

This instrument was prepared by:

Name: **Pedro Gassant, Esq.**
Address: **Holland & Knight LLP**
701 Brickell Avenue, Suite 3300
Miami, Florida 33131

(Space Reserved for Clerk of the Court)

LAND USE RESTRICTION AGREEMENT

This Land Use Restriction Agreement (the "Agreement") is made and entered into this 29th day of October, 2018 (the "Effective Date"), by and between the City of North Miami, a Municipal Corporation under the laws of the State of Florida (the "City") and AHDS Ocean King, LLC, a Florida limited liability company (the "Owner") (collectively, the City and the Owner shall be referred to as the "Parties")

RECITALS

WHEREAS, the Owner owns certain land located at 14500 NE 6th Avenue, in the City of North Miami, FL and legally described in Exhibit "A" (the "Property"); and

WHEREAS, the Owner anticipates rehabilitating the Property and making its dwelling units available to individuals who make up to eighty percent (80%) of the Area Median Income ("AMI"); and

WHEREAS, the Owner has agreed to comply with certain sale or rental restrictions for the dwelling units that are located on the Property in order to provide affordable and/or workforce housing in the City; and

WHEREAS, the Owner wishes to voluntarily provide for certain sale or rental restrictions that will require that twenty percent (20%) of the units on the Property shall be made affordable to individuals making eighty percent (80%) percent or less of the AMI for Miami-Dade County, FL.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I

Definitions

Section 1.0 General. Capitalized terms used in this Agreement shall have, unless the context clearly states otherwise, the meaning specified in this Article I. Certain additional terms may be defined elsewhere in this Agreement.

- a) "Area Median Income" ("AMI") means the United States Department of Housing and Urban Development ("HUD") established standard known as Median Income for the Miami-Miami Beach- Kendall, FL Metropolitan Statistical Area which includes the City of North Miami published annually by HUD and the "Income Limits and Rent Limits" chart as published annually by the Florida Housing Finance Corporation ("FHFC").
- b) "Eligible Households" means one or more natural persons or a family determined to have a total gross annual income certified by the household at initial occupancy to be not in excess of the amount published annually by FHFC as the 80 % of AMI amount (adjusted for family size) and for purposes of this Agreement such amount shall never be required to be less than the 2018 amount, but must have enough total gross income to pay the allowable rent or mortgage payment (including taxes and insurance) by dedicating no more than 30% of the total gross income to rent. It is not the intent of this provision to limit a household's ability to devote more than 30% of its income for housing if the first institutional lender is satisfied, in its discretion, that the household can afford monthly payments in excess of 30% of its income. Eligible Households must, in addition to the above income qualifications, qualify on the basis of credit worthiness, criminal background, and any other requirements that may legally be applied in determining eligibility for occupancy at the Project. The Owner shall establish these qualifying standards at the Owner's discretion.
- c) "Affordable Rents" are the amount the Owner may charge Eligible Households in base rent on a monthly basis for the term of the lease. The maximum rent allowable to be charged to an Eligible Household shall not exceed the monthly rent as published in the FHFC annual "Income Limits and Rent Limits" report for Multifamily Rental Programs for the 80 % AMI line adjusted by bedroom count. The maximum Affordable Rents shall be no lower than the maximum allowable rents at 80% AMI adjusted by bedroom count published by the FHFC for 2018.
- d) "Dwelling Unit" means a residential dwelling constituting part of the Project located within the City of North Miami and containing separate and complete living facilities designed and intended for the primary purpose of providing safe, descent and sanitary residential units available for rental and/or sale to the general sale.

ARTICLE II

Use, Sale and Occupancy of the Property

Section 2.0 Sale and Lease Restrictions. The Owner shall sell or rent, as an owner-occupied or rental unit.

Section 2.1 Occupancy Requirements. For purposes of complying with the requirements set forth in Section 2.0 above, if the income of the Eligible Household did not exceed the applicable income limit (adjusted for the household size and

bedroom count) at the commencement of such resident's rental occupancy, such person(s) or family may be treated as continuing to be an Eligible Household until such time as they vacate the Dwelling Unit, at which time, the Dwelling Unit shall be made available and leased to an Eligible Household.

Section 2.2 Use Restrictions. During the term of this Agreement, the Owner shall not use the Project for any use other than an owner-occupied, or rental residential development.

Section 2.3. Non-Discrimination. The Owner shall not discriminate on the basis of race, creed, religion, color, sex, familial status, national origin or handicap in the use or occupancy of the Project. Age discrimination and discrimination against minor dependents, except when units are specifically being held for Elderly Households in accordance with applicable State and Federal law, are also not permitted.

Section 2.4 Term. The Owner shall require that the Dwelling Units be leased to Eligible Households at Affordable Rents for a period of twenty (20) years from the date that the Dwelling Units are initially offered to Eligible Households at Affordable Rents pursuant to this Agreement.

ARTICLE III

Administration

Section 3.0 Annual Report. The Owner shall, for the term of this Agreement, submit an Annual Report concerning the Eligible Households at the Project to the City. The information required to be submitted will be for leases, applications, employment, and income certification documents. In addition, the Owner shall evaluate each of the potential lessees of the Property and confirm that each lessee meets the definition of Eligible Household as defined in this Agreement.

Section 3.1 Binding Term. This Agreement and the restrictions herein, shall run with the land, and be binding upon and enforceable against all successors in title to the current Owner for the period of twenty years from the effective date of this Agreement.

Section 3.2 Omissions. The omission of any regulatory requirement in this Agreement shall not relieve the Owner from the necessity of complying with any and all applicable State, County and Federal laws, rules and regulations.

Section 3.3 City Review. The City shall review the Project at least every twelve (12) months to determine compliance with the terms of this Agreement. Failure of the City to conduct said review or identify violations of this Agreement shall not relieve Owner of any obligation hereunder to prevent subsequent enforcement.

Section 3.4 City's Right to Audit. During the term of this Agreement, the City shall have the right to review and audit certain records of the Owner relating to the Property to determine compliance with this Agreement. The Owner shall be required upon written notification by the City, to provide copies of leases, applications, income certification necessary to permit an audit for the Dwelling Units during the term of the Agreement. The Owner shall pay the administrative costs associated with the City's monitoring obligations under this Agreement.

Section 3.5 Compliance Monitoring Fees. The Owner agrees to pay the City fees in such amounts and at such times as the City shall, in its sole discretion, require the Owner to pay in order to reimburse the City for the costs of compliance monitoring. The fees are estimated to be sixty dollars (\$60.00) per hour for reimbursement of city staff time devoted to monitoring under the terms of this agreement. The City will submit invoices for reimbursement to Owner within sixty (60) days of services being rendered. Payment shall be due within thirty (30) days from the date of the invoice. **ARTICLE IV**

Miscellaneous

Section 4.0 Enforcement. Enforcement shall be by action against any party or person violating, or attempting to violate, this Agreement. The Parties shall be entitled to mandamus or injunctive relief to the extent that any of the obligations under this Agreement are not being complied with. This enforcement provision shall be in addition to any other remedies available at law, in equity, or both.

Section 4.1 Notification. Notices required to be given by this Agreement shall be in writing, by certified mail, with copies to be mailed as set forth below. Required certified mail shall also have return receipt requested, addressed to the persons and places specified for giving notices below. Revisions to the names or addresses of those individuals to receive notice may be made by either party by providing notice to the other party as provided herein. Notice shall be provided to the following

For the City: Tanya Sejour-Wilson
Planning, Zoning and Development Director
Community Planning and Development Department
City of North Miami
12400 NE 8th Avenue
North Miami, FL 33161

With Copies to: Jeff Cazeau
City Attorney
City of North Miami
776 NE 125th Street, 3rd Floor
North Miami, FL 33161

For Owner: Daniel Charleton

AHDS Ocean King, LLC
2126 N.W. 75th Way
Pembroke Pines, FL 33023

Section 4.2 Interpretation, Jurisdiction, Venue and Applicable Law. The Owner and City agree that the Parties have played an equal and reciprocal role in the drafting of this Agreement and, therefore, no provision of this Agreement shall be construed by any court or other judicial or administrative authority against any party hereto because such party is deemed to have drafted or structured such provision. This Agreement shall be construed, and the rights and obligations of the City and Owner hereunder shall be determined, in accordance with the laws of the State of Florida. Venue for any litigation pertaining to the subject matter hereof shall be in Miami-Dade County, Florida.

Section 4.3 Severability. Invalidation of any one of the provisions of this Agreement by judgment of Court shall not affect any of the other provisions which shall remain in full force and effect.

Section 4.4 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same instrument.

Section 4.5 Entire Agreement. The Parties agree that this instrument embodies the complete understanding of the Parties with respect to the subject matter of this Agreement and supersedes all other agreements, oral or otherwise. This Agreement contains the entire understanding between the Parties, and each agrees that no representation was made by or on behalf of the other that is not contained in this Agreement, and that in entering into this Agreement neither party relied upon any representation not herein contained.

Section 4.6 Amendment and Waiver. This Agreement may be amended only by written instrument signed by all Parties. If any party fails to enforce their respective rights under this Agreement, or fails to insist upon the performance of the other party's obligations hereunder, such failure shall not be construed as a permanent waiver of an rights as stated in this Agreement.

Section 4.7 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

Section 4.8 Construction of Terms. Whenever used, the singular number shall include the plural, the plural the singular; and the use of any gender shall include all genders, as the context requires.

Section 4.9 Captions. The captions for each section of this Agreement are for convenience and reference only and in no way define, describe, extend, or limit the scope of intent of this Agreement, or the intent of any provision hereof.

Section 4.10 Effective Date. The Effective Date of this Agreement shall be the date in which it is fully executed and recorded in the public records of Miami-Dade County, FL.

Section 4.11 Recordation. This Agreement shall be recorded by the Owner in the public records of Miami-Dade County, Florida, at the Owner's expense.

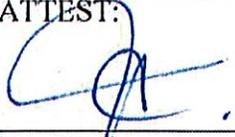
[SIGNATURES AND ACKNOWLEDGMENTS CONTINUE ON FOLLOWING PAGE]

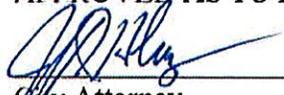
IN WITNESS WHEREOF the Parties hereto have executed this AGREEMENT by their duly authorized officers and representatives on the date first written above.

City of North Miami

By: 
City Manager or Designee

Date Executed: OCTOBER 29, 2018

ATTEST:

City Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

City Attorney

[SIGNATURES AND ACKNOWLEDGMENTS CONTINUE ON FOLLOWING PAGE]

IN WITNESS WHEREOF the Parties hereto have executed this AGREEMENT by their duly authorized officers and representatives on the date first written above.

Witnesses:

AHDS Ocean King, LLC:

[Signature]
Print Name: G. Jean

AHDS Ocean King, LLC, a Florida limited liability company

[Signature]
Print Name: Stephanie Martinez

By: [Signature]
Name: Daniel Charlton
Title: Senior Partner / Manager

Date Executed: 10/23/2018

STATE OF FLORIDA)
)
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this 23 day of October, 2018, by Daniel H. Charlton, as the _____ of AHDS Ocean King, LLC, a Florida limited liability company. He is personally known to me or has produced DL C643-168-54-381-0 as identification.

[Signature]
Notary Public

My Commission Expires:
7-21-2020



**ADDENDUM TO LAND USE RESTRICTION AGREEMENT BETWEEN AHDS
OCEAN KING, LLC AND THE CITY OF NORTH MIAMI**

This addendum clarifies that the Land Use Restriction Agreement (the "Agreement") signed between AHDS Ocean King, LLC ("AHDS") and the City of North Miami (the "City") on October 29, 2018 is of no force and effect pursuant to Sections 4.10 and 4.11 of said Agreement. The aforementioned provisions required the document to be recorded in the public records of Miami-Dade County by AHDS, but AHDS informed the City that it will not be recording the document. Accordingly, the Agreement between AHDS and the City is of no force and effect and is recognized as void *ab initio*.