

Prepared by and Return to:
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DECLARATION OF AFFORDABLE HOUSING RESTRICTIONS AND OPTION TO PURCHASE

This Declaration of Affordable Housing Restrictions (hereinafter "Declaration") is made and entered into this ^{5th} day of April, 2007, by Ivy D. Faatuai and Viliamu Faatuai, her husband as to an undivided ½ interest and Mary N. Roche, an unremarred widow, as to an undivided ½ interest, as joint tenants with right of survivorship (hereinafter "Declarant"), whose principal mailing address is 1612 Johnson Street, Key West, Florida, 33040.

This Declaration applies to the real property located at 1612 Johnson Street, 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, 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 restricts 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; and

WHEREAS, Declarant and 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; and

NOW, THEREFORE, the Declarant agrees 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 interests in the Property or any part thereof, their heirs, successors and assigns for the entire term of this Declaration.

I. DEFINITIONS

- A. "Adjusted Maximum Sale Price" means the Maximum Work Force Housing Sale Price, as increased or decreased pursuant to Section X herein.
- B. "Eligible Applicant" means an individual or individuals who have been found by the City to constitute an Eligible Household pursuant to Section 122-1469 of the Code of Ordinances of the City of Key West, Florida.
- C. "Encumber" shall include any mortgage, deed of trust, or other instrument intended to secure an obligation or indebtedness (whether purchase money debt or refinanced debt). See Section XI below.
- D. "Declarant" shall mean the owner of the Property and any subsequent purchaser (whether an occupant purchaser or non-occupant titleholder), devisee, transferee, grantee or holder of title of the Property or any portion of the Property.
- E. "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.
- F. "Transferee" shall mean an individual, or individuals, who receive a Transfer of the Property from the Declarant.

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 twenty-five (25) years from the effective date of this Declaration.

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 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 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 Declarant hereby grants and assigns to the City the right to monitor and enforce compliance with this Declaration, and in furtherance of this right assigns to the City any proceeds payable to the Declarant from a foreclosure or deed in lieu of foreclosure in excess of the Adjusted Maximum Sale Price, as provided in Section XII.B of this Declaration. Declarant otherwise reserves the rights necessary to implement the provisions of this Declaration.

III. DEFAULT UNDER MORTGAGE; SUBORDINATION; NOTICE TO CITY

A. This Declaration shall be subject to and subordinate to the lien of a first mortgage which secures a loan made in the amount of the City approved purchase price paid by Declarant. The subordination of this Declaration pursuant to this Section III shall not apply to any mortgage that exceeds such amount.

B. In the event of default under any mortgage, the City shall be considered to have sufficient interest in the Property to have the same right as the Declarant to cure the default and redeem the Property prior to foreclosure sale. Such redemption shall be subject to the same fees, charges and penalties which would otherwise be assessed against the Declarant. Nothing herein shall be construed as creating an obligation on the part of the City to cure any such default. This right to cure and redeem shall not operate to extend any time limitations in the default provisions of the underlying mortgage.

C. Declarant shall notify City of any deed of trust or mortgage recorded against the Property, and shall provide the City with the information needed by the City to record a Request for Notice of Default. Note that the City's approval of any financing is required under Sections V and XI below.

IV. OCCUPANCY, LEASING AND USE OF THE PROPERTY

A. In the event Declarant leases the Property to a third party, 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 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.

3. 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).

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.

V. REQUIREMENTS FOR CITY APPROVAL OF TRANSFER, REFINANCE OR OTHER ENCUMBRANCE

A. Except as provided in this Section V and Section III, above, the Property shall not be transferred, financed, refinanced or otherwise encumbered without written approval of the City. The following transfers are exceptions to the requirement for the City's written approval, provided that Declarant notifies the City of such transfers in writing within 10 days of the effective date of the transfer:

1. A transfer resulting from the death of Declarant where the transfer is to a spouse or legal heir pursuant to Article X, Section 4, of the Florida Constitution; or
2. A transfer by an Declarant to a co-owner of the Property; or
3. A transfer resulting from a decree of dissolution of the marriage or legal separation in connection with a property settlement agreement incidental to such a decree by which a spouse who is an Owner becomes the sole Owner of the property; or
4. A transfer by Declarant to the trustee of an inter vivos trust in which the Declarant is a beneficiary.

C. The City shall approve a proposed transfer of the Property provided that Declarant is not in default under this Declaration, and the City has determined that Declarant and Declarant's proposed subsequent purchaser or transferee (collectively referred to hereinafter as "Transferee") have complied with all of the requirements of this Declaration.

D. The City may assign its rights, as set forth in this Declaration, to its designee for the purpose of enforcing the provisions of this Declaration.

VI. [THIS SECTION INTENTIONALLY LEFT BLANK]

VII. REQUIRED DISCLOSURES UPON TRANSFER

Prior to the transfer of the Property, Declarant and Transferee shall provide the City, or the City's designee, with the following information:

A. The Transferee shall submit in writing the name, address and telephone number of each Transferee.

B. The Transferee shall submit in writing all information required by the City to determine, or have determined by the City's designee, whether Transferee is eligible under Section VIII herein to purchase the Property. The Transferee shall pay to the City a reasonable fee to cover the City's costs of verifying information and administering its rights and obligations under this Declaration.

C. Declarant or Transferee shall submit the proposed sale contract and all other related documents setting forth the terms of sale or transfer of the Property. These documents shall include the following:

1. The sale price; and
2. The price to be paid by the Transferee for Declarant's personal property, if any, and for the services of Declarant, if any; and
3. All other amounts of money or other consideration, if any, concerning the Property to be paid by the Transferee to the Declarant, and reasons therefore; and
4. The down payment to be paid by the Transferee; and
5. Any additional financing obtained by the Transferee to purchase the Property, including all terms and conditions of the financing; and
6. The monthly payments to be paid by the Transferee in connection with the purchase and ownership of the Property, itemized for each loan, taxes, insurance, homeowners association fees, etc; and
7. A signed affidavit stating that the Transferee has carefully read and understands the City's Work Force Housing Ordinance and this Declaration.

VIII. ELIGIBILITY OF TRANSFEREE

The Transferee(s) shall be an individual or individuals who have been determined to constitute an Eligible Applicant under Section 122-1469 of the City's Work Force Housing Ordinance.

A. The household or person shall derive at least 70 percent of his/her total income from gainful employment in Monroe County.

B. At the time of transfer of the Property, the total income of eligible household or persons shall not exceed 120 percent of the median household income for Monroe County (adjusted for family size).

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

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

E. The applicant shall execute a sworn affidavit stating the applicant's intention to occupy the property.

F. 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.

G. 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.

IX. REQUIREMENTS FOR APPROVED TRANSACTION

In order to receive City approval, a transfer of the Property shall meet the following requirements:

A. The sale price shall not exceed the Adjusted Maximum Sale Price calculated pursuant to Section X below.

B. In the event a sale or transfer is made in violation of the terms of this Declaration, or false or misleading statements are made in any documents or certification submitted to the City for its approval of the sale or transfer, the City may declare a default under the Declaration. The City also shall have the right to file any action at law or in equity to force the parties to terminate and rescind the sale contract and declare the sale void, notwithstanding the fact that the sale or transfer may have closed and become final as between the seller and purchaser. In any event, any costs, liabilities or obligations incurred by the seller and purchaser for the return of any moneys paid or received in violation hereunder or for any costs and legal expenses, shall be jointly and severally borne by the seller and purchaser, and not by the City. The seller and purchaser shall jointly and severally hold the City and its agents harmless and indemnify the City for any action the City takes in good faith in enforcing the terms of this Declaration.

X. ADJUSTED MAXIMUM SALE PRICE CALCULATION

A. Except as provided in Section III above, and except for adjustments as provided herein below, the sale price of the Property shall not exceed 5 times the annual median household income (adjusted for family size) for Monroe County, in accordance with section 122-1472 of the Code of Ordinances of the City of Key West.

B. Owner Improvements. In order to assure continued affordability to subsequent purchasers, no price adjustment or other reimbursement will be allowed for improvements made to the Property by the Declarant unless the requirements of this Section X are met. The City, or its designee, may approve, on a case-by case basis, price adjustments related to improvements made to the Property, provided all of the following conditions are met:

1. The improvements were permanent and substantial; and
2. The improvements were not of a decorative or maintenance nature, such as painting, wall coverings, window coverings, or replacement of carpeting. Landscaping plantings and hardscape may be eligible for a price adjustment, but only to complete a large area (such as a rear yard) that was previously unimproved; and
3. The price adjustment for all improvements may not exceed the lower of:
 - a. The actual out-of-pocket cost of eligible improvements, as determined by the City pursuant to this Section X, paid by Declarant for design, materials and labor, as evidenced by valid receipts; or
 - b. The actual present value of the improvements, as determined solely by the City. This is the amount that the improvements would add to the market value of the unit at time of sale (without regard for affordability restrictions); or
 - c. Ten percent (10%) of the otherwise permissible sales price of the unit; and
4. The combined actual present value of the eligible improvements as described in Subsection X.B.4.(b), above, is at least one percent (1%) of the otherwise permissible sales price of the unit ; and
5. The improvements were made in compliance with the City Code, applicable permits, and any requirements imposed by a homeowners' association or any other governing district or association.

C. Declarants who are planning to make improvements and hope to eventually add the value of the improvements to their sale price are encouraged to request pre-approval from the City or its designee.

D. Other Requirements and Conditions

1. No increase whatsoever shall be allowed during such time, if any, that Declarant was in violation of any requirement of this Covenant. City staff or staff's designee shall be afforded reasonable opportunity to inspect the Property for damage or deferred maintenance. If the Property is damaged or if there is substantial deferred maintenance, City staff may decrease the Property's sale price by the amount needed to repair the damage or to carry out the needed maintenance.
2. The Declarant may not require the Transferee to pay any commissions or other costs associated with the sale typically paid by sellers of residential real property.
3. The price paid to Declarant by the Transferee for Declarant's personal property and/or Owner's personal services must be disclosed to the City prior to sale of the Property, and shall not exceed the current fair market value of such property and services.

E. The Adjusted Maximum Sale Price of the Property is not a guarantee that the Owner will be able to sell the Property for that price.

XI. REQUIREMENTS FOR CITY APPROVAL OF FINANCING OR REFINANCING

The terms of all financing secured by the Property must be approved by the City, whether at the time of sale or thereafter. The City may approve refinancing of a first mortgage loan if no additional funds are provided to the Declarant other than the refinancing costs, the terms of the new loan are more favorable than the original loan, and the borrower is in full compliance with the City's Work Force Housing Ordinance and this Declaration. If Declarant seeks to receive additional funds from a refinance, the City may approve the request if Declarant's total secured loans-to-value ratio does not exceed 80% and the debt payment-to-income ratio is not higher than it was upon Declarant's purchase of the property. Financing which will result in negative amortization shall not be approved. The City may designate a third party to handle the approval requirements set forth herein.

XII. BEQUEST OR FORECLOSURE, INSURANCE AND CONDEMNATION

A. In the event of a transfer of the Property by operation of law such as by devise, bequest, foreclosure on any financing not exempted under Section III above, or deed in lieu of foreclosure on any such financing, to a party who does not meet

the requirements of Section VIII herein, the transferee nevertheless shall be bound by the provisions of this Declaration. City shall not declare a default before allowing such transferee a reasonable period of time of not less than 120 days to sell the Property to an Eligible Transferee in conformance with the provisions of this Declaration and the City's Work Force Housing Ordinance.

B. In the event that the Property is transferred by operation of law for the purpose of curing or preventing default by Declarant on a loan or obligation, any amount by which the sale price exceeds the Adjusted Maximum Sale Price calculated according to Section X above, and which would otherwise be payable to Declarant after full satisfaction of the lender's loan and costs, shall be due and owing to the City as assignee of the consideration benefits from the original sale of this Property.

C. Any hazard insurance proceeds which are not used to repair or rebuild the Property, and any condemnation award, shall be distributed as follows:

1. First, to lenders according to the recording priority of their encumbrances against the Property, as provided by law.
2. If any funds remain after lenders have been paid, then to the Declarant, up to but not to exceed the net amount (after payment of encumbrances) that Declarant would have received under a sale at the Adjusted Maximum Sale Price.
3. If any funds remain after the Declarant has been paid, the remainder shall be paid to the City.

XIII. 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 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: Declarant hereby assigns 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.

XIV. PURCHASE OPTION UPON DEFAULT

A. In addition to the remedies provided for herein, Declarant hereby grants to the City the option to purchase the Property in the event that Declarant is in default.

B. The option to purchase may be exercised upon a default under this Declaration, or upon default under any notes Declarant has executed in favor of the City, or any deed of trust, or any other lien, including a judgment lien, recorded against the Property. The City shall have thirty (30) days after declaring a default or receiving notice that a default is declared on any other obligation secured by this Property to notify the Declarant of its decision to exercise its option to purchase. Not later than sixty (60) days after the certified mailing of the notice to exercise its option and provided that Declarant does not by act or omission frustrate or prevent purchase of the Property, the City or its assignee shall purchase the Property for the following option price:

The lesser of the following:

1. The Adjusted Maximum Sale Price, less six percent (6%) to cover the City's resale costs, and less the amount necessary to repair any damage and correct deferred maintenance as reasonably determined by the City; or,
2. The appraised value of the Property as determined by a state licensed appraiser approved by Declarant and City, less six percent (6%) to cover the City's resale costs, but not less than the amount necessary to pay the balance due on the outstanding first mortgage.

XV. 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 occupied the Property and 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.

XVI. 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. The Declarant covenants that Declarant has not and will not execute an agreement to purchase, or purchase, any other real property for a price above the Maximum Work Force Housing Unit Sales Price while owning the Property.

D. 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 Declaratin shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

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

F. 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 525 Angela Street, Key West, FL, 33040 or such other address that the City may subsequently provide in writing to the Declarant.

G. Declarant agrees to permit the City to record a Request for Notice of Default and a Request for Notice of Delinquency at any time.

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

DECLARANT: IVY D. FAATUAI

Ivy Faatua'i

Signature

April 5, 2007

Date

Ivy Faatua'i

Print Name

STATE OF:
COUNTY OF:

Sworn to or affirmed and subscribed before me this 5th day of April, 2007 by, IVY D. FAATUAI ___ who is personally known to me or has produced Drivers License as identification.

NOTARY SEAL:

Mary E. Turso
NOTARY PUBLIC



DECLARANT: VILIAMU FAATUAI

Viliamu Faatau
Signature
VILIAMU FAATUAI
Print Name

April 5, 2007
Date

STATE OF: Florida
COUNTY OF: Monroe

Sworn to or affirmed and subscribed before me this 5th day of April, 2007, by who is personally known to me or has produced Drivers License as identification.



Mary E Turso
NOTARY PUBLIC

DECLARANT: MARY N. ROCHE

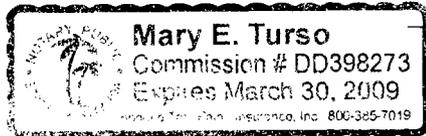
Mary N. Roche
Signature
MARY N. ROCHE
Print Name

April 5, 2007
Date

STATE OF: Florida
COUNTY OF: Monroe

Sworn to or affirmed and subscribed before me this 5th day of April, 2007, by who is personally known to me or has produced Drivers License as identification.

NOTARY SEAL:



Mary E Turso
NOTARY PUBLIC

EXHIBIT "A"

On the Island of Key West and known on William A. Whitehead's map, delineated in February A.D. 1829, as part of Tracts 28 and 29 but better known as Lot 22 in Square 3 of Tract 29, according to the plat drawn by W.A. Gwynn and recorded in Plat Book 1, Page 22, Public Records of Monroe County, Florida.