

## ENCROACHMENT AND RESTRICTIVE COVENANT AGREEMENT

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2021, by and between **BROCKWAY/VALENCIA, LLC, a Florida limited liability company**, whose mailing address is 300 Almeria Avenue, Coral Gables, Florida 33134, hereinafter referred to as "OWNER", and the **City of Coral Gables, a Florida municipal corporation**, HEREINAFTER REFERRED TO AS "CITY".

### RECITALS:

**WHEREAS**, OWNER is the fee simple owner of certain real property located within the City of Coral Gables Miami-Dade County, Florida with a property address of 2801 Salzedo Street, Coral Gables, Florida, 33134, more particularly described below:

Lots 1-11, inclusive and Lot 27 less the East 20 feet thereof, and Lots 28-38, Inclusive together with a 20 foot alley lying between, Block 18, Coral Gables Crafts Section, as recorded in Plat Book 10 at page 40 of the public records of Miami-Dade County, Florida.

**WHEREAS**, on April \_\_\_\_, 2021, the CITY conveyed the above described property to OWNER with an existing building located at the Property, hereinafter referred to as "BUILDING";

**WHEREAS**, several overhang structures located on the north, east, south and west elevations of the BUILDING as set forth on Exhibit "A", attached hereto and made a part hereof;

**WHEREAS**, OWNER desires to maintain these encroachments upon CITY's sidewalks; and

**WHEREAS**, the existing stormwater drainage system service the BUILDING, including piping and drainage structures, also encroaches into the CITY's rights of way on the north, west, south and east sides of the BUILDING, as shown on the CITY's Department of Public Works drainage improvement plan on Exhibit "B" attached hereto and made a part hereof; and

**WHEREAS**, the CITY is allowing OWNER to maintain the encroachments,

**NOW, THEREFORE**, in consideration for the mutual covenants contained herein, the sufficiency of which is hereby acknowledged by the Parties hereto, the Parties agree as follows:

1. The foregoing recitals are true and correct and are incorporated herein as if repeated in their entirety.

2. The CITY hereby grants permission for the above-described encroachment upon the City's rights-of-way and sidewalks, in accordance with plans and specifications on file.
3. OWNER shall maintain, at all times, at its sole cost and expense, proper and adequate property and liability insurance covering the BUILDING's overhangs depicted in Exhibit "A" and the stormwater drainage system, including all associated facilities, depicted in Exhibit "B".
4. To the fullest extent permitted by Laws and Regulations, OWNER hereby agrees to defend, indemnify and hold harmless the CITY and its commissioners, directors, attorneys, appointed officials, administrators, consultants, agents, and employees from and against all claims, damages, losses and expenses direct, indirect or consequential (including but not limited to fees and charges of attorneys and other professionals and court and arbitration costs) arising out of or resulting from the maintenance of the encroachments and caused, in whole or in part, by any willful, intentional, reckless or negligent act and/or omission of OWNER or any person, employee, agent or third party acting on OWNER's behalf (including any contractor, subcontractor or any person or organization directly or indirectly employed by any of them or anyone for whose acts any of them may be liable).
5. In any and all claims against the CITY or any of its consultants, agents or employees by any employee of OWNER or any employee of any person, employee, agent or third party acting on OWNER's behalf (including contractors, subcontractors, or any person or organization directly or indirectly employed by any of them or anyone for whose acts any of them may be liable), the indemnification obligation under the above Paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for OWNER or by or for any person, employee, agent or third party acting on OWNER's behalf (including contractors, subcontractors or other persons or organizations directly or indirectly employed by any of them or anyone for whose acts any of them may be liable) under workers' or workman's compensation acts, disability benefit acts, other employee benefit acts or any other service of law. Moreover, nothing in this Indemnification and Hold Harmless provision shall be considered to increase or otherwise waive any limits of liability or to waive any immunity established by Florida Statutes, case law, or any other source of law. This indemnification provision shall survive the termination of any CITY permit or Agreement with the CITY, however terminated. Nothing contained herein shall be construed as a waiver of any immunity or limitation of liability the CITY may have under the doctrine of sovereign immunity in Section 768.28 Florida Statutes. Inclusive in this Indemnity provision is the agreement to fully indemnify the CITY from any claims or actions alleged to have been caused by the CITY's acts or omissions. OWNER shall maintain insurance, which will provide for the indemnity provision provided herein.
6. For the purposes of this Agreement, OWNER shall obtain insurance policies – naming the CITY as an additional insured on a primary and non-contributory basis – that comply with the current version of the City of Coral Gables Insurance Requirements for Encroachment & Restrictive Covenant Agreements and OWNER shall evidence this

- insurance to the Risk Management Division of the City of Coral Gables in accordance with the parameters and instructions outlined within the current version of the City of Coral Gables Insurance Requirements for Encroachment & Restrictive Covenant Agreements. Evidence of insurance will not be approved unless all of the requirements have been met to the satisfaction of the Risk Management Division. Moreover, said insurance shall be maintained until the encroachments are removed and failure to maintain such insurance shall constitute a material breach of this Agreement;
7. All individuals signing this Agreement have the legal authority and capacity to enter into this General Encroachment & Restrictive Covenant Agreement.
  8. This Agreement shall be recorded at OWNER's sole expense and shall inure to the benefit of and be binding upon OWNER's successors, heirs, executors, administrators, representatives, assigns and all other persons or entities acquiring an interest thereunder, and this Agreement shall be a restrictive covenant concerning the use, enjoyment, and title to the above-property and shall constitute a covenant running with the land.
  9. In the event the terms of this Agreement are not complied with, in addition to other remedies available, the CITY is hereby authorized to withhold any further permits and to refuse to make any inspections or grant any approvals until such time as there is full compliance with this Agreement;
  10. This Agreement and the provisions contained herein shall be construed, controlled and interpreted according to the laws of the State of Florida and all applicable and duly adopted ordinances, regulations, and policies of Miami-Dade County and the CITY now in effect and those hereinafter adopted.
  11. The location for settlement of any claims, controversies, disputes, arising out of or relating, directly or indirectly, to any part of this Agreement or any breach hereof, shall be in Miami-Dade County, Florida.
  12. OWNER agrees that it shall be liable for reasonable attorneys' fees incurred by CITY, if CITY is required to take any actions, through litigation or otherwise, to enforce this Agreement.
  13. CITY, shall be entitled as a matter of right to an injunction issued by any court of competent jurisdiction restraining any violation of this Agreement as well as recovery of any and all costs and expenses sustained or incurred by CITY in obtaining such an injunction including, without limitation, reasonable attorney's fees.
  14. This Agreement shall automatically terminate and become null and void upon the demolition, in part (over 50%) or in full, voluntary or otherwise of the BUILDING.
  15. This Agreement constitutes the entire Agreement between the Parties with respect to the specific matter contained herein and supersedes all previous discussions, understandings and agreements. Any amendments to or waivers of the provisions contained herein shall be made by the Parties in writing.
  16. If any sentence, phrase, paragraph, provision or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed an independent provision and such holding shall not affect the validity of the remaining portions hereto.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the day and year first written above.

AS TO OWENRS:

BROCKWAY/VALENCIA, LLC, a Florida limited liability company

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

Notarization of Owner's Execution

STATE OF FLORIDA  
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me by means of \_\_\_ physical presence or \_\_\_ online notarization, on this \_\_\_ day of \_\_\_\_\_, 2021 by \_\_\_\_\_, who is personally know to me or has produced a \_\_\_\_\_ as identification.

My Commission Expires:

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

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

BY: \_\_\_\_\_  
Miriam Soler Ramos, City Attorney  
Cristina M. Suarez, Deputy City Attorney  
Stephanie M. Throckmorton, Asst. City Attorney  
Gustavo J. Ceballos, Asst. City Attorney  
Naomi Levi Garcia, Asst. City Attorney