

PREPARED BY AND RETURN TO:

[Legibly print, type or stamp name and address of natural person who prepared the instrument or under whose supervision it was prepared as required by § 695.26 (1) (b), Fla. Stat.]

Folio No: _____

Space above this line for recorder's use

Declaration Regarding Maintenance Obligation
(_____ Name of Project _____)

THIS Declaration of Maintenance Obligation ("Declaration") is made this ___ day of _____, 2019 (the "Effective Date"), by _____ (the "Owner"), whose address is _____, in favor of the City of Fort Lauderdale, a Florida municipal corporation, whose address is 100 North Andrews Avenue, Fort Lauderdale, Florida 33301 (the "City").

Recitals

A. The City has approved the development plan under DRC case # _____, approved on _____ (date of approval) for the project known as " _____ " ("Approved Development Plan"); and

B. Owner is in the process of developing _____ (Project Name) on that certain real property located in the City of Fort Lauderdale, Broward County, Florida, more particularly described in **Exhibit "A"** attached hereto ("Property"); and

C. As a part of the approval of the Approved Development Plan by the City, the Owner requested the right to install landscape, curbing, pedestrian lighting and irrigation, on street parking pavers, ("Special Improvements") within parts of those certain rights-of-way known as _____, all located immediately adjacent to the Property ("Special Improvement Area"), as more particularly described by the sketch and legal description provided in **Exhibit "B"** attached hereto and made a part hereof; and

D. As a condition of approval of the Approved Development Plan and in consideration of the City authorizing the installation of the Special Improvements, the Owner is required to maintain the Special Improvements within the Special Improvement Area; and

E. The design and construction documents describing and depicting the locations, material specifications, dimensions, and the criteria for installation, testing and acceptance for the Special Improvements were reviewed and approved on _____ by the Department of Sustainable Development under Permit No. _____ (Building Permit); and

F. The Special Improvements were installed by the Owner in accordance with the Building Permit and inspected and approved by the Department of Sustainable Development on _____; and

G. In consideration of the foregoing, Owner wishes to declare its responsibilities with regard to the construction and maintenance of the Special Improvements within the Special Improvement Area, all as described herein and the conditions upon which it makes this Declaration.

NOW, THEREFORE, in consideration of the approvals and permits described in this Declaration, Owner hereby declares that the Property shall be held and conveyed subject to the following:

Section 1. Recitals Incorporated by Reference. The above recitals are true, complete and correct and are incorporated herein by this reference.

Section 2. Maintenance. Owner shall, at its own cost and expense, install and at all times maintain or cause to be maintained the Special Improvements as described and depicted in the Approved Development Plan and Special Improvement Area, together with any supporting materials under or around the Special Improvements, including but not limited to limerock base, stabilized subbase and concrete banding by: (1) repairing or replacing, as necessary, any materials within the Special Improvement Area that require repair or replacement; and (2) cleaning the Special Improvement Area, as needed, to maintain the Special Improvement Area in a neat and attractive manner. To the extent required in order to comply with its obligations hereunder, the Owner shall have the right to enter rights-of-way and easements under the City's jurisdiction within and adjacent to the Special Improvement Area. Notwithstanding the foregoing, Owner shall not be responsible to repair, replace, or maintain any City improvements, facilities, infrastructure or utilities on, under or about the Special Improvement Area except as otherwise specifically provided in this Declaration.

2.1 Prior to the repair and/or replacement and/or modification of the Special Improvements pursuant to the terms of this Declaration, Owner shall submit a permit application with construction plans and details to the Department of Sustainable Development for review. As part of the permit application Owner shall also furnish a cost estimate and surety bond in a form and amount acceptable to the City Engineer and payable to City in a sum equal to the cost of constructing the Improvements and which guarantees to City the completion of the Improvements, guarantees the performance of the work necessary to complete same as well as full payment of all suppliers, materialmen, laborers or subcontractors employed to provide services to complete such work in accordance with the terms of this Declaration, from a surety company having at least an A Best's Policy holder's rating and a Class VII Best's Financial Size Category. In order for the City to verify the bond amount, the cost estimate shall include a breakdown of the individual

components of work, cost of the materials, labor and equipment to install the improvements, complete and in place, to the satisfaction of the City.

2.2 Owner shall conduct periodic inspections to identify any potential defects and general integrity of the Special Improvements (breakage, chipping, cracking, settlement, change in surface texture, foreign materials on surface) that may result in changes of grade, slope, ponding of surface water, surface texture, slip resistance, undermining of supporting materials and loss of pavers that would create a trip hazard or other safety hazard. Owner shall make best efforts to inspect and proactively repair any such defects to the Special Improvements to eliminate any potential hazards to the public safety at all times. Failure to conduct periodic inspections and maintain the Special Improvements to the satisfaction of the City Engineer shall be cause for termination of this Declaration.

2.3 All repairs and replacements Owner makes as declared herein shall be at least of equal quality and class to the original work and shall be subject to the approval of the City Engineer and subject, if necessary, to any other development permit required by law, which approval shall not be unreasonably withheld, conditioned or delayed. When making such repairs and replacements or performing maintenance of the Special Improvements within the Special Improvement Area, Owner shall comply with all applicable laws, ordinances, codes, regulations and State and City engineering standards then in effect.

2.4 In the event Owner damages any utilities, facilities, infrastructure or other City improvements located in, under or around the Special Improvement Area as a result of its repair or maintenance of the Special Improvements within the Special Improvement Area, Owner shall be responsible for the cost of City to repair and restore the utility, facilities, infrastructure or other City improvement.

2.5 It is acknowledged that the Special Improvements within the Special Improvement Area are designed and constructed with special materials that are different from the materials used to construct other City sidewalks and/or rights of way. In the event the City disturbs or damages the Special Improvement Area as a result of the City's repair of City improvements on, under or around the Special Improvement Area, it is understood that City shall repair the Special Improvement Area to the same level and quality as it would for any other public right-of-way or sidewalk and the Owner shall then be responsible for bringing the Special Improvement Area up to the original permit standards; it being the parties intent that the Special Improvement Area shall always be maintained in the condition specified in the Approved Development Plan.

Section 3. Insurance. At all times during the term of this Declaration, the Owner, at its expense, shall keep or cause to be kept in effect the following, to the extent available:

3.1 Fire and All Risk Property coverage on the Special Improvements contained within the Special Improvement Area, if available, in an amount equal to not less than ninety percent (90%) of their full insurable value. The deductible shall be no more than ten percent (10%) of the value of the Special Improvements within the Special Improvement Area.

3.2 In the event Owner has employees who perform maintenance and repairs of the Special Improvement Area, then Owner shall maintain Workers' Compensation Insurance in its own name.

3.3 A Commercial General Liability Insurance Policy, in standard form, insuring Owner and the City as an additional insured, against any and all liability for bodily injury or property damage in the amount of not less than One Million Dollars (\$1,000,000.00) in respect to injuries or death attributable to any one occurrence and at least Two Million Dollar/s (\$2,000,000.00) in the aggregate. This policy shall not be affected by any other insurance carried by City. The minimum limits of coverage may be reviewed by City no sooner than every five (5) years and adjusted based on what is generally required by City in other similar Declarations approved at or near the time of such review.

3.4 With the exception of Workers' Compensation and Fire and All Risk coverage, all insurance to be obtained by Owner pursuant to this Declaration shall name the Owner as insured and City as an additional insured as their respective interests may appear. The All Risk Policy shall include the City's interest as a loss payee. All such policies of insurance shall also provide for the adjustment of claims under such policies by Owner.

3.5 Subject to the requirements of Owner's lender(s), any and all net insurance proceeds received by or on account of Owner, as the case may be, shall be deposited by Owner in an interest bearing account for the benefit of Owner and City, and said funds shall be used for the purpose of reconstruction or repair, as the case may be, of any of the Special Improvements within the Special Improvement Area so damaged or destroyed. Such reconstruction and repair work shall be done in strict conformity with all applicable building and zoning codes and regulations or standards promulgated by any governmental agency having jurisdiction over the Special Improvement Area. Should the cost of reconstruction or repair exceed the amount of funds available from the proceeds of such insurance policy, then, and in such event, such funds shall be used as far as the same will permit in paying the cost of said reconstruction or repair, and any difference shall be paid by Owner, other than for City utilities, infrastructure, facilities and other City improvements unless damaged by Owner as provided in Section 2.2.

3.6 Owner shall deliver to City's Risk Manager and Director of Public Works duplicate copies of all insurance policies required by this Declaration and proof of full payment of the premiums therefor within thirty (30) days after the Effective Date hereof. From time to time, Owner shall procure and pay for renewals of insurance required herein before it expires. Owner shall deliver to City evidence of insurance coverage at least twenty (20) days before the existing policy expires. All of the policies of insurance provided for in this Declaration:

(i) shall be in the form and substance approved by the Insurance Department of the State of Florida ("DOI"),

(ii) shall only be issued by admitted and non-admitted companies regularly writing business in the State of Florida;

(iii) shall be with a carrier having an A Best's Rating of not less than A, Class VII,

(iv) shall bear endorsements showing the receipt by the respective companies of the premiums thereon or shall be accompanied by other evidence of payment of such premiums to the insurance companies, including evidence of current annual payment, if on any installment payment basis, and

(v) shall provide (i) that they may not be canceled by the insurer for thirty (30) days after service of notice of the proposed cancellation upon City and shall not be invalidated as to the interest of City by any act, omission or neglect of Owner, and (ii) a waiver of subrogation as to Owner's claims against City.

All insurance policies shall be renewed by Owner and certificates evidencing such renewals, bearing endorsements or accompanied by other evidence of the receipt by the respective insurance companies of the premiums thereon, shall be delivered to City, at least twenty (20) days prior to their respective expiration dates.

3.7 If Owner fails to obtain and maintain insurance as provided in this Declaration and such failure shall continue for a period of thirty (30) days after written notice by City to the Owner, City may, but shall not be obligated to, effect and maintain any such insurance coverage and pay premiums therefore, with the ultimate cost and expense thereof to be the responsibility of Owner.

3.8 The obligation of collection upon the insurance policies furnished and provided for by Owner, or obtained by City by reason of the failure of Owner to obtain them, shall be upon Owner, but City will cooperate in such collection (but without expense to City) in such reasonable degree as may be requested by Owner.

3.9 Until the expiration or sooner termination of this Declaration, title to and ownership of any structures or improvements situated or erected by the Owner within Special Improvement Area and the structures, equipment and other items installed by Owner therein and any alterations, changes or additions thereto, shall remain with Owner. Subject to the provisions of the Internal Revenue Code, City agrees that Owner, as between City and Owner, shall be entitled to the tax deduction for depreciation for any structure or structures, equipment or other items, improvements, additions, changes or alterations which Owner constructs and installs.

Section 4. Indemnity. The Owner shall protect, defend, indemnify and hold harmless the City, its officers, employees and agents from and against any and all lawsuits, penalties, damages, settlements, judgments, decrees, reasonable and necessary costs, charges and other expenses, including reasonable attorneys' fees and liabilities of every kind, nature or degree resulting from or arising out of the failure of the Owner to maintain and repair Special Improvement Area pursuant to the terms of this Declaration except for any occurrence arising out of or resulting from the intentional conduct or negligence of the City, its officers, agents and employees. Without limiting the foregoing, any and all such claims, suits, causes of action relating to personal injury, death, damage to property, defects in construction, rehabilitation or restoration of the Special Improvement Area pursuant to the terms of this Declaration, or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation or decree of any court, is included in the indemnity. The Owner further agrees to investigate, handle, respond to, provide defense for, and defend any such claims at its sole expense and agrees to

bear all other costs and expenses related thereto even if the claim is groundless, false or fraudulent and if called upon by the City, Owner shall assume and defend not only itself but also the City in connection with any claims, suits or causes of action, and any such defense shall be at no cost or expense whatsoever to City, provided that City shall retain the right to select counsel of its own choosing, subject to the Owner's approval which shall not be unreasonably withheld, conditioned or delayed.

Section 5. Defaults. In the event any one or more of the following events shall occur:

5.1 Owner shall default in making payment to City of any cost or fees, as and when the same shall become due and payable, and such default in payment shall continue for a period of thirty (30) days after written notice to Owner by City; or

5.2 Owner shall file a petition to be declared bankrupt, or insolvent or be adjudicated or declared bankrupt or insolvent by any court, or Owner files for reorganization under the Federal Bankruptcy Code, or for the appointment of a receiver or trustee for all of Owner's Property; or Owner enters into an arrangement with creditors; or if Owner's creditors institute Bankruptcy proceedings or receivership proceedings which are not dismissed within one hundred eighty (180) days after same are instituted. However, this provision has no effect so long as all of the other provisions of this Declaration are being performed; or

5.3 Owner fails to commence to repair, replace or maintain the Special Improvement Area in accordance with the terms of this Declaration and such failure continues for a period of thirty (30) days after written notice to Owner by City; or

5.4 Owner shall default in complying with any term, covenant or condition of this Declaration and such default in compliance shall continue for a period of thirty (30) days after written notice to Owner by City specifying the claimed default, and Owner shall not, in good faith, have commenced within said thirty (30) day period, to remedy such default and diligently and continuously proceed therewith;

then, if any of the above-referenced events should occur, City may serve a written fifteen (15) day notice of cancellation and termination of this Declaration with respect to the Special Improvements and the Special Improvement Area.

Section 6. Termination. In the event of a termination as provided in Section 5.4, the Special Improvements within the Special Improvement Area and all fees, issues and profits thereof, whether then accrued or to accrue, all insurance policies and all insurance moneys paid or payable thereunder, vest in and belong to City. Upon termination, the Owner shall continue to have the duty to pay City any costs or fees that have been incurred pursuant to the terms of this Declaration but shall not have further duties, responsibilities, liabilities or obligations with respect to the Special Improvements or the Special Improvement Area except to the extent Owner is in violation of any and all condition(s) of the Approved Development Plan.

Section 7. Remedies of the City.

7.1 In the event the Owner fails to commence to maintain, make repairs, demolish or take such actions required by this Declaration and such default(s) shall continue for a period of thirty (30) days after written notice to Owner by City, and the City does not terminate this Declaration pursuant to Section 5, it is declared that City has the option and right to take such action which was required to be taken by the Owner at Owner's sole cost and expense. Owner shall then be liable for payment to the City for all reasonable and necessary costs and expenses incurred by City in connection with the performance of the action or actions plus a surcharge of five percent (5%) for amounts up to One Thousand Dollars (\$1,000) and ten percent (10%) for amounts over One Thousand Dollars (\$1,000) and Owner shall reimburse City within sixty (60) days following written demand therefor. Interest shall accrue on the unpaid amount at the rate of twelve (12.0%) percent per annum, compounded monthly, but in no event shall interest exceed the highest amount allowed by Florida law. The City's demand for such payment shall include reasonable documentation supporting the expenses incurred by City. If a dispute arises as to the need for, or amount due to the City for repairs or maintenance undertaken by the City in accordance with this Declaration, and such dispute is not resolved within forty-five (45) days after the date that the City makes the original written demand for payment, the Owner shall pay to City the undisputed amount (if any) and shall provide the City with a bond or other security reasonably acceptable to the City for the disputed amount pending a resolution of the dispute by negotiation or litigation. In addition to any other remedies available to City, the City shall be entitled to recover from the Owner all costs of collection, including reasonable attorneys' fees and court costs incurred at all tribunal and appellate levels.

7.2 If Owner does not make the payments required by Section 7.1 above within the sixty (60) day period set forth therein, then the City shall have a right to record a Claim of Lien upon the Common Area within the Property, which Claim of Lien may be for all reasonable and necessary costs and expenses of any cure undertaken by the City in accordance with Section 7.1 above, the cost of any interim insurance policy as provided herein, and reasonable attorneys' fees and costs associated therewith. The Claim of Lien shall be effective upon the recording of a Claim of Lien in the Public Records of Broward County, Florida, which Claim of Lien shall state all amounts due and owing to the City. The Claim of Lien may be foreclosed by City in the same manner as provided by law for foreclosure of mortgage liens. The Claim of Lien shall continue until payment to the City of the amounts set forth in the Claim of Lien (at which time the City shall record a satisfaction of such lien). In addition to the Claim of Lien, the City shall have all other rights and remedies granted to it by law or in equity for Owner's failure to reimburse the City pursuant to Section 7.1 above. Owner shall be entitled to pursue all legal and equitable remedies to contest the amount or existence of any such lien.

7.3 In the event that the City has provided the notice described in subparagraph 7.1, but the Owner has failed to cure or to commence and diligently pursue cure of the default(s), and the City cures such default(s), makes such repairs or undertakes such protection or maintenance or take other actions described herein, and the Owner fails to make payment in accordance with Section 7.1 the Owner shall be in default under this Declaration. Such a default shall not arise where Owner has paid the undisputed amount and secured any disputed amount, or where the Owner pays the costs of cure as set forth in Section 7.1 above prior to a judicial determination of a default. Upon judicial determination of such a default the City shall be entitled to a judgment of specific performance of this Declaration and the City shall have the right to exercise the options provided herein.

7.4 In the event this Declaration is terminated as provided in Section 5 herein, as an alternative to the other remedies provided herein, City has the right to remove whatever improvements have been placed in Special Improvement Area and Owner shall be in violation of a condition of the Approved Development Plan.

Section 8. Assignment. Owner may sell, transfer or assign this Declaration without the prior written consent of City to a transferee of the fee simple interest in the Property or to an owner responsible for the common areas of the Property (including a condominium association, homeowners association or property owners association), with written notice of the assignment and delivery of a copy of the written assumption of responsibilities executed by assignor to City, which such transfer or assignment shall be given in a recordable form and shall be recorded by Owner or Owner's assignee or transferee. Owner's assignee or transferee shall assume all obligations arising under this Declaration, and, thereafter, Owner shall be fully released and relieved from all liability and obligation hereunder. If the Property is converted to condominium form of ownership, then the applicable condominium association shall automatically be deemed the Owner and no other assignment or other documentation is needed in order to effectuate the transfer. Other than as described in this subparagraph, Owner may not sell, transfer or assign this Declaration without the prior written consent of City.

Section 9. Notice. Whenever it is provided herein that notice, demand, request or other communication shall or may be given to, or served upon, either of the parties by the other, or either of the parties shall desire to give or serve upon the other any notice, demand, request or other communication with respect hereto or with respect to any matter set forth in this Declaration, each such notice, demand, request or other communication shall be in writing and any law or statute to the contrary notwithstanding shall not be effective for any purpose unless the same shall be given by hand delivery, transmitting same by Federal Express or similar delivery method, or by registered or certified mail, postage prepaid, return receipt requested, addressed to the party at the address set forth below, or at such other address or addresses and to such other person or firm as City or Owner may from time to time designate by notice as herein provided.

9.1 All notices, demands, requests or other communications hereunder shall be deemed to have been given or served for all purposes hereunder twenty-four (24) hours after transmission by Federal Express or other nationally recognized overnight mail delivery service or at the time of hand delivery or forty-eight (48) hours after the time that the same shall be deposited in the United States mail, postage prepaid, in the manner aforesaid, provided, however, that for any distance in excess of five hundred (500) miles, air mail service or Federal Express or similar carrier shall be utilized, if available.

9.2 Any written notice hereunder shall be addressed as follows, unless either party provides written notice to the other to direct notices other than as set forth herein:

If to City: City of Fort Lauderdale
100 N. Andrews Avenue
7th Floor
Ft. Lauderdale, Florida 33301
Attn: City Attorney

Telephone: 954-828-5940
Facsimile: 954-828-5915

With a copy to: City Manager
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, Florida. 33301

If to Owner: Name
Address
City, State Zip code
Telephone:
Facsimile:
Attention:

(optional) With a copy to: Name
Address
City, State Zip code
Telephone:
Facsimile:
Attention:

Section 10. Compliance with Governing Laws. The parties shall comply with all applicable laws, ordinances and codes of the United States of America, the State of Florida and all local governments having jurisdiction in carrying out the rights and obligations set forth in this Declaration.

Section 11. Recordation/Successors and Assigns. This Declaration shall be recorded in the public records of Broward County Florida and the rights and obligations hereunder shall be binding upon the Owner and its successors in interest.

Section 12. Covenant Running with the Land. It is intended that this Declaration and the rights and obligations set forth herein shall run with the land and shall bind every person having any fee, leasehold or other interest therein and shall inure to the benefit of the respective parties and their successors, assigns, heirs, and personal representatives.

Section 13. Enforcement. The City shall be entitled to enforce the maintenance obligations set forth in this Declaration by an action in law or equity.

Section 14. Florida Law. This Declaration shall be construed and enforced in accordance with the laws of the State of Florida.

Section 15. Venue. Any action or proceeding of any kind arising out of or related to this Declaration shall be brought in the appropriate State or Federal Court for Broward County, Florida. The parties hereto irrevocably consent to service, jurisdiction, and venue in the courts of

Broward County, Florida, for any litigation arising from this Declaration and waive any other venue to which any of them might be entitled.

Section 16. Headings/Interpretation. The word or phrase appearing at the commencement of sections or subsections are included only as a guide to the contents thereof and are not to be construed as controlling, enlarging or restricting the language or meaning of the text.

Section 17. Waiver of Jury Trial. THE OWNER, SUBJECT TO CITY AGREEING TO SAME FOR ITSELF, WAIVES ANY RIGHTS IT MAY HAVE TO A JURY TRIAL IN ANY LITIGATION ARISING OUT OF OR RELATED TO THIS DECLARATION AND SHALL NOT ELECT A TRIAL BY JURY. THE OWNER HERETO HAS SEPARATELY, KNOWINGLY AND VOLUNTARILY GIVEN THIS WAIVER OF RIGHT TO TRIAL BY JURY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

Section 18. Third Parties. Unless expressly stated to the contrary in this Declaration, nothing contained in this Declaration, whether express or implied, is intended to confer any rights or remedies under or by reason of this Declaration on any third party as a third party beneficiary or otherwise.

Section 19. Amendment. This Declaration may be amended, modified or restated only by written consent signed by both Owner and City, and such amendment, modification or restatement shall only become effective when recorded in the Public Records of Broward County, Florida. No other party or person shall be required to join in or consent to any amendment, modification or restatement, nor shall the Owner or City be required to give any notice thereof. If the Property is subsequently governed or administered by a condominium association, homeowners association or property owners association, then the execution and delivery of any amendment, modification or restatement by such condominium association, homeowners association or property owners association shall serve as the consent of the unit owners, homeowners or property owners and no further consent by such unit owners, homeowners or property owners shall be required.

SIGNATURE AND ACKNOWLEDGMENT APPEAR ON FOLLOWING PAGES

IN WITNESS WHEREOF, the Owner has executed this Declaration as of the date first above written.

WITNESSES:

Print Name: _____

Print Name: _____

OWNER

<< Owner name here >>

By: _____

Printed name and title

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this ____ day of _____, 2019 by _____ (name of signatory), as _____ (title) of _____ (company if applicable). He is personally known to me or has produced _____ as identification.

Notary Public, State of Florida
(Signature of Notary taking
Acknowledgement)

Name of Notary Typed,
Printed or Stamped

My Commission Expires:

Commission Number

APPROVED AS TO FORM:

Asst. City Attorney, City of Fort Lauderdale

EXHIBIT "A"

Sketch and Legal Description

<< sample description = Lots 9 through 14 (inclusive), Lots 19 through 21 (inclusive), Block 24; Lots 1 through 48 (inclusive), Block 25; Lots 1 through 48 (inclusive), Block 26; Lots 7 through 13 (inclusive), Lots 33 through 42 (inclusive), Block 27, AMENDED PLAT OF OSWALD PARK, THIRD ADDITION, according to the plat thereof as recorded in Plat Book 10, Page 5, of the Public Records of Broward County, Florida. >>

(if necessary) Together with:

Parcels "B" and "C", of BRIARBROOK HOMES NO. 1, according to the Plat thereof, as recorded in Plat Book 38, Page 38, of the Public Records of Broward County, Florida.

EXHIBIT "B"

Special Improvements/Special Improvement Area