

DRAFT SUBJECT TO FINAL CITY ATTORNEY APPROVAL

Prepared by:
Laura L. Russo, Esq.
Laura L. Russo, Esq., LLC
2655 LeJeune Road, Suite 201
Coral Gables, Florida 33134

DECLARATION OF RESTRICTIVE COVENANT

KNOW ALL MEN BY THESE PRESENTS, SANFORD I. RAKOFSKY, AS TRUSTEE OF THE SANDORD I. RAKOFSKY DECLARATION OF TRUST DATED MAY 23, 2010, (hereinafter the "Owner") does hereby make, declare, and impose on the land herein described, the covenants running with the title to the land, which shall be binding on the Owner, heirs, successors, and assigns, personal representatives, mortgages, lessees, and against all persons claiming by, through or under them;

WHEREAS, Owner holds the fee simple title to the lands in the City of Coral Gables, Florida, described below, (hereinafter called the "Property"):

See Exhibit "A" attached hereto and made a part hereof

WHEREAS, Owner submitted an application to Change the Land Use Map Designation in the City of Coral Gables Comprehensive Plan's Future Land Use Map for Owner's property from "Commercial Use Mid-Rise Intensity" to Commercial Use, High-Rise Intensity" for a .6 acres size parcel legally described in Exhibit "A" attached hereto and made a part hereof with addresses of 246-296 Andalusia Avenue, Coral Gables, Florida, and

WHEREAS, after notice of public hearing duly published and notification of all property owners of record within one thousand (1,000) feet of the property, a public hearing was held before the Local Planning Agency (Planning and Zoning Board) of the City of Coral Gables on October 13, 2010, and

WHEREAS, on October 13, 2010, the Local Planning Agency recommended unanimous approval in a 5-0 vote to amend the Future Land Use Map of the Coral Gables Comprehensive Plan, and

WHEREAS, pursuant to the provisions of sections 163.3187 Florida Statutes, the City Commission held a public hearing on October 26, 2010, at which hearing all interest persons were afforded an opportunity to be heard and the Owner's application was approved, and

WHEREAS, based on issues raised in discussions of application, Owner supplemented his application to proffer the condition that any proposed future development of the Property to construct a building taller than allowed under the City's regulations governing Commercial Use Mid-Rise Intensity including Mediterranean Bonuses: to wit: 70' + 27' equaling the maximum of 97' feet (excluding architectural elements), shall undergo the "Conditional Use" and "Site Plan" public hearing review process, regardless of the proposed use, and

WHEREAS, the property owner, successors or assigns, shall submit an application to the City for "Conditional Use" review to the City pursuant Zoning Code Article 4., Division 4., Conditional Uses, as amended, and "Site Plan" review pursuant to Article 3, Development Review, as amended, as provided herein, and

WHEREAS, that the request for a Comprehensive Plan Map amendment to the "City of Coral Gables Comprehensive Plan, Future Land Use Map, is hereby approved and amended from "Commercial Use, Mid-Rise Intensity" to "Commercial Use, High-Rise Intensity" for a 0.6 acre parcel legally described as Lots 1-10, Block 7, Crafts Section (246-296 Andalusia Avenue), Coral Gables, Florida; with the condition, proffered by the Owner that any proposed future development of the Property to construct a building taller than allowed under the City's regulations governing Commercial Use Mid-Rise Intensity including Mediterranean Bonuses: to wit: 70' + 27' equaling the maximum of 97' feet (excluding architectural elements), shall undergo the "Conditional Use" and "Site Plan" public hearing review process, regardless of the proposed use.

NOW THEREFORE, IN ORDER TO ASSURE the City of Coral Gables that the representations made by the Owner in connection with the above-described approval by the City will be abided by, the Owner freely, voluntarily, and without duress, makes the following Declaration of Restrictions covering and running with the Property:

- (1) The above recitations are true and correct and are incorporated herein in their entirety.
- (2) Any proposed future development of the Property to construct a building taller than allowed under the City's regulations governing Commercial Use Mid-Rise Intensity including Mediterranean Bonuses: to wit: 70' + 27' equaling the maximum of 97' feet (excluding architectural elements), shall undergo the "Conditional Use" and "Site Plan" public hearing review process, regardless of the proposed use.
- (3) The property owner, successors or assigns, shall submit an application to the City for "Conditional Use" review to the City pursuant Zoning Code Article 4., Division 4., Conditional Uses, as amended, and "Site Plan" review pursuant to Article 3, Development Review, as amended, as provided herein.
- (4) This Declaration on the part of the Owner shall constitute a covenant running with the land and shall remain in full force and effect and be binding upon the undersigned Owner, and his heirs, successors and assigns until such time as the same is modified or released. These restrictions shall be for the benefit of, and

limitation upon, all present and future owners of the real property and for the public welfare.

- (4) This Declaration is to run with the land and shall be binding on all parties and all persons claiming under it for a period of thirty (30) years from the date this Declaration is recorded after which time it shall be extended automatically for successive periods of ten (10) years, unless an instrument signed by the then owner(s) of the Property has been recorded agreeing to change the covenant in whole, or in part, provided that the Declaration has first been modified or released by the City of Coral Gables.
- (5) This Declaration of Restrictions 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 all of the Property, including joinders of all mortgagees, if any, provided that the same is also approved by the City of Coral Gables. Should this Declaration of Restrictions be so modified, amended or released, the City shall forthwith execute a written instrument effectuating and acknowledging such modification, amendment or release.
- (6) Enforcement shall be by action at law or in equity against any parties or person violating, or attempting to violate, any covenants, either to restrain violations or to recover damages. The prevailing party in any action or suit pertaining to or arising out of this Declaration shall be entitled to recover, in addition to costs and disbursements allowed by law, such sum as the Court may adjudge to be reasonable for the services of their attorney. This enforcement provision shall be in addition to any other remedies available at law, in equity, or both;
- (7) In the event the terms of this Declaration are not being complied with, in addition to other remedies available, the City is hereby authorized to withhold any further permits, and refuse to make any inspections or grant any approvals, until such time as there is compliance with this declaration;
- (8) 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;
- (9) Where construction has occurred on the Property or any portion thereof, pursuant to a lawful permit issued by the City, and inspections made and approval of occupancy given by the City, then such construction, inspection and approval shall create a rebuttable presumption that the buildings or structures thus constructed comply with the intent and spirit of this Declaration;
- (10) Invalidity of any of these covenants by judgment or Court shall not affect any of the other provisions, which shall remain in full force and effect.
- (11) This Declaration shall be filed in the public records of Miami-Dade County, Florida,

at the expense of the Owner.

The undersigned Owner does hereby declare that he will not convey or cause to be conveyed the title to the above referenced Property without requiring the successor in title to abide by all the terms and conditions set forth herein.

FURTHER, the undersigned Owner declares that this covenant is intended and shall constitute a restrictive covenant concerning the use, enjoyment, and title to the Property and shall be binding upon the undersigned, his successors and assigns.

IN WITNESS WHEREOF, the undersigned has caused its seal to be affixed hereto on this _____ day of _____, 2010.

WITNESSES:

OWNER:

Witness Signature

Print Name

Witness Signature

Print Name

Sanford I. Rakofsky, as Trustee of the
Sanford I. Rakofsky Declaration of
Trust dated May 23, 2000

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

I hereby certify that on this _____ day of _____, 2010, personally appeared before me Sanford I. Rakofsky, as Trustee of the Sanford I. Rakofsky Declaration of Trust dated May 23, 2010, who is personally known to me or has produced _____ as identification and he acknowledges that he executed this agreement.

My Commission Expires

NOTARY PUBLIC, STATE OF FLORIDA

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:

ELIZABETH M. HERNANDEZ
CITY ATTORNEY

Exhibit "A"

Legal Description:

Lots 1 through 10, Block 7, of CORAL GABLES CRAFTS SECTION, according to the Plat thereof, recorded in Plat Book 10, at Page 40, of the Public Records of Miami-Dade County, Florida.