# **DECLARATION OF RESTRICTIVE COVENANTSFOR ATTAINABLE MIXED-INCOME HOUSING DEVELOPMENT**

This Declaration of Restrictive Covenants (“Declaration”) made this day of \_\_\_\_\_\_\_\_\_\_, 20\_\_\_, by [PROPERTY OWNER – INDIVIDUAL OR ENTITY], a [IF ENTITY - THE STATE AND TYPE OF ENTITY] (“Owner”) having an address at [ADDRESS OF PROPERTY OWNER], in favor of the City of Miami, a municipal corporation of the State of Florida (“City”), having an address at 444 SW 2nd Avenue, Miami, Florida 33130; and

WHEREAS, Owner hereby covenants that Owner is lawfully seized of that certain real property located in the City of Miami, Miami-Dade County, Florida, assessed under Folio Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, legally described in Exhibit “A,” attached hereto and incorporated herein (the "Property"); that Owner intends to construct a multi-family residential structure as Attainable Mixed-Income Housing as defined in Article 1, Section 1.2 and Article 3, Section 3.15.2 of Ordinance No. 13114, the Zoning Ordinance of the City of Miami, Florida, as amended (“Miami 21 Code”), as may be amended; and

WHEREAS, the proposed Development will provide a minimum of twenty percent (20%) of the Dwelling Units as Affordable Housing serving residents at or below fifty percent (50%) of Area Median Income (“AMI”), including [FIVE PERCENT (5%) OR TEN PERCENT (10%)] of the Dwelling Units as Extremely Low Income serving residents at or below thirty percent (30%) of AMI, and the remainder of the Dwelling Units as Workforce Housing serving residents at or below one hundred forty percent (140%) of AMI; and

 WHEREAS, the proposed Development shall contain [ TOTAL # OF UNITS] Dwelling Units with [# OF UNITS TO BE WORKFORCE HOUSING] Dwelling Units set aside for Workforce Housing, [# OF UNITS TO BE AFFORDABLE HOUSING] Dwelling Units set aside for Affordable Housing, and [# OF UNITS TO BE EXTREMELY LOW INCOME HOUSING] Dwelling Units set aside for Extremely Low Income Housing, all as defined in Article 1, Section 1.2 of the Miami 21 Zoning Code and Section 13-5 of the City Code, as applicable and as may be amended (collectively, “Units” and the “Project”); and

WHEREAS, Owner has applied to City for the deferral of [AMOUNT TO BE DEFERRED] Dollars ($\*\*\*,\*\*\*\*.00) in developmental impact fees (hereafter “impact fee[s]”) otherwise applicable to these Units, pursuant to the requirements for deferral of impact fees for Affordable and Workforce Housing as set forth in the City of Miami Code of Ordinances (the “Code”), including specifically, but not limited to Sections 13-5, 13-8 and 13-16; and

WHEREAS, pursuant to Article 3, Section 3.15.2 and Section 3.15.6 of the Miami 21 Code, the Owner agrees to provide the minimum Dwelling Units as Extremely Low Income Housing, Affordable Housing, and/or Workforce Housing as described above; and

 WHEREAS, pursuant to Section 13-8 of the City Code, a condition of the deferral of impact fees for Affordable and Workforce Housing is that Owner must reasonably ensure that the Project is reserved for “Affordable Housing” or “Workforce Housing” as defined in Section 13-5 of the Code and described in Section 3 herein; and

WHEREAS, Owner desires to defer said impact fees until such time as the Property no longer qualifies as an Affordable and Workforce Housing Development pursuant to Section 13-5 of the City Code and as described in Section 3, below; and

WHEREAS, the Owner, submitted an eligible and timely Petition for an Affordable and Workforce Housing deferral of impact fees determination under § 13-16 of the Code, which is found by City staff to be acceptable; and

WHEREAS, the Owner affirms that all portions of the Development that do not qualify for this deferral shall be paid in full prior to issuance of a building permit; and

WHEREAS, Owner, in fulfillment of that obligation hereby voluntarily places certain restrictions on the use of the Property;

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged:

1. **Recitals**. The recitals set forth above are true and correct and are incorporated into this Declaration.
2. **Covenant Running with the Land**. This Declaration shall constitute a covenant running with the land and be binding upon the Owner, its successors, heirs, representatives and assigns, effective upon recordation in the Public Records of Miami-Dade County, Florida, for an initial term of thirty (30) years. The term hereof shall be automatically extended for successive periods of ten (10) years that may be released a vote of the City Commission, with such costs, fees, and expenses associated with any release being the responsibility of the party requesting the release. 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. This Declaration shall also serve as the Affordable and Workforce Housing impact fee deferral agreement under Section 13-8 of the City Code.
3. **Restriction**. Owner hereby declares that the Property shall be held, maintained, transferred, sold, conveyed and owned subject to the following designations and restrictive covenants:

Owner hereby agrees that [AMOUNT TO BE DEFERRED] and 00/100 Dollars ($\*\*\*,\*\*\*.00) in impact and/or administrative fees (the “Deferred Impact Fees”) have been deferred for the construction of [# OF UNITS TO BE AFFORDABLE HOUSING] units of Affordable Housing and [# OF UNITS TO BE WORKFORCE HOUSING] units of Workforce Housing. In consideration, the Owner shall ensure that the aforementioned units shall be rented or sold to persons of the general public qualifying for occupancy of Workforce, Affordable, and/or Extremely Low Income Housing, as defined herein and pursuant to the provisions of Chapter 13 of the City Code and the Project shall be qualified as “Attainable Mixed-Income Housing” so long as the Project provides a minimum of (20%) of the Dwelling Units as Affordable Housing serving residents at or below fifty percent (50%) of AMI, including [FIVE PERCENT (5%) OR TEN PERCENT (10%)] of the Dwelling Units as Extremely Low Income serving residents at or below thirty percent (30%) of AMI, and the remainder of the Dwelling Units as Workforce Housing serving residents at or below one hundred forty percent (140%) of AMI; and

The Project shall contain [TOTAL # OF UNITS] Dwelling Units with [# OF UNITS TO BE WORKFORCE HOUSING] Dwelling Units set aside for Workforce Housing, [# OF UNITS TO BE AFFORDABLE HOUSING] Dwelling Units set aside for Affordable Housing, and [# OF UNITS TO BE EXTREMELY LOW INCOME HOUSING] Dwelling Units set aside for Extremely Low Income Housing as defined in Article 1, Section 1.2 of the Miami 21 Zoning Code and in Section 13-5 of the City Code, as applicable and as may be amended; and

Prior to converting any of the Workforce, Affordable, or Extremely Low Income Housing Units from rental units to homeownership units, the Owner, or its successors or assigns, must request and receive written authorization from the City Manager. In the event that the conversion is authorized, the City and Owner shall coordinate to record covenants on individual units (“Individual Covenants”) in a manner that creates the same amount of Affordable or Workforce homeownership units specified in this Declaration. Each Individual Covenant must (i) specify the applicable AMI for any purchaser during the term of the Individual Covenant and (ii) expire on the same date as the Covenant for Affordable or Workforce Housing; and

In the event that any of the Workforce, Affordable, or Extremely Low Income Housing Units are sold, the specific Unit(s) must be sold with a purchase cost equal to or less than the standards for those individuals whose income is at or below the AMI as established herein. Each Affordable, Workforce, or Extremely Low Income Housing Unit sold shall include a deed restriction that the Unit shall only be sold with a purchase cost equal to or less than the standards for those individuals whose income is at or below the applicable AMI as established in the Covenant and shall further indicate that the Unit shall only be rented or sold to individuals whose income is at or below the AMI as established herein. The deed restriction must specify the specific applicable AMI.

4. **Release**. Any release of this Declaration shall be pursuant to Section 2 of this Declaration. Any release must be in recordable form and signed by the then Owner, the City Manager, the Zoning Director, the Planning Director, and the Housing and Community Development Director, or their successors or designees, in a form acceptable to and signed by the City Attorney, or his/her successor or designee. Further, any release must require payment of the Deferred Impact Fees and compliance with the Miami 21 Code, as amended.

 5. **Monitoring**. It is understood and agreed that any official inspector of the City may have the right at any time during normal business hours to enter upon the Property to investigate the use of the Property and determine compliance with the terms and conditions of this Declaration.

6. **Enforcement**. 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 person or persons, entity or entities, violating or attempting to violate the terms of this Declaration, to restrain violations, recover the Deferred Impact Fees, or for any other remedy available. In addition, any violation or noncompliance of this Declaration shall be immediately referred to the Code Compliance Department for enforcement proceedings, lien placement, and citations pursuant to Chapter 2, Article X of the City Code, Chapter 62 of the City Code, as both may be amended, and this Declaration. Any violation or noncompliance of this Declaration shall be referred to the City Attorney’s Office for enforcement, including but not limited to injunctive relief and/or any other remedies in law or equity. This enforcement provision shall be in addition to any other remedies available under the law. The use of one remedy shall not preclude the use of another.

 7. **Non-Compliance**.

The Deferred Impact Fees shall become due and payable by the then-current owner of the Project if and when it does not comply with Section 3 herein after notice and 90 days to cure. Subject to applicable notice and cure provisions, such payment shall be made in full within thirty (30) days following the date on which the Project no longer qualifies as Affordable Housing and Workforce Housing as described herein. Late payments shall accrue interest at 18% per annum until fully paid. This is in addition to any enforcement action pursuant to Section 6 above.

Any violation or noncompliance of this Declaration shall result in a monetary penalty to be deposited into the Affordable Housing Trust Fund. Such monetary penalty shall be assessed as a daily fine of two hundred fifty dollars ($250.00) per day per violation until proof of compliance has been provided to the City. The monetary penalty shall not be subject to mitigation or otherwise modified by any body or board including, but not limited to, the Code Enforcement Board.

 8. **Modification**.

Any modification, amendment, or deferral of any provision of this Declaration not required by or associated with Section 3.15 of the Miami 21 Code shall not be effective unless modification, amendment, or deferral is in recordable form and signed by the then Owner, the City Manager, the Zoning Director, and the Planning Director, and the Housing and Community Development Director, or their successors or designees, in a form acceptable to and signed by the City Attorney, or his/her successor assignee.

Any modification, amendment or deferral of any provision of this Declaration required by or associated with Section 3.15.2 of the Miami 21 Code shall not be effective unless modification, amendment, or deferral is approved by the City Commission at a publicly noticed hearing with all associated costs, expenses, and fees paid by the party making the request; it shall be in recordable form and signed by the then Owner, the Zoning Director, the Planning Director, the Housing and Community Development Director, and the City Manager, or their successors or designees, in a form acceptable to and signed by the City Attorney, or his/her successor assignee.

 9. **Costs**. This Declaration, modifications, amendments, or releases thereof, shall be recorded in the Public Records of Miami-Dade County, Florida, at the cost of the Owner, and shall become effective upon recordation. The Owner shall furnish a recorded copy of this Declaration to the City Departments of Zoning and Hearing Boards within thirty (30) days of recordation.

10. Applicable Laws. Owner shall comply with all provisions of this Declaration, Chapter 13 of the City Code, as amended, the City Zoning Code (Miami 21), as amended, and all other applicable Federal, State, and local laws, rules, and regulations, including without limitation those related to Affordable and Workforce Housing. Any violation of said laws shall be deemed a violation of this Declaration.

11. City Funded Projects. In the event Owner receives any funding from the City in the form of HOME, SHIP, CDBG or other subsidy, this Covenant shall be interpreted to comport with all such City funding documents including, but not limited to, any applicable Rent Regulatory Agreement or Declaration of Restrictive Covenants; provided, however, in the event of any conflict between the terms of this Covenant and the terms of the City funding documents, the terms of the document which imposes the more stringent requirements shall control.

12. **Headings**. The article and paragraph headings in this Declaration are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Declaration.

13. **Governing Law**. This Declaration 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 Declaration shall, to the extent permitted by law, be held in Miami-Dade County, Florida.

14. **Entire Agreement**. This Declaration incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein, including the Affordable Housing and Workforce Housing components, and the parties agree that there are no other commitments, agreements, or understandings concerning the matters contained herein, including the Affordable and Workforce Housing components of this Declaration that are not contained in this Declaration. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreements whether written or oral. It is further agreed, that no modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document utilizing the same formalities as were used in the execution of this Declaration and pursuant to this Declaration.

15. **Notice**. Any notice required to be given herein shall be given by personal delivery or by certified U.S. mail at the address specified below or at such other address as may be specified in writing by the parties.

**DEPARTMENT OWNER**

 Zoning Director [OWNER NAME]

 City of Miami

 444 SW 2nd Avenue [OWNER ADDRESS]

 Second Floor Miami, Florida 331\*\*

 Miami, Florida 33130 Attention:

 With a copy to: With a copy to:

 Office of the City Attorney [IF APPLICABLE]

 City of Miami C/O

 444 SW 2nd Avenue

 Suite 945

 Miami, Florida 33130

16. Counterparts/Electronic Signature. This Declaration 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 Declaration. The parties shall be entitled to sign and transmit an electronic signature of this Declaration (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 Declaration upon request.

 17. Recordation. This Declaration will be e-recorded by the City of Miami, at the Owner's expense, in the public records of Miami-Dade County, Florida upon full execution.

*(SIGNATURES ON FOLLOWING PAGES)*

Signed, witnessed, executed and acknowledged this \_\_\_ day of \_\_\_\_\_\_\_\_\_, 20\_\_.

Witnesses: [OWNER NAME]

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

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

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

STATE OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_)

 )SS

COUNTY OF\_\_\_\_\_\_\_\_\_\_\_\_)

The foregoing instrument was acknowledged before me by means of \_\_\_\_ physical presence OR \_\_\_\_ online notarization this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, [TITLE] of [NAME OF ENTITY, INCLUDING STATE AND TYPE OF ENTITY, IF APPLICABLE]. He/She is [ ] personally known to me or has produced \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as identification.

Print or Stamp Name: \_\_\_\_\_\_\_\_\_\_

Notary Public, State of\_\_\_\_\_\_\_\_\_\_

Commission No.: \_\_\_\_\_\_\_\_\_\_

My Commission Expires:\_\_\_\_\_\_\_\_\_\_\_

 CITY OF MIAMI, a municipal corporation of the State of Florida

ATTESTED:

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

Todd B. Hannon Arthur Noriega V

City Clerk City Manager

STATE OF FLORIDA )

 )SS:

COUNTY OF MIAMI-DADE )

 The foregoing instrument was acknowledged before me by means of \_\_\_\_ physical presence OR \_\_\_\_ online notarization this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of the City of Miami, Florida, a municipal corporation of the State of Florida. He/She is [ ] personally known to me or has produced \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as identification.

My Commission Expires:

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Notary Public, State of Florida

 Print or Stamp Name

 Commission No.:

Approved: Approved:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

George Mensah Daniel S. Goldberg, Esq.

Director Zoning Administrator

Housing and Community Development

Approved as to legal form and correctness: Approved:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Victoria Méndez, Esq. Cesar Garcia-Pons, AICP, LEED, AP

City Attorney Planning Director

 **EXHIBIT "A"**

 **LEGAL DESCRIPTION**