREAS**, the parties hereto are desirous of memorializing the terms of the easements,

**NOW, THEREFORE**, in consideration of the mutual promises contained herein and other good and valuable consideration to which the parties acknowledge receipt of, the parties agree as follows:

1. Recitals: The above recitals are true and correct and are incorporated herein by reference.
2. Grant of Easement:

Grantor grants to Grantee a non-exclusive easement in favor of Grantee for the purposes stated above (the "Easement"). The Easements granted herein shall run with the land and be binding upon Grantor, its successors, and assigns for so long as the Signal Mast Arm, Foundation, Pedestrian Signal and Pole, and electrical/communication wiring remains on the Property, reserving unto Grantor the full right and use of its area within the Easements for purposes that do not conflict or interfere with the rights conveyed to Grantee herein. Grantor hereby covenants, warrants, and represents that: it is lawfully seized of said Property in fee simple; that the Property is free and clear of all encumbrance; except those encumbrances of record in the Public Records of Palm Beach County, Florida; that Grantor has good right and lawful authority to convey the Easements; and Grantor fully warrants and defends the title to the Easements hereby conveyed against the lawful claims of all persons whomsoever.

3. Easement Area Maintenance Costs: Grantor acknowledges that the Signal Mast Arm, Foundations, Pedestrian Signal and Pole, and electrical/communication wiring are owned by Grantee. Grantee acknowledges that its sole use of the Signal Mast Arm, Foundation, Pedestrian Signal and Pole, and electrical/communication wiring will be to maintain and operate the signals within the Bradley Place and Sunrise Avenue intersection currently as situated and exists for so long as the intersection needs to be signalized and operational, without any repair, modification, maintenance or replacement that will in any way affect the Property or impede the use of the Property by its owner. Should the Signal Mast Arm, Foundation, Pedestrian Signal and Pole, and electrical/communication wiring require any repair or maintenance, said repair or maintenance must be performed by Grantee, at Grantee's expense.

4. Damage: Grantee shall be responsible for any damage caused within the Easements, the Property and/or to the Signal Mast Arm, Foundation, Pedestrian Signal and Pole, and electrical/communication wiring, and Grantee shall, immediately upon notification of such damage, begin the repair of such damage and diligently complete such repairs as soon as reasonably possible. If Grantee should fail to complete such repairs in accordance with the terms of this paragraph, after giving Grantee notice and reasonable opportunity to cure, Grantor shall have the right, but not the obligation, to cause such repairs to be made and Grantee shall pay on demand all of Grantor's costs in connection therewith (including, without limitation, attorney's fees and other costs of collection) together with interest thereon at an annual rate of twelve percent (12%) accruing from and after the date of such expenditure until the date Grantor receives full payment.

5. Indemnification: Each party to this agreement shall be liable for its own actions and negligence and, to the extent permitted by law, Grantor shall indemnify, defend and hold harmless Grantee against any actions, claims or damages arising out of the Grantor's negligence in connection with this Agreement; and, to the extent allowed by law, Grantee shall indemnify, defend and hold harmless the Grantor against any actions, claims or damages arising out of the negligence of Grantee in connection with this Agreement. The foregoing indemnification shall not constitute a waiver of Grantee's sovereign immunity beyond the limits set forth at Sec. 768.28, *Florida Statutes*. 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.

6. Not a Public Dedication. Nothing contained herein shall be deemed to be a gift or dedication of any portion of the easement area to the general public or for any public use or purpose whatsoever.

7. Non-Waiver: The failure of any party to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which that party may have hereunder or at law or equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

8. Successors in Interest: All provisions of the Agreement are binding upon and shall inure to the benefit of, and are enforceable by and against, the successors and assigns of each party hereto.

9. Entire Agreement: The Agreement contains the entire agreement between the parties with respect to the subject matter hereof and no statement or representation of any party, their agents or employees, shall form any part hereof or be binding upon the other party.

10. Effective Date: The term "effective date" or "date of the Agreement" shall mean the latest date the Agreement is executed by the parties.

11. Signatures: This Agreement may be executed in multiple counterparts which together shall have the same force and effect as if this single instrument were executed by both parties hereon.

*[Signatures and acknowledgments appear on the following pages]*

Signed, sealed and delivered in our presence:

Witness

Print Name: Sally Moran

Witness

Print Name: Lance Marsigliano

GRANTOR:

Palm Beach Biltmore Condominium Association, Inc., owner of 150 Bradley Place, Palm Beach Florida 33401

By:

Phillip Rosenband

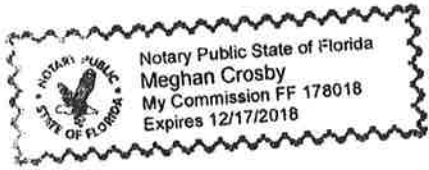
Title:

Pres.

STATE OF FLORIDA )  
 )  
COUNTY OF PALM BEACH )

The foregoing instrument was acknowledged before me this 19 day of April, 2018 by Phillip Rosenband as a President Palm Beach Biltmore Condominium Association, Inc., owners of 150 Bradley Place, Palm Beach, Florida, who  is personally known to me or  has produced the following as identification:

(seal)



Meghan Crosby  
Notary Public in and for the State and County aforesaid  
Commission Number FF 178018  
My Commission Expires: 12-17-18  
Print Notary Name: Meghan Crosby

[signatures continue on following page]

Signed, sealed and delivered in  
our presence:

GRANTEE:

TOWN OF PALM BEACH,, a municipal  
corporation existing under the laws of the  
State of Florida

\_\_\_\_\_  
Witness  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
By: Gail L. Coniglio  
Title: Mayor

\_\_\_\_\_  
Witness  
Print Name: \_\_\_\_\_

Approved as to legal form and sufficiency:

\_\_\_\_\_  
Town Attorney

STATE OF FLORIDA            )  
  )  
COUNTY OF PALM BEACH    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018  
by Gail L. Coniglio as a Mayor of the Town of Palm Beach, a municipal; corporation existing  
under the laws of the State of Florida, who  is personally known to me or  has produced the  
following as identification: \_\_\_\_\_.

(seal)

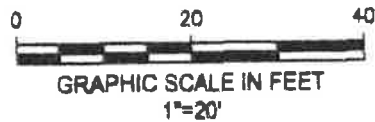
\_\_\_\_\_  
Notary Public in and for the State and  
County aforesaid  
Commission Number: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
Print Notary Name: \_\_\_\_\_

**SKETCH AND DESCRIPTION  
SIGNAL EASEMENT**  
PORTION OF GOVERNMENT LOT 4, SECTION 15, TOWNSHIP 43 SOUTH, RANGE 43 EAST  
TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA

**LAND DESCRIPTION:**

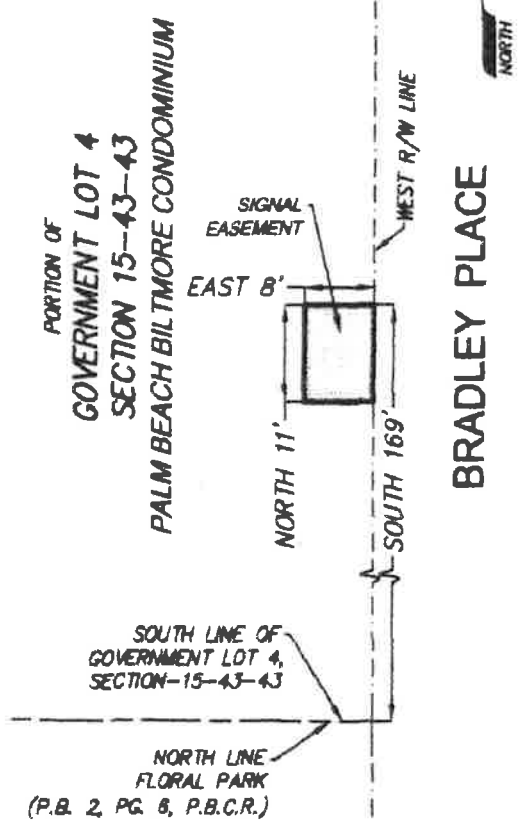
The east 8 feet of the north 11 feet of the south 169 feet of Government Lot 4, Section 15, Township 43 South, Range 43 East lying west of the west right-of-way line of Bradley Place.

Said land lying in Palm Beach County, Florida and contains 88 square feet, more or less.



**SURVEYOR'S REPORT:**

1. Reproductions of this Sketch are not valid without the signature and the original raised seal of a Florida Licensed Surveyor and Mapper. Additions or deletions to this sketch by other than the signing party is prohibited without written consent of the signing party.
2. No Title Opinion or Abstract to the subject property has been provided. It is possible that there are Deeds, Easements, or other instruments (recorded or unrecorded) which may affect the subject property. No search of the Public Records has been made by the Surveyor.
3. The land description shown hereon was prepared by the Surveyor.
4. Data shown hereon was compiled from instrument(s) of record and does not constitute a boundary survey.
5. Abbreviation Legend: P.B. = Plat Book; P.B.C.R. = Palm Beach County Records; PG. = Page; R/W = Right-of-Way.



**CERTIFICATION:**

I HEREBY CERTIFY that the attached Sketch and Description of the hereon described property is true and correct to the best of my knowledge and belief as prepared under my direction. I FURTHER CERTIFY that this Sketch and Description meets the Standards of Practice set forth in Chapter 5J-17.050 through 5J-17.052, Florida Administrative Code, pursuant to Section 472.027, Florida Statutes.

Date: 2/22/18

*Michael D. Avrom*

MICHAEL D. AVIROM, P.L.S.  
Florida Registration No. 3268  
AVIROM & ASSOCIATES, INC.  
L.B. No. 3300

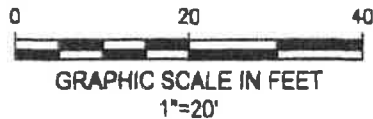
<b>REVISIONS</b>		<b>AVIROM &amp; ASSOCIATES, INC.</b> <b>SURVEYING &amp; MAPPING</b> 50 S.W. 2nd AVENUE, SUITE 102 BOCA RATON, FLORIDA 33432 (561) 392-2594 / <a href="http://www.AVIROMSURVEY.com">www.AVIROMSURVEY.com</a> <small>© 2018 AVIROM &amp; ASSOCIATES, INC. All rights reserved. This sketch is the property of AVIROM &amp; ASSOCIATES, INC. and should not be reproduced or copied without written permission.</small>	JOB #:	9929-14A
			SCALE:	1" = 20'
			DATE:	02/21/2018
			BY:	KSB
			CHECKED:	M.D.A.
			F.B. - PG. -	- -
SHEET:	1 OF 1			

**SKETCH AND DESCRIPTION**  
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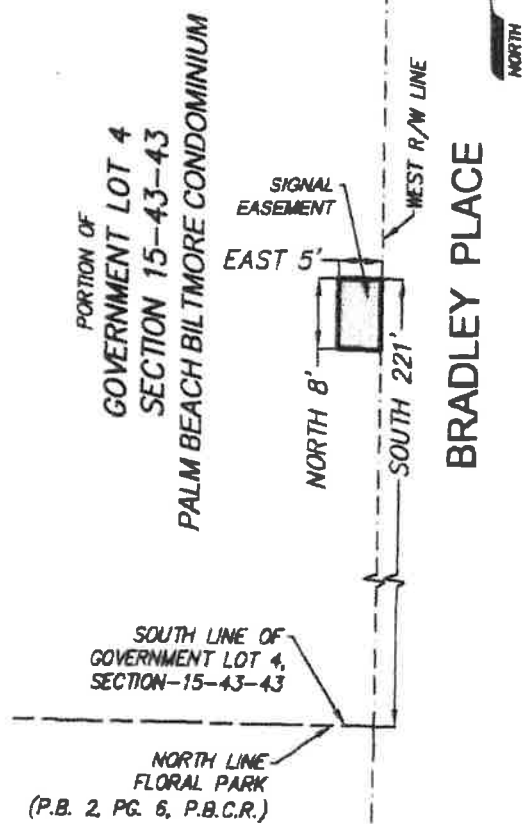
The east 5 feet of the north 8 feet of the south 221 feet of Government Lot 4, Section 15, Township 43 South, Range 43 East lying west of the west right-of-way line of Bradley Place.

Said land lying in Palm Beach County, Florida and contains 40 square feet, more or less.



**SURVEYOR'S REPORT:**

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Date: 2/20/18

*Michael D. Avrom*

MICHAEL D. AVROM, P.L.S.  
 Florida Registration No. 3268  
 AVIROM & ASSOCIATES, INC.  
 L.B. No. 3300

REVISIONS



**AVIROM & ASSOCIATES, INC.**  
**SURVEYING & MAPPING**  
 50 S.W. 2nd AVENUE, SUITE 102  
 BOCA RATON, FLORIDA 33432  
 (561) 392-2594 / [www.AVIROMSURVEY.com](http://www.AVIROMSURVEY.com)  
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