

Prepared by/Return to:
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Oropeza Stones Cardenas
221 Simonton Street
Key West, FL 33040

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DECLARATION OF RESTRICTION ON FUTURE DEVELOPMENT

THIS DOCUMENT SHALL BE INCORPORATED IN WHOLE AND REFERENCED BY OFFICIAL RECORD BOOK AND PAGE NUMBER AND DOCUMENT NUMBER ON ALL TRANSFERS OF THE BELOW DESCRIBED REAL PROPERTY.

WHEREAS, this Declaration of Restriction on Future Development (herein “Declaration”) is granted this _____ day of _____, 2020, by Monroe County, a political subdivision of the State of Florida (hereinafter “Grantor”), whose address is 1100 Simonton Street, Key West, Florida 33040; and is acknowledged and accepted concurrent with the conveyance and acceptance of ownership and title to be vested in _____ (herein “Grantee”)

WHEREAS, the undersigned Grantor, is the sole fee simple title owner(s) of the certain below-described real property (hereinafter “Restricted Parcel”) that is currently undeveloped and is located in Monroe County, Florida, having a legal description as follows and which is shown on attached Exhibit “____,” which is hereby incorporated as if fully stated herein:

Parcel Address: _____ **Approximate Mile Marker:** _____
Parcel(s)/Lot(s): _____ **Block:** _____
Subdivision: _____
Key: _____ **Plat Book:** _____ **Page:** _____
Real Estate Number(s): _____

WHEREAS, Grantor is a general purpose political subdivision of the State of Florida and is authorized to engage in the sale of publicly owned property when deemed to be in the best interest of the citizens of Monroe County to protect and provide for the public health, safety, and welfare; and

WHEREAS, the Restricted Parcel is subject to the jurisdiction and requirements of the Monroe County Comprehensive Plan and the Monroe County Code(s) as well as voluntarily imposed limitations and restrictions imposed by this Declaration; and

WHEREAS, Grantee hereby attest(s) his/her/its/their recognition that this Declaration restricts certain future development of this land, specifically prohibiting the development of any residential dwelling as a principal use and Grantee acknowledges and accepts the condition hereafter limiting development to otherwise permitted non-habitable accessory uses to a principal use (residential) if located on an adjacent or contiguous parcel also owned by Grantee, or if Grantee is not an adjacent or contiguous parcel owner use shall be restricted to such other non-residential principal and accessory uses as may be permitted by

the controlling land use district for the Restricted Parcel; and

WHEREAS, the undersigned Grantor and Grantee(s) hereby attest that the transfer of the Restricted Parcel subject to this Declaration imposing this limitation prohibiting any future residential structure development is supported by good and valuable consideration; and

WHEREAS, this Declaration does not discharge, exempt, waive, or otherwise release the undersigned Grantee(s), tenant(s) thereto, the personal representative(s), heir(s), assign(s), and successor(s) in title of the undersigned Grantee(s), or tenant(s) thereto, from their duty to obtain required federal, state, County, and/or other local approval(s) for any future construction of accessory structures or establishment of permitted uses upon the Restricted Parcel; and

NOW, THEREFORE, as an inducement to Grantee for and in consideration of Grantor's transfer/conveyance of good and adequate consideration, the adequacy, sufficiency, and receipt of which are hereby expressly acknowledged and attested to, the undersigned Grantor hereby grants, creates, imposes and establishes a Declaration of Restriction on Future Development for and in favor of Grantor upon the above legally described Restricted Parcel which shall run with the land and be binding upon the undersigned Grantee(s), and tenant(s), heirs, assigns and successors in interest thereto, and shall remain in full force and effect forever, and Grantor and Grantee(s) declare(s) and grant(s) and accept as follows:

- 1) **Recitals.** The foregoing recitals are true and correct and are hereby incorporated as if fully stated herein.
- 2) **Restriction on Development.** Notwithstanding the general density standard of one (1) residential dwelling unit per platted lot in the Improved Subdivision Land Use District, per this Declaration:
 - A. The Restricted Parcel shall have a residential density of zero (0) dwelling units. No development rights may be transferred off of the Restricted Parcel, nor shall any Restricted Parcel be eligible as a Receiver Site for the transfer of development rights from another Sender Site or location.
 - B. Limits development on the Restricted Parcel to non-habitable residential accessory use(s) if otherwise qualified, and/or permitted non-residential principal and accessory uses in the applicable Restricted Parcel land use district now existing or as it may be amended from time to time; and
 - C. The Restricted Parcel shall not be eligible for use as a land dedication parcel or lot aggregation parcel for purposes of the ROGO allocation system. The Restricted Parcel shall be worth zero (0) points for land dedication or lot aggregation.
 - D. The Restricted Parcel shall not be eligible for use as a land dedication parcel for purposes of the NROGO allocation system. The Restricted Parcel shall be worth zero (0) points for land dedication.
- 3) **No Conflicts.** The undersigned Grantor hereby covenant(s) with Grantee that Grantor(s) is/are lawfully seized of the Restricted Parcel in fee simple free and clear of all encumbrances that are inconsistent with the terms of and exhibits attached to this Declaration.
- 4) **Perpetual Duration.** This Declaration is intended to benefit, run with the land in favor of, and shall in perpetuity inure to Grantor, Monroe County, Florida.
- 5) **Construction and Interpretation.** The construction and interpretation of such, and all other, Monroe County Comprehensive Plan provision(s) and Monroe County Code(s) provision(s) shall be construed in favor of Grantor and such construction and interpretation shall be entitled to great weight on trial

and on appeal.

6) **Recordation, Amendment, Modification, or Release.**

- A. The undersigned Grantee(s) hereby agree to the recording of the Declaration with the Clerk of the Circuit Court of Monroe County and agree to the re-recording of said documents at any time Grantor may require in order to preserve its (Grantor's) rights.
- B. No amendment or modification to this Declaration is effective unless agreed to in writing by both Grantor and the undersigned Grantee(s) and filed, together with all appropriate and required Joinder(s), with the Clerk of Circuit Court of Monroe County for recording in the Official Records of Monroe County, Florida.
- C. This Declaration may not be rescinded, voided, or released unless and until the Monroe County Board of County Commissioners (hereinafter "BOCC") approves such rescission, voidance, or release by BOCC Resolution.

7) **Subsequent Reference Requirement.**

- A. The undersigned Grantee(s), tenant(s) thereto, the personal representative(s), heir(s), assign(s), and successor(s) in title of the undersigned Grantor(s), and tenant(s) thereto, hereby agree(s) to and shall submit a copy of this filed and recorded Declaration together with (simultaneously in date and time with) all future development applications relating to the Restricted Parcel. Such submission by the undersigned Grantee(s), tenant(s) thereto, the personal representative(s), heir(s), assign(s), and successor(s) in title of the undersigned Grantee(s), and tenant(s) thereto, shall be to the agency(ies), department(s), and office(s) in receipt of or otherwise receiving such development application(s). This requirement is non-exclusive to Monroe County agencies, departments, and offices, and is to be construed as inclusive of all reviewing federal, state, Monroe County, and local agencies, departments, and offices in receipt of or otherwise receiving such development application(s), such that the undersigned Grantee(s), tenant(s) thereto, the personal representative(s), heir(s), assign(s), and successor(s) in title of the undersigned Grantee(s), and tenant(s) thereto, must so simultaneously furnish a copy of this filed and recorded Declaration to any and all federal and state, Monroe County, and local agencies, departments, and offices in receipt of or otherwise receiving such development application(s).
- B. The undersigned Grantee(s), tenant(s), thereto, the personal representative(s), heir(s), assign(s), and successor(s) in title of the undersigned Grantor(s), and tenant(s) hereto, shall reference this Declaration and all previously executed and recorded restrictions in any future instrument conveying title to or an interest in the Restricted Parcel, including the recording book and page number(s) and document number(s) of this Declaration.

- 8) **Joint-and-Several Liability.** If the undersigned Grantee(s), tenant(s) thereto, the personal representative(s), heir(s), assign(s), and successor(s) in title of the undersigned Grantee(s), tenant(s), thereto, or any other non-County natural person(s) or legal person(s) are party(ies) to any suit, action, or proceeding, in law or in equity, initiated, cross-initiated, counter-initiated, or filed by the County to enforce any provision(s), restriction(s), or term(s) contained herein, and consist(s) of more than one person(s) or entity(ies), such person(s) and entity(ies) shall be jointly and severally liable.

9) **Notice and Service of Process.**

- A. **Notice – To Grantor.** All notices, consents, approvals, or other communications to Grantor

hereunder shall be in writing and shall be deemed properly served if sent by U.S. Postal Service Certified Mail, return receipt requested, in the following for, and address:

Monroe County Planning & Environmental Resources Department

Attn: Senior Director

Subject: Declaration of Restriction on Future Development

2798 Overseas Highway

Marathon, FL 33050

And with a copy to:

Monroe County Attorney's Office

Subject: Declaration of Restriction on Future Development

1111 12th Street, Suite 408

Key West, FL 33040

10) **Dispute Resolution – Meet-and-Confer Prerequisite.** The undersigned Grantee(s), tenant(s) thereto, the personal representative(s), heir(s), assign(s), or successor(s) in the title of the undersigned Grantee(s), and tenant(s) thereto, hereby agree(s) that as a first condition precedent to his/her/its/their initiation of litigation or adversarial administrative proceedings against the County in the form of a suit or action arising out of, related to, or in connection with this Declaration, shall first, prior to the initiation of such suit or action, attempt to resolve their dispute(s) and disagreement(s) by a meet-and-confer session between himself/herself/themselves and Monroe County Planning & Environmental Resources Department staff and counsel of the Monroe County Planning & Environmental Resources Department. If no resolution can be agreed upon within thirty (30) days after occurrence of the aforesaid meet-and-confer session, such issue(s) shall next as a second condition precedent to the initiation of such suit or action, be discussed at a public meeting of the Monroe County BOCC occurring in the same geographic sub-area as the geographic location of such Restricted Parcel (i.e., Upper Keys – Key Largo, Middle Keys – Marathon, Lower Keys – Key West). The undersigned Grantee(s), tenant(s) thereto, the personal representative(s), heir(s), assign(s), or successor(s) in title of the undersigned Grantee(s), and tenant(s) thereto, hereby agree(s) that in the event he/she/it/they so initiate such suit or action without satisfying both of these conditions precedent to their initiation or litigation or adversarial administrative proceedings against the County, that the County shall automatically be entitled to an Order granting Grantor's Motion to Dismiss and Florida Statute Sec. 57.105 (2015) Motion for Sanctions and Attorney's Fee (or, at Grantor's election (if applicable), their Florida statutory equivalent(s), Federal equivalent(s), or non-Florida legal equivalent(s)).

11) **Limitation of Liability.**

- A. In the event of any litigation concerning the conditions, provisions, revisions, or terms of the Declaration, Grantor, the undersigned Grantee(s), tenant(s) thereto, the personal representative(s), heir(s), assign(s), and successor(s) in the title of the undersigned Grantee(s), and tenant(s) thereto, hereby agree to expressly waive and shall be treated as having expressly waived their right to a jury trial.
- B. The undersigned Grantee(s), tenant(s) thereto, the personal representative(s), heir(s), assign(s), or successor(s) in title of the undersigned Grantor(s), and tenant(s) thereto, hereby agree(s) that no charge(s) or claim(s) shall be made by it for any delay(s) or the effective date of this Declaration.
- C. **No Waiver.** Grantor shall not be deemed to have waived any rights under this Declaration unless such waiver has been given, within this instrument, both expressly and specifically.

- D. **No Personal Liability.** The County expressly reserves and in no way shall be deemed to have waived for itself or for its officer(s), employee(s), or agent(s), any sovereign, governmental, and any other similar defense, immunity, exemption, or protection against any suit, cause-of-action, demand, or liability. Further, no covenant, provision, or term of this Declaration shall be deemed to be a covenant or agreement of any officer, employee, or agent of the County in his or her individual capacity, and no officer, employee, or agent of the County shall be liable personally in this Declaration or be subject to any personal liability or accountability by reason of the execution of this Declaration.
- E. **Non-Reliance by Third-Parties.** No person(s) or entity(ies) shall be entitled to rely upon the terms, or any of them, of this Declaration to enforce or attempt to enforce any third-party claim(s) or entitlement(s) to or benefit(s) of any service(s), term(s), or program(s) contemplated hereunder.

12) **Enforcement.**

- A. **Default Notice.** In the event of breach or violation of the restrictions or terms hereof by Grantee(s), tenant(s) thereto, the personal representative(s), heir(s), assign(s), or successor(s) in title of the undersigned Grantee(s), or tenant(s) thereto, Grantor shall provide written "Notice of Default" or "Notice of Violation" to such breach(es) or violation(s) within thirty (30) days of receiving notice of such breach(es) or violation(s).
- B. **Grantee(s) Breach or Violation.**
1. Uncured breach(es) or violation(s), by the undersigned Grantor(s), tenant(s) thereto, the personal representative(s), heir(s), assign(s), or successor(s) in title of the undersigned Grantor(s), or tenant(s) thereto, of the terms of and restrictions imposed by this Declaration shall, without any additional notice beyond this Declaration's recordation, entitle Grantee to immediately suspend and/or rescind, without liability to Grantee, development applications, pending permits, approvals, and inspections, and issued development order(s) contingent upon the effectiveness of this Declaration and Grantor(s) compliance thereto, the compliance of tenant(s) thereto, the compliance of the personal representative(s), heir(s), assign(s), or successor(s) in title of the undersigned Grantor(s) thereto, and the compliance of tenant(s) thereto, with the terms of this Declaration, applied for or those permits, approvals, and/or inspections necessary to cure such breach(es) or violation(s). Such uncured breach(es) or violation(s) shall be presumed to constitute breach(es) or violation(s) that is/are irreparable or irreversible in nature.
 2. In the event of any suit, action, or proceeding, in law or in equity, by the County to enforce the restrictions or terms contained herein, if the County prevails in any such suit, action, or proceeding, on trial or appeal, the County shall be entitled to reasonable attorney's fees, including trial, appellate, bankruptcy, and post-judgment costs and collection proceedings for the maintenance or defense of any such suit, action, or proceeding, to be paid by the losing party(ies) as fixed by the court. Any judgement so rendered in favor of the County in connection with any suit, action, or proceeding arising out of, related to, or in connection with this Unity if Title, shall bear interest at the highest rate allowed by law. The County may recover reasonable legal and professional fees attributable to the preparation, administration, and enforcement of such suit, action, or proceeding, from any person(s) and/or entity(ies) from or whom a demand or enforcement request is made, regardless of actual initiation of a suit, action, or proceeding. These remedies are in addition to any other remedy, fine, or penalty which may be applicable under, including, but not limited to, Chapters 162.373, and

- 403, Florida Statutes, and any other action at law or in equity. Grantee hereby agrees and the undersigned Grantee(s), tenant(s) thereto, the personal representative(s), heir(s), assign(s), and successor(s) in title of the undersigned Grantee(s), and tenant(s) thereto, hereby agree that suits, actions, and proceedings arising out of, related to, or in connection with this Declaration shall be in accordance with the Florida Rules of Civil Procedure.
3. **Cumulative Remedies.** In the event of any breach or violation of the restrictions or terms contained herein, Grantor shall, without liability to Grantor, have the right to proceed at law or in equity as may be necessary to enforce compliance with the restrictions or terms hereof, to enjoin activities, construction, maintenance, practices, repairs, and uses inconsistent with the restrictions or terms hereof, and to otherwise prevent the breach or violation of any of them, to collect damages, and both authorized and entitled to enforce this Declaration by emergency, preliminary, and permanent injunction, including by ex parte motion and action for such injunction(s), it being hereby expressly and specifically agreed that Grantor has no adequate remedy at law, or such other legal method as Grantor deems appropriate. All rights and remedies accruing to the County shall be assignable in whole or in part and be cumulative; that is, the County may pursue such rights and remedies as the law and this Declaration afford it in whatever order the County desires and the law permits. The County's resort to any one law(s) and/or remedy(ies) in advance of any other shall not result in waiver or compromise of any other law(s) and/or remedy(ies). The undersigned Grantor(s), tenant(s) thereto, the personal representative(s), heir(s), assign(s), or successor(s) in title of the undersigned Grantor(s), and tenant(s) thereto, hereby agree(s) to and shall pay for all costs associated with Grantee's enforcement action(s).
 4. Failure of the undersigned Grantee(s), tenant(s) thereto, the personal representative(s), heir(s), assign(s), or successor(s) in title of the undersigned Grantor(s), or tenant(s) thereto, to comply with or perform any act required by or under this Declaration shall not impair the validity of this Declaration or the conditions, provisions, reservations, restrictions, rights, or terms hereof or limit their enforceability in any way.
 5. Enforcement of the conditions, provisions, restrictions, and terms of this Declaration shall be at the discretion of the Grantor, Grantor's delay or failure to enforce or omission in the exercise of any condition, provision, reservation, restriction, right, or term contained herein, however long continued, shall not be deemed a waiver or estoppel of the right to do so thereafter as to any violation or breach. No Grantor waiver of a breach of any of the condition(s), provision(s), reservation(s), restriction(s), right(s), or term(s) hereof, shall be construed to be a waiver of any succeeding breach of the same condition(s), provision(s), reservation(s), restriction(s), right(s), or term(s) hereof.
- 13) **Duty to Cooperate.** Where required under this Declaration or related agreement(s), the undersigned Grantee(s), tenant(s) thereto, the personal representative(s), heir(s), assign(s), and successor(s) in title of the undersigned Grantee(s), and tenant(s) thereto, shall, to ensure the implementation of the government purpose furthered by this Declaration, cooperate with Grantor's reasonable requests submitted to Grantee(s), tenant(s) thereto, Grantee's personal representative(s), heir(s), assign(s), and successor(s) in title, and tenant(s) thereto, regarding the terms and conditions contained herein.
- 14) **Inconsistency, Partial Invalidity, Severability, and Survival of Provisions.** If any condition, provision, reservation, restriction, right, or term of this Declaration, or any portion(s) thereof, is/are held to be invalid or unenforceable in or by any administrative hearing officer or court of competent jurisdiction, the invalidity or unenforceability of such condition, provision, reservation, restriction, right, term, or any portion(s) thereof, shall neither limit nor impair the operation, enforceability, or

validity of any other condition, provision, reservation, restriction, right, term, or any remaining portion(s) thereof. All such other conditions, provisions, reservation, restrictions, rights, terms, and remaining portion(s) thereof shall continue unimpaired in full force and effect.

- 15) **Captions and Paragraph Headings.** Captions and paragraph headings, where used herein, are inserted for convenience only and are not intended to descriptively limit the scope and intent of the paragraph or text to which they refer.
- 16) **No Encumbrances.** The undersigned grantee(s), tenant(s) thereto, the personal representative(s), heir(s), assign(s), and successor(s) in title of the undersigned Grantee(s), and tenant(s) thereto, represent(s) and warrant(s) that, to his/her/its/their knowledge, there are no superior encumbrances or material claims, cause-of-action, or other proceedings pending or threatened in respect to the ownership, operation, or environmental condition(s) of the above legally described property that may, shall, or will diminish, extinguish, interrupt, or subordinate the effectiveness or operation of this Declaration's provision(s), restriction(s), right(s), and term(s) running in perpetuity in favor of Grantor, Monroe County, Florida.
- 17) **Governing Laws/Venue.** This Declaration is and the construction and enforcement of the restrictions, terms, and obligations established therefrom are governed by the Monroe County Comprehensive Plan and the Monroe County Code(s), and shall be liberally construed and enforced in favor of the grant to effectuate the public purpose of this Declaration and the policy(ies) and purpose(s) of the Monroe County Comprehensive Plan and the Monroe County Code(s). Exclusive venue for any dispute arising from or under, relating to, or in connection with this Declaration shall be in the Sixteenth Judicial Circuit in and for Monroe County, Florida.
- 18) **Authority to Attest.** Each party to this Declaration represents and warrants to the other that the execution, delivery, and performance of this Declaration has been duly authorized by all necessary corporate and other organizational action, as required.
- 19) **Effective Date.** This Declaration will become effective upon recordation in the Official Records of Monroe County, Florida.

TO HAVE AND HOLD UNTO GRANTOR and GRANTEE FOREVER.

EXECUTED ON THIS _____ day of _____, 20____

First Witness (Print Name)

GRANTOR:
Monroe County, Florida:

First Witness (Signature)

Mayor Heather Carruthers

Second Witness (Print Name)

Second Witness (Signature)

**STATE OF FLORIDA
COUNTY OF MONROE**

Before me, the undersigned authority, personally appeared **Heather Carruthers**, on this _____ day of _____, 20____, who is personally known to me or produced _____ as proof of identification.

Sworn and subscribed to before me this _____ day of _____, 20____.

[NOTARY SEAL]

Notary Public (Print Name and Notary No.)

Notary Public (Signature)

WITNESSES TO ALL:

GRANTEE(S)

First Witness (Print Name)

Grantor No. 1 (Print Name)

First Witness (Signature)

Grantor No. 1 (Signature)

(Complete Mailing Address above)

Second Witness (Print Name)

Grantor No. 2 (Print Name)

Second Witness (Signature)

Grantor No. 2 (Signature)

(Complete Mailing Address above)

STATE OF _____
COUNTY OF _____

The foregoing instrument, Monroe County Declaration of Restriction on Future Development was acknowledged before me this _____ day of _____, 20____ by _____, who is personally known to me or produced _____ as proof of identification and did take an oath.

[NOTARY SEAL]

Notary Public (Print Name and Notary No.)

Notary Public (Signature)