

Prepared by: RETURN:

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City Attorney's Office
200 N.W. 1st Avenue
Delray Beach, Florida 33444

Address: 222 NW 9th Ave, Delray Beach
P.C.N.# 12-43-46-17-25-001-0240

WORKFORCE HOUSING COVENANT

THIS WORKFORCE HOUSING COVENANT (the “Covenant”) is entered into as of the ____ day of _____, 2021, by and among the **CITY OF DELRAY BEACH**, a Florida Municipal Corporation, (referred to herein as “**City**”), **Ethan Joseph Homes, LLC**, a Florida Limited Liability Company, (referred to herein as “**Developer**” which term shall include any assignee or successor to Developer as owner of the Development).

RECITALS

A. City has implemented Affordability Controls as set forth in Article 4.7 of the Delray Beach Land Development Regulations (“**Regulations**” or “**LDR**”) by establishing a Family/Work Force Housing Program for the City (hereinafter referred to as the “Affordable Housing Program”).

B. Developer desires to be part of the Affordable Housing Program with respect to that certain real property located at 222 NW 9th Avenue, Delray Beach, FL more particularly described in **Exhibit “A”** which is attached hereto and incorporated by reference herein (the “**Real Property**”). Pursuant to LDR Section 4.1.4, in order to develop a residential structure on a lot which has frontage of less than 50 feet, Developer agreed to provide Workforce Housing which complies with the Affordable Housing Program (“**Affordable Housing Lot**”).

C. Pursuant to the City’s Affordable Housing Program, LDR Section 4.1.4(D), within the R-1-A, RL and RM zoning districts, lots of record having at least 40 feet of frontage may be used for Workforce Housing, as long as the workforce housing unit meets the typical designs represented by the sketches set forth in Section 4.7.12(a), the lot is a minimum of 4,000 square feet and conforms to setbacks; provided, however, the minimum side setback may be reduced to a minimum five feet if necessary to accommodate the designs set forth in Section 4.7.12(a) and meets other development standards in the zoning district. The Workforce Housing unit on a lot with frontage as herein described must include rear access via an alley, if available. The unit must also contain design features such as, but not limited to, front porches, eyebrows, outriggers, gables, dormers, arbors, trellises, shutters, balconies, decorative vents, siding, textured stucco finishes, undulating facades and other such appropriate architectural features.

D. Consistent with LDR Section 4.1.4(E), should Developer develop the Affordable Housing Lot, Developer shall be subject to the requirement to construct a Workforce Housing Unit. Developer shall have no obligations to construct or provide any Workforce Housing Units pursuant to this Covenant should Developer choose not to Develop the Affordable Housing Lot.

E. This Covenant is to be recorded against the Real Property in the Public Records of Palm Beach County, Florida.

F. This Covenant shall apply and be enforceable against Developer and all current and future Owners, as applicable, during the term of this Covenant and shall restrict the sale, resale, and use of the Workforce Housing Unit as provided herein.

NOW, THEREFORE, City and Developer hereby agree as follows:

I. DEFINITIONS

The following terms not otherwise defined herein shall have the meanings set forth below for purposes of this Covenant, and if a term is defined in the Regulations, the Regulations shall control:

1.1. **Adjusted Median Income (A.M.I.)** – The Palm Beach County median income, based on a family of four, as published by Florida Housing Finance Agency.

1.2. **Affordability Controls** – Restrictions placed on the Unit by which the income of the purchaser will be restricted in order to ensure that the Unit remains affordable to those households which qualify as Very Low, Low, or Moderate Income Households.

1.3. **City** – The City of Delray Beach, Florida.

1.4. **Development** – The Real Property located at 222 NW 9th Avenue, Delray Beach, FL.

1.5. **Eligible Occupant** – A household who is income eligible to own a Workforce Housing Unit. Priority will be given to persons who have lived or worked within the municipal limits of the City continually for the one (1) year period immediately prior to the date of application for a Workforce Housing Unit by an Eligible Occupant.

1.6. **First Time Home Buyer** – A person who has not held ownership in a residence in the State of Florida within the past three (3) years.

1.7. **HUD** - The United States Department of Housing and Urban Development.

1.8. **Household** – A single person living alone, or two (2) or more persons sharing residency, with a combined income available to cover household expenses.

1.9. **Low Income Household(s)** – A Household with a gross, combined income between 61% and 80% of the Palm Beach County Adjusted Median Income (as defined by the Florida Housing Finance Corporation) as published more specifically in the “Income Limits Florida Housing Finance Corporation CWHIP Homeownership Program” table for West Palm Beach – Boca Raton HMFA (Palm Beach) area.

1.10. **Moderate Income Household(s)**– A Household with a gross, combined income between 81% and 120% of the Palm Beach County Adjusted Median Income (as defined by the Florida Housing Finance Corporation) as published more specifically in the “Income Limits Florida Housing Finance Corporation CWHIP Homeownership Program” table for West Palm Beach – Boca Raton HMFA (Palm Beach) area.

1.11. **Purchase Price or Sales Price** -All consideration paid for the Transfer of a Workforce Housing Unit either at or outside of closing, but shall not include any proration amounts, taxes, costs and expenses of obtaining financing, the fair market value of furnishings or personal property, lender fees, title insurance fees, closing costs, inspection fees, or other normal and customary costs related to the purchase of property but not paid directly to the seller.

1.12. **Transfer** -Any sale, assignment or transfer, voluntary or 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 a Workforce Housing Unit, including but not limited to, a fee simple interest, a joint tenancy interest, a tenancy in common, a life estate, or any interest evidenced by a land contract by which possession of such Unit is transferred while the existing Workforce House Unit owner retains title.

1.13. **Unit Owner** -The ground lessee or record title owner at any time of the Workforce Housing Unit.

1.14. **Workforce Housing Unit(s) or Workforce Unit(s)** – A single family dwelling.

II. SALE AND RESALE OF THE WORKFORCE HOUSING UNIT

2.1. **Right of First Refusal.** The Workforce Housing Unit offered for sale and/or resale pursuant to this Covenant shall be sold as a Workforce Housing Unit and shall include a reference to this Covenant. All sales contracts shall state that the Workforce Housing Unit is part of the Affordable Housing Program and subject to this Covenant. This Covenant hereby establishes and all deeds to a Unit Owner of the Workforce Housing Unit shall provide that the Delray Beach Community Land Trust has the right of first refusal to purchase the Workforce Housing Unit on the same terms and conditions as a prospective buyer. Developer and/or Unit Owner shall notify the City and the Delray Beach Community Land Trust in writing within five (5) days after the Developer’s or Unit Owner’s acceptance of a contract for sale and purchase and shall include in the notice a true and correct copy of the contract. The City shall have fifteen (15) business days after receipt of the written notice and contract to exercise its right to purchase the Unit on the same terms as stated in the contract, except as stated herein. The Delray Beach Community Land Trust shall deliver written notice of its exercise to purchase the Unit to the Developer/Unit Owner within fifteen (15) days after the receipt by the City of the Developer’s/Unit Owner’s written notice. The

City shall close the transaction within sixty (60) business days after its election to exercise its right of first refusal.

2.2. All purchasers of the Workforce Housing Unit shall be very low, low, or moderate income households and must be a First Time Home Buyer.

2.3. Owners of the Workforce Housing Unit shall be required to occupy the Workforce Housing Unit. If, during ownership, the Owner is unable to continuously occupy the Workforce Housing Unit due to illness, death, bankruptcy, or mental or physical incapacity, based upon evidence and application made to the City, City may in its discretion, excuse compliance with this requirement.

2.4. Closing costs and title insurance shall be paid pursuant to the custom and practice in Palm Beach County at the time of closing. No charges or fees shall be imposed by the seller on the purchaser of the Workforce Housing Unit which are in addition to or more than charges imposed upon purchasers of market rate Units, except for administrative fees charged by the City, or its designee.

2.5. The Sales Price for the Workforce Housing Unit will be calculated on the basis of:

a. The Sales Price of a new structure for low and very low Households may not exceed the maximum price established by the City Neighborhood and Community Improvement Department under the approved Local Housing Assistance Plan (LHAP).

b. For moderate income Households, the maximum Sales Price shall be established by the City Neighborhood and Community Improvement Department based on a formula that considers the prevailing Institutional Lender mortgage interest rates, as approved by the City Commission by resolution.

2.6. The Workforce Housing Unit shall not be offered for sale to the general public until all requirements of this Covenant are met. Each purchaser shall be an Eligible Occupant.

2.7. Except as expressly permitted by this Covenant, no Unit may be transferred.

III. ADDITIONAL SALE AND RESALE RESTRICTIONS AND EXCEPTIONS

3.1. Not less than twenty (20) business days prior to the closing on the Workforce Housing Unit sale or resale, the City shall be notified of the sale or resale of the Workforce Housing Unit and the City shall be provided with a true and correct copy of the proposed contract. Owners of a Workforce Housing Unit, shall deliver written notice of the intent to sell to the City, and shall provide to the City all information which is necessary for the City to determine that the proposed sale complies with the terms, restrictions, and conditions contained in this Covenant. The information shall be provided to the City on City approved forms and shall be executed under oath by the proposed transferor or transferee, as applicable. The City shall have ten (10) business days after the receipt of the written notice to determine and notify the Workforce Housing Unit Owner whether the proposed transfer is in compliance with the terms, conditions, and restrictions contained

in this Covenant. If it is not, the proposed transfer shall not be made and any such transfer not in compliance with this Covenant shall be deemed null and void. If the City does not timely deliver written notice to the Workforce Housing Unit Owner that the proposed contract is not in compliance, such contract shall be deemed approved by the City. City shall have the right to waive this notice requirement at its sole discretion as circumstances may warrant to facilitate sale of Workforce Housing Units. Each contract for sale and purchase of a Workforce Housing Unit shall contain a clause which subjects the proposed transfer to the prior review of the City.

3.2. **Additional Resale Restrictions of the Workforce Housing Unit.** The following resale conditions are imposed on the Workforce Housing Unit and the same shall also be included in each deed:

a. The Workforce Housing Unit shall remain affordable for a period of no less than forty (40) years from the date of recording of this Covenant in the Public Records of Palm Beach County, Florida.

b. The Workforce Housing Unit must be sold to Eligible Occupants except as otherwise provided by this Covenant.

c. Transfers of title under the following circumstances shall be allowed, and are not subject to the restrictions included in this Covenant:

- i. Transfers by inheritance to the Unit Owner's surviving spouse, qualified domestic partner, or lineal descendants, or;
- ii. Transfers of title to a spouse as part of a divorce decree, or to a qualified domestic partner as part of a court approved property settlement agreement; or
- iii. Acquisition of title or interest therein by an existing Unit Owner's spouse if it is in conjunction with marriage of the Unit Owner and his/her spouse, or by an existing Unit Owner's qualified domestic partner.

3.3. No resale of the Workforce Housing Unit is permitted until the requirements of this Covenant are met.

3.4. Household income is determined by the cumulative income of all tenants or purchasers intended to occupy the Workforce Housing Unit.

3.5. The maximum permitted resale price of a Workforce Housing Unit may not exceed the resale price as determined by the initial sale price of the Workforce Housing Unit, subject to an increase at the same rate as the Palm Beach County median income has increased from the initial date of purchase.

3.6. Nothing contained in this Covenant shall require a Household qualified to occupy a

Workforce Unit to sell the Workforce Housing Unit if the purchaser(s) income respectively, later exceeds AMI, provided such Household initially qualified for such purchase.

3.7. The forms of the contract for sale of the Workforce Housing Unit, respectively, shall be approved in advance for compliance with this Covenant by the City Attorney.

3.8. At any time and from time to time, the City may conduct written or oral surveys of Eligible Occupants and Unit Owners to verify the compliance with the terms and conditions of this Covenant, and City may enter the Workforce Housing Unit for the purpose of conducting personal interviews and obtaining other information reasonably necessary to verify the compliance with the City's Affordable Housing Program requirements and this Covenant.

3.9. Each Unit Owner, tenant, and occupant shall comply with all applicable Federal, State and local laws, rules, regulations and ordinances relating to the sale and rental of the Real Property.

IV. DURATION AND AMENDMENT

4.1. This Covenant shall remain in effect for forty (40) years from the date of recording of this Covenant in the Public Records of Palm Beach County, Florida. This Covenant shall apply to any replacement structure or structures constructed if a Workforce Housing Unit is demolished or destroyed, provided that if demolition or destruction of a Workforce Housing Units occurs thirty-five (35) years after recording of this Covenant and demolition or destruction was unintentional, this Covenant with respect to the Workforce Housing Unit shall terminate on demolition or destruction.

4.2. **Covenant Running With Land.** The terms of this Covenant constitute covenants running with the Real Property. The terms of this Covenant constitutes covenants running with each designated Workforce Housing Unit. This Covenant shall bind, and the benefit hereof shall inure to, Developer, the Workforce Housing Unit Owners, and the City, and any heirs, legal representatives, executors, successors and assignees thereof. The Workforce Housing Unit shall be held, conveyed, hypothecated, encumbered and occupied subject to the covenants, restrictions and limitation set forth herein. Any buyer, or transferee of a Workforce Housing Unit or any portion thereof, by acceptance of a deed or lease therefor, or by the signing of a contract to purchase the same, shall, by 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, whether or not there is any express reference to this Covenant in such deed or contract.

4.3. **Amendment.** This Covenant may be amended at any time by a recorded document executed and acknowledged by the respective Workforce Housing Unit Owner and the City.

V. ENFORCEMENT

5.1. **Right to Enforce.** The City reserves, and Developer, all proposed buyers and the owners of the Workforce Housing Unit are deemed to have granted the City, the right to review and enforce compliance with all provisions of this Covenant, as further set forth in this Article V.

a. In the event that the City has reasonable cause to believe that the Developer, lessee, occupant, Household or a Unit Owner is in default of any of the provisions of this Covenant, then the City Manager, or his or her designee, may inspect the Unit owned by the Developer or such Unit Owner at any reasonable time and from time to time, after providing the Developer, lessee or such Unit Owner not less than twenty-four (24) hours advance oral or written notice, except in the case of an emergency when less advance notice may be given.

b. Except in the case of a default which constitutes an incurable default or involves the health, safety and welfare of Households in the Development, or in the case of an emergency (in which events no notice and opportunity to cure is required), in the event of any other default under this Covenant, the City shall give the Developer, lessee, Unit Owner or Household Occupant who is in default, fifteen (15) days written notice of such default, which notice shall state the nature of the default. If the default is not cured to the satisfaction of the City within fifteen (15) days from the giving of such notice, or immediately when no notice and opportunity to cure is required, the City may pursue any or all remedies available to it, as set forth in Section 5.1(c) below.

c. The City hereby reserves the right to enforce this Covenant by pursuing any and all remedies provided by law or in equity. The City's remedies shall include, by way of example and not limitation, the right to specific performance of this Covenant, the right to a mandatory injunction requiring the sale or lease of the Workforce Housing Unit in conformance with this Covenant, the disgorgement of profits received from any sale or lease conducted in violation of this Covenant, the right to cancel and declare void the sale, deed, contract or lease, the right to remove occupants, the right to require the Developer to relinquish the density bonus Units which were approved as bonus units, and damages and injunctive relief for breach of this Covenant. All of the remedies available to the City shall be cumulative, and the City's election to pursue any remedy shall not preclude the City for then or later pursuing any one or more other remedies.

d. In the event City resorts to litigation with respect to any default under this Covenant, and the City prevails, the City shall be entitled to recover its damages and costs, including expert witness fees. The party in default hereunder shall be responsible for the costs of any Court-ordered sale of a Unit required to enforce the provisions of this Covenant. Venue for any action for breach of, or to enforce, this Covenant shall be properly in Palm Beach County, Florida.

e. In the event any Unit is transferred or leased in a manner that is not in full compliance with the provisions of this Covenant, such transfer or lease shall be wholly null and void and shall confer no title or rights whatsoever upon the purported transferee or lessee.

5.2. **Priority of Covenant.** This Covenant shall be senior to, and shall not be subordinated to, any lien or encumbrance, including without limitation, any Institutional Lender, and shall survive and not be extinguished by the foreclosure or deed-in-lieu of foreclosure regarding

any such liens or encumbrances. This includes, but is not limited to, judgment liens, assessment liens, tax liens, construction liens and mortgage liens.

VI. MISCELLANEOUS

6.1. **Third Party Beneficiaries.** Other than the Delray Beach Community Land Trust's right of first refusal, there are no intended third-party beneficiaries of this Covenant, and no party other than the City or Developer of the Delray Beach Community Land Trust shall have standing to bring an action for, breach of, or to enforce, the provisions of this Covenant.

6.2. **Notices.** Notices to any person or entity shall be given in writing and delivered in person or mailed, by certified or registered prepaid U. S. Mail, return receipt requested, or by electronic mail, or by a reputable overnight courier service (such as FEDEX), to the person's or entity's representative set forth below (as may be changed by notice from time to time) at the address set forth below:

Notices to the City shall be sent to:

City of Delray Beach
100 N. W. 1st Avenue
Delray Beach, Florida 33444
Attention: City Manager

With a copy to:

City of Delray Beach
100 N. W. 1st Avenue
Delray Beach, Florida 33444
Attention: Director of Neighborhood & Community Services

With a copy to:

City Attorney
City of Delray Beach
200 N. W. 1st Avenue
Delray Beach, Florida 33444

Notices to the Developer shall be sent to:

Michael Ritzer
Ethan Joseph Homes, LLC
6465 Pond Apple Road
Boca Raton, FL 33433
michael@ethanjosephhomes.com

With a copy to:

Michael Robert Flam P.A.
20125 Ocean Key Drive
Boca Raton, Florida 33498
michaelrobertflam@outlook.com

Notices to an owner of a Workforce Housing Unit may be given in like manner addressed to the applicable Workforce Housing Unit. Such notice shall be deemed given when hand delivered or when deposited, postage prepaid, in the United States mail.

6.3. **Severability.** If any provision of this Covenant shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions shall survive and their validity, legality and enforceability shall not in any way be affected or impaired thereby, and the court may, but shall not be required to, fashion a substitute for the provision held to be invalid or unenforceable.

6.4. **Headings.** The headings of the sections in this Covenant are for convenience only and shall not be used to interpret the meaning of any provision hereof.

6.5. **Homestead Waiver.** This Covenant is prior and superior to the owner of the Workforce Housing Unit's right to a homestead exemption. Each owner of a Workforce Housing Unit waives that owner's homestead rights to the fullest extent that they conflict or impair the City's rights and remedies under this Covenant.

6.6. **No Guarantee.** Nothing herein shall be construed or give rise to any implied representation, warranty or guarantee, and the City expressly disclaims, that any owner of a Workforce Housing Unit will be able to resell his or her Workforce Housing Unit for the maximum purchase price or recover the purchase price for such Workforce Housing Unit. Such owner of a Workforce Housing Unit recognizes and accepts that his or her Unit may be less marketable than other Units in the Development and may not sell for as great a purchase price.

6.7. **Governmental Functions:** Notwithstanding anything to the contrary contained in this Declaration:

a. Even though the City has certain contractual obligations under this Covenant such obligations shall not relieve any person subject to this Covenant from complying with all applicable governmental regulations, rules, laws, and ordinances;

b. To the extent approval or permission must be obtained from the City, such approval or permission shall be granted or denied in accordance with applicable governmental regulations, rules, laws, and ordinances, and no person shall have any vested rights;

c. The City has not waived its sovereign immunity; and

d. Any action by City shall be without prejudice to, and shall not constitute a limit on, impairment or waiver of, or otherwise affect City's right to exercise its discretion in connection with its governmental or quasi-governmental functions.

6.8. DEVELOPER AND CITY HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE THE RIGHT ANY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS COVENANT AND ANY AGREEMENT EXECUTED IN CONJUNCTION HERewith OR THEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY.

6.9. This Agreement constitutes the entire agreement between City and Developer.

6.10. **Recordation.** The parties acknowledge and agree that this Covenant shall be recorded in the Public Records of Palm Beach County, Florida, and shall be a covenant running with the Real Property.

6.11. **Venue.** This Agreement shall be governed by the laws of the State of Florida. The venue for actions arising out of this Agreement shall be Palm Beach County, Florida.

[Remainder of Page Intentionally Left Blank]

Signed, sealed and delivered
in the presence of:

ETHAN JOSEPH HOMES, LLC

Signature

By: _____

Title: _____

(Name printed or typed)

(Name printed or typed)

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me by means of ☐ physical presence
or ☐ online notarization, this ____ day of _____, 2021, by
_____ (name of person), as _____ (type of
authority) for _____ (name of party on behalf of whom instrument was
executed).

Personally known ____ OR Produced Identification

Type of Identification Produced _____

Notary Public – State of Florida

ATTEST:

CITY OF DELRAY BEACH, FLORIDA

City Clerk

By: _____
Shelly Petrolia, Mayor

Approved as to legal form
and sufficiency:

City Attorney

Witness

Print name of Witness

Witness

Print name of Witness

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me by means of ☐ physical presence
or ☐ online notarization, this ____ day of _____, 20__, by Shelly Petrolia, as Mayor
for the City of Delay Beach.

Personally known ____ OR Produced Identification

Type of Identification Produced _____

Notary Public – State of Florida

EXHIBIT “A”
Legal Description of Real Property