



CFN 2004R1166007  
OR Bk 22947 Pgs 1214 - 1220f (7pgs)  
RECORDED 12/28/2004 14:37:26  
HARVEY RUVIN, CLERK OF COURT  
MIAMI-DADE COUNTY, FLORIDA

A/10

This instrument prepared by :  
Brian S. Adler, Esq.  
Bilzin Sumberg Baena Price & Axelrod LLP  
200 South Biscayne Boulevard, Suite 2500  
Miami, Florida 33131-2336

(Space Above For Recorder's Use Only)

**DECLARATION OF RESTRICTIONS**

WHEREAS, the undersigned Owner holds the fee simple title to the land in Miami-Dade County, Florida, described in Exhibit "A" attached hereto and made a part hereof, hereinafter called the "Property"; and

IN ORDER TO ASSURE the **Board of County Commissioners and/or Community Zoning Appeals Board No. 2** of Miami-Dade County, Florida, that the representations made to them by the Owner, during consideration of Public Hearing No. 04-057, will be abided by the Owner, its heirs, successors or assigns, freely, voluntarily and without duress, the Owner makes the following Declaration of Restrictions ("Declaration") covering and running with the Property:

1. That this Declaration shall become final and shall be recorded in the Public Records of Miami-Dade County and is conditioned upon the approval of Public Hearing Application No. 04-057 by the Board of County Commissioners and/or Community Zoning Appeals Board No. 2 of Miami-Dade County, Florida.
2. **Site Plan.** That said Property shall be developed substantially in accordance with the plans previously submitted and entitled "Professional Building" (the "Site Plan") as prepared by Steven B. Schwartz, consisting of 5 sheets, with sheet A-1 dated April 14, 2004 and four pages dated March 1, 2004, on file with the Miami-Dade County Department of Planning and Zoning, and by reference made a part of this Declaration.
3. **Prohibited Uses.** Notwithstanding the Property's RU-5A zoning classification, the Owner agrees to exclude the following uses on the Property, and those uses not currently permitted in the RU-5A district, that may be permitted in the future, but which are determined by the Director of the Department of Planning and Zoning to be similar to the following delineated uses:

- (1) Travel Agency.
- (2) Restaurants.

Recorded as per County Attorney's request. Craig Collier 12/23/04

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## Declaration of Restrictions

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- (3) Banks, with or without drive-thru banking facilities.
  - (4) Medical Allied Training Facility as pursuant to Section 33-223.6(27A) of the Code of Miami-Dade County, Florida.
  - (5) Public libraries.
  - (6) Telephone answering service.
  - (7) Theater ticket agencies.
4. **Height.** The building agrees to limit the height to one story.
  5. **Additional Landscaping.** Prior to issuance of the Certificate of Use on the site, Owner shall plant three (3) additional oak trees at the rear of the property, said oak trees to be planted twenty (20) feet off center and twelve (12) high at time of planting and maintained by the Owner of the Property.
  6. **Rear Wall.** Prior to issuance of the final certificate of occupancy, Owner agrees to construct a six (6) foot high masonry wall along the south property line. The wall shall be maintained by the Owner of the Property.
  7. **County Inspection.** As further part of this Declaration, it is hereby understood and agreed that any official inspector of Miami-Dade County, or its agents duly authorized, may have the privilege at any time during normal working hours of entering and inspecting the use of the premises to determine whether or not the requirements of the building and zoning regulations and the conditions herein agreed to are being complied with.
  8. **Covenant Running with the Land.** This Declaration on the part of the Owner shall constitute a covenant running with the land 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 same is modified or released. These restrictions during their lifetime shall be for the benefit of, and limitation upon, all present and future owners of the real property and for the public welfare. Owner and its heirs, successors and assigns acknowledge that acceptance of this Declaration does not in any way obligate or provide a limitation on the County.
  9. **Term.** This Declaration is to run with the land and shall be binding on all parties and all persons claiming under it for a period of thirty (30) years from the date this Declaration is recorded after which time it shall be extended automatically for successive periods of ten

## Declaration of Restrictions

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(10) years each, unless an instrument signed by the then owner(s) of the Property has been recorded agreeing to change the covenant in whole, or in part, provided that the Declaration has first been modified or released by Miami-Dade County.

10. **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 all of the Property, including joinders of all mortgagees, if any, provided that the same is also approved by the Board of County Commissioners or Community Zoning Appeals Board No. 2 of Miami-Dade County, Florida, or such successor, board or governmental body, whichever by law has jurisdiction over such matters, after public hearing. Should this Declaration be so modified, amended or released, the Director of the Department of Planning and Zoning, or the executive officer of the successor of such department, or in the absence of such director or executive officer, by his assistant in charge of the office in his absence, shall forthwith execute a written instrument effectuating and acknowledging such modification, amendment or release.
11. **Enforcement.** Enforcement shall be by action against any parties or person violating, or attempting to violate, any covenants. The prevailing party in 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 his attorney. This enforcement provision shall be in addition to any other remedies available at law, in equity or both.
12. **Authorization for Miami-Dade County to Withhold Permits and Inspections.** In the event of a violation of this Declaration, in addition to any other remedies available, Miami-Dade County is hereby authorized to withhold any future permits, and refuse to make any inspections or grant any approval, until such time as this Declaration is complied with.
13. **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.
14. **Presumption of Compliance.** Where construction has occurred on the Property or any portion thereof, pursuant to a lawful permit issued by the County, and inspections made and approval of occupancy given by the County, then such construction, inspection and approval shall create a rebuttable presumption that the buildings or structures thus constructed comply with the intent and spirit of this Declaration. However, if any

## Declaration of Restrictions

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material portion of this Declaration is invalidated, the County shall be entitled to revoke any approval predicated upon the invalidated portion.

15. **Severability.** Invalidation of any one of these covenants, by judgment of Court shall not affect any of the other provisions which shall remain in full force and effect.
16. **Recording.** This Declaration shall be filed of record in the public records of Miami-Dade County, Florida at the cost of the Owner following the approval of the Application. This Declaration shall become effective immediately upon recordation. Notwithstanding the previous sentence, if any appeal is filed, and the disposition of such appeal results in the denial of the application, in its entirety, then this Declaration shall be null and void and of no further effect. Upon the disposition of an appeal that results in the denial of the Application, in its entirety, and upon written request, the Director of the Planning and Zoning Department or the executive officer of the successor of said department, or in the absence of such director or executive officer by his/her assistant in charge of the office in his/her absence, shall forthwith execute a written instrument, in recordable form, acknowledging that this Declaration is null and void and of no further effect.
17. **Acceptance of Declaration.** Acceptance of this Declaration does not obligate the County in any manner, nor does it entitle the Owner to a favorable recommendation or approval of any application, zoning or otherwise, and the County Commission and/or any appropriate Community Zoning Appeals Board No. 2 retains its full power and authority to deny each such application in whole or in part and to decline to accept any conveyance or dedication.
18. **Owner.** The term Owner shall include the Owner, and its heirs, successors and assigns.

[SIGNATURE PAGE FOLLOWS]

**Declaration of Restrictions**

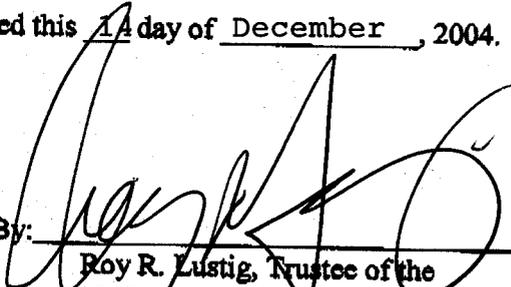
Page 5

Signed, witnessed, executed and acknowledged this 14 day of December, 2004.

Witnesses:

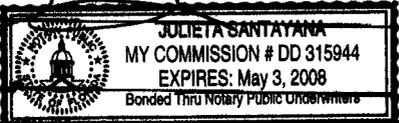
  
Print Name: Julie Santayana

  
Print Name: Gisela Dusa

  
By: Roy R. Lustig, Trustee of the  
2390 Gardens Florida Land Trust  
dated October 15, 2002

STATE OF FLORIDA }  
COUNTY OF MIAMI-DADE } SS:

The foregoing instrument was acknowledged before me this 14th day of December, 2004 by Roy R. Lustig, Trustee of the 2390 Gardens Florida Land Trust dated October 15, 2002, who is personally known to me or produced a valid driver's license as identification.

  
Notary Public  
Sign Name: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
  
JULIETA SANTAYANA  
MY COMMISSION # DD 315944  
EXPIRES: May 3, 2008  
Bonded thru Notary Public Underwriters

My Commission Expires: \_\_\_\_\_

Serial No. (None, if blank): \_\_\_\_\_

[NOTARIAL SEAL]

EXHIBIT A

*Legal Description:*

LOTS 1 AND 2 IN BLOCK 3, OF LESS 30.09 FEET OF "RIVERDALE"  
PLAT BOOK 44, AT PAGE 71, OF THE PUBLIC  
RECORDS OF MIAMI-DADE COUNTY, FLORIDA

OR BK 22947 PG 1220  
LAST PAGE

**JOINDER BY MORTGAGEE CORPORATION**

The undersigned First City Funding Corp., Mortgagee under that certain mortgage from Roy R. Lustig, as Trustee of the 2390 Gardens Florida Land Trust, dated October 15, 2002, dated the 17<sup>th</sup> day of May, 2004, and recorded in Official Records Book 22682, Page 1010, of the Public Records of Miami-Dade County, Florida, in the original amount of \$600,000.00 covering the property described in the foregoing Declaration of Restrictions, does hereby acknowledge that the terms of this agreement are and shall be binding upon the undersigned and its successors in title.

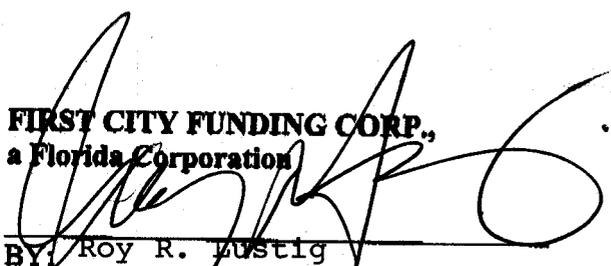
IN WITNESS WHEREOF, these presents have been executed this 14 day of December, 2004.

Witnesses:

  
\_\_\_\_\_  
Signature  
Julie Santayana  
Print Name

  
\_\_\_\_\_  
Signature  
Julia Duser  
Print Name

**FIRST CITY FUNDING CORP.,**  
a Florida Corporation

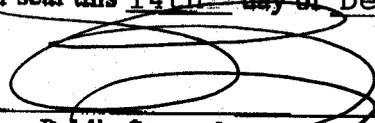
  
\_\_\_\_\_  
BY: Roy R. Lustig  
TITLE: President  
2600 Douglas Road, Suite 908  
Coral Gables, FL 33134

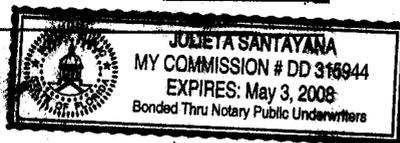
STATE OF FLORIDA

COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me by Roy R. Lustig, the President of FIRST CITY FUNDING CORP., a Florida corporation, on behalf of the corporation. He is personally known to me or has produced \_\_\_\_\_, as identification.

Witness my signature and official seal this 14th day of December, 2004, in the County and State aforesaid.

  
\_\_\_\_\_  
Notary Public-State of  
Print Name  
My Commission Expires:



OPINION OF TITLE

TO: **Miami-Dade** County

With the understanding that this Opinion of Title is furnished to **Miami-Dade** County, as inducement for acceptance of a Declaration of Restrictions covering the real property, hereinafter described, it is hereby certified that I have examined a complete Abstract of Title covering the period from the beginning to the **21st** day of **November**, 2004, at the hour of **11:00 P.M.**, inclusive, of the following described property:

**Lots 1 and 2 less the North 30.09 feet, Block 3, RIVERDALE, according to the plat thereof as recorded in Plat Book 44, Page 71, of the Public Records of Miami-Dade County, Florida.**

I am of the opinion that on the last mentioned date, the fee simple title to the above-described real property was vested in:

**Roy R. Lustig, as Trustee of the 2390 Gardens Florida Land Trust dated October 15, 2002.**

Subject to the following encumbrances, liens and other exceptions (If "none" please indicate):

1. **RECORDED MORTGAGES:** Mortgage in favor of First City Funding Corp. dated May 17, 2004 in the amount of \$600,000.00, and recorded September 27, 2004, at Official Records Book 22682, Pages 1010-1029, of the Public Records of Miami-Dade County, Florida.
2. **RECORDED CONSTRUCTION LIENS, CONTRACT LIENS AND JUDGMENTS:**  
None
3. **GENERAL EXCEPTIONS:**
  - a. Taxes under Folio Nos. 30-22-04-001-200 and 30-22-04-001-210 for the year 2003 are delinquent for both lots and taxes for the year 2004 which became due and payable November 30, 2004, are unpaid for both lots.
  - b. Rights of persons other than the above owners, who are in possession.
  - c. Facts that would be disclosed upon an accurate survey.
  - d. Any unrecorded labor, mechanics' or materialmens' liens.
  - e. Zoning and other laws, restrictions and ordinances by governmental authority.
  - f. Any adverse ownership claim by the State of Florida by right of sovereignty to any portion of the lands insured hereunder, including submerged, filled and artificially exposed lands, and lands accreted to such lands.
4. **SPECIAL INSTRUCTIONS:**
  - a. Restrictions, conditions, reservations, easements, and other matters contained in the plat of Riverdale, as recorded at Plat Book 44, Page 71, of the Public Records of Miami-Dade County, Florida.
  - b. Covenant running with the land concerning waste water in favor of Miami-Dade County as recorded at Official Records Book 22361, Pages 3776-8 of the Public Records of Miami-Dade County.

c. Mortgage in favor of First City Funding Corp. dated May 17, 2004 in the amount of \$600,000.00, and recorded September 27, 2004, at Official Records Book 22682, Pages 1010-1029, of the Public Records of Miami-Dade County, Florida.

I HEREBY CERTIFY that I have reviewed all the aforementioned encumbrances and exceptions.

Therefore, it is my opinion that the following party(ies) must join in the agreement in order to make the agreement a valid and binding covenant on the lands described herein.

<u>Name</u>	<u>Interest</u>	<u>Special Exception Number</u>
Ray R. Lustig as Trustee	Owner	
First City Funding Corp.	Mortgage	4. c.

The following is a description of the aforementioned abstract and its continuations:

<u>Number</u>	<u>Company Certifying</u>	<u>No. of Entries</u>	<u>Period Covered</u>
Policy #OPM-1610888	Attorneys' Title Ins. Fund, Inc.	1	EPR-10/17/2002
Search # 01-2004-024574	Attorneys' Title Ins. Fund, Inc.	6	11/20/1947-11/15/1976
Search #TJD2831	Attorneys' Title Ins. Fund, Inc.	14	11/15/1976-11/21/2004

I HEREBY CERTIFY that the legal description contained in this Opinion of Title coincides with, and is the same as, the legal description in the proffered, recordable agreement.

I, the undersigned, further certify that I am an attorney-at-law duly admitted to practice in the State of Florida and a member in good standing of the Florida Bar.

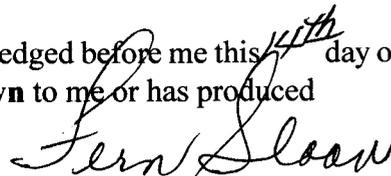
Respectfully submitted this 14<sup>th</sup> day of December, 2004.



Name: Kenneth S. Sandler  
Florida Bar No. 221015  
Address: 4700-B Sheridan Street  
Hollywood, Florida 33021

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of December 2004, by Kenneth S. Sandler, who is personally known to me or has produced \_\_\_\_\_, as identification.



Notary Public  
Print Name: FERN SLOAN

My commission expires:



Fern Sloan  
My Commission DD255210  
Expires October 25, 2007