

# FAIRCHILD TROPICAL BOTANIC GARDEN

Exploring, Explaining and Conserving the World of Tropical Plants

## COVENANT RUNNING WITH THE LAND

This Agreement dated July 9, 2010, is between Fairchild Tropical Botanic Garden, Inc. ("Fairchild Garden") and the Hammock Oaks Homeowners Association, Inc. ("Hammock Oaks"). The parties agree as follows:

1. Fairchild Garden owns and/or leases the property located at 10901 Old Cutler Road, Coral Gables, FL.
2. Hammock Oaks is an association of persons who own and reside in property contiguous to or proximate to Fairchild Garden in the Hammock Oaks development in Coral Gables, FL.
3. In connection with the construction and expansion of facilities at Fairchild Garden, Fairchild Garden has submitted Planning Application No. 11-09-095-P "Fairchild Tropical Botanic Garden-Science Village" to the City of Coral Gables (the "Application").
4. In such Application, Fairchild Garden has requested approval for the construction of a Science Center comprised of a science classroom building, a laboratory building and a shade house (the "Proposed Science Facilities").
5. Fairchild Garden and Hammock Oaks have engaged in good faith discussions as to the Application and the Proposed Science Facilities in order to develop a set of guidelines for the Proposed Science Facilities as well as protections for Hammock Oaks which shall apply to the Proposed Science Facilities.

6. Hammock Oaks agrees that, in consideration for the concessions and limitations on Fairchild Garden's use and development of its property as set forth herein, it
  - a. supports and is in favor of the Application,
  - b. will not oppose the Application before the City of Coral Gables, any division or department thereof or in any subsequent appellate proceedings or reconsideration of the Application as modified, and
7. At a Special Meeting of the Board of Directors of the Hammock Oaks Homeowners Association, Inc., held on June 8, 2010, a resolution was passed approving the Agreement which is made a part hereof. If requested, the Board will provide a copy of the minutes of the Board meeting.
8. The agreements set forth herein are based upon the Proposed Science Facilities as set forth in the pending Application and any "material modification" to such Application shall void the Hammock Oaks consent given herein.
9. In consideration of Hammock Oak's support of the Application and contingent upon such support and the approval of the Application by Coral Gables, Fairchild Garden agrees to execute and record this Covenant Running with the Land and to agree to the following conditions for the construction of the Proposed Science Facilities for which approval is requested in the Application and for any subsequent expansion, renovation, reconstruction, modification or other work on the facilities at Fairchild Garden:

#### Access

- a. Vehicle access into Fairchild Garden shall be prohibited from Campana Avenue, other than such access as may be required by the City of Coral Gables for emergency vehicles responding to an emergency, including access during hurricanes or necessary testing.
- b. The emergency entrance shall not be used for deliveries or waste removal at any time.
- c. Persons using the facilities shall not park at or access the facilities through the emergency entrance.

- d. There shall be no pedestrian access to Fairchild Garden from Campana Avenue. Subject to the foregoing, Fairchild Garden shall construct a pedestrian gate in proximity to the emergency entrance for use only by Hammock Oaks residents who are current members of Fairchild Garden. Fairchild Garden employees are prohibited from using the pedestrian gate in all circumstances other than emergencies.
- e. Except as set forth herein, there shall be no access to Fairchild Garden from Campana Avenue.

#### Beautification/Landscape

- f. Fairchild Garden shall accommodate the reasonable requests of the current property owners of 495 Campana Avenue and 470 Campana Avenue for beautification of the emergency driveway and foliage to screen the proposed structures from view. There shall be sufficient landscaping behind the proposed structures to screen those structures from view from Campana Ave. to the greatest extent possible.
- g. Fairchild Garden shall landscape, beautify, improve and maintain the border between Fairchild Garden and Campana Avenue south of the coral rock wall. The wall shall be made sturdy, repaired with the same material and maintained, and shall slope to the height of the emergency gate.

#### Development/Facilities

- h. No construction vehicles will enter via Campana Avenue during or after construction, but access to Fairchild Garden will only be through Fairchild Garden's premises.
- i. The Proposed Science Facilities shall not be expanded any further to the east.
- j. All future development of structures by Fairchild shall be located no less than 250 feet measured from the back property lines from the homes located on the north side of Campana Avenue. Provided, however, that this restriction shall not apply to Fairchild's Amphitheater or parts thereof that are within that area, and shall not operate to prohibit any reasonable or necessary repairs or maintenance for that facility.
- k. The back windows of the structures in the Proposed Science Facilities in the Application shall be niche windows.
- l. Current and future construction shall not have greater height than presently shown on the plans for the Proposed Science Facilities, nor shall any future construction encroach towards Campana Ave. closer than the Proposed Science Facilities.

#### Use

- m. Amplified sound shall be prohibited at all times from the Proposed Science Facilities and the property that is now known as the Davis house.
- n. Events at Fairchild will include uniformed police officers.

10. This Covenant is contingent upon the approval of the Application by the City of Coral Gables and the expiration of any appeal rights, and the issuance of a permit or permits for the construction of the Proposed Science Facilities; in the event the Application is not approved or a building permit is not issued for the Proposed Science Facilities, then the recording of this Covenant may be deferred until such time as such events occur. Cost of recording shall be borne by Fairchild Garden.
11. This Agreement may be enforced by injunction restraining any violation of this agreement, in addition to such other relief as may be proper, by any aggrieved person(s) holding title to property within Hammock Oaks (platted as Hammock Oaks Harbor sections 1, 2 and 3) or by the Hammock Oaks Homeowners Association, Inc.
12. This Agreement constitutes the entire agreement between the parties with respect to the specific matters contained herein and supersedes all previous discussions, understandings, and agreements. Any amendments to or waivers of the provisions herein shall be made by the parties in writing.
13. This Agreement is to run with the land and shall be binding on all parties and all persons claiming under it for a period of 30 years from the date this Agreement is recorded, after which time it shall be extended automatically for successive periods of 10 years, until such time as it is modified, released or terminated by further agreement of the parties.
14. This Agreement may be modified, released or terminated as to the land herein described, or any portion thereof, by written instrument executed by the parties and all owners then in title to property on the North side of Campana Ave.

**Except as specifically amended herein, the Agreement dated July 9, 2010 shall be in full force and effect.**

**FAIRCHILD TROPICAL BOTANIC GARDEN, INC.  
ASSOCIATION, INC.**

**HAMMOCK OAKS HOMEOWNERS**

By: \_\_\_\_\_  
Bruce W. Greer, President

By: \_\_\_\_\_  
Maurice Donsky, President

(Corporate Seal)

(Corporate Seal)

Sworn to and subscribed before me this August \_\_ 2010, by BRUCE W. GREER, as President of Fairchild Tropical Botanic Garden, Inc., who is personally known to me or produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public

My commission expires:

Sworn to and subscribed before me this August \_\_, 2010, by MAURICE DONSKY, as President of Hammock Oaks Homeowners Association, Inc. who is personally known to me or produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public

My commission expires: