

PREPARED BY:

The Above Blank Space Is for Recording Purposes.

COMMERCIAL (check if applicable)

RESIDENTIAL (check if applicable)

PROPERTY OWNER’S ENCROACHMENT & RESTRICTIVE COVENANT AGREEMENT

THIS AGREEMENT is made and entered this _____ day of _____, 2018, by and between _____, whose mailing address is _____, hereinafter referred to as “OWNER”, and the City of Coral Gables, a Florida municipal corporation, hereinafter referred to as “CITY”.

RECITALS

WHEREAS, OWNER is/are the fee simple owner(s) of certain real property located within the City of Coral Gables, Miami Dade County, Florida with a property address of _____ Coral Gables, Florida and more particularly described as (insert the full legal description for the property as maintained by the Miami-Dade County Property Appraiser’s Office. See www.miamidade.gov for more information):

WHEREAS, OWNER’S property is located adjacent to certain CITY right-of-way, sidewalk, swale, alley, or other such right-of-way; and

WHEREAS, OWNER desires to place, construct, install, and/or maintain upon CITY's right-of-way, sidewalk, swale, alley, or other such right-of-way the following (place an **X** next to the type of encroachment):

_____ **Special driveway approach(es) (type):** _____

_____ **Sign(s)**

_____ **Canvas canopy(ies) or awning(s)**

_____ **Landscaping**

_____ **Irrigation system**

_____ **Tables, chairs, umbrellas, heaters (describe the item to be placed as well as the day(s) of the week and hour(s) of the day of such placement):**

_____ **Electrical (describe):** _____

_____ **Other (describe):** _____

_____, thereby, encroaching into the City's right-of-way, sidewalk, swale, alley, or other such right-of-way; and

WHEREAS, the CITY is willing to allow OWNER to encroach into CITY's right-of-way, sidewalk, swale area, or other such right-of-way without prejudice to the CITY's right to have the encroachment removed at the OWNER's sole expense; and

WHEREAS, OWNER understands that at any time the CITY may require OWNER to remove the aforesaid encroachment from the CITY right-of-way, sidewalk, swale area, or other such right-of-way.

NOW, THEREFORE, in consideration for the mutual covenants contained herein and as further consideration for the CITY approving OWNER's request to encroach upon CITY's right-of-way, sidewalk, swale area, or other such right-of-way, 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 right-of-way, sidewalk swale area, or other such right-of-way provided that said encroachment shall be in accordance with plans and specifications on file or to be filed with and approved by the CITY.
3. At any time, the CITY may require either the permanent or temporary removal of said encroachment and OWNER for himself/herself as well as their successors in interest agree that at such time as the CITY requires temporary or permanent removal of the aforesaid encroachment, OWNER will do so promptly and at their own expense. OWNER further agrees that if he/she/they should fail to remove the encroachment within thirty (30) days after the CITY mails a written request to OWNER requiring removal of the encroachment, then the CITY may remove the aforesaid encroachment and impose the cost of said removal as a special assessment lien against the Property — such special assessment lien shall be in parity or coequal with the lien of all state, county, district and city taxes, and superior in dignity to all other liens, titles, encumbrances, and claims. In the event of an emergency, the CITY shall have the right to remove the encroachment without notice to OWNER and without any obligation or liability to OWNER for damage to the encroachment.
4. To the fullest extent permitted by Laws and Regulations, OWNER hereby agree(s) 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 installation and/or maintenance of the encroachment 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 of Coral Gables 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 encroachment is removed and failure to maintain such insurance shall constitute a material breach of this Agreement that may result in the City requiring removal of the encroachment at OWNER's sole expense.
7. All individuals signing this Agreement have the legal authority and capacity to enter into this General Encroachment & Restrictive Covenant Agreement.
8. As further part of this Agreement, 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 to enter and inspect the premises to determine whether the requirements of the Building and Zoning regulations and the conditions herein agreed to are fully complied with.
9. 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.
10. In the event the terms of this Agreement are not being 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.
11. 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.
12. 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.
13. OWNER agrees that he/she shall be liable for reasonable attorney's fees incurred by CITY, if CITY is required to take any actions, through litigation or otherwise, to enforce this Agreement.
14. 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.

- 15. 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 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 OWNER(S):

Signature

Signature

Print Name & Title (if applicable)

Print Name & Title (if applicable)

Notarization of Owner's/Owners' Execution

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this ____ day of _____, in the year 2018, by _____, who is/are personally known to me or has/have produced _____ as identification.

My Commission Expires:

Notary Public, State of Florida

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Miriam Soler Ramos, City Attorney
Cristina M. Suárez, Deputy City Attorney
Stephanie Throckmorton, Assistant City Attorney
Gustavo J. Ceballos, Assistant City Attorney

◆ THIS COVER SHEET MUST BE PROVIDED WITH ALL INSURANCE DOCUMENTS ◆

<p>Encroachment & Restrictive Covenant Agreements</p> <p align="center">Cover Sheet</p> <p align="center">For</p> <p>Evidencing Insurance to the City of Coral Gables</p>	<p>Legal Name of (Individual or Company) executing agreement: _____</p> <p>Insurance is being submitted for a Commercial Property (circle one): YES or NO Insurance is being submitted for a Residential Property (circle one): YES or NO</p> <p>Without limiting “OWNER” and/or “TENANT” indemnification obligation of the CITY, and during the term of this Agreement, “OWNER” and/or “TENANT” shall provide and maintain at its own expense the below described programs of insurance. Such programs and evidence of insurance shall be satisfactory to the “CITY” and shall be primary to and not contributing with any other insurance or self-insurance program maintained by the “CITY”. Certificates or other evidence of coverage shall be delivered via email, fax or US mail to;</p> <p align="center">Certificate Holder should read: City of Coral Gables Insurance Compliance</p> <p align="center">Email address: PO Box 100085-CE Duluth, GA 30096 cityofcoralgables@ebix.com</p> <p>Such certificates or other evidence of coverage shall be delivered prior to the approval of this Agreement, and shall contain the express condition that the “CITY” is to be given written notice of at least thirty (30) days in advance of any cancellation, non-renewal or material change of any insurance policy.</p>				
<p>Insurance Requirements</p> <p align="center">For</p> <p>Commercial Properties</p>	<p>Commercial Properties are required to evidence the following Insurance to the City;</p> <table border="0" style="width: 100%; border-collapse: collapse;"> <tr> <td style="border-bottom: 1px solid black; width: 45%;"><u>Insurance Coverage Type</u></td> <td style="border-bottom: 1px solid black; width: 55%;"><u>Limit of Liability Required</u></td> </tr> <tr> <td>Commercial General Liability</td> <td>Each Occurrence \$1,000,000 Aggregate \$2,000,000</td> </tr> </table> <ul style="list-style-type: none"> All insurance policies evidenced to the City shall name the City of Coral Gables as an Additional Insured on a Primary and Non-contributory basis. All insurance policies evidenced to the City shall contain A Waiver of Subrogation Endorsement in favor of the City of Coral Gables. All insurance companies providing coverage must have an A.M. Best rating of at least (A-/VI) or an equivalent rating given by a recognized rating agency. <p>When evidencing insurance to the City, the following documents must be provided;</p> <ol style="list-style-type: none"> This Cover Sheet with all of the questions above answered. A Certificate of Liability Insurance naming the City of Coral Gables as an additional insured on a primary and non-contributory basis including a Waiver of Subrogation in favor of the City. A copy of the Endorsements evidencing that Additional Insured status has been provided to the City and that this coverage has been provided on a Primary & Non-Contributory Basis. A copy of the Waiver of Subrogation Endorsements for each line of coverage required. 	<u>Insurance Coverage Type</u>	<u>Limit of Liability Required</u>	Commercial General Liability	Each Occurrence \$1,000,000 Aggregate \$2,000,000
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Personal Liability Insurance	Each Occurrence \$300,000				
<p align="center">City of Coral Gables Insurance Compliance Contact Information</p> <p align="center">Phone: (951) 652-2883 • Fax: (770) 325-0417 • Email: cityofcoralgables@ebix.com</p>					