

Prepared by and Return to:  
Larry R. Erskine, Esq.  
P.O. Box 1409  
Key West, FL 33041-1409  
(305) 809-3770

## DECLARATION OF AFFORDABLE HOUSING RESTRICTIONS

This Declaration of Affordable Housing Restrictions (hereinafter "Declaration") is made and entered into this 27 day of September, 2006, by Joy Emanuel-Kohen and Shlomo Kohen (hereinafter "Declarants"), whose principal mailing address is 3200 Riveria Drive, Key West, Florida 33040.

This Declaration applies to the real property located at 1100 Duval Street, **upstairs rear unit**, in Key West, Florida, which is more fully described in the Legal Description attached hereto and incorporated herein as Exhibit A, the upstairs rear unit of said property shall hereinafter be referred to as "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, as amended from time to time ("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; and

**WHEREAS**, Declarants 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 Declarants 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; and

**NOW, THEREFORE**, the Declarants agree that the Property shall be held and conveyed 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. "Declarants" shall mean the owners 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 Declarants retain title.
- C. "Transferee" shall mean an individual, or individuals, who receive a Transfer of the Property from the Declarants.

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 Declarants, their 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 or purchaser of the Property, or of any portion of or interest in the Property, by the acceptance of a deed therefore, whether from Declarants 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 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.

D. In order to preserve through this Declaration the affordability of the Property for persons with incomes within a specified range, the Declarants hereby grant and assign to the City the right to monitor and enforce compliance with this Declaration. Declarants otherwise reserve the rights necessary to implement the provisions of this Declaration.

### III. OCCUPANCY, LEASING AND USE OF THE PROPERTY

A. 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 the subject unit is 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.

3. 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).

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

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

6. 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.

7. 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.

8. The board of adjustment 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.

#### **IV. 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 Declarants. 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 in violation of this Declaration, for a declaration that a prohibited transfer is void, or for any such other relief as may be appropriate.

B. Assignment of rents: Declarants hereby assign to City the right to receive the rents due or collected during the entire period the Property is 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.

#### **V. REQUIREMENTS FOR WRITTEN REPORTS FROM DECLARANT**

Declarants 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 Declarants have complied with all provisions of this Declaration, or includes Declarants' 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.

#### **VI. GENERAL PROVISIONS**

A. The City may assign its rights and delegate its duties hereunder in writing without the consent of Declarants. Upon such assignment the City shall notify the Declarants.

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.

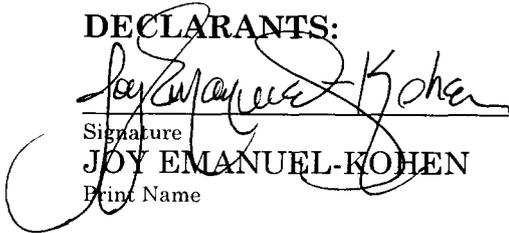
C. If any one or more of the provisions contained in this Declaration shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Declaration, and this Declaration shall 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 Declarants at the address of the Property and to the City or its designee at Office of the City Manager, City of Key West, 525 Angela St., Key West, FL 33040, or such other address that the City may subsequently provide in writing to the Declarants.

IN WITNESS WHEREOF, the Declarants have executed this Declaration as of the date written below.

DECLARANTS:

  
\_\_\_\_\_  
Signature  
JOY EMANUEL-KOHN  
Print Name

Sept. 27, 2006  
\_\_\_\_\_  
Date

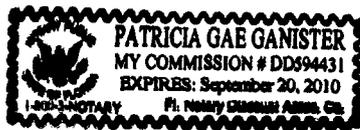
  
\_\_\_\_\_  
Signature  
SHLOMO KOHN  
Print Name

9 / 27 / 2006  
\_\_\_\_\_  
Date

STATE OF FLORIDA :  
COUNTY OF MONROE:

Sworn to or affirmed and subscribed before me this 27 day of September, 2006, by Joy Emanuel-Kohen and Shlomo Kohen, who are personally known to me or have produced \_\_\_\_\_ as identification.

NOTARY SEAL:



  
\_\_\_\_\_  
NOTARY PUBLIC

**EXHIBIT A**

On the Island of Key West, and is part of Lot 2, Square 6 of Tract 11, according to Charles W. Tift's map of said Island, but now better known as Subdivision Number 1 according to a diagram made by Stepney Austin of said Lot 2 in the said Square and Tract recorded in Deed Book L at Page 433, Monroe County records: COMMENCING at the corner of Virginia and Duval Streets, and running thence along Duval Street in a Southeasterly direction 34 feet, 1 inch; thence at right angles in a Southwesterly direction 101 feet, 6 inches; thence at right angles in a Northwesterly direction 34 feet, 1 inch; thence at right angles in a Northeasterly direction 101 feet, 6 inches, along Virginia Street to the Place of Beginning. Reference being had to Deed recorded in Deed Book PP at Page 27. Subject to a perpetual easement over and upon the Southwest Fifteen (15) feet of the above described property for the purposes of access to land immediately contiguous to the land conveyed herein.