

## **DECLARATION OF RESTRICTIVE COVENANTS RUNNING WITH THE LAND**

**KNOW ALL MEN BY THESE PRESENT** that the undersigned 5<sup>th</sup> Street Marina, LLC owner, a Florida Limited Liability company (hereinafter, the "Owner") hereby makes, declares and imposed on the land herein described, this Declaration of Restrictive Covenants Running with the Land (the "Declaration" or "Covenant") running with the title to the land contained herein, which shall be binding on Owner, all heirs, grantees, successors and assigns, personal representatives, mortgagees, lessees, and against all persons claiming by, through or under them.

**WHEREAS**, Owner is the fee simple title holder to that certain property located at 341 NW South River Dr., Miami FL 33128, more particularly described on Exhibit "A" (the "**Property**") attached hereto and incorporated herein, which is the subject of development; and

**WHEREAS**, Owner voluntarily proffers this Covenant acknowledging and accepting the presence of the existing Working Waterfront 24-hour operations, as permitted; and

**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.; and

**NOW, THEREFORE**, Owner 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, and their heirs, successors, and assigns, as follows:

1. **Recitals**. The foregoing recitals are true and correct and are incorporated herein as if repeated at length.
2. **Restrictions**. Owner covenants the following:
  - a. The Property will be developed in accordance with the Miami River Greenway Action Plan and the Miami River Corridor Urban Infill Plan.
  - b. Owner recognizes that legally permitted existing Working Waterfront 24-hour operations may currently exist proximate to the Property. Therefore, Owner agrees:
    - i. Not to object or otherwise attempt to impede any legally permitted Working Waterfront 24-hour operations;
    - ii. To provide all future tenants and prospective owners of the Property notice of the existing Working Waterfront 24-hour operations in each lease and or Condominium Sale Documents; and

- iii. That it is solely the Owner's responsibility to design its structures to accommodate legally permitted Working Waterfront 24-hour operations; and
  - iv. 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.
- c. 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.
  - d. Owner shall allow public access to a Riverwalk to be constructed as part of a future, new development at the Property.

3. **Covenant Running with the Land**. This Covenant on the part of the Owner shall constitute a covenant running with the land and shall be recorded, by the Owner and at Owner's expense, in the Public Records of Miami-Dade County, Florida, and shall remain in full force and effect and be binding upon the undersigned Owner, and its heirs, and successors, and assigns until such time as the Declaration is terminated, modified or released. These restrictions during their lifetime shall be for the benefit of, and be a limitation upon, all present and future owners of the Property and for the public welfare.

4. **Term of Covenant**. The provisions of this Declaration shall become effective upon its 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 they shall be extended automatically for successive periods of ten (10) years each, unless the Covenant, pursuant to Section 4 below, is released in writing by the following: (i) then owners of the Property AND (ii) the Director of the Department of Planning and Zoning of the City of Miami (the "**Director**") subject to the approval of the City Attorney as to legal form, or their respective designees or successors.

5. **Modification, Amendment, Release**. This Covenant 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 and approved by the Director. Should this Declaration be so modified, amended, or released, the Director 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.

6. **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 to enter upon the Property for determining whether the conditions of this Declaration and the requirements of the City's

building and zoning regulations are being complied with. Enforcement shall be by action against any parties or person violating, or attempting to violate any covenant contained herein. This enforcement provision shall be in addition to any other remedies available at law or in equity or both.

7. **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.

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

9. **Recording.** This Covenant shall be filed of record in the Public Records of Miami-Dade County, Florida by the Owner at the cost of the Owner within ten (10) days of acceptance by the City of Miami. Owner shall provide the Director with a copy of the recorded Declaration within thirty (30) days of recordation.

[Signature Page to Follow]

Signed, witnessed, executed and acknowledged this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

5<sup>th</sup> Street Marina, LLC, a Florida Limited Liability Company

By: Managing Member

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

Name: Orin T. Black

Title: General Manager

STATE OF FLORIDA

} SS.

COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by Orin T. Black, the General Manager and Managing Member of 5<sup>th</sup> Street Marina, LLC, a Florida Limited Liability Company, who is personally known to me, or has produced \_\_\_\_\_, as identification and he acknowledged before me that he executed the same, freely and voluntarily, for the purposes therein expressed.

\_\_\_\_\_  
Name: Jolene M. Arena

Notary Public, State of Florida

Commission No.

**APPROVED:**

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

Francisco Garcia, Director of Planning and Zoning

**APPROVED AS TO LEGAL FORM AND CORRECTNESS:**

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

Victoria Mendez, City Attorney

EXHIBIT "A"

Legal Description:

Parcel I (Folio No. 01-0200-010-3020)

Lots 4 and 5, of "J.G. BAILES RE-SUBDIVISION OF LOTS 4, 5 AND 6, BLOCK "A," of SOUTH, CITY OF MIAMI," according to the plat thereof, as recorded in Plat Book 7 Page 150, of the Public Records of Miami-Dade County, Florida, less and except the land conveyed pursuant to that ORDER OF TAKING recorded in Official Records Book 25465 at Page 1993, of the Public Records of Miami-Dade County, Florida.

Parcel II (Folio No. 01-4138-044-1020)

A strip of land lying opposite of Lots 1, 2 and 3, Block 2, between N.W. South River Drive and Miami River in "SOUTH CITY OF MIAMI," according to the plat thereof, as recorded in Plat Book "B" Page 41, of the Public Records of Miami-Dade County, Florida.

Parcel III (Folio No. 01-0200-010-1071)

A strip of land at foot of N.W. 7th Avenue on South side of Miami River, between Blocks 1 and 2 South and lands opposite of Lots 2, 3 and 4, Block 1, of "SOUTH CITY OF MIAMI," according to the plat thereof, as recorded in Plat Book "B" Page 41, and Lot B, of "SILVERSON AND TATUM'S," according to the plat thereof, as recorded in Plat Book 3 Page 190, of the Public Records of Miami-Dade County, Florida.

Together With:

Begin at a point where the Easterly line of Lot Four (4) Block One (1) South, City of Miami, according to the plat thereof recorded in Plat Book B, Page 41, Public Records of Miami-Dade County, Florida, extended Northerly, intersects the Northerly line of N.W. South River Drive, formerly known as South River Drive or Street; thence Northerly along the Easterlyline of Lot Four (4), Block One (1) South, City of Miami, extended Northerly, to the low-water line of the Miami River; thence Southeasterly along the low-water line of the Miami River to a point where the Easterly boundary line of Lot Two (2), Block One (1), South, City of Miami, extended Northerly, intersects said low-water line of the Miami River; thence Southerly along the Northerly extension of the Easterly boundary line of N.W. South River Drive, formerly known as South River Street; thence Northwesterly along the Northerly line of N.W. South River Drive, formerly known as South River Street, to the Point of Beginning.