After recording, return to:

City of Miami

Planning Department

444 SW 2nd Avenue, 3rd Floor

Miami, Florida 33130

Folio No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Space Reserved for Clerk )

**DECLARATION OF RESTRICTIVE COVENANTS**

This Declaration of Restrictive Covenants (the “Declaration”) made this \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, by **[OWNER’S FULL NAME, INCLUDING TYPE OF ENTITY AND STATE OF ORIGINATION]** (hereinafter referred to as the “Owner”), including its heirs, grantees, successors and assigns, is in favor of the **CITY OF MIAMI**, a municipal corporation located within the State of Florida (hereinafter referred to as the “City”).

PREAMBLE

**WHEREAS**, the Owner sought and obtained a determination of eligibility by the City’s Historic Preservation Officer (the “Historic Preservation Officer”) in accordance with Section 23-6 of the Code of the City of Miami, Florida, as amended (“City Code”), for the property located at [**PROPERTY ADDRESS**] and legally described in **Exhibit “A”**, attached hereto and incorporated herein, (Folio No. ) (hereinafter referred to as the “Sending Site”); and

**WHEREAS**, the Sending Site has a lot area of approximately acres and is presently developed with [**DESCRIPTION OF CURRENT CONDITION**] containing [residential / lodging unit(s)]; and

**WHEREAS**, on , the City issued Certificate of Eligibility No. TDD-COE- , authorizing a total of units of available transfer of development density to unknown eligible “Receiving Site(s)” in accordance with Chapter 23 of the City Code and Article 4, Diagram 11 of Ordinance 13114, the City Zoning Ordinance (“Miami 21”); and

**WHEREAS**, the Owner desires to make a voluntary binding commitment to assure that the Sending Site shall be preserved and maintained in accordance with the provisions of this Declaration and the City Code, including but not limited to, all applicable provisions of Section 23-6, titled “Transfer of Development Rights and density for historic resources; provision for a determination of eligibility process, and special provisions for resources within the Miami Modern (MiMo)/Biscayne Boulevard Historic District; prohibiting certain uses; and establishing a 35-foot height limit”.

**NOW THEREFORE**, the Owner voluntarily and knowingly covenants and agrees that the Sending Site shall be subject to the following declarations and restrictions, which shall be deemed a covenant running with and touching and concerning the land and binding upon the Owner of the Sending Site, its heirs, grantees, successors, and assigns as follows:

1. The above recitals are hereby incorporated as if fully set forth herein.
2. The Owner hereby makes the following voluntary declarations running with and touching the land regarding the Sending Site:
	1. Any construction or site improvements on the Sending Site shall require the issuance of a Certificate of Appropriateness to be approved by either the Historic Preservation Officer or the City’s Historic and Environmental Preservation Board (the “HEPB”), as required by and in accordance with Chapter 23 of the City Code. All work shall be done in accordance with the Secretary of the Interior Standards and the City of Miami Design Guidelines for Historic Resources.
	2. The Sending Site shall be maintained to a standard consistent with the City Building Department’s standards for “Forty (40) year recertification.”
	3. Any structure or improvements on the Sending Site shall not be demolished, unless approved via a Special Certificate of Appropriateness by the HEPB.
	4. The requirements set forth herein shall be binding upon the Owner, its heirs, grantees, successors, and assigns.
	5. Notice of any change in ownership of the Sending Site shall be provided to the Historic Preservation Officer within 30 days of the date of such transfer.
	6. The Receiving Site(s) shall be located within a Transit Oriented Development Area (“TOD”) zone and must be eligible to participate in the Transfer of Development Density Program. The Receiving Site(s) shall have recorded against its title, in the Public Records of Miami-Dade County, Florida, a Certificate of Transfer indicating the amount of units of development density transferred thereto.
	7. In the event that the units are transferred from the Sending Site to an eligible Receiving Site(s), such Certificate(s) of Transfer shall be recorded on the Sending Site and Receiving Site(s) within thirty (30) days of issuance of such Certificate of Transfer. A copy of such shall be provided to the Historic Preservation Officer of the City.
3. Effective Date. This Declaration shall become effective upon recordation in the Public Records of Miami-Dade County, Florida, and shall continue in effect for a period of thirty (30) years after the date of such recordation, after which time it shall be extended automatically for successive periods of ten (10) years. This Declaration shall constitute a covenant running with the land on the Sending Site and shall be binding upon the Owners, their heirs, grantees, successors, and assigns. These restrictions shall be a limitation upon all present and future Owners of the Sending Site and shall be for the public welfare, as part of the preservation of historic buildings. Certificates of Transfer created pursuant to the transfer of development density included in this Declaration shall also be recorded on both the Sending Site and Receiving Site(s), once identified, as notice to the public of the transfer.
4. Modification, Amendment, Release. This instrument may only be modified, amended, or released as to the Sending Site, or any portion thereof, by a written instrument executed by the then Owner(s) of the Sending Site, including joinders by all mortgagees, if any, provided that the same is also approved in writing by the Historic Preservation Officer, the Director of the Planning Department, the Zoning Director, and with legal form approved by the City Attorney, or their successors or designees.
5. Inspection and Enforcement. This Declaration may be enforced by any means provided by law. An enforcement action may be brought by the City by action in 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, to restrain violations and/or to recover damages. Each party in the action or suit shall bear its own costs and attorney’s fees. The City may also enforce this Declaration pursuant to the Code of the City of Miami, Florida, as amended, specifically Chapter 2, Article X, titled “Code Enforcement”, and Chapter 23, titled “Historic Preservation”. This enforcement provision shall be in addition to any other remedies available under the law.
6. Severability. Invalidation of any one of these covenants by judgment of court shall not affect any of the other provisions of the Declaration, which shall remain in full effect.
7. Recording. This Declaration shall be filed of record among the Public Records of Miami-Dade County, Florida, at the Owner’s expense within thirty (30) days of execution by the City. The Owner shall furnish a certified copy of the recorded Declaration to the Historic Preservation Officer within ten (10) days of its recordation. Certificates of Transfer created pursuant to the transfer of development density included in this Declaration shall be recorded upon the Sending Site and the Receiving Site(s) once identified. The Owner shall likewise furnish a certified copy of the recorded Certificate of Transfer to the Historic Preservation Officer within thirty (30) days such recordation.
8. Governing Law and Venue. This Declaration shall be construed and enforced according to the laws of the State of Florida. Venue in any proceeding between the parties shall be in Miami-Dade County, Florida. Each party waives any defense, whether asserted by motion or pleading, that the aforementioned courts are an improper or inconvenient venue. Moreover, the parties consent to the personal jurisdiction of the aforementioned courts and irrevocably waive any objections to said jurisdiction. The parties irrevocably waive any rights to a jury trial.
9. Headings. Title and paragraph headings are for convenient reference and shall not affect in any way the meaning or interpretation of this Declaration.
10. No Waiver. No waiver of breach of any provision of this Declaration shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.
11. Entire Agreement. This Declaration constitutes the sole and entire agreement between the parties hereto. No modification or amendment hereto shall be valid unless in writing and executed according to Section 4 herein.
12. 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.

 **[Signature Pages to Follow]**

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

Witnesses: **[OWNER’S NAME]**

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

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

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

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

STATE OF FLORIDA

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 [OWNER’s NAME] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. He/She is ❑ personally known to me or ❑ has produced , as identification, and did take an oath.

Notary Public State of Florida at Large

My Commission Expires: Print Name

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

**APPROVED AS TO LEGAL FORM APPROVED AS TO HEPB ORDINANCE**

**AND CORRECTNESS: FOR TDD:**

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

VICTORIA MENDEZ JEREMY CALLEROS-GAUGER

City Attorney Acting Historic Preservation Officer

**APPROVED AS TO ZONING APPROVED AS TO PLANNING**

**REQUIREMENTS: REQUIREMENTS:**

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

DANIEL S. GOLDBERG CESAR GARCIA-PONS

 Zoning Administrator Planning Director

**Exhibit “A”**

**Legal Description of Property**

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