

This instrument was prepared by:

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(Space reserved for Clerk)

DECLARATION OF RESTRICTIONS

WHEREAS, the undersigned Owner holds the fee simple title to approximately 6.3 acres of land in the City of Miami, Florida (the "City"), described in Exhibit "A," attached to this Declaration (the "Property"), which statement as to title is supported by the attorney's opinions attached to this Declaration as Exhibit "B";

WHEREAS, the Property is currently designated Industrial and Restricted Commercial on the City's Future Land Use Map, shown on Exhibit "C," attached to this Declaration;

WHEREAS, the Property is currently zoned D3 Waterfront Industrial and T6-36B-O Urban Core, as shown on Exhibit "D," attached to this Declaration;

WHEREAS, the portion of the Property zoned D3 Waterfront Industrial is also governed by the Port of Miami River Sub-Element and identified as Category B therein;

WHEREAS, Owner will be seeking approval of a Special Area Plan ("SAP") created for the Property, to be developed in coordination with the City;

WHEREAS, the Property is a subset of the SAP Application Area, as described in Exhibit "E;"

WHEREAS, Owner will be applying to rezone the Property pursuant to the abovementioned Special Area Plan;

WHEREAS, the portion of the Property zoned D3 Marine Industrial will remain D3 Marine Industrial;

WHEREAS, Policy PA-3.1.9 of the Miami Neighborhood Comprehensive Plan requires that all new residential development located along the Miami River be the subject of a recorded covenant acknowledging and accepting the presence of the existing Working Waterfront 24-hour operations, as permitted;

(Public Hearing)

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WHEREAS, the Port of Miami River has a designated Federal Navigable Channel featuring numerous job generating businesses, including International Shipping Terminals, Boatyards, Marinas, Tug Boat Basins, Commercial Fishing, etc.

NOW THEREFORE, in order to assure the City, and other stakeholders, that the representations made by the Owner during the City's consideration of the concurrent Land Use and Special Area Plan Applications will be abided by the Owner, its successors and assigns, freely, voluntarily, and without duress, makes the following Declaration of Restrictions covering and running with the Property:

- 1) This Declaration of Restrictions satisfies the requirement set forth in Policy PA-3.1.9 of the Miami Neighborhood Comprehensive Plan.
- 2) The Property will be redeveloped in accordance with the Miami River Greenway Action Plan and the Miami River Corridor Urban Infill Plan.
- 3) The portion of the Property currently zoned D3, and designated as Industrial on the City's Future Land Use Atlas, shall maintain a working waterfront use.
- 4) Owner recognizes that legally permitted existing Working Waterfront 24-hour operations currently exist proximate to the Property. Therefore, Owner agrees:
 - (a) not to object or otherwise attempt to impede any legally permitted Working Waterfront 24-hour operations;
 - (b) to provide all future tenants and prospective owners of the Property notice of the existing Working Waterfront 24-hour operations and will include a provision to agree not to object to legally permitted Working Waterfront 24-hour operations in each lease and or Condominium Sale Documents;
 - (c) that it is solely the Owner's responsibility to design its structures to accommodate legally permitted Working Waterfront 24-hour operations; and
 - (d) that it will not pursue any claims for liability, loss or damage, whether through litigation or otherwise, against permittees engaging in Working Waterfront 24-hour operations, related to, noise, smoke, fumes, federally regulated bridge openings, and/or other quality of life issues that might result from legally permitted Working Waterfront 24-hour operations.
- 5) There shall be no net loss of the number of recreational wet-slips along the Miami River, except as required by the United States Coast Guard, the Miami-Dade County Department of Regulatory and Economic Resources, or as required by other regulating agencies with appropriate jurisdiction.

Covenant Running with the Land. This Declaration on the part of the Owner shall constitute a covenant running with the land and may be recorded, at Owner's expense, in the

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public records of Miami-Dade County, Florida and shall remain in full force and effect and be binding upon the undersigned Owner, and their heirs, successors and assigns until such time as the same is modified or released. These restrictions during their lifetime shall be for the benefit of, and limitation upon, all present and future owners of the real property and for the benefit of the City of Miami and the public welfare. The Owner, and their heirs, successors and assigns, acknowledge that acceptance of this Declaration does not in any way obligate or provide a limitation on the City.

Term. This Declaration is to run with the land and shall be binding on all parties and all persons claiming under it for a period of thirty (30) years from the date this Declaration is recorded after which time it shall be extended automatically for successive periods of ten (10) years each, unless an instrument signed by the, then, owner(s) of the Property has been recorded agreeing to change the covenant in whole, or in part, provided that the Declaration has first been modified or released by the City of Miami.

Modification, Amendment, Release. This Declaration of Restrictions may be modified, amended or released as to the land herein described, or any portion thereof, by a written instrument executed by the then owner(s) of the fee simple title to the Property, or any portion thereof, provided that the same is reviewed by the Miami River Commission for an advisory recommendation and approved by the City Commission of the City of Miami, Florida. Should this Declaration be so modified, amended, or released, the Director of the Department of Planning and Zoning or the executive officer of a successor department, or, in the absence of such Director or executive officer, by his or her assistant in charge of the office in his/her office, shall execute a written instrument effectuating and acknowledging such modification, amendment, or release.

Enforcement. Enforcement shall be by action against any parties or person violating, or attempting to violate, any covenants. The prevailing party in any action or suit pertaining to or arising out of this declaration shall be entitled to recover, in addition to costs and disbursements allowed by law, such sum as the Court may adjudge to be reasonable for the services of his attorney. This enforcement provision shall be in addition to any other remedies available at law, in equity or both.

Election of Remedies. All rights, remedies and privileges granted herein shall be deemed to be cumulative and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other additional rights, remedies or privileges.

Presumption of Compliance. Where construction has occurred on the Property or any portion thereof, pursuant to a lawful permit issued by the City, and inspections made and approval of occupancy given by the City, then such construction, inspection and approval shall create a rebuttable presumption that the buildings or structures thus constructed comply with the intent and spirit of this Declaration.

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Severability. Invalidation of any one of these covenants, by judgment of Court, shall not affect any of the other provisions which shall remain in full force and effect. However, if any material portion is invalidated, the City shall be entitled to revoke any approval predicated upon the invalidated portion

Recordation and Effective Date. This Declaration shall be filed of record in the public records of Miami-Dade County, Florida at the cost of the Owner following the approval of the Application. This Declaration shall become effective immediately upon recordation. Notwithstanding the previous sentence, if any appeal is filed, and the disposition of such appeal results in the denial of the Application, in its entirety, then this Declaration shall be null and void and of no further effect. Upon the disposition of an appeal that results in the denial of the Application, in its entirety, and upon written request, the Director of the Planning and Zoning Department or the executive officer of the successor of said department, or in the absence of such director or executive officer by his/her assistant in charge of the office in his/her absence, shall forthwith execute a written instrument, in recordable form, acknowledging that this Declaration is null and void and of no further effect.

Acceptance of Declaration. The Owner acknowledges that acceptance of this Declaration does not obligate the City in any manner, nor does it entitle the Owner to a favorable recommendation or approval of any application, zoning or otherwise, and the City Commission retains its full power and authority to deny each such application in whole or in part and decline to accept any conveyance.

Owner. The term Owner shall include all heirs, assigns, and successors in interest.

[Execution Pages Follow]