

This instrument prepared by:

Name: Graham Penn, Esq.
Address: Bercow Radell Fernandez & Larkin
200 S. Biscayne Boulevard, Suite 850
Miami, FL 33131

**DECLARATION OF RESTRICTIVE COVENANTS
AND MAINTENANCE AGREEMENT**

KNOW ALL BY THESE PRESENTS that the undersigned Alton Road Development, LLC (the "Owner") hereby makes, declares and imposes on the land herein described, covenants running with the title to the land, which shall be binding on the Owner, its heirs, successors and assigns, personal representatives, mortgagees, lessees, and against all persons claiming by, through or under them (the "Declaration");

WHEREAS, the Owner holds fee simple title to the land in the City of Miami Beach, Florida (the "City"), located at 709-745 Alton Road (Folio Nos. 02-4203-009-8600, 8610, 8620, 8630), more particularly described as (the "Property"):

Lots 9, 10, 11, 12, 13 and 14, Block 106 Ocean Beach
Addition No. 3 Subdivision as recorded in Plat Book 2, Page
81, Miami-Dade County, Florida.

WHEREAS, the Owner has obtained several development approvals and building permits from the City in connection with its redevelopment of the Property with a commercial development; and

WHEREAS, the City requires the Owner to design, construct and install landscaping and architectural features and improvements on the Property and within the public right-of-way adjacent to the Property and further described on Exhibit A attached hereto and incorporated herein by reference (the "Enhancements");

WHEREAS, the City requests the Declaration from the Owner to ensure that the Owner will maintain or cause to be maintained the Enhancements in a satisfactory matter, without liability or cost to the City; and

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Owner voluntarily

agree that the Property shall be subject to the following provisions that are intended and shall be covenants running with the land and binding upon the Owner, its successors and assigns, as follows:

1. The Owner shall install all Enhancements in compliance with the conditions described in Historic Preservation Board Order No. 7395, including landscaping and irrigation systems, above-grade utility infrastructure, and pedestrian sidewalk improvements.

2. The Owner agrees to replace, restore, and/or repair the aboveground Enhancements at the Owner's expense following a necessary and permitted utility cut for replacement, construction, or maintenance work of utilities or a major natural disaster. The City shall notify the Owner in writing and provide thirty (30) calendar days' notice in advance of such work and shall make all necessary effort to salvage and store on-site any of the Enhancements' salvageable material and shall provide a temporary restoration surface with a City standard material such as cement or asphaltic concrete. Upon receipt of notice from the City, the Owner shall have forty-five (45) calendar days to undertake any restoration work. Restoration performed within the public right of way should not exceed ten (10) working days following the completion of the repairs/construction activity. This time period may be reasonably extended by the City to account for the impact of permitting delays, unanticipated delays caused by utility providers, and Acts of God (including fire, flood, earthquake, hurricane, or other natural disaster). The City shall remain responsible for all repairs, restorations, or replacement of any underground utilities.

Notwithstanding the above, after the completion of any necessary and permitted utility cut for replacement, construction, or maintenance work of utilities, and before the Owner undertakes any restoration work, the Owner and the City shall confer as to whether any party (e.g., the City, any agency, or a private party) intends to perform any work (e.g., any excavation or temporary encroachment) in the future that would be likely to damage, disrupt, disturb, or interfere with any restoration. If such future work is anticipated, then the Owner may request that the City extend the restoration deadline to the date which is forty-five (45) calendar days after such future work is completed (subject to extension to the extent that such restoration cannot be completed using commercially reasonable efforts within such forty-five (45) calendar day period), and such request for an extension shall not be unreasonably withheld, conditioned, or delayed. Furthermore, such deadline shall automatically be extended if the City, any agency, or a private party is scheduled to perform future

work within the area within the six (6) month period following the completion of the prior excavation or temporary encroachment.

3. If the Owner breaches any of its obligations as specified herein (and same are not waived in writing by the City), then the City shall provide the Owner written notice specifying the nature of the default. The Owner shall have thirty (30) calendar days after receipt of such notice within which to cure the specified default, after which time the City may take action to complete the restoration work, at the Owner's expense. However, if the nature of such default is such that the same cannot reasonably be cured within such thirty (30) day period, then the Owner shall not be deemed to be in default if the Owner shall, within such period, commence such cure and thereafter diligently prosecute the same to completion.

4. The Owner shall obtain and maintain a liability insurance policy in the covered amount of \$1,000,000 per incident, to provide compensation for personal injuries or related claims stemming from any error, omission, negligence, or misconduct on the part of the Owner, or any of its respective officers, agents, servants, employees, or contractors in the installation or maintenance of the Enhancements. The Owner shall add the City as an additional insured on the Certificate of Insurance for Liability.

5. The Owner shall indemnify, hold and save the City, and its officers, agents, contractors, and employees, whole and harmless from and against all claims, demands, actions, damages, losses, costs, liabilities, expenses, and judgments of any nature recovered from or asserted against the City on account of injury or damage to person(s) or property, to the extent that any such damage or injury may be incident to, arise out of, or be caused, either proximately or remotely, wholly or in part, by any act, error, omission, negligence, or misconduct on the part of the Owner, or any of their respective officers, agents, servants, employees, or contractors in the installation or maintenance of the Enhancements. The Owner shall be entitled to select counsel of the Owner's choice to defend the claim; provided, however, that such counsel shall first be approved by the City Attorney, which approval shall not be unreasonably conditioned, withheld or delayed; and provided further, that the City shall be permitted, at its cost and expense, to retain independent counsel to monitor the claim proceeding. Notwithstanding the foregoing, the Owner shall not be obligated or liable to the City, or any third parties, for any claims, demands, actions, damages, losses, costs, liabilities, expenses, or judgments resulting from the negligence, recklessness, or willful misconduct of the City or its officials,

employees, contractors, representatives, or agents.

6. The Owner acknowledges that the City shall have no financial and/or other obligation and/or liability for the maintenance of the Enhancements (including, without limitation, any liability for improper or inadequate maintenance by the Owner); these are the sole obligations of the Owner to maintain. Additionally, it is the intent of the parties hereto that no third party beneficiary rights are created or acknowledged through this Declaration.

7. The provisions of this Declaration shall become effective, and shall be binding upon the Owner, and the Owner's successors and assigns, 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 modified, amended or released prior to the expiration thereof.

8. This Declaration sets forth the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior discussions, negotiations, understandings or agreements relating thereto. This Declaration may be modified, amended or released as to any portion of the Property by a written instrument executed by the then owners 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. Should this instrument be so modified, amended or released, the Public Works Director shall execute a written instrument in recordable form effectuating and acknowledging such modification, amendment or release.

9. This Declaration shall be recorded in the Public Records of Miami-Dade County, Florida, at the cost of the Owner.

10. It is understood and agreed that any City official has the right during normal business hours to enter and investigate the use of the Property in order to verify compliance with the conditions of this Declaration and the requirements of the City's building, zoning and land development regulations.

11. An action to enforce the terms and conditions of this Declaration may be brought by the City and may be, at law or in equity, against any party or person violating or attempting to violate any provision of this Declaration or

provisions of the building, zoning or land development regulations, either to restrain violations or to recover damages.

12. This Declaration shall be enforceable in Miami-Dade County, Florida. This Declaration shall be governed by, and construed in accordance with, the laws of the State of Florida, both substantive and remedial, without regard to principles of conflict of laws. The exclusive venue for any litigation arising out of this Declaration shall be Miami Dade County, Florida. BY ENTERING INTO THIS DECLARATION, THE OWNER AND THE CITY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS DECLARATION.

1. 13. In any action or proceeding involving this Declaration or the contents hereof, the prevailing party shall be entitled to recover from the other party the prevailing party's reasonable costs and expenses actually incurred in such action or proceeding, including reasonable attorneys' fees of outside counsel incurred at standard hourly rates.

All notices, demands, requests, or other communications which may be or are required to be given, served, or sent by either the Owner or the City pursuant to this Declaration shall be in writing and addressed as follows:

DECLARATION OF RESTRICTIVE COVENANTS
FOR LANDSCAPE MAINTENANCE
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If to Alton Road Development, LLC: Alton Road Development, LLC
Attn: Michael S. Sheitelman
2200 Biscayne Boulevard
Miami, Florida 33137

With copies to: Bercow, Radell Fernandez & Larkin
Attn: Graham Penn, 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.

[Execution Pages to Follow]


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FOR LANDSCAPE MAINTENANCE
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APPROVED AS TO
FORM & LANGUAGE



City Attorney

10/10/17
Date



City Public Works Director

10/10/17
Date

[SIGNATURE PAGE CONTINUES ON NEXT PAGE]

IN WITNESS WHEREOF, Alton Road Development, LLC has caused these presents to be signed in its name by its proper officials.

Witnesses:



Signature

LOWEN PROTEIN

Print Name



Signature

RITA M. JONES

Print Name

Alton Road Development, LLC


Address: 2200 Biscayne Boulevard
Miami, Florida 33137

By: 

Marisa Galbut, President

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

On the 22nd day of June in the year 2017, before me, the undersigned, personally appeared MARISA GALBUT, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



NOTARY PUBLIC, State of Florida at Large
(NOTARY SEAL)

My Commission Expires:



EXHIBIT A

Description of Enhancements
