

Prepared by: RETURN:

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

Address: 2621 Frederick Boulevard
P.C.N.# 12-43-46-28-07-035-0200

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**”), **Frederick Isles LLC**, whose address is 2552 Peters Road, Suite B, Fort Pierce, FL 34945, (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 2621 Frederick Boulevard, 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 4.7.4, in order to increase the maximum density from 12 dwelling units per acre to 16 dwelling units per acre and six units, Developer agreed to provide one (1) Workforce Housing Unit which complies with the Affordable Housing Program (“**Affordable Housing Lot**”).

C. Consistent with LDR Section 4.7.4, Developer of property in the Infill Workforce Housing Area will earn bonus units for building workforce housing for very low, low, and moderate income families.

D. Whereas Developer has agreed to offer for rent one fee simple dwelling unit available to a moderate income household within the Development.

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 rental, subsequent rental, 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 Workforce Housing Unit by which the income of the lessee will be restricted in order to ensure that the Workforce Housing Unit remains affordable to those households which qualify as Moderate-Income Households.

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

1.4. **Development** – The Real Property located at 2621 Frederick Boulevard, Delray Beach, FL, consisting of six townhomes for rent one of which will be offered for rent to a moderate income household.

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. **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.

1.10. **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.

1.11. **Unit Owner** -The lessee at any time of a Workforce Housing Unit within the Development.

1.12. **Workforce Housing Unit(s) or Workforce Unit(s)** – Any of the 6 townhomes within the Development.

II. RENTAL OF THE WORKFORCE HOUSING UNIT

2.1. The Workforce Housing Unit shall be subject to this Covenant, and each lessee shall be an Eligible Occupant, except as provide in Section 2.5 below.

2.2. In no event shall the Workforce Housing Unit be used for transient, interval or timeshare rental or ownership.

2.3. At all times, the units in the Development must include one Workforce Housing Unit to be reserved for occupancy by Eligible Occupants.

2.4. The Workforce Housing Unit shall not be offered for rent to the general public until all requirements of this Covenant are met.

2.5. One Workforce Housing Unit in the Development shall be marketed continuously as a Workforce Housing Unit. In the unlikely event that, notwithstanding the marketing efforts of Developer, the Workforce Housing Unit remains vacant for 45 days or more due to a lack of Eligible Occupants, the Workforce Housing Unit may be rented to non-eligible occupants at market rents provided that the Developer shall pay to the Delray Beach Housing Trust Fund (DBHTF) at the end of each calendar year any rents actually received from the non-eligible occupants of the Workforce Housing Unit for that year in excess of the rent that would have been received from Eligible Occupants for the Workforce Housing Unit based on workforce rents at the time of signing the lease ("Excess Rental Payments"). Excess Rental Payments shall accrue only for periods in which the required 100% is not satisfied. No later than 30 days following the end of the year, the Developer shall provide the DBHTF with an annual statement.

III. ADDITIONAL RESTRICTIONS AND EXCEPTIONS

3.1. **Subsequent Rental of the Workforce Housing Unit.** To maintain the availability of the Workforce Housing Unit, the following rental conditions are imposed 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 offered for rent to Eligible Occupants except as otherwise provided by this Covenant.

c. If the Workforce Housing Unit in the Development is part of a homeowners association or similar community, these Covenants shall be incorporated into the governing documents of such community and the governing documents shall be approved by the City Attorney. The governing documents may not be amended without the City's consent.

3.2. The Workforce Housing Unit may not be sublet or assigned to a tenant(s) whose income exceeds the percent of AMI under which the Workforce Housing Unit was originally approved except as otherwise provided by this Covenant.

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

3.4. 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.

3.5. The forms of the lease of the Workforce Housing Unit or deed for the rental of the Workforce Housing Unit, respectively, shall be approved in advance for compliance with this Covenant by the City Attorney.

3.6. To ensure the Developer's compliance with the Affordability Controls and restrictions contained in this Covenant, not later than the tenth (10th) day of each calendar month for every month during the term of this Covenant, Developer shall deliver a written report ("Report") to the City containing such information and documents the City may require to verify that the Developer is in compliance with this Covenant. The Report shall be current as of the first day of the month in which the Report is delivered to the City. The form of the Report shall be approved by the City Attorney. At a minimum, the Report shall contain the following information and documents with respect to the Workforce Housing Unit:

3.6.1. With respect to the Workforce Housing Unit lease:

- a. Name and address of the Workforce Housing Unit's Eligible Occupant and each member of the Household;
- b. Date lease term commenced;
- c. Date lease terms terminates;
- d. Amount of monthly rent due under the lease;

- e. Household income;
- f. Workforce Housing Unit address;
- g. Number of bedrooms and baths in the Workforce Housing Unit;
- h. Household size; and
- i. Whether the Workforce Housing is occupied or vacant.

3.7. The Report shall be executed under oath by the Developer or its authorized agent or representative.

3.8. At any reasonable time and from time to time, after first providing the Developer or lessee with not less than twenty-four (24) hours advance written notice, except in the case of an emergency, when less advance notice may be given, the City may enter the Development for the purpose of conducting personal interviews and obtaining other information reasonably necessary to verify Developer's compliance with the City's Affordable Housing Program requirements.

3.9. Developer, tenant, and occupant shall comply with all applicable Federal, State and local laws, rules, regulations and ordinances relating to the 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 lease therefor, or by the signing of a lease, shall, by acceptance of such lease 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 Developer and the City.

V. ENFORCEMENT

5.1. **Right to Enforce.** The City reserves, and Developer, all proposed lessees 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, or Household 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 or lessee 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, 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 lease conducted in violation of this Covenant, the right to cancel and declare void the 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 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.** There are no intended third-party beneficiaries of this Covenant, and no party other than the City 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:

Miles Rich
Frederick Isles LLC

2525 Peters Road, Suite B
Fort Pierce, FL 34945
milesrich@me.com

Notices to a lessee 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. **Conflict**. To the extent of any conflict between the terms of this Covenant and Section 4.7 of the City's Land Development Regulation in effect as of the date of the execution of this Covenant by the City, the Land Development Regulations shall control.

6.12. **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]

ATTEST:

CITY OF DELRAY BEACH, FLORIDA

City Clerk

By: _____
Shelly Petrolia, Mayor

Approved as to legal form
and sufficiency:

City Attorney

Signed, sealed and delivered
in the presence of:

FREDERICK ISLES LLC

(Name printed or typed)

Signature

(Name printed or typed)

By: _____
(Name Printed and Title)

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 _____

(name of person acknowledging).

Personally known ____ OR Produced Identification

Type of Identification Produced _____

Notary Public – State of Florida

EXHIBIT "A"
Legal Description of Real Property

Lots 20, 21, 22, 23, 24 and 25, Block 35, Del-Raton Park, according to the map or plat thereof as recorded in Plat Book 14, Page 9, Public Records of Palm Beach County, Florida.