

Prepared by and  
return to:

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(For Recorder's Use Only)

**DECLARATION OF USE RESTRICTION  
(715 Seminole Street)**

This Declaration of Use Restriction (hereinafter "Declaration") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_ by BRE/FL Development Parcels, L.L.C., a Delaware limited liability company (collectively the "Declarant"), whose principal mailing address is c/o Park Hotels & Resorts, 1775 Tysons Boulevard, 7<sup>th</sup> Floor, Tysons, Virginia 22102.

**WHEREAS**, the Declarant, with the consent of the City of Key West ("City"), desires to place of record this Declaration to restrict certain uses on the Property; and

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged:

**I. DEFINITIONS**

A. "Declarant" shall mean the owner 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 but Declarant retains title.

C. "Transferee" shall mean an entity(ies) or individuals who receive a Transfer of the Property or any portion thereof from the Declarant.

D. "Property" shall mean the real property particularly described as:

**On the Island of Key West, Florida, being Lots 1 thru 10 inclusive, all being in Block 8 as shown on the Plat of the Key West Investment Cmpany's Subdivision of Part of Tract Seventeen (17), duly recorded in Plat Book 1 at Page 69 of the Public Records of Monroe County, Florida.**

**II. TERM AND ENFORCEABILITY**

A. This Declaration shall run with the Property and bind the Declarant, its heirs, legal representatives, executors, successors in interest and assigns, for a period of fifty (50) years from the effective date of this Declaration. At any time during the final year of the restriction, the City, at its sole discretion, may act by Resolution to renew this Declaration for an additional 50-year term.

B. The Property is and hereafter shall be subject to the covenants, conditions, restrictions and limitations set forth in this Declaration. 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 of the Property shall be deemed to have consented to and accepted the covenants, conditions, restrictions and limitations set forth herein.

**III. USE OF THE PROPERTY**

A. The following uses are prohibited on the Property:

1. Community centers, clubs and lodges
2. Places of worship
3. Commercial retail low intensity less than or equal to 5,000 square feet
4. Commercial retail low and medium intensity great than 5,000 square feet
5. Bars and lounges accessory to and located within a motel, hotel or other transient facility having at least 20 units
6. Restaurants (however notwithstanding anything in this Declaration to the contrary, in room dining, beverage service, catering service and room service shall be permitted)
7. Small recreational power-driven equipment rentals
8. Any additional commercial floor area not set forth on Exhibit "A"

B. The Property's permitted density shall be limited to sixteen (16) units per acre, notwithstanding applicable code provisions. The Property shall be entitled to aggregate density with the real property located at 811 Seminole Avenue, Key West, Florida 33040, through a Unity of Title and as such density shall be calculated on an aggregated basis.

C. Issuance of the certificates of occupancy for the workforce housing units identified on Exhibit A, along with certificates of appropriateness for the contributing structures as determined by the City of Key West Historic Architectural Review Commission, shall occur prior to or simultaneously with the issuance of certificates of occupancy for the market rate units depicted on Exhibit "A."

**IV. DEFAULTS AND REMEDIES**

A. Upon any violation of the provisions of this Declaration the City may declare a default under this Declaration by delivering written notice thereof to the Declarant. Declarant shall have a period of ninety (90) days following receipt of the City notice to cure the default, provided, if the default is not capable of being cured within such ninety (90) day period and Declarant has or has caused to be taken commercially reasonable efforts to commence a cure within such ninety (90) day period, Declarant shall be entitled to an equitable extension of the cure period. If Declarant fails to cure the default within the ninety (90) day cure period (as may be extended), then the City may apply to a court of competent jurisdiction for specific performance of the Declaration.

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

**V. FUTURE DEVELOPMENT**

Declarant shall apply for the necessary permits to demolish the non-historically protected buildings on 715 Seminole Street parcel within one hundred twenty (120) days from the recording of this Declaration in the Monroe County, Public Records. Future development shall require major development approval from the City together with requisite building permits approving the proposed project substantially in conformance as is shown on the site plan attached hereto as Exhibit A. Declarant shall be required to apply for a development agreement and major development approval which shall include review by the Development Review Commission, Tree Commission, Planning Board, Historical Architectural Commission, Art in Public Places and City of Key West Commission.

**VI. REQUIREMENTS FOR WRITTEN NOTICE FROM DECLARANT**

Declarant shall provide a notice to the City each year on or before January 31, or on such later date as specified by the City in writing, which states to the best of Declarant's actual knowledge all uses on the Property for the preceding calendar year are in compliance with this Declaration.

**VII. GENERAL PROVISIONS**

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

B. 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.

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

D. All notices required herein shall be sent by certified mail, return receipt requested, to the Declarant at Park Hotels & Resorts Inc., Attention General Counsel, 1775 Tysons Boulevard, 7<sup>th</sup> Floor, Tysons, Virginia 22102 with a copy to Gregory

S. Oorpeza, Esq., Oropeza Stones & Cardenas, PLLC, 221 Simonton Street, Key West, Florida 33040 and to the City or its designee at P.O. Box 1409, Key West, Florida, 33041, or such other address that the City may subsequently provide in writing to the Declarant.

E. This Declaration may be amended by mutual consent of the parties or their successors in interest. Amendment under this provision will be accomplished by an instrument in writing signed by the parties or their successors, which signing may only occur after the occurrence of one (1) publicly noticed community workshop. Public notice of the community workshop shall be provided to property owners within one thousand (1,000) feet of the Property as determined by the Monroe County Property Appraiser.

**[Rest of page intentionally left blank; Signature page to follow]**

DRAFT

**DRAFT RESTRICTIVE COVENANT 715 SEMINOLE – PROPERTY OWNER TO CITY**

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

BRE/FE: Development Parcels, L.L.C., a Delaware limited liability company,

Signed, sealed and delivered in our presence:

\_\_\_\_\_  
Witness Name:

By: \_\_\_\_\_

Name: Thomas J. Baltimore, Jr.  
Title: President

\_\_\_\_\_  
Witness Name:

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me [ ] by physical presence or [ ] online notarization this \_\_ day of \_\_\_\_\_, 202\_\_ by Thomas J. Baltimore, Jr. as President of BRE/FE Development Parcels, L.L.C., a Delaware limited liability company, who [ ] are personally known to me or [ ] have produced \_\_\_\_\_ as identification.

[Notary Seal]

\_\_\_\_\_  
Notary Public

Printed Name: \_\_\_\_\_

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