

This instrument prepared by, and after recording return to:

(Space reserved for Clerk of Court)

Name:  
Address:  
Folio No.:

**DECLARATION OF RESTRICTIVE COVENANT  
IN LIEU OF POSTING A TREE PROTECTION BOND FOR AFFORDABLE HOUSING  
DEVELOPMENT**

THIS DECLARATION OF RESTRICTIVE COVENANTS (the "Declaration"), made this day \_\_\_\_ of \_\_\_\_\_, 202\_\_, by \_\_\_\_\_, a \_\_\_\_\_ having offices at \_\_\_\_\_ (the "Applicant"), in favor of the City of Miami, Florida, a municipality of the State of Florida (the "City") having an address at 444 SW 2<sup>nd</sup> Avenue, Florida 33130.

**W I T N E S S E T H :**

WHEREAS, Applicant holds fee-simple title to certain property in the City of Miami, Florida, located at \_\_\_\_\_, legally described in **Exhibit "A"** attached hereto and made a part hereof (the "Property"); and

WHEREAS, on May 13, 2018, the City Commission adopted Ordinance No. 13174 in order to promote tree protection and environmental preservation and address the stewardship of the living features in the City of Miami ("City"), which includes the City's topographic, geological, and landscape features; and

WHEREAS, the protection of the tree canopy and environmental features within the City is of paramount importance; and

WHEREAS, affordable housing is of great significance to the City; and

WHEREAS, on November 21, 2019, the City Commission adopted Ordinance No. 13873 to provide an exception for a covenant in lieu of the tree protection bond requirement for affordable housing developments which are procured and/or funded by the City in an effort to incentivize affordable housing development projects; and

WHEREAS, the Applicant hereby voluntarily covenants and agrees that this Declaration shall be binding upon the Applicant for one year after the final certificate of occupancy is issued by the City, unless released by the City in writing, and shall not bind any successor homebuyer as approved, and eligible through the City's Affordable Housing Program.

**NOW THEREFORE**, the Applicant, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, voluntarily covenants and agrees that the Property shall be subject to the following restrictions that are intended and shall be deemed to be a covenant running with the land and binding upon the Applicant of the Property, and its heirs, grantees, successors, and assigns as follows:

1. Recitals. The recitals and findings set forth in the preamble of this Declaration are hereby adopted by reference thereto and incorporated herein as if fully set forth in this Section.

2. Use Restrictions: Applicant hereby agrees to, covenants to, and declares to construct dwelling(s), more specifically, \_\_\_\_\_ to be used for "Affordable Housing Development(s)" as defined in Section 2-416 of the Code of the City of

Miami, as amended (“City Code”), and said Affordable Housing Development has been procured, funded and/or received City benefits as defined in Section 2-417 of the City Code. Applicant hereby agrees that this Declaration is subject to Section 17-4(c)(5) of the City Code. Applicant further agrees that the Property is required to comply with all laws and sections of the City Code; including but not limited to Chapter 17 the Tree Ordinance. Should the Property cease to be used as “Affordable Housing” as defined in Section 2-416 of the City Code this Declaration shall no longer apply and the bond amount of \_\_\_\_\_ shall be due and payable to the City promptly at such time.

**Covenanted/Bonded Trees**

Tree Number	Tree Species	Bond Amount

Sum \$ \_\_\_\_\_

3. Effective Date. This instrument shall constitute a covenant running with the land to the Property and be binding upon Applicant, its heirs, grantees, successors and assigns, and it shall be effective upon recordation in the Public Records of Miami-Dade County, Florida. These

restrictions shall be for the benefit of, and a limitation upon, all present and future owners of the Property and for the public welfare.

4. Term of Covenant. This voluntary Declaration on the part of the Applicant shall remain in full force and effect for one year after the final certificate of occupancy is issued for Building Process/Permit No. \_\_\_\_\_ and shall be binding upon the Applicant, its heirs, grantees, successors-in-interest and assigns, until released in writing, contingent upon an inspection by the City. The effective date shall commence once this instrument is recorded in the public records of Miami-Dade County, Florida.

5. Inspection and Enforcement. It is understood and agreed that any official inspector of the City of Miami may have the right at any time during normal working hours of the City of Miami's inspector to enter upon the Property for the purpose of investigating the use of the Property, and for determining whether the conditions of this Declaration and the requirements of the City's Building, Planning, Zoning and Code regulations are being complied with. An action to enforce the terms and conditions of this Declaration may be brought by the City and may be by action at law or in equity against any party or person violating or attempting to violate any covenants of this Declaration or provisions of the Building, Planning, Zoning and Code regulations, either to restrain violations or to recover damages. This enforcement provision shall be in addition to any other remedies available under the law.

6. Non-Compliance. Should the Applicant fail to comply with this Declaration or with any laws and/or sections of the City Code, the Applicant will be given notice of such non-compliance and thirty (30) days to cure. Failure to comply within thirty (30) days following the

date of which Non-compliance is determined this Declaration shall no longer apply and the bond in the amount of \_\_\_\_\_ shall be due and payable to the City promptly at such time.

7. Amendment, Modification, Release. This Declaration may not be modified, amended, superseded, released or otherwise modified except by a written instrument, expressly identifying modifications made and signed by the authorized representatives of the Applicant and City, and be in a form acceptable to the City Attorney. Any release of this Declaration shall be contingent upon an inspection and written release by the City.

8. Applicable Laws. Applicant shall comply with all provisions of this Declaration and of Chapter 17, of the Code of the City of Miami, as amended, and all other applicable Federal, State, and local laws, rules, and regulations, including without limitation those related to Affordable Housing and the City of Miami Zoning Ordinance. Any violation of said laws shall be deemed a violation of this Declaration.

9. Severability. Invalidation of any one of these covenants by judgment of Court shall not affect any of the other provisions of this Declaration, which shall remain in full force and effect.

10. Recording. This Declaration shall be filed of record among the Public Records of Miami-Dade County, Florida, at the cost of the Applicant, within thirty (30) days of the acceptance by the City. A copy of the recorded Declaration shall remain in the custody of the Department of Building.

11. No Vested Rights. Nothing in this Declaration shall be construed to create any vested rights whatsoever to the Applicant, its heirs, grantees, successors and assigns.

12. Counterparts and Electronic Signatures. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Any party providing an electronic signature agrees to promptly execute and deliver to the other parties an original signed Agreement upon request.

13. Miscellaneous. In the event of litigation, arbitration, or mediation, between the parties hereto, arises out of the terms of this Declaration, each party shall be responsible for its own attorney's fees, costs, charges, and expenses through the conclusion of all appellate proceedings, and including any final settlement or judgment.

14. Governing Law. This Agreement shall be construed in accordance with the laws of the State of Florida and any proceedings arising between the parties in any manner pertaining or relating to this Agreement shall, to the extent permitted by law, be held in Miami-Dade County, Florida.

***SIGNATURE PAGES TO FOLLOW***

IN WITNESS WHEREOF, the undersigned has set his hand and seal this \_\_\_\_ day of \_\_\_\_\_, 202\_\_.

Witnessed by:

[Name of Applicant]

Name: \_\_\_\_\_

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

[Name and Title]

\_\_\_\_\_  
Name: \_\_\_\_\_

ACKNOWLEDGMENT

STATE OF FLORIDA }

COUNTY OF MIAMI-DADE } SS:

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization this \_\_\_\_ day of \_\_\_\_\_, 202\_\_ by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, Authorized Member of \_\_\_\_\_, and on behalf of \_\_\_\_\_, who is personally known to me or has produced \_\_\_\_\_ as identification.

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

\_\_\_\_\_  
Notary Public, State of Florida at large

**CONSENT BY CITY OF MIAMI, FLORIDA**

**ATTEST**

**CITY OF MIAMI**

\_\_\_\_\_  
Todd B. Hannon, City Clerk

\_\_\_\_\_  
Arthur Noriega V, City Manager

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

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

**Approved as to Legal Form and Correctness**

**Approved as to Insurance Requirements**

\_\_\_\_\_  
Victoria Méndez, City Attorney

\_\_\_\_\_  
Ann-Marie Sharpe, Director of Risk Management

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

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

**Approved as to Content:**

**Approved as to Affordable Housing Eligibility**

\_\_\_\_\_  
Eduardo Santamaria, Director of Building

\_\_\_\_\_  
George Mensah, Director of Community Development

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

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



**Exhibit "A"**

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[legal description of property]