

**This instrument was prepared by and
after recording return to:**

**Mario Garcia-Serra, Esq.
Gunster, Yoakley & Stewart, P.A.
600 Brickell Avenue, Suite 3500
Miami, FL 33131**

(Space reserved for Clerk)

AMENDMENT TO DECLARATION OF RESTRICTIONS

WHEREAS, 1350 S DIXIE LLC, a Delaware limited liability company, (the “Owner”), holds the fee simple title to the land at 1350 South Dixie Highway in the City of Coral Gables, Florida (hereinafter the “Property”), which is legally described on the attached Exhibit “A”; and

WHEREAS, the Owner and the City of Coral Gables (the “City”) made certain covenants pursuant to that certain Declaration of Restrictions recorded on November 15, 2017 in Book 30756, Page 2040 of the Public Records of Miami-Dade County, Florida (the “Declaration of Restrictions”).

WHEREAS, the Declaration of Restrictions was executed prior to the adoption of the City’s Green Building Bond requirements codified in Section 5-1302.B. of the City’s Zoning Code; and

WHEREAS, LEED or equivalent certification requires completion of construction and, possibly, operation for one year of a building; and

WHEREAS, the Owner and the City now desire to amend the Declaration of Restrictions to require issuance of LEED or equivalent certification within one year of issuance of a Temporary Certificate of Occupancy; and

NOW, THEREFORE, Owner freely, voluntarily and without duress makes the following Declaration of Restrictions, and agrees as follows:

- (1) **Recitals**. The above recitations are true and correct and are incorporated herein in their entirety.
- (2) **That Section 10.n. of the Declaration of Restrictions, is hereby amended as follows:**

10. Prior to issuance of the first Temporary Certificate of Occupancy:

~~n. **LEED.** Prior to the issuance of the Temporary Certificate of Occupancy for any individual building, such individual building must achieve LEED or equivalent certification.~~

- (3) **That Section 11 of Resolution No. 2015-316 (As Amended), is hereby amended as follows:**

11. Following issuance of the first Temporary Certificate of Occupancy:

c. **LEED.** Within one (1) year of issuance of the Temporary Certificate of Occupancy for any individual building, such individual building must achieve LEED or equivalent certification or either (i) provide the City with a performance bond, cash, or irrevocable letter of credit payment in the amount of 3% of the master building permit construction cost value at any point in time within one (1) year of issuance of the Temporary Certificate of Occupancy, such bond being subject to Sections 5-1302.C.2-3 of the Zoning Code, or (ii) vacate the building within sixty (60) days from the one (1) year date, at which time the Temporary Certificate of Occupancy shall be revoked. Applicant understands that the issuance of a Certificate of Occupancy will require Applicant to have obtained final LEED or equivalent certification.

- (4) **Modification, Amendment, Release.** This Declaration may be modified, amended, or released as to the land herein described, or any portion thereof, by written instrument executed by the then owner(s) of the Property, including joinders of all mortgagees, if any, and further provided that the same is also approved by the City. In the event that the Property is submitted to the condominium form of ownership, the condominium association is authorized to consent to any modification, amendment, or release on behalf of all its members. Should this Declaration be so modified, amended or released, the City shall forthwith execute a written instrument effectuating and acknowledging such modifications, amendment, or release.
- (5) **Enforcement.** 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 its attorney. This enforcement provision shall be in addition to any other remedies available at law, in equity or both. Owner shall be provided notice of any alleged violation of this covenant and afforded a 30 day time period during which to cure the alleged violation.

In addition, in the event of a breach of this covenant, enforcement may be by action at law or in equity against any parties or person(s) violating, or attempting to violate, any covenants, either to restrain violations or to recover damages. The parties agree that a

breach of this covenant shall create, in favor of the City, the presumption of irreparable harm for the purposes of any injunctive relief.

- (6) **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.
- (7) **Presumption of Compliance.** Where construction occurred on the Property or any portion thereof pursuant to a lawful permit issued by the City and where inspections were made and approval of occupancy was 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. The issuance of a final Certificate of Occupancy shall establish conclusively that the building(s) certified for occupancy comply with this Declaration.
- (8) **Severability.** Invalidation of any one of these covenants, by judgment or Court order, shall not affect any of the other provisions which shall remain in full force and effect. However, if any material portion is invalidated, the City shall be entitled to revoke any approval predicated upon the invalidated portion.
- (9) **Recording.** This Declaration shall be recorded in the public records of Miami-Dade County, Florida, at the cost of Owner and shall become effective immediately upon recordation.

NOW, THEREFORE, for good and valuable consideration, the undersigned does hereby declare that it will not convey or cause to be conveyed the title to the above referenced Property without requiring successors in title to abide by all terms and conditions set forth herein. Further, the undersigned 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, its successors, and assigns.

[Execution Pages Follow]

IN WITNESS WHEREOF, the undersigned have set their hands and seals to this

Declaration of Restrictive Covenants this _____ day of _____, 2017.

WITNESS:

1350 S DIXIE, LLC, a
Delaware limited liability company

Print Name: _____

By: _____
Brent M. Reynolds
Authorized Representative

Print Name: _____

Owner's Address: 2020 Ponce de Leon
Blvd., Suite 1104, Coral Gables, Florida
33134

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me by _____, the _____
of 1350 S DIXIE, LLC, this _____ day of _____, 2017 who is personally known to
me or who produced _____ as identification.

Notary Public, State of Florida at Large
Print Name: _____
My commission expires: _____

Approved as to form and legal sufficiency:

Miriam S. Ramos, City Attorney
Cristina M. Suarez, Deputy City Attorney
Stephanie M. Throckmorton, Assistant City Attorney

EXHIBIT "A"

LEGAL DESCRIPTION

The Southwesterly 360.00 feet of Tract A, a REPLAT OF PART OF CORAL GABLES, RIVIERA SECTION PART 8, according to the Plat thereof, recorded in Plat Book 46, Page 100, of the Public Records of Miami-Dade County, Florida.

Also known as:

All that part of Tract A as shown on plat entitled REPLAT OF PART OF CORAL GABLES, RIVIERA SECTION PART 8, according the Plat thereof, recorded in Plat Book 46, Page 100, of the Public Records of Miami-Dade County, Florida, that lies Southwesterly of the following described line:

Commence at a point where the Southeasterly line of Miami-Homestead Highway (U.S. 1) intersects the Northeasterly line of Hardee Road; thence Northeasterly along the Southeasterly line of Miami-Homestead Highway, a distance of 360 feet to the Point of Beginning of the line being described; thence Southeasterly parallel to and 360 feet Northeasterly at right angles to the Northeasterly line of Hardee Road a distance of 325 feet to a point located on the Northwesterly line of Avenue Madruga, said point, being 303.70 feet Northeasterly from a point where the Northwesterly line of Avenue Madruga intersects the Northerly line of Hardee Road.

JOINDER AND CONSENT OF LENDER