

Prepared by and  
return to:

Shawn D. Smith, Esq.  
P.O. Box 1409  
Key West, FL 33041-1409  
(305) 809-3773

(For Recorder's Use Only)

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## DECLARATION OF AFFORDABLE HOUSING RESTRICTIONS

This Declaration of Affordable Housing Restriction (hereinafter "Declaration") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2022 by BAHAMA VILLAGE COMMUNITY, LTD., a Florida limited partnership (the "Declarant")

This Declaration applies to all of the units which are or may be located on the real property located in Historic Bahama Village, in Key West, Florida, which is more fully described in the Legal Description attached hereto and incorporated herein as Exhibit A (hereinafter "Property").

**WHEREAS**, the Property has been leased to Declarant pursuant to that certain 99-year ground lease by and between The Naval Properties Local Redevelopment Authority of the City of Key West, a political subdivision of the State of Florida ("City of Key West") and Declarant dated \_\_\_\_\_ and recorded \_\_\_\_\_ at Book \_\_\_\_\_, Page \_\_\_\_\_ of the Official Records of Monroe County (the "Lease");

**WHEREAS**, the City of Key West has required that the Property be subject to affordable housing restrictions, which shall establish affordable housing categories to facilitate the development of housing designed to meet the needs of people in the City, establish eligibility requirements for occupants of such affordable housing, and restricts lease price of the Property and requires that the Property leased at a price substantially less than fair market value to a tenant within a specific income range;

**WHEREAS**, Declarant as well as tenants will benefit from the limitations and regulations placed on the Property by operation of this Declaration;

**WHEREAS**, the intent of the City of Key West in imposing reasonable regulations on the Property is to establish and maintain the affordability of the Property for persons with incomes within a specified range; and

**WHEREAS**, the intent of Declarant is to preserve through this Declaration the affordability of the Property and to assign to the City the right to enforce compliance with this Declaration as an intended beneficiary of this Declaration.

**NOW, THEREFORE**, the Declarant agrees that the Property shall be held conveyed, assigned or leased subject to the following affordable 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 for the entire term of this Declaration.

## **I. DEFINITIONS**

A. "Declarant" shall include any subsequent purchaser, devisee, transferee, grantee or holder of title of the Property or any portion of the Property.

B. "Transfer" means any sale, lease or sublease, 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.

D. "Income" shall mean gross adjusted income.

All other terms shall have the same meaning given to them in the Lease and Related Agreements (as defined in the Lease).

## **II. TERM AND ENFORCEABILITY**

A. This Declaration shall run with the land and with the title to the Property in perpetuity and bind the Declarant, its successors in interest and assigns, from the effective date of this Declaration.

B. The Property is held and hereafter shall be held, conveyed, encumbered, used, subleased, leased and occupied subject to the covenants, conditions, restrictions and limitations set forth in the Lease and 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, sublessee, lessee, mortgagee or purchaser of the Property, or of any portion of or interest in the Property, by the acceptance of a deed or sublease therefore, whether from Declarant or from any subsequent purchaser of the Property, or by the signing of a contract or agreement to purchase or sublease the same, shall, by the acceptance of such deed, sublease or mortgage, or 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 lease or sublease, sell, convey, grant, transfer, exchange assign or mortgage any legal or equitable rights or interests to the Property (including the interest in the Lease) 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 lease, sublease, deed 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 Declarant hereby grants and assigns to the City 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 UNITS AFFECTED**

Pursuant to the Lease, the total rental for all the affected units shall be based on each unit being affordable housing. The affordable housing development located on the Property shall consist of the following rental for units designated at “extremely low”, “low income” or “very low income” or “moderate income”

- A. Ten (10) units designated for “extremely low-income” persons
- B. Thirty-nine (39) units designated for “very low-income” persons
- C. Twenty-nine (29) units designated for “low-income” persons
- D. Twenty (20) units designated for “moderate income” persons

### **IV. OCCUPANCY, SALE, LEASING AND USE OF THE PROPERTY**

A. The Property shall be operated, managed and otherwise administered as affordable housing and such other uses incidental to residential use as may be permitted by local zoning and land use regulations.

1. At the time an affordable housing (extremely low-income) unit is subleased, the total income of the eligible household or persons shall not exceed 25 percent of the median annual adjusted gross income for households within the State of Florida. The Florida Housing Finance Corporation may adjust this amount annually by rule to provide that in lower income counties, extremely low income may exceed 25 percent of area median income and that in higher income counties, extremely low income may be less than 25 percent of area median income.

2. At the time an affordable housing (very low-income) unit is subleased, the total income of the eligible household or persons shall not exceed 60 percent of the median annual adjusted gross income for households within the State of Florida, or 60 percent of the median annual adjusted gross income for households within the metropolitan statistical area (“MSA”) or, if not within an MSA, within the county in which the person or family resides, whichever is greater.

3. At the time an affordable housing (low-income) unit is subleased, the total income of the eligible household or persons shall not exceed 80 percent of the median annual adjusted gross income for households within the State of Florida, or 80 percent of the median annual adjusted gross income for households within the MSA or, if not within an MSA, within the county in which the person or family resides, whichever is greater.

4. At the time an affordable housing (moderate income) unit is subleased, the total income of the eligible household or persons shall not exceed 120 percent of the median annual adjusted gross income for households within the State of Florida, or 120 percent of the median annual adjusted gross income for households within the MSA or, if not within an MSA, within the county in which the person or family resides, whichever is greater)

5. Eligibility is based on an employer verification form signed by the employer or reasonably sufficient evidence, demonstrating income qualification through self-employment.

6. The income of eligible households shall be determined by counting the full amount, before any payroll deductions, of wages, salaries, overtime pay, commissions, fees, tips, bonuses, Social Security, annuities, insurance policies retirement funds, pensions, disability or death benefits unemployment compensation disability or death benefits, unemployment compensation disability compensation, worker's compensation, severance pay and any net income from the operation of a business or profession of all household members. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income from operation of a business or profession.

## **V. DEFAULTS AND REMEDIES: ASSIGNMENT OF RENTS**

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. After providing written notice of default, and provide that such default has not been reasonably cured within thirty (30) days of receipt of such default notice, the City may apply to a court of competent jurisdiction for specific performance of the Declaration, for an injunction prohibiting a proposed sale or 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. Subject to the rights of "Leasehold Mortgagees" under the Lease, Declarant hereby assigns to City the right to receive the rents due or collected from any units identified to be subject to this Declaration during the entire period those units are occupied in violation of any of the terms of this Declaration.

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 City each year on January 1, or on such other date as specified by the City in writing, which includes a statement that Declarant has complied with all provisions of this Declaration, or includes 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 City, or to such other person or address designated by the City. 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 City may assign its rights and delegate its duties hereunder in writing without the consent of Declarant. Upon such assignment, the City shall notify the Declarant.

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

C. 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.

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

E. All notices required herein shall be sent by certified mail, return receipt requested, to the Declarant at 3030 Hartley Road, Suite 310, Jacksonville, FL 32257, with a copy to Smith Hawks, PL, 138 Simonton Street, Key West, FL 33040 and to the City Manager or his or her designee at P.O. Box 1409, Key West, FL, 33041, or such other address that either party may subsequently provide in writing to the other party.

## **VIII. CONVERSION TO CONDOMINIUM FORM OF OWNERSHIP**

Prior to Declarant or any subsequent owner or transferee converting ownership of the Property to condominium or a similar form of ownership, Declarant shall obtain the City's reasonable consent to same and Declarant expressly agrees herein to execute an amended Declaration as reasonably required by the City.

## **IX. MORTGAGE SUBORDINATION**

Subject to the terms regarding "Leasehold Mortgages" under the Lease, upon demand by the City any mortgagee who accepts any or all of the Property as collateral or security for any

purpose or loan shall execute and deliver, in recordable form, its subordination agreement subordinating its mortgage to the terms and conditions of this Declaration.

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

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

BAHAMA VILLAGE COMMUNITY, LTD., a  
Florida limited partnership

By: Bahama Village GP, LLC, its general partner

Signed, sealed and delivered in our presence:

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

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

The foregoing instrument was acknowledged before me [ ] by physical presence or [ ] online notarization this \_\_\_\_ day of \_\_\_\_\_, 2022 by \_\_\_\_\_ as \_\_\_\_\_ of Bahama Village GP, LLC, general partner of BAHAMA VILLAGE COMMUNITY, LTD., a Florida limited partnership, who [ ] are personally known to me or [ ] have produced \_\_\_\_\_ as identification.

[Notary Seal]

\_\_\_\_\_  
Notary Public  
Printed Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

## EXHIBIT A