

Prepared by and Return to:  
George B. Wallace, Esq.  
P.O. Box 1409  
Key West, FL 33041-1409  
(305) 809-3770

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Bk# 2345 Pg# 2336

## DECLARATION OF AFFORDABLE HOUSING RESTRICTIONS

This Declaration of Affordable Housing Restrictions (hereinafter "Declaration") is made and entered into this 31<sup>st</sup> day of March, 2017, by STOCK ISLAND APARTMENTS, LLC, a Delaware limited liability company (hereinafter "Declarant").

This Declaration applies to thirty-seven (37) of the units which are or may be located on the real property located at 5555 College Road, 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 is subject to regulation pursuant to Sections 122-1465 through 122-1500 of the Code of Ordinances of the City of Key West, Florida, (2014) ("Work Force Housing Ordinance"), which ordinance establishes affordable housing categories to facilitate the development of housing designed to meet the needs of people employed by the local economy, establishes eligibility requirements for occupants of work force housing, restricts the sales or lease price of the Property, and requires that the Property be sold or leased at a price substantially less than fair market value to a purchaser or tenant within a specific income range; and

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

**WHEREAS**, the intent of the City of Key West (hereinafter "City") 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, or leased subject to the following affordable housing restrictions,

**NOW, THEREFORE**, the Declarant agrees that the Property shall be held, conveyed, 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 mean the owner of the Property and 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 City's Work Force Housing Ordinance.

**II. TERM AND ENFORCEABILITY**

A. This Declaration shall run with the Property and bind the Declarant, his or her 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 held and hereafter shall be held, conveyed, encumbered, used, rented, leased and occupied 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 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 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 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**

A. Within 30 days of the date of execution of this Declaration, the Declarant shall identify and specify the 37 units which shall be subject to this Declaration. Further, the Declarant shall specify which affordable housing classification (low, median, moderate, or middle) each unit shall be operated under. The Declarant shall identify the affected units and classification pursuant to an amendment to this Declaration made by the Declarant alone, executed with the formalities of a deed, and recorded in the Public Records of Monroe County, Florida.

B. Pursuant to Section 122-1467(c) of the Work Force Housing Ordinance, the total rental for all the affected 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 affected units as affordable housing (moderate income).

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

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

1. Occupancy shall be restricted to households or persons who derive at least 70 percent of its or his/her total income from gainful employment in Monroe County.

2. At the time an affordable housing (low income) unit is sold or leased, the total income of the eligible household or persons 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 30 percent of that amount which represents 80 percent of the monthly median household income of Monroe County (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 Monroe County, Fl. (adjusted for family size as provide in Section 122-1472 of the Code of Ordinances of the City of Key West as amended from time to time).

3. At the time an affordable housing (median income) unit is sold or leased, the total income of the eligible household or persons shall not exceed 100 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 140 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 30 percent of that amount which represents 100 percent of the monthly median household income of Monroe County (adjusted for family size). 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 Monroe County, Fl. (adjusted for family size as provided in Section 122-1472 of the Code of Ordinances of the City of Key West as amended from time to time)



4. At the time an affordable housing (middle income) unit is sold or leased, the total income of the eligible household or persons 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 30 percent of that amount which represents 140 percent of the monthly median household income of Monroe County (adjusted for family size). For an owner-occupied dwelling unit, (middle income) shall mean a dwelling unit whose sales price shall not exceed six and one-half times the annual median household income for Monroe County, Fl. (adjusted for family size as provided in Section 122-1472 of the Code of Ordinances of the City of Key West as amended from time to time.)

5. At the time an affordable housing (moderate income) unit is sold or leased, the total income of the eligible household or persons shall not exceed 120 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 160 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 30 percent of that amount which represents 120 percent of the monthly median household income of Monroe County (adjusted for family size). 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 Monroe County, Fl. (adjusted for family size as provided in Section 122-1472 of the City of Key West Code of Ordinances as amended from time to time.)

6. Eligibility is based on proof of legal residence in Monroe County for at least one consecutive year.

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

8. The income of eligible households shall be determined by counting only the first and highest paid 40 hours of employment per week of each unrelated adult. For a household containing adults related by marriage or a domestic partnership registered with the City, only the highest 60 hours of combined employment shall be counted.

The income of dependents regardless of age shall not be counted in calculating a household's income.

9. In the event that a tenant'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 landlord and tenant may extend a lease for a period of one year at the affordable rate.

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

11. (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) Seven (7) of the new affordable units shall comply with Section 122-1467 (a), and the remaining Thirty (30) affordable units shall comply with Section 122-1467 (c).

## **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, 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. Assignment of rents: 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 the address of the Property and to the City or its designee at P.O. Box 1409, Key West, FL, 33041, or such other address that the City may subsequently provide in writing to the Declarant.

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

In the event the Declarant or any subsequent owner or transferee proposes to convert ownership of the Property to condominium or a similar form of ownership, prior to the conversion, Declarant expressly agrees herein to execute an amended Declaration restricting the use, ownership, resale price, and occupancy of the affected thirty-seven (37) units located on the Property in accordance with the provisions of the Work Force Housing Ordinance.

**IX. MORTGAGE SUBORDINATION**

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.

**[Signatures on next page]**

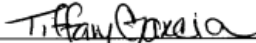
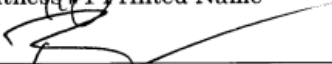


IN WITNESS WHEREOF, the Declarant has executed this Declaration as of the date written below.


Signed, sealed and delivered in the presence of:

STOCK ISLAND APARTMENTS,  
LLC, a Delaware limited liability  
company

By:   
Robert Pabian, Manager

  
Witness #1 Signature  
Tiffany Spradlin  
Witness #1 Printed Name  
  
Witness #2 Signature  
Bryan Hawks  
Witness #2 Printed Name

STATE OF FLORIDA:  
COUNTY OF MONROE:

The foregoing instrument was acknowledged before me this 31<sup>st</sup> day of March, 2017, by Robert Pabian, Manager of STOCK ISLAND APARTMENTS, LLC, a Delaware limited liability company, on behalf of the company, who ( ) is personally known to me or (X) has produced  as identification.

NOTARY SEAL:

  
NOTARY PUBLIC

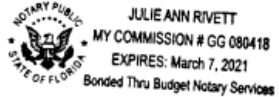


EXHIBIT A

Condominium Unit Nos. 1 and 4 of SUNSET PARCELS, a Condominium, according to the Declaration of Condominium thereof, recorded March 29, 2017, in Official Records Book 2846, at Page 122, of the Public Records of Monroe County, Florida, together with an undivided interest in the common elements.