Document prepared by: Office of City Attorney

444 SW 2 Avenue, Suite 945

Miami, FL 33130-1910

Return Recorded Copy to: City of Miami

Planning Department, Attn: Planning Director 444 SW 2 Avenue, 3rd Floor

Miami, FL 33130-1910

Folio No(s): [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

(Space Above for Recorder's Use Only)

# DECLARATION OF RESTRICTIVE COVENANTS

# FOR AGE RESTRICTED HOUSING (AGE 55 AND OLDER)

THIS DECLARATION OF RESTRICTIVE COVENANTS (the "Declaration"), made

this [CALENDAR DAY] day of [MONTH], [202X], by [NAME OF BUSINESS/INDIVIDUAL OWNER], a[N] [STATE OF ORGANIZATION AND ENTITY TYPE] having offices at [ADDRESS OF OFFICES OF BUSINESS/INDIVIDUAL OWNER] (the "Owner"), in favor of the City of Miami, Florida, a municipality of the State of Florida (the "City").

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

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

WHEREAS, Owner intends to construct a multi-family residential structure; and

WHEREAS, the proposed development shall contain [TOTAL NUMBER OF UNITS] Dwelling Units (the “Project”);

WHEREAS, the Project is solely intended to be operated and maintained to meet the social and physical needs of persons fifty-five (55) years of age and older; and

WHEREAS, this Declaration is entered into in order to assure the City that the Project will be limited to Housing for the Elderly in order to address School Concurrency requirements; and

WHEREAS, changes to the Project that result in allowing persons under 55 years of age are subject to school concurrency requirements, pursuant to Chapter 163, F.S. and Chapter 1013, F.S.

**NOW THEREFORE**, the Owner, for valuable consideration, the receipt and adequacy 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 Owner 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.

1. Use/Restriction. The Project is solely intended to be operated and maintained to

meet the social and physical needs of persons fifty-five (55) years of age and older. All Dwelling Units in the Project shall be restricted to Housing for the Elderly, for residents aged fifty-five (55) and older. No dwelling unit within the Project shall be occupied by any person under the age of (18), subject to Federal Fair Housing Act regulations. The term “Occupied” or “Occupy” shall mean any person who stays overnight in a dwelling unit more than twenty-one (21) days in any sixty (60) day period or more than thirty (30) days in any twelve (12) month period.

1. Effective Date. This Declaration shall constitute a covenant running with the title

to the Property and be binding upon Owner, its successors and assigns 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.

1. Term of Covenant. This voluntary Declaration on the part of the Owner shall

remain in full force and effect and shall be binding upon the Owner, its successors in interest and assigns for an initial period of thirty (30) years from the date this Declaration is recorded in the public records, and shall be automatically extended for periods of ten (10) years, unless modified, amended, or released prior to the expiration thereof.

1. 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 and zoning 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 and zoning regulations, either to restrain violations or to recover damages. This enforcement provision shall be in addition to any other remedies available under the law.

1. Amendment, Modification, Release. This Declaration may be modified,

amended, or released as to any portion or all of the Property only after the occurrence of a determination of the Zoning Administrator and Planning Director that the Declaration is no longer necessary to preserve and protect the Property for the purposes herein intended. Any amendment, modification, or release shall be executed by the Zoning Administrator and Planning Director, or his or her successor or designee, and be in a form acceptable to the City Attorney. In the event that this Declaration is modified or released, Owner shall provide proof that any School Concurrency requirements are met.

1. 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.

1. 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.

1. 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.

1. No Vested Rights. Nothing in this Declaration shall be construed to create any

vested rights whatsoever to the Owner, its successors and assigns.

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

[NAME OF BUSINESS/INDIVIDUAL OWNER]**,** a[N][STATE OF ORGANIZATION AND ENTITY TYPE]

 [NAME OF BUSINESS/INDIVIDUAL OWNER]**,** a[N] [STATE OF ORGANIZATION AND ENTITY TYPE], its Manager]

WITNESSES:

 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 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Personally Known \_\_\_\_\_ or Produced Identification \_\_\_\_\_\_\_\_.

Type of Identification Produced \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

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

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

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

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

CITY OF MIAMI:

APPROVED AS TO CONTENTS:

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Lakisha Hull, AICP, LEED AP B+C

Planning Director

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

Daniel S. Goldberg, Esq.

Zoning Administrator/Zoning Director

APPROVED AS TO LEGAL FORM AND CORRECTNESS:

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

Victoria Méndez, Esq.

City Attorney

**Exhibit “A”**

**Legal Description**

[LEGAL DESCRIPTION OF PROPERTY]

[LEGAL DESCRIPTION CONTINUED]

JOINDER BY MORTGAGEE

The undersigned [NAME OF BUSINESS], a[N] [STATE AND TYPE OF BUSINESS ENTITY], under that certain Mortgage, Assignment of Leases and Rents and Security Agreement from [NAME OF BUSINESS], a[N] [STATE AND TYPE OF BUSINESS ENTITY], dated [MONTH] [CALENDAR DAY], [202X], recorded [MONTH] [CALENDAR DAY], [202X], in Book [BOOK NUMBER], Page [PAGE NUMBER], covering all of the property legally described in Exhibit "A", does hereby acknowledge that the terms of this Declaration of Restrictive Covenants shall be binding upon the undersigned and its successors in title.

[NAME OF BUSINESS]

[BY: [NAME OF BUSINESS], a[N] [STATE AND TYPE OF BUSINESS ENTITY], ITS CO-MANAGER]

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

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

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witnesses:

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

Witness

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

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

Witness

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

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

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

The Foregoing instrument was acknowledged before me, by means of ( ) physical presence OR ( ) online notarization, this [CALENDAR DAY] day of [MONTH], [202X] by [NAME OF INDIVIDUAL THAT EXECUTED THIS DECLARATION] as [TITLE] of [NAME OF BUSINESS], a[N] [STATE OF ORGANIZATION AND ENTITY TYPE], [AS THE MANAGER OF [NAME OF BUSINESS], a[N] [STATE OF ORGANIZATION AND ENTITY TYPE], ON BEHALF OF SAID COMPANIES], who is ( ) personally known to me or ( ) produced a valid driver’s license as identification.

Notary Public

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

Printed Name of Notary Public: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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