

This instrument prepared by:  
Name: Matthew Amster, Esq.  
Address: Bercow Radell Fernandez & Larkin, PLLC  
200 S. Biscayne Boulevard, Suite 850  
Miami, FL 33131

(Space above reserved for clerk)

**DECLARATION OF RESTRICTIVE COVENANTS  
REGARDING IMPROVEMENTS IN THE PUBLIC RIGHTS-OF-WAY**

This Declaration of Restrictive Covenants Regarding Improvements in the Public Rights-of-Way (the "Declaration") is entered into this \_\_\_\_ day of January, 2020, by Fisher Island Community Association, Inc. (the "Owner"), a Florida not for profit corporation and in favor of the City of Miami Beach, Florida, a municipality of the State of Florida (the "City").

**WHEREAS**, the Owner holds fee simple title to the property located at 112 MacArthur Causeway, Miami Beach, Florida, identified by Miami-Dade County Folio No. 02-4204-000-0065 (the "Property"), legally described in **Exhibit "A"**;

**WHEREAS**, the Owner has obtained development conditional use approvals from the City's Planning Board (PB File No. 2100), Design Review Board (DRB File No. 22974) and Board of Adjustment (BOA File No. 3677), see **Exhibit "B"** to redevelop the Property with a multi-story parking garage and commercial ferry service terminal to and from Fisher Island (the "Conditional Use Approvals");

**WHEREAS**, the City requires the Owner to install landscaping and associated improvements in the public rights-of-way, specifically portions of the south side of the MacArthur Causeway and the access road east of Bridge Road to the west end of the East Channel Bridge, abutting the Property (the "Improvements") substantially in accordance with the plans reviewed and approved by the City's Design Review Board (DRB File No. 22974) and submitted for permit entitled "Fisher Island Terminal Prepared for FICA" and dated last revised June 27, 2018 (the "Development Plan") attached hereto as **Exhibit "C"**;

**WHEREAS**, the portions of MacArthur Causeway abutting the Property as shown in Exhibit "C" are subject to the Fisher Island Terminal Improvements Maintenance Memorandum of Agreement (the "MMOA") between the State of Florida Department of Transportation (FDOT) and the City dated \_\_\_\_\_, 2020 and adopted by the City Commission through Resolution No. \_\_\_\_\_ on January 15, 2020, including plans approved by FDOT (the "Approved Plans" through FDOT Permit Numbers 2019-A-691-00001, 2018-C-690-013, 2017-D-690-015 and 2019-L-691-00020) attached hereto as composite **Exhibit "D"**;

**WHEREAS**, additional portions of the MacArthur Causeway abutting the Property as shown in Exhibit "C", identified by Miami-Dade County Folio Nos. 02-4204-000-0045 and 02-4204-000-030 attached hereto as composite **Exhibit "E"**, are owned by the City;

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**WHEREAS**, the Owner has applied to the Public Works Department for permission to install the Improvements within the public rights-of-way, according to the Approved Plans and in accordance with the Conditional Use Approvals; and

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged including consideration of the approval of the right-of-way permit and/or plans approved by the Public Works Department, the Owner voluntarily covenants and agrees that the Property shall be subject to the following restrictions that are intended and shall be deemed to be covenants running with the land and binding upon the Owners of the Property, their successors in interest and assign, as follows:

1. 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 the Section.
2. The Owner covenants and agrees as follows:
  - a. To install and maintain the Improvements as depicted in Exhibit "D"; and
  - b. To replace, restore and/or repair the Improvements as depicted in Exhibit "D" at Owner's expense, in the event the Public Works Department must issue an underground utility or right-of-way permit for work in that area; and
  - c. To hereby grant to the City the right to remove, add, repair, maintain, replace or have the Owner remove, add, repair, maintain, replace any of the Improvements as depicted in Exhibit "D" within the right-of-way, at Owner's expense, in the event the City determines in its reasonable discretion that such action is required; and
  - d. To add the City as additional named insured on the Certificates of Insurance for Liability and Workmen's Compensation for a coverage in the minimum limits as approved by the City's Risk Manager.
  - e. The City has the right to remove, repair, restore the area and charge the costs of all work (direct costs plus overhead and administration charges) to the Owner. Should Owner fail to pay for the work performed by the City will result in a lien being placed against the Owner's Property, and/or a collection action to be filed in Circuit Court.
  - f. To be bound by the City's responsibilities imposed under the MMOA attached as composite Exhibit "D" for the portions of MacArthur Causeway abutting the Property as shown in Exhibits "C and "D".
  - g. Comply with each of the City's obligations established under the MMOA attached as composite Exhibit "D", including requiring all Owner's Vendors/Contractors to utilize the U.S. Department of Homeland Security's E-Verify system as set forth in the MMOA.

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3. This voluntary Declaration shall remain in full force and effect and shall be binding upon the Owner of the Property, their successors in interest and assigns for an initial period of thirty (30) years from the date this instrument is recorded in the public records, and shall be automatically extended for successive periods of ten (10) years, unless modified, amended or released prior to the expiration thereof.
4. This Declaration may be modified, amended or released as to any portion of the Property by a written instrument executed by the then Owner of the fee-simple title to the land to be affected by such modification, amendment or release providing that same has been approved by the Public Works Director of the City, or his designee, or the successor administrative officer with jurisdiction over the matter. Should this instrument be so modified, amended or released the Public Works Director, or his successor, or other administrative officer with jurisdiction over the matter, shall execute a written instrument in recordable form effectuating and acknowledging such modification, amendment or release.
5. Invalidation of any provision of this Declaration by judgment of Court shall not affect any of the other provisions of this Declaration, which shall remain in full force and effect.
6. This Declaration shall be recorded in the Public Records of Miami-Dade County, Florida, at the cost of the Owner.
7. It is understood and agreed that any official inspector of the City may have the right, upon reasonable prior written notice to Owner, at any time during normal working hours of entering and investigating the use of the Property, to determine whether the conditions of this Declaration are being complied with.
8. 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 provision of this Declaration either to restrain violations or to recover damages. The prevailing party in the action or suit shall be entitled to recover costs and reasonable attorneys' fees, at all levels of trial and appeal. This enforcement provision shall be in addition to any other remedies available under the law.
9. The Owner, and its successors and assigns, hereby agree to indemnify, defend and hold harmless the City, its officers and employees, from any and all liability that may arise by virtue of the MMOA, this Agreement, or the City permitting the installation of these items.
10. All notices, demands, requests, or other communications which may be or are required to be given, served, or sent by either the Grantor or Grantee pursuant to this Declaration shall be in writing and addressed as follows:

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If to Owner: FISHER ISLAND COMMUNITY ASSOCIATION, INC.  
Attn: Roberto Sosa  
One Fisher Island Drive  
Fisher Island, Florida 33109

With copies to: Bercow Radell Fernandez & Larking, PLLC  
Attn: Matthew Amster, Esq.  
200 S. Biscayne Boulevard, Suite 850  
Miami, Florida 33131

If to the City: City of Miami Beach  
Attn: City Manager  
1700 Convention Center Drive, 4th Floor  
Miami Beach, Florida 33139

With copies to: City of Miami Beach  
Attn: Public Works Director  
1700 Convention Center Drive, 4th Floor  
Miami Beach, Florida 33139

Each Party may designate by notice in writing a new address to which any notice, demand, request or communication may thereafter be so given, served or sent.

APPROVED

\_\_\_\_\_  
Public Works Director

\_\_\_\_\_  
Date

APPROVED AS TO  
FORM & LANGUAGE

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Date

[EXECUTION PAGES TO FOLLOW]

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Signed, sealed executed and acknowledged on \_\_\_\_ day of \_\_\_\_\_, 2020.

*IN WITNESS WHEREOF*, Grantor has caused these presents to be signed in their name by their proper officials.

**WITNESSES:**

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Signature

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

**GRANTOR:**

FISHER ISLAND COMMUNITY ASSOCIATION,  
INC., a Florida Not For Profit Corporation

By: \_\_\_\_\_  
Roberto Sosa, President

Address: One Fisher Island Drive  
Fisher Island, Florida 33109

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

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

The foregoing instrument was acknowledged before me by \_\_\_\_\_, the \_\_\_\_\_ of FISHER ISLAND COMMUNITY ASSOCIATION, INC. on behalf of the Florida Not For Profit Corporation. He is personally known to me or has produced \_\_\_\_\_, as identification.

Witness my signature and official seal this \_\_\_\_ day of \_\_\_\_\_, 2020, in the County and State aforesaid.

\_\_\_\_\_  
Notary Public-State of \_\_\_\_\_

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

My Commission Expires: