

This instrument prepared by and under the supervision of:

Name: Steven A. Landy, Esquire  
Address: Greenberg Traurig, P.A.  
333 SE 2<sup>nd</sup> Avenue  
Miami, Florida 33131

## **DECLARATION OF RESTRICTIVE COVENANTS FOR SENIOR HOUSING**

This DECLARATION OF RESTRICTIVE COVENANTS FOR SENIOR HOUSING (“**Declaration**”) is made as of this \_\_\_\_ day of \_\_\_\_\_, 2017 by and between **THE GRAHAM COMPANIES**, a Florida corporation (“**Graham**”) in favor of **THE TOWN OF MIAMI LAKES**, a Florida municipal corporation (“**Town**”).

### **RECITALS:**

- A. Graham is the owner of fee simple title to that certain real property located in The Town of Miami Lakes, Miami-Dade County, Florida described in **Exhibit “A”** attached hereto and by this reference made a part hereof (“**Senior Housing Property**”).
- B. Graham intends to develop and operate "Senior Housing" on the Senior Housing Property in compliance with all applicable federal, state, and local laws, rules and regulations now existing or hereinafter enacted.
- C. In connection with the development and operation of Senior Housing on the Senior Housing Property, Graham intends to comply with the requirements (“**Federal 55 and Over Requirements**”) for housing designated for persons who are 55 years of age or older within the portion of the Housing for Older Persons exemptions established pursuant to the Housing for Older Persons exemptions established pursuant to the Fair Housing Act, as amended in 1988, 42 U.S.C. § 3607(b), and its regulations, 24 C.F.R. § 100.304; and the Housing for Older Persons Act of 1995, 42 U.S.C. §3607(b)(1995), and its regulations, 24 C.F.R. §§ 100.304-100.308 (1999) (“**Act**”) and other applicable laws, rules and regulations.
- D. To permit development of Senior Housing on the Senior Housing Property, pursuant to Section 13-306 of the Code of the Town (“**Town Code**”), Graham has applied to amend the Official Zoning Map of the Town to change the designation of the Senior Housing Property from IU-C, Industrial District - Conditional, to RM-36, Medium Density Residential District (“**Zoning Change**”).
- E. In connection with the operation and use of Senior Housing on the Senior Housing Property, Graham has also agreed to restrict the Senior Housing Property beyond the Federal 55 and Over Requirements, to the extent permitted by law, by requiring that each occupied residential unit on the Senior Housing Property be occupied by at least one

person who is 62 years of age or older and that no residents of the residential units on the Senior Housing Property are under the age of 19.

- F. Graham has agreed that the number of residential dwelling units to be located on the Senior Housing Property shall be limited to 220.
- G. Graham has agreed that no residential units located on the Senior Housing Property shall be occupied by residents before January 1, 2020.
- H. If the Zoning Change is granted by appropriate Ordinance of the Town with all appeal periods having expired without appeal, or if an appeal is filed, then upon a final judicial determination approving the Zoning Change, as applicable (hereinafter referred to as the “**Ordinance Condition**”), Graham voluntarily covenants and agrees that the Senior Housing Property shall be subject to the restrictions identified within this covenant, that are intended to, and shall be deemed to, be a covenant running with the Senior Housing Property and binding upon Graham, and its successors and assigns. This Declaration shall be recorded in the Public Records of Miami-Dade County, Florida upon satisfaction of the Ordinance Condition. This Declaration shall not be effective or recorded unless and until the Ordinance Condition is satisfied

**NOW, THEREFORE**, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Graham hereby voluntarily covenants and agrees as follows:

1. The foregoing recitals are true and correct and are incorporated herein by reference as if set forth at length.

2. Subject to all applicable federal, state and local laws, rules and regulations now existing or hereinafter enacted, each occupied residential unit on the Senior Housing Property must be occupied by at least one person who is 62 years of age or older, and no residents of any of the residential units on the Senior Housing Property shall be under the age of 19. In the event that a unit complies with the restrictions set forth in this paragraph 2 at the commencement of any tenancy, and there is a change in circumstances to a resident or residents during that tenancy (such as divorce or the death or disability of a resident), the owner of the Senior Housing Property shall be permitted to make reasonable accommodations with respect to that unit for the remainder of the tenancy without being in violation of the restrictions contained in this Paragraph 2. In addition, the owner of the Senior Housing Property shall have the right to make reasonable accommodations based upon disability or other accommodations necessary to comply with applicable laws.

3. Beginning, October 1, 2022, and every two (2) years thereafter, Graham agrees to submit with its annual renewal of the business tax receipt (“**BTR**”) for the Senior Housing Property, documentation verifying compliance with Paragraph 2 above. In the absence of any requirement regarding BTR, said documentation shall be submitted to the Town Manager. Notwithstanding the reporting period described above, Graham further agrees to provide such verification at Town’s request.

4. Notwithstanding the provisions of Paragraph 2 above, in the event that after thirty-six (36) months from January 1, 2020 or receipt of the first certificate of occupancy for the residential units on the Senior Housing Property, whichever comes last, the average vacancy rate of the Senior Housing Property over the prior twelve (12) month period is five percent (5%) below the average vacancy rate of the residential properties within the Town owned by The Graham Companies and/or its affiliates, the requirement in Paragraph 2 above that each occupied residential unit must be occupied by at least one person who is 62 years of age or older shall be reduced to require that each occupied residential unit must be occupied by at least one person who is 55 or older. The owner of the Senior Housing Property shall have the right to petition Town for relaxation of Paragraph 2, and upon good showing of same and with administrative authorization from the Town, shall be permitted to record an addendum to this Declaration indicating the specified restriction reduction from 62 years of age or older to 55 years of age or older.

5. The number of residential units located on the Senior Housing Property shall not exceed 220.

6. No residential units located on the Senior Housing Property shall be occupied by residents before January 1, 2020.

7. In the event of multiple ownership subsequent to said Zoning Change for the Senior Housing Property, each of the subsequent owners, mortgagees and other parties in interest to the Senior Housing Property shall be bound by the terms, provisions and conditions of this Declaration.

8. Enforcement shall be by action against any parties or persons violating or attempting to violate any covenants. The prevailing party to 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.

9. In the event of a violation of this Declaration, in addition to any other remedies available, the Town of Miami Lakes is hereby authorized to withhold any future permits with respect to the Senior Housing Property, and refuse to make any inspections or grant any approval with respect to the Senior Housing Property, until such time as this Declaration is complied with.

10. The provisions of this Declaration shall become effective upon their 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, after which time it shall be extended automatically for three (3) successive periods of ten (10) years each, unless released in writing by the then owners of the Senior Housing Property and the Town Manager of the Town of Miami Lakes, Florida, upon the demonstration and affirmative finding that the same is no longer necessary to preserve and protect the property for the purposes herein intended. This Declaration shall be recorded in the public records of Miami-Dade County at Graham's expense.

11. This Declaration may be modified, amended, derogated, canceled or terminated by the then owner of the Senior Housing Property and the Town, after public hearing, except to the extent set forth in paragraph 3 above. This Declaration shall be deemed to be a covenant running with title to the Senior Housing Property and binding upon Graham, and its successors and assigns.

**IN WITNESS WHEREOF**, Graham has executed and delivered this Agreement as of the date first above written, to be effective upon the Ordinance Condition being met.

Witnesses:

**GRAHAM:**

**THE GRAHAM COMPANIES**, a  
Florida corporation

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

By: \_\_\_\_\_  
Luis O. Martinez, Sr. Executive  
Vice President

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

**STATE OF FLORIDA**

**COUNTY OF MIAMI-DADE**

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017 by Luis O. Martinez, as Sr. Executive Vice-President of The Graham Companies, a Florida corporation, on behalf of said corporation. He is personally known to me.

[NOTARIAL SEAL]

\_\_\_\_\_  
Notary Public, State of Florida  
Print Name: \_\_\_\_\_  
My Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_