

This instrument was prepared by  
and after recording return to

Steven J. Wernick, Esq.  
WERNICK & CO, PLLC  
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Suite #113  
Miami, FL 33137-4440

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Reserved for Recording

<b>DECLARATION OF RESTRICTIONS</b>
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THIS DECLARATION OF RESTRICTIONS (the "**Declaration**"), is made this day \_\_ of \_\_\_\_\_, 2019, by Puntallana, LLC, a Florida limited liability company, (the "**Owner**"), in favor of Spring Garden Civic Association, Inc., a Florida not for profit corporation (the "**SGCA**").

**WHEREAS**, Owner is the fee simple title holder to that certain property located at 301 NW South River Drive, Miami, Florida (the "**301 Parcel**") and 311 NW South River Drive, Miami, Florida (the "**311 Parcel**"), more particularly described on **Exhibit "A"** (the 301 Parcel and 311 Parcel together comprising the "**Property**") attached hereto and incorporated herein; and

**WHEREAS**, Owner contemplates new construction of a 6-story commercial building on the 301 Parcel for use as a marine-related commercial establishment, and the renovation and adaptive use of the existing commercial building located on the 311 Parcel for an ancillary food service establishment, by warrant under D3 transect zone, with indoor and outdoor dining areas (the "**Project**"); and

**WHEREAS**, Owner has submitted plans prepared by DLW Architects, as amended October \_\_ 2019 (the "**Site Plan**"), to the City of Miami for the approval of the Project pursuant to Warrant Final Decision No. \_\_\_\_\_; and

**WHEREAS**, in order to assure the SGCA that the representations made by the Owner to them will be abided by, the Owner freely, voluntarily, knowingly, and without duress, makes the following Declaration of Restrictions covering and running with the Property; and

**NOW, THEREFORE**, Owner voluntarily covenants and agrees that the Property shall be subject to the following restrictions that are intended and shall be deemed to be a covenant running with the land and binding upon the Owner, and their heirs, successors, and assigns, as follows:

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein as if repeated at length.
2. **Owner Restrictions.** Owner covenants the following:

- a. There shall be no outdoor dining operated after sunset by the restaurant on the rooftop observation deck proposed for the existing building on the 311 Parcel; and
- b. There shall be no outdoor alcoholic beverage sales after sunset at the Property, except in designated ground level dining areas; and
- c. There shall be no operation of any portable sound-making device or instrument, or the playing of any band, orchestra, musician or group of musicians, where the noise or music is plainly audible at a distance of 100 feet from the Property; and
- d. Owner shall engage a qualified sound engineer to verify that the proposed operations of the food service establishment, including but not limited to any sound amplification system installed on the Property, complies with all standards and criteria as set forth in Chapter 36 of City of Miami Code of Ordinances (the “Noise Ordinance”) prior to issuance of a TCO or CO for the Property.

**3. SGCA Restrictions.** SGCA covenants the following:

- a. The SGCA agrees not to, nor encourage third parties to, in any manner whatsoever challenge, protest, infringe, object, obstruct, delay, appeal, file any formal or informal complaint administrative or judicial action adverse to or concerning, or otherwise interfere with any aspect relating, either directly or indirectly, to the approval of the Project so long as all terms of this Declaration are in compliance;
- b. The SGCA agrees to support Owner’s application(s) for approval of the Project including, but not limited to, the Warrant Application and agrees to proffer its support to the Miami River Commission (the “MRC”) prior to formal consideration and action by the MRC;
- c. Upon Owner’s request, the SGCA agrees to appear at any public hearings or provide a written resolution regarding its support for the Project consistent with this Declaration, including, but not limited to, any appeal hearings on the Warrant Application, in order to express support for the Project;
- d. If the Warrant Application is not approved, expires, or the Owner withdraws the Warrant Application or if SGCA violates any of the covenants set forth in Section 3.a – c. above, this Declaration shall be null and void.

**4. Covenant Running with the Land.** This Declaration on the part of Owner shall constitute a covenant running with the land and shall be recorded, by the Owner and at 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 its heirs, successors, and assigns until such time as the Declaration is terminated, modified or released. These restrictions shall run in favor of and to the benefit of the SGCA. These restrictions during their lifetime shall be for the benefit of, and be a limitation upon, all present and future owners of the Property and for the public welfare.

**5. Term of Covenant.** The provisions of this Declaration shall become effective upon its recordation in the Public Records of Miami-Dade County, Florida, and shall continue in effect for a period of thirty (30) years after the date of such recordation, unless this Covenant is

released in accordance with terms in Section 6 below, or rendered null and void as provided in Section 3(d) above.

**6. Modification, Amendment, Release.** This Declaration 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 the fee simple title to the Property, or any portion thereof, provided that the same has also been approved in writing by the SGCA. Should this Declaration be so modified, amended, or released, the SGCA shall execute a written instrument effectuating and acknowledging such modification, amendment, or release, in a form acceptable for recording in the public records of Miami-Dade County, Florida. Recording shall be at the sole expense of the then owner of the Property. The SGCA shall execute and record a release of this Declaration within thirty (30) days of this Declaration being rendered null and void pursuant to Section 3(d) above.

**7. Enforcement.** Enforcement shall be by the SGCA by a civil action against any parties or person violating, or attempting to violate, any of the covenants contained herein. This enforcement provision shall be in addition to any other remedies available at law, in equity, or both.

**8. 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.

**9. Severability.** Invalidation of any one of these covenants by judgment of Court shall not affect any of the other provisions of this Declaration, which shall remain in full force and effect.

**10. Recording.** This Declaration shall be filed of record in the Public Records of Miami-Dade County, Florida by the Owner, at the cost of the Owner, prior to the issuance of a building permit by City of Miami pursuant to Warrant Final Decision No. \_\_\_\_\_. This Declaration shall not be effective or enforceable until recorded.

**11. Authority.** Each of the undersigned represent and warrant that he or she has the requisite authority to make this agreement and bind the Owner and SGCA, respectively, to the terms of this Declaration.

**12. Entirety of Agreement.** This instrument sets forth the entire agreement of the parties with respect to this Declaration.

[Signature Page to Follow]

Declaration of Restrictions  
301-311 NW South River Drive, Miami, FL

Declaration of Restrictions  
301-311 NW South River Drive, Miami, FL

Signed, witnessed, executed and acknowledged this \_\_\_ day of \_\_\_\_\_, 2019.

WITNESSES

**Puntallana, LLC**, a Florida limited liability company

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

By: \_\_\_\_\_  
Arturo Ortega, Sr., its Manager

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

STATE OF FLORIDA            )  
  ) SS  
COUNTY OF MIAMI-DADE    )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2019, by Arturo Ortega, Sr., the manager of Puntallana, LLC, who is personally known to me, or has produced \_\_\_\_\_, as identification and she acknowledged before me that he executed the same, freely and voluntarily, for the purposes therein expressed.

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

Notary Public, State of Commission No. \_\_\_\_\_

Declaration of Restrictions  
301-311 NW South River Drive, Miami, FL

Signed, witnessed, executed and acknowledged this \_\_\_ day of \_\_\_\_\_, 2019.

WITNESSES

**Spring Garden Civic Association, Inc.**  
a Florida not for profit corporation

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

By: \_\_\_\_\_  
Carlos Salas, its President

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

STATE OF FLORIDA            )  
  ) SS  
COUNTY OF MIAMI-DADE    )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2019, by \_\_\_\_\_, as President of the Spring Garden Civic Association, Inc., who is personally known to me, or has produced \_\_\_\_\_, as identification and she acknowledged before me that he executed the same, freely and voluntarily, for the purposes therein expressed.

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

Notary Public, State of Commission No. \_\_\_\_\_

Declaration of Restrictions  
301-311 NW South River Drive, Miami, FL

**Exhibit "A"**

**Legal Description**

*LOT 1, HUNT SUBDIVISION, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 52, PAGE 17, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.*

*AND*

*LOTS E AND F, SILVERSON AND TATUM'S SUBDIVISION, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 3, PAGE 190, BOTH OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.*

**Address and Folio Number:**

301 NW South River Drive: 01-0200-010-5010

311 NW South River Drive: 01-0200-010-2040