

**DRAFT**

**NOTE: Amended resolution (~~strike-thru~~ and underlining will be removed on codified version)**

**DECLARATION OF RESTRICTIVE COVENANTS**

***KNOWN ALL BY THESE PRESENTS***, that Guillermo and Consuelo Huergo, hereinafter referred to as “**Owner**”, hereby makes, declares, and imposes on the land herein described, the covenants running with the title to the land, which shall be binding on the Owners, their 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 land in the City of Coral Gables, Florida, described as:

Lots 17-19 and 40-42, Block 127 of Coral Gables Riviera Section, Part 10 according to the Plat thereof as recorded in Plat Book 31 at Page 1 of the Public Records of Miami-Dade-County. (5705 Riviera Drive); and

***WHEREAS***, Owner has submitted Application No. 06-06-422-P, to the Planning Department of the City of Coral Gables, requesting the following:

Approval of a Building site separation pursuant to Section 12-5 of the Zoning Code of the City of Coral Gables, Florida, as amended; and

***WHEREAS***, The Owner is desirous of giving the City of Coral Gables and certain abutting property owners whose properties are described as follows:

Parcel 1 - Lots 20 and 21, Block 127 of Coral Gables Riviera Section, Part 10 according to the Plat thereof as recorded in Plat Book 31 at Page 1 of the Public Records of Miami-Dade-County. (5700 San Vicente Street.)

Parcel 2 – South one-half of Lot 15 and Lot 16, Block 127 of Coral Gables Riviera Section, Part 10 according to the Plat thereof as recorded in Plat Book 31 at Page 1 of the Public Records of Miami-Dade-County. (5614 San Vicente Street.)

Parcel 3 - Lots 38 and 39, Block 127 of Coral Gables Riviera Section, Part 10 according to the Plat thereof as recorded in Plat Book 31 at Page 1 of the Public Records of Miami-Dade-County. (5709 Riviera Drive.)

Parcel 4 - Lots 43 and 44, Block 127 of Coral Gables Riviera Section, Part 10 according to the Plat thereof as recorded in Plat Book 31 at Page 1 of the Public Records of Miami-Dade-County. (5617 Riviera Drive.); and

**WHEREAS**, the Planning and Zoning Department, based upon its “findings of facts” recommended, approval. As a part of the approval, the owner agreed to execute a Restrictive Covenant in favor of the neighbors and not as required by the City Commission pursuant to Resolution No.R-2007-16 as amended as part and parcel of the approval agreeing to certain conditions.

**NOW, THEREFORE**, in order to assure the City of Coral Gables and the abutting property owners that the representations include as a part of the record of the proceedings made by the Owner in connection with the approvals by the City and issuance of a certificate of use and occupancy, will be abided by. The Owner freely, voluntarily, and without duress, makes the following Declaration of Restrictive Covenant covering and running with the Property and agrees as follows:

1. The above recitations are true and correct and are incorporated herein in their entirety; and
2. Lots 40-42 will be developed in substantial conformity with the site plan and elevations prepared by the architectural firm of Bravo, LLC, and dated January 31, 2006, all of which is on file in the office of the Planning Director of the City of Coral Gables (hereinafter referred to as the “Site Plan”); and
3. The property shall not be further separated, with the existing property divided into two building sites, each with three (3) platted lots; and
4. Each building site shall be for a one single family residence; and
5. All existing encroachments shall be removed from the proposed building site (Lots 17-19) within one (1) year of the approval; and
6. There shall not be any landscaping over 10 feet in height within 15 feet of the south property line; and
7. The existing single-family residence located on Lots 40-42 shall be reconfigured to remove all non-conforming encroachments within one (1) year of the approval; and
8. The new residence constructed on Lots 17-19 shall meet all requirements of the new single-family Zoning Code regulations; and
9. As proffered by the applicant, no encroachments or variances shall be granted for the new residence constructed on Lots 17-19; and
10. This Declaration of Restrictive Covenant shall be binding against the property is located at, Lots 17-19 and Lots 40-42 Block 127 of Coral Gables Riviera Section 10 according to the Plat thereof as recorded in Plat Book 31 at Page 1 of the

Public Records of Miami-Dade-County, and enforceable by the City of Coral Gables and the four (4) adjoining properties; and

11. This Declaration of Restrictive Covenant shall be binding upon the respective successors, heirs, executors, administrators, representatives and assigns of the Applicant / Owner, and upon all persons arguing an interest thereunder and shall constitute a covenant running with the land for a period of thirty (30) years from the date of the covenant is recorded after which X if share be extended automatically for successive periods of ten (10) years, unless modified or released by the City of Coral Gables; and
12. The Owner freely agrees to be bound by the restrictions depicted on the Site Plan including but not limited to setbacks, and heights of the various portions of the residence and shall not be change without the written authorization of one hundred (100%) percent of the abutting property owners; and
13. This Declaration of Restrictive Covenant on the part of the Owner shall constitute a covenant running with the land and shall be recorded, at the Owner's expense, in the public records of Miami-Dade County, Florida and shall remain in full force and effect and be binding upon the undersigned Owner and their heirs, successors and assigns until such time as the same is modified or released. These restrictions during their lifetime shall be for the benefit of, and limitation upon, all present and future owners of the real property and for the public welfare; and
14. This Declaration of Restrictive Covenant 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; and
15. This Declaration of Restrictive Covenant 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, or if the property has been submitted to a condominium form of ownership, by an authorized representative of the condominium association responsible to manage the condominium, in lieu of all the property owners, including joinders of all mortgages, 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; and
16. 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; and

17. As further part of this Declaration, it is hereby understood and agreed that any official inspector of the City of Coral Gables, or its agents duly authorized, may have the privilege at any time during normal working hours of entering and inspecting the premises to determine whether or not the requirements of all applicable City codes and the conditions herein agreed to are being complied with; and
18. In the event the terms of this Declaration are not being complied with, in addition to any 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; and
19. 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; and
20. 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 this Declaration; and
21. 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; and
23. The location for settlement of any claims, controversies, disputes, arising out of or relating to any part of this Agreement, or breach hereof, shall be in Miami-Dade County, Florida.

#### ACKNOWLEDGEMENT

Signed, sealed, executed, and acknowledged on this \_\_\_\_ of \_\_\_\_\_,  
2008.

Witness:

\_\_\_\_\_  
Print Name:

\_\_\_\_\_  
Guillermo Huergo

\_\_\_\_\_  
Print Name:

Witness:

\_\_\_\_\_  
Print Name:

\_\_\_\_\_  
Consuelo Huergo

\_\_\_\_\_  
Print Name:

**STATE OF FLORIDA** )

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**COUNTY OF MIAMI-DADE** )

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The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_ by \_\_\_\_\_ on behalf of \_\_\_\_\_, who is personally known to me or who produced \_\_\_\_\_ identification.

\_\_\_\_\_  
Notary Public State of Florida  
Print Name: \_\_\_\_\_

Commission No.: \_\_\_\_\_  
Commission Expires: \_\_\_\_\_