

Prepared by and Return to:
Adele V. Stones, Esq.
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Key West, FL 33042
(305) 294-0252

DECLARATION OF AFFORDABLE RENTAL HOUSING RESTRICTIONS

This Declaration of Affordable Rental Housing Restrictions (hereinafter "Declaration") is made and entered into this ___ day of _____, 2016, by Peary Court Apartments, LLC, a Delaware limited liability company, as assignee of American Federated Title Corporation, as Trustee under Land Trust #2016PC, a Florida land trust (hereinafter "Declarant"), whose mailing address is 3850 Hollywood Boulevard, Suite 400, Hollywood, FL 33021 and the Monroe County Comprehensive Plan Land Authority (hereinafter "Land Authority"), whose address is 1200 Truman Avenue, Suite 207, Key West FL 33040 and the Housing Authority of the City of Key West, Florida (hereinafter "Housing Authority"), whose address is 1400 Kennedy Drive, Key West, FL 33040, individually and collectively identified as the Grantees and Beneficiaries of this Declaration.

This Declaration applies to all of the real property commonly known as Peary Court in Key West, Florida, which includes the street addresses of 400 White Street and 541 White Street, and which is more fully described in the Legal Description attached hereto and incorporated herein as Exhibit A (hereinafter "Property").

WHEREAS, Declarant is the fee simple owner of the Property and deems it desirable, in the public interest, and in the best interest of present owner, assigns and successors-in-interest that the Property shall be used for affordable workforce rental housing purposes, subject to the covenants and restrictions set forth herein.

WHEREAS, the Land Authority and the Housing Authority have participated in the acquisition of the Property by the Declarant through the contribution of funding in the amount of \$12,500,000.00 for which the Land Authority and the Housing Authority are receiving an interest in the Property through this Declaration.

WHEREAS, it is the intention of the Declarant that the restrictions contained herein shall be perpetual, run with the land and bind the Declarant, its successors and assigns, and shall inure to the benefit of the Land Authority and the Housing Authority.

NOW, THEREFORE, Declarant agrees that the Property shall be held and conveyed subject to the following affordable workforce housing restrictions, covenants and conditions, which shall run with the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns in perpetuity.

I. DEFINITIONS

A. "Declarant" shall mean the owner of the Property and any subsequent purchaser, mortgagee, devisee, transferee, grantee or holder of title in the Property or any portion of the Property.

B. "Transfer" means any sale, assignment or transfer, voluntary, involuntary or by operation of law (whether by deed, contract of sale, gift, devise, bequest, trustee's sale, deed in lieu of foreclosure, or otherwise) of any interest in the Property, including but not limited to, a fee simple interest, a joint tenancy interest, a life estate, a leasehold interest, or an interest evidenced by a land contract by which possession of the Property is transferred and Declarant retains title.

C. "Transferee" shall mean an individual, or individuals, who receive a Transfer of the Property from the Declarant.

All other terms shall have the same meaning given to them in the Key West Work Force Housing Ordinance.

II. TERM AND ENFORCEABILITY

A. This Declaration shall run with the Property and bind the Declarant, its, his or her heirs, legal representatives, executors, successors in interest and assigns in perpetuity.

B. The Property is held and hereafter shall be held, conveyed, encumbered, developed or redeveloped, used, rented, leased and occupied as affordable work force rental housing subject to these covenants, conditions, restrictions and limitations. All of the herein-stated covenants, conditions, restrictions and limitations are intended to constitute both equitable servitudes and covenants running with the land.

C. Any transferee, mortgagee, or purchaser of the Property, or of any portion of or interest in the Property, by the acceptance of a deed therefore, whether from Declarant or from any subsequent purchaser of the Property, or by the signing of a contract or agreement to purchase the same, shall, by the acceptance of such deed, mortgage, or transfer of interest by the signing of such contract or agreement, be deemed to have consented to and accepted the covenants, conditions, restrictions and limitations set forth herein. Any written instrument attempting or purporting to sell, convey, grant, transfer, exchange, assign, or mortgage any legal or equitable rights or interests to the Property shall be deemed null and void, where such instrument purports or evidences an attempt to sell, convey, grant, transfer, exchange or assign any right or interest to the Property where such instrument is inconsistent with or contrary to the conditions or covenants contained herein. Any

deed, mortgage, or instrument of conveyance executed by or on behalf of Declarant or any subsequent grantee, devisee, heir, assignee or other transferee shall expressly set forth verbatim this and the foregoing reservations, restrictions and covenants or, in lieu thereof, incorporate them by specific reference to this Declaration by Book and Page number(s) where recorded in the Public Records of Monroe County, Florida.

D. In order to preserve through this Declaration the affordability of the Property for persons with incomes within a specified range, the Land Authority and Housing Authority or their assigns shall have the right to monitor and enforce compliance with this Declaration. Declarant otherwise reserves the rights necessary to implement the provisions of this Declaration.

III. IDENTIFICATION OF THE PROPERTY AFFECTED

A. Upon execution of this Declaration, the entire Property as described in Exhibit A shall be subject to this Declaration and the City of Key West Land Development Regulations, Chapter 122, Article V, Division 10, Section 122-1465 through 122-1500 (Work Force Housing Ordinance), as it currently exists, a copy of which is attached as Exhibit B.

B. Pursuant to Section 122-1467(c) of the Work Force Housing Ordinance, the total rental for all the units shall be based on each unit being affordable housing (moderate income). The rental may be mixed among affordable housing (low income), (median income), (moderate income) and (middle income) in order that the total value of rental does not exceed ten percent of the rental of all the units as affordable housing (moderate income).

C. The terms contained herein are the minimum standards imposed by this Declaration. Nothing herein shall be construed to limit the City of Key West from adopting standards or imposing conditions on future development that would make future units at the Property (any units in excess of the existing 208 approved units) more affordable than currently provided for by this Declaration.

IV. OCCUPANCY, LEASING AND USE OF THE PROPERTY

A. Subject to Paragraph C below, the Property shall be operated, managed, developed or redeveloped and otherwise administered as affordable work force rental housing pursuant to Section 122-1469 of the Work Force Housing Ordinance and such other uses customarily accessory to residential use as may be permitted by local zoning and land use regulations, except that as required by Section 380.0666(3), Florida Statutes, under no circumstances shall the household's income be allowed to exceed 160% of the median household income for Monroe County adjusted for family size. Notwithstanding anything contained herein to the

contrary, in any year the U.S. Department of Housing and Urban Development (HUD) promulgated median household income for Monroe County increases and the corresponding promulgated rental rate(s) decrease, Declarant shall not be obligated to decrease the rental amount charged below the amount charged in the prior year.

B. Any unit that is vacant or becomes available for rental following the date of execution of this Declaration shall be immediately subject to this Declaration.

C. Any tenant or tenants occupying a unit under lease at the Property on the date of execution of this Declaration may be entitled to enjoy the full term of their existing lease plus one additional twelve (12) month lease term (said twelve (12) month period shall be referred to as the "Transition Period"), provided said tenant or tenants are in good standing under the terms of their lease(s) at lease renewal. If said tenant(s) income qualify under the terms of this Declaration, the rental rates described in Paragraph A above shall apply during the Transition Period. If said tenants do not income qualify under the terms of this Declaration, the rental rate charged during the Transition Period shall not exceed that permitted otherwise for middle income tenants.

D. At a date not later than twenty-four (24) months from execution of this Declaration the Transition Period described in Paragraph C above shall terminate and all units on the Property shall be subject to this Declaration.

V. DEFAULTS AND REMEDIES: ASSIGNMENT OF RENTS

A. Upon any violation of the provisions of this Declaration the Housing Authority or its assigns may declare a default under this Declaration by delivering written notice thereof to the Declarant. After providing written notice of default, the Housing Authority or assigns may apply to a court of competent jurisdiction for specific performance of the Declaration, for an injunction prohibiting a proposed sale, transfer, or lease in violation of this Declaration, for a declaration that a prohibited transfer or lease is void, or for any such other relief as may be appropriate.

B. Assignment of rents: Declarant hereby assigns to the Housing Authority or its assigns the right to receive the rents due or collected from any units identified to be in violation of this Declaration during the entire period those units are occupied in violation of any of the terms of this Declaration provided the Housing Authority, or its assigns, provides Declarant and any mortgagee holding a first mortgage on the Property (at the address provided in such mortgage) with written notice of default and thirty (30) days to cure. If Declarant is prevented from curing said default within the prescribed thirty (30) day period due to causes beyond the reasonable control of Declarant, the curative period shall be extended for such time as Declarant is prevented from achieving the cure. Once such cause is removed, the prescribed period shall continue to run.

C. The remedies stated herein shall not be exclusive, but shall be cumulative to all other remedies and rights the parties may lawfully exercise.

VI. REQUIREMENTS FOR WRITTEN REPORTS FROM DECLARANT

Declarant shall provide a written report to the Housing Authority each year on January 1, or on such other date as specified by the Housing Authority in writing, which contains the information necessary to ensure continued compliance with affordability criteria, including sworn tenant household verification information, a statement that Declarant has complied with all provisions of this Declaration, and, if applicable Declarant's explanation of any violation of any provision of this Declaration. The report shall be submitted within thirty (30) days of the specified date to the Housing Authority. Failure to provide a report in a timely manner, or any misrepresentations on the report, shall constitute a default under this Declaration.

VII. GENERAL PROVISIONS

A. The Land Authority and Housing Authority may assign their rights and delegate their duties hereunder in writing without the consent of Declarant. Upon such assignment the parties shall so notify each other.

B. Declarant shall be required to include in each lease for any unit located on the Property the condition that each tenant acknowledge that tenant's occupancy of the unit is subject to this Declaration and the City of Key West Work Force Housing Ordinance.

C. If any action is brought to enforce the terms of this Declaration, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

D. If any one or more of the provisions contained in this Declaration shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Declaration, and this Declaration shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

E. The terms of this Declaration shall be interpreted under the laws of the State of Florida and venue shall lie in Monroe County, Florida.

F. All notices to the Declarant, Land Authority, or Housing Authority required herein shall be sent by certified mail, return receipt requested, to the addresses stated above, or such other addresses that the parties may subsequently provide in writing.

G. This Declaration may not be terminated, amended, or modified except by written agreement executed by the parties.

VIII. SUBORDINATION AND TRANSFER OF DEVELOPMENT RIGHTS PROHIBITED

A. This Declaration shall be superior to all mortgages and shall not be subordinated. This Declaration shall be recorded in the Public Records immediately following the Warranty Deed conveying the Property to Declarant and before the filing of any mortgages, liens, or interests in the Property.

B. The consideration provided to Declarant is contingent upon the Property having the development rights to the 208 units referenced in Paragraph III C. above as of the date this Declaration is signed. No existing or future development rights, including but not limited to the 208 units referenced in Paragraph III C. above, may be transferred from the Property.

IN WITNESS WHEREOF, the Declarant has executed this Declaration as of the date written below.

Signed, sealed and delivered in the presence of:

DECLARANT: PEARY COURT APARTMENTS, LLC, a Delaware limited liability company

By: THE CORNFELD GROUP, LLC, a Florida limited liability company, its Manager

By: _____
Jeffrey D. Cornfeld, its Manager

Witness #1 Signature

Witness #1 Printed Name

Witness #2 Signature

Witness #2 Printed Name

Approved as to form and legality:

Adele V. Stones
Adele V. Stones, Esquire

STATE OF FLORIDA
COUNTY OF _____:

The foregoing instrument was acknowledged before me this ____ day of _____, 2016 by Jeffrey D. Cornfeld, Manager of The Cornfeld Group, LLC, a Florida limited liability company, Manager of Peary Court Apartments, LLC, a Delaware limited liability company, who () is personally known to me or () has produced _____ as identification.

NOTARY SEAL:

NOTARY PUBLIC

EXHIBIT A

A parcel of land situated in the City of Key West, Monroe County, Florida and being more particularly described as follows: COMMENCING at the intersection of the Northwesterly Right-of-Way Line of Newton Street and the Northeasterly Right-of-Way Line of White Street (Florida State Plane Coordinates East Zone NAD 83/90, Northing = 82591.01, Easting = 392639.41): thence N 34°08'30" W along the said Northeasterly Right-of-Way Line of White Street for 310.39 feet; thence N 55°51'30" W for a distance of 0.05 feet to the back edge (Northeast side) of a concrete sidewalk and the Point of Beginning; thence N 34°08'00" W, and along the Northeast edge of a concrete sidewalk a distance of 289.66 feet; thence S 55°51'30" W for a distance of 0.10 feet to the Northeasterly Right-of-Way Line of White Street; thence N 34°08'30" W along the said Northeasterly Right-of-Way Line of White Street for a distance of 31.83 feet; thence N 55°51'30" E for a distance of 0.10 feet to the said back of the sidewalk of White Street; thence N 34°08'00" W along the said Northeasterly edge of a sidewalk for a distance of 353.03 feet to an existing fence; thence N 55°36'56" E., and along the said fence, which lies on Eaton Street a distance of 194.19 feet to a point lying 0.5 feet (6 inches) Northeast of a fence corner; thence S 79°06'43" E., and along a line lying 0.5 feet (6 inches) Northeasterly of a existing fence and wall a distance of 1206.74 feet; thence N 10°44'48" E for a distance of 8.75 feet to the Southeasterly Right-of-Way Line of Palm Avenue; thence S 79°15'12" E along the said Southeasterly Right-of-Way Line of Palm Avenue for a distance of 55.00 feet; thence S 10°44'48" W for a distance of 8.88 feet to the extension of a line lying 0.5 feet (6 inches) Northeasterly of the existing fence and wall; thence S 79°06'43" E and along a line lying 0.5 feet (6 inches) Northeasterly of the existing fence and wall for a distance of 325.65 feet to a point lying 0.5 feet (6") from the corner of the fence on Eisenhower Drive; thence S 40°23'08" E along the fence on Eisenhower for a distance of 20.90 feet; thence S 14°07'44" E and being partially along a fence line for 167.37 feet to Angela Street; thence S 56°24'46" W., and along a line lying 0.5 feet (6 inches) Southeasterly of the fence line of Angela Street a distance of 1030.22 feet; thence N 19°36'43" W., and along the edge of an existing fence a distance of 72.01 feet; thence S 68°44'44" W., and along the edge of an existing fence a distance of 204.28 feet to the Northeast side of a concrete sidewalk and the Point of Beginning.

EXHIBIT B

DIVISION 10. - WORK FORCE HOUSING⁽²²⁾

Footnotes:

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Editor's note—Section 1 of Ord. No. 05-27, adopted Oct. 18, 2005, amended the title of Div. 10, Affordable Housing to read as herein set out.

Cross reference— Fair housing, § 38-26 et seq.

Sec. 122-1465. - Intent.

It is the intent of this division to create affordable housing categories to facilitate the development of housing designed and priced to meet the needs of people employed by the local economy in a manner that reflects the percentage of the workforce at each income level and mixes people of all incomes together and does not create high and low-income enclaves.

(Ord. No. 05-27, § 2, 10-18-2005)

Sec. 122-1466. - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Affordable housing shall be defined as provided in the following classifications:

Affordable housing (low income) for a rental dwelling unit shall mean a dwelling unit whose monthly rent, not including utilities, does not exceed 30 percent of that amount which represents 80 percent of the monthly median household income (adjusted for family size). For an owner-occupied dwelling unit, affordable housing (low income) shall mean a dwelling unit whose sales price shall not exceed two and one-half times the annual median household income (adjusted for family size) for Monroe County, in accordance with section 122-1472.

Affordable housing (median income) for a rental dwelling unit shall mean a dwelling unit whose monthly rent, not including utilities, does not exceed 30 percent of that amount which represents 100 percent of the monthly median household income (adjusted for family size) for Monroe County. For an owner-occupied dwelling unit, affordable housing (median income) shall mean a dwelling unit whose sales price shall not exceed three and one-half times the annual median household income (adjusted for family size) for Monroe County, in accordance with section 122-1472. The definition of "affordable housing (median income)" applies to and encompasses all affordable housing under construction or built pursuant to this ordinance prior to July 1, 2005, for which deed restrictions are required.

Affordable housing (middle income) for a rental dwelling unit shall mean a dwelling unit whose monthly rent, not including utilities, does not exceed 30 percent of that amount which represents 140 percent of the monthly median household income (adjusted for family size) for Monroe County. For an owner-occupied dwelling unit, affordable housing (middle income) shall mean a dwelling unit whose sales price shall not exceed six and one-half times the annual median household income (adjusted for family size) for Monroe County, in accordance with section 122-1472.

Affordable housing (moderate income) for a rental dwelling unit shall mean a dwelling unit whose monthly rent, not including utilities, does not exceed 30 percent of that amount which

represents 120 percent of the monthly median household income (adjusted for family size) for Monroe County. For an owner-occupied dwelling unit, affordable housing (moderate income) shall mean a dwelling unit whose sales price shall not exceed five times the annual median household income (adjusted for family size) for Monroe County, in accordance with section 122-1472.

Affordable work force housing shall include low income, median income, moderate income and middle income housing.

Affordable work force housing trust fund shall mean the trust fund established and maintained by the city for revenues from fees in lieu of constructing affordable work force housing, and revenues from any other source earmarked for the trust fund by land development regulation, ordinance or donation.

Median household income shall mean the median household income published for Monroe County on an annual basis by the U.S. Department of Housing and Urban Development.

(Ord. No. 98-18, § 1, 6-3-1998; Ord. No. 02-08, § 1, 2-20-2002; Ord. No. 05-27, § 3, 10-18-2005)

Cross reference— Definitions generally, § 1-2.

Sec. 122-1467. - Requirements of affordable work force housing; ratio of new construction.

- (a) *New market-rate multifamily residential housing.* At least ten percent of all new multifamily residential units constructed each year shall be low income affordable housing of at least 400 square feet each, as defined herein and 20 percent shall be affordable housing (median income) housing of at least 400 square feet each, as defined herein. Residential or mixed use projects of less than ten residential or mixed use units shall be required to develop at least 30 percent of units of at least 400 square feet each as affordable (median income), but may contribute a fee in lieu for each unit to the affordable work force housing trust fund, if approved by the city commission. The per unit fee shall be \$200,000.00 (representing construction cost, less land cost, of a 400 square foot unit). The 30 percent affordability requirement shall be determined on a project by project basis and not on a city-wide basis. Vested units shall be subject to this subsection if not otherwise governed by law or agreement. For every required affordable housing (median income) unit, a developer may increase the sales or rental rates to affordable housing (middle income) so long as another unit's sales or rental rate is decreased to affordable housing (low income).
- (b) *Linkage of projects.* Two development projects may link to allow the affordable housing requirement of one development project to be built at the site of another project, so long as the affordable housing requirement of the latter development is fulfilled as well. Written proof of the project linkage shall be supplied by the developer to the city commission at the time of the first site plan approval. The project containing the affordable units must be built either before or simultaneously with the project without, or with fewer than, the required affordable units. In addition, if a developer builds more than the required number of affordable units at a development site, this development project may be linked with a subsequent development project to allow compliance with the subsequent development's affordable unit requirement. Written proof of the linkage must be supplied by the developer to the city commission at the time of the subsequent development's site plan approval. Linkage shall not be available if either development is entirely or in part to be constructed by public funds. Finally, all linkages under this subsection may occur within the city or on a site within the city and on a site on Stock Island in the unincorporated part of the county.
- (c) *New affordable work force housing.* The maximum total rental and/or sales price for all new affordable work force housing units in a single development shall be based on each unit being affordable housing (moderate income). The rental and/or sales price may be mixed among affordable housing (low income), (median income), (middle income) and (moderate income) in order that the total value of rental and/or sales does not exceed ten percent of the rental and/or sales of all the units at affordable housing (moderate income).