

Prepared by and  
return to:

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(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 ON FORT, 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 restrict the sales price of the Property and requires that the Property be sold at a price substantially less than fair market value to a purchaser within a specific income range;

**WHEREAS**, Declarant as well as subsequent purchasers 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, 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 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, sold, 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 an Owner/Occupant (as defined in the Lease), 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, all units on the Property shall be workforce affordable housing. The affordable housing development located on the Property shall consist of the following units for sale designated at “low income” or “very low income” or “middle income”

- A. Three (3) units designated for “very low-income” persons
- B. Eleven (11) units designated for “low-income” persons
- C. Fourteen (14) units designated for “middle income” persons

Prior to selling any units within the affordable housing development on the Property, the Declarant shall record an Identification of Affordable Housing Agreement in the public records of Monroe County, Florida, which recorded document shall identify which unit are which particular income level.

### **IV. OCCUPANCY, SALE 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 (very low-income) unit is sold, such sales price shall not exceed one and one-half times the annual median household income (adjusted for family size) for Monroe County, in accordance with section 122-1472 of the City Code.
- 2. At the time an affordable housing (low-income) unit is sold, such 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 of the City Code.
- 3. At the time an affordable housing (middle income) unit is sold, such 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 of the City Code.

4. The following eligibility requirements shall be required of households or persons to qualify for affordable work force housing units to the extent lawful:
  - (a) The household or person shall derive at least 70 percent of its or his/her total income from gainful employment in the county. This section shall not disqualify an individual previously and continuously qualified who reaches the age of retirement, or becomes disabled, and is otherwise income qualified.
  - (b) At the time of sale of an affordable housing (very low income) unit, the total income of eligible household or persons shall not exceed sixty (60) percent of the median household income for Monroe County (adjusted for family size). In the event that a very low income affordable housing unit is leased, the total income of the eligible household or persons leasing the unit shall not exceed 60 percent of the median household income for Monroe County (adjusted for family size). During the occupancy of the rental unit, the household's income may increase to an amount not to exceed 100 percent of the median household income for Monroe County (adjusted for family size). In such event, the tenant's occupancy shall terminate at the end of the existing lease term. The monthly rent for the rental unit, not including utilities, shall not exceed 25 percent of that amount which represents 60 percent of the monthly median household income of Monroe County (adjusted for family size).
  - (c) At the time of sale of an affordable housing (low income) unit, the total income of eligible household or persons shall not exceed eighty (80) percent of the median household income for Monroe County (adjusted for family size). In the event that a low income affordable housing unit is leased, the total income of the eligible household or persons leasing the unit shall not exceed 80 percent of the median household income for Monroe County (adjusted for family size). During the occupancy of the rental unit, the household's income may increase to an amount not to exceed 120 percent of the median household income for Monroe County (adjusted for family size). In such event, the tenant's occupancy shall terminate at the end of the existing lease term. The monthly rent for the rental unit, not including utilities, shall not exceed 25 percent of that amount which represents 80 percent of the monthly median household income of Monroe County (adjusted for family size).
  - (d) At the time of sale of an affordable housing (middle income) unit, the total income of eligible household or persons shall not exceed one hundred forty (140) percent of the median household income for Monroe County (adjusted for family size). In the event that a middle income affordable housing unit is leased, the total income of the eligible household or persons leasing the unit shall not exceed 140 percent of the median household income for Monroe County (adjusted for family size). During the occupancy of the rental unit, the household's income may increase to an amount not to exceed 180 percent of the median household income for Monroe County (adjusted for family size). In such event, the tenant's occupancy shall

terminate at the end of the existing lease term. The monthly rent for the rental unit, not including utilities, shall not exceed 25 percent of that amount which represents 140 percent of the monthly median household income of Monroe County (adjusted for family size).

5. Eligibility is based on proof of legal residence in the county as demonstrated by a valid State of Florida driver license or identification card, voter registration card if eligible, and an employer verification form signed by the employer or sufficient evidence, satisfactory to the City or its designee, demonstrating income qualification through self-employment.

6. Priority shall be given to families of four or more members for larger sized affordable housing units.

7. 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. Unrelated adults may be qualified individually for rental purposes provided the total lease payment to the Owner does not exceed the rent limits established by the City.

8. In the event that a tenant of an affordable housing unit's income shall exceed the maximum allowable income under this section and such shall occur for the first time during the last three months of a tenancy, then the Owner/Occupant landlord and tenant may extend a lease for a period of one year at the affordable rate.

9. The planning board may review a potential tenant's household's income and unique circumstances to determine eligibility and conformance with the intent of this Declaration to assure that people in need are not excluded and people without need are not included

## **V. 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. 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. 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 or its 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. In the event of any change in contact information, the parties agree to record an amendment to this Declaration in the public records of Monroe County, Florida reflecting such change.

## **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, pursuant to Lease, Declarant shall obtain the City's reasonable approval of such condominium documents (including a condominium declaration) 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 ON FORT, LTD., a Florida limited partnership

By: Bahama Village on Fort GP, LLC, its general partner

By: Vestcor, Inc., a Florida corporation, its manager

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 Vestcor, Inc., a Florida corporation, manager of Bahama Village on Fort GP, LLC, general partner of BAHAMA VILLAGE ON FORT, 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