

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date:	December 17, 2019	<input checked="" type="checkbox"/> Consent	<input type="checkbox"/> Regular
		<input type="checkbox"/> Ordinance	<input type="checkbox"/> Public Hearing
Department:	Department of Housing and Economic Sustainability		

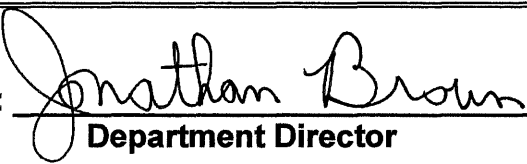
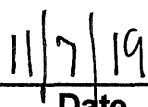

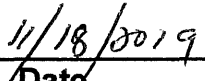
I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to Receive and File: two (2) Certificates of Award for Developer Affordable Rental Housing Units to Ocean Breeze East Apartments, LLC, under the Impact Fee Affordable Housing Assistance Program (IFAHAP).

Summary: Staff recommends the Board of County Commissioners (BCC) receive and file two (2) Certificates of Award for Developer Affordable Rental Housing Units to Ocean Breeze East Apartments, LLC, under IFAHAP. The attached documents have been executed on behalf of the BCC by the Mayor in accordance with Agenda Items 5B-1 and 5A-1 as approved by the BCC on February 5, 2019, and July 2, 2019, respectively. The certificates awarded a total of \$318,248 in IFAHAP assistance associated with the construction of 123 apartments at 700 North Seacrest Boulevard in Boynton Beach. In accordance with County PPM CW-0-051, all delegated contracts, agreements and grants must be submitted by the initiating Department as a receive and file agenda item. IFAHAP funds are from interest earned by the Impact Fee Fund. District 7 (HJF)

Background and Justification: On February 5, 2019 (Agenda Item 5B-1), Ocean Breeze East Apartments, LLC, was awarded \$106,399 in IFAHAP assistance associated with the construction of the Ocean Breeze East Apartments project. On July 2, 2019 (Agenda Item 5A-1), Ocean Breeze East Apartments, LLC, was awarded \$211,849 in IFAHAP assistance associated with the construction of the Ocean Breeze East Apartments project. IFAHAP requires that these units be rented to households with incomes that do not exceed 140% of Area Median Income.

Attachment(s):
1. Two (2) Certificates of Award for Developer Affordable Rental Housing Units to Ocean Breeze East Apartments, LLC

Recommended By:		
	Department Director	Date
Approved By:		
	Assistant County Administrator	Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2020	2021	2022	2023	2024
Capital Expenditures					
Operating Costs					
External Revenues					
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT					

# ADDITIONAL FTE POSITIONS (Cumulative)					
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Is Item Included In Current Budget? Yes X No
Does this Item include the use of Federal funds? Yes No X

Fund Dept Unit Object Program Code/Period

B. Recommended Sources of Funds/Summary of Fiscal Impact:

No additional fiscal impact

C. Departmental Fiscal Review: Shairette Major
Shairette Major, Fiscal Manager II

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

Leah KP 11/18/19 OFMB KP 11/18/19
J. J. Andrews 11/14/19 Contract Development and Control 11/14/19 TW

B. Legal Sufficiency:

H. J. J. 11/15/19 Assistant County Attorney

C. Other Department Review:

Department Director

(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT)

PALM BEACH COUNTY
IMPACT FEE AFFORDABLE HOUSING ASSISTANCE PROGRAM

CERTIFICATE OF AWARD
FOR DEVELOPER AFFORDABLE RENTAL HOUSING UNITS

This Certificate is awarded on OCT 22 2019, by PALM BEACH COUNTY, a political subdivision of the State of Florida (the "County") to Ocean Breeze East Apartments, LLC, a Florida Limited Liability Company, whose Federal I.D. number is 82-4956544 (the "Developer"). This Certificate is awarded pursuant to funding approval by the Palm Beach County Board of County Commissioners on July 2, 2019, at which time authority was delegated to the Mayor to execute this Certificate.

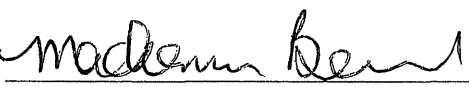
The Developer may present this Certificate to the Palm Beach County Impact Fee Coordinator under the Impact Fee Affordable Housing Assistance Program (the "IFAHAP") to receive a credit of \$211,849 towards the payment of Zone 4 Road Impact Fees associated with the construction of one hundred and twenty three (123) affordable rental housing units in a housing development to be known as the Ocean Breeze East Apartments Project.

In exchange for the acceptance of this Certificate and the receipt of the aforementioned credits from the County towards the payment of impact fees associated with the Ocean Breeze East Apartments Project, the Developer expressly agrees to comply with, and to perform, all of the terms contained in the below enumerated Conditions of Issuance.

Furthermore, in exchange for the receipt of the aforementioned credit from the County towards the payment of impact fees associated with the Ocean Breeze East Apartments Project, the Developer also agrees to execute and deliver to the County the Declaration of Restrictions for Developer Affordable Rental Housing Units, attached hereto and made a part hereof, and to comply with the terms contained therein.

This Certificate, if not used for the purposes set forth herein, shall expire one (1) year from the date of funding approval for the Ocean Breeze East Apartments Project by the Palm Beach County Board of County Commissioners, that is, on July 2, 2020.

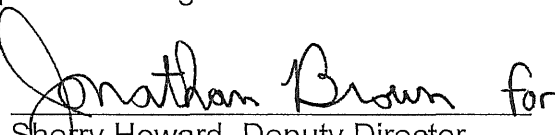
PALM BEACH COUNTY, FLORIDA, a
Political Subdivision of the State of Florida
BOARD OF COUNTY COMMISSIONERS

By: 
Mack Bernard, Mayor

Approved as to Form and
Legal Sufficiency

By: 
Howard J. Falcon III
Chief Assistant County Attorney

Approved as to Terms and Conditions
Dept. of Housing and Economic Sustainability

By:  for
Sherry Howard, Deputy Director

CONDITIONS OF ISSUANCE

1. Organization Status: Developer is a Florida Limited Liability Company duly organized and validly existing in good standing under the laws of the State of Florida with full power and authority to consummate the transactions contemplated herein.

2. Housing To Be Constructed: At the time of issuance of this Certificate to the Developer, the Developer has represented to the County that the Developer owns that certain real property (hereinafter "Property") located in Palm Beach County, Florida, as more particularly described in Attachment 1 to Exhibit A, attached hereto and made a part hereof. The Developer shall construct no fewer than one hundred and twenty three (123) rental housing units on the Property, together with ancillary improvements, all of which shall be known as the Ocean Breeze East Apartments Project (hereinafter "Project"). All aforesaid rental housing units shall be "Affordable Rental Housing Units" affected by these Conditions of Issuance and the Declaration of Restrictions referenced herein. Each of the aforesaid Affordable Rental Housing Units shall be the unit tenant's home under the limits of a signed lease document. None of the Affordable Rental Housing Units may be used for transitional housing, for emergency shelters, or for other non-permanent housing.

3. Declaration of Restrictions: The Developer shall, in exchange for the receipt of this Certificate deliver to the County a fully executed Declaration of Restrictions for Developer Affordable Rental Housing Units, attached hereto and made a part hereof, as Exhibit A, and shall comply with the terms contained therein.

4. Building Permits: Developer shall obtain all building permits for the construction of the Project from the building department with jurisdiction over the Project within one (1) year after the date of funding approval for the Project by the Palm Beach County Board of County Commissioners, that is, no later than July 2, 2020.

5. Certificates of Occupancy and Initial Lease: Developer shall obtain certificates of occupancy from the building department with jurisdiction over the Project for all Affordable Rental Housing Units at the Project and initially lease all such units within four (4) years after the date of funding approval for the Project by the Palm Beach County Board of County Commissioners, that is, no later than July 2, 2023.

6. Affordability of Rental Housing Units: Developer shall, for a period of twenty (20) years from the date of execution of the Declaration of Restrictions, lease each of the aforesaid one hundred and twenty three (123) Affordable Rental Housing Units to a household whose gross income, adjusted for family size, is no more than one hundred and forty percent (140%) of Area Median Income (hereinafter "AMI") at the time the unit is first occupied, and thereafter, at any time a new tenant occupies the unit. AMI shall mean the most recent area median income published by the U. S. Department of Housing and Urban Development (hereinafter "HUD") for the West Palm Beach-Boca Raton Metropolitan Statistical Area.

Developer shall, for the aforesaid twenty (20) year period, lease each of the aforesaid Affordable Rental Housing Units at an Affordable Rental Rate such that the sum of the actual monthly rent paid by the tenant of an Affordable Rental Housing Unit plus the cost of tenant paid utilities does not exceed the rent limit for households at one hundred and forty percent (140%) of AMI as shown for Palm Beach County in the Income Limits and Rent Limits chart published by the Florida Housing Finance Corporation from time to time for its Multifamily Rental Programs - Except HOME and SHIP and fixed according to the number of bedrooms. Tenant paid utilities including gas, water/sewer, electric, and garbage shall be based on the current utility allowances from the HUD Utility Schedule Model. (Should publication of the Multifamily Rental Programs -- Except HOME and SHIP or the HUD Utility Schedule Model be discontinued, then the County shall designate an alternative source of information).

The above rental rate requirement shall apply to all initial leases with tenants, as well as all subsequent leases and lease renewals.

7. Records to be Maintained by Developer: Developer shall, for each tenant that is leased any of the Affordable Rental Housing Units at the Project, comply with the below requirements and maintain a file that, at a minimum, contains the following:

- An application-for-lease, signed and dated by the applicant(s), identifying the household members that intend to occupy the unit and their household characteristics, and the household income they have disclosed.
- Documentation evidencing the Developer's verification of the applicant's household income and a computation sheet demonstrating the Developer's determination of the applicant's income eligibility to occupy the unit. Household income computation shall follow the HUD Section 8 method (24 CFR 5.609).
- A copy of the AMI showing the HUD income levels in effect at the time all leases are signed or renewed.
- A computation sheet demonstrating that in every initial lease, every subsequent lease, and every lease renewal, the rent is at an Affordable Rental Rate as defined herein.
- An original of each executed lease with the applicant/tenant identifying the apartment number and the rental rate. Developer shall utilize leases which require parents to be held legally and financially liable for the acts of their children in the apartment complex and which allow management to terminate the lease of any household where a household member is engaged in illegal or criminal activity or where a household member is engaged in anti-social behavior which denies the project's residents or area residents the quiet and peaceful enjoyment of their homes or businesses.
- Should the Developer elect to utilize criminal background information in the screening of prospective tenants or the retention/termination of tenants, the Developer must develop and implement tenant selection policies which comply with HUD guidance on the use of criminal background information.

Tenant selection/retention/termination shall not:

- (i) Exclude persons from housing based on records of arrests not resulting in conviction;
- (ii) Exclude persons from housing based solely on conviction of any type, with the exception of those identified by HUD (methamphetamine production and registered sex offender); and
- (iii) Be utilized to intentionally discriminate against protected classes of persons.

Tenant selection/retention/termination shall:

- (i) Serve a substantial, legitimate, and non-discriminatory interest of the housing provider;
- (ii) Distinguish between criminal conduct which indicates a demonstrable risk to resident safety and/or property and that which does not;
- (iii) Consider the nature, severity, and recency of the criminal offense;
- (iv) Consider relevant individualized evidence such as: circumstances surrounding the criminal conduct; the age of the individual at the time of the conduct; tenant history before and/or after the criminal conduct; and rehabilitation efforts; and

(v) Be applied equally among all classes of protected persons.

- Any other documentation evidencing the Developer's compliance with these Conditions of Issuance and the requirements of the Declaration of Restrictions for Developer Affordable Rental Housing Units.

8. Right to Audit and Access to Records: Developer shall maintain ongoing records related to each tenant at the Project, and shall maintain all tenant records for at least five (5) years after the end of each tenancy. The County shall have the option, but not the obligation, to verify the Developer's compliance with these Conditions of Issuance and the requirements of the Declaration of Restrictions for Developer Affordable Rental Housing Units. The County may, at its sole discretion, inspect or audit all tenant and owner records, and the Developer shall provide the County access to such books, records, and documents as required in this Section for the purpose of inspection or audit during normal business hours at the Developer's place of business.

Palm Beach County has established the Office of Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the Developer, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 – 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

9. Public Records: Notwithstanding anything contained herein, as provided under Section 119.0701, F.S., if the Developer: (i) provides a service; and (ii) acts on behalf of the County as provided under Section 119.011(2) F.S., the Developer shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time. The Developer is specifically required to:

- Keep and maintain public records required by the County to perform services as provided in this Certificate.
- Upon request from the County's Custodian of Public Records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. The Developer further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach County PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time.
- Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Agreement, if the Developer does not transfer the records to the public agency.

Failure of the Developer to comply with the requirements of this article shall be a material breach of this Certificate. The County shall have the right to exercise any and all remedies available to it, including but not limited to, the right to terminate for cause. The Developer acknowledges that it has familiarized itself with the requirements of Chapter 119, F.S., and other requirements of state law applicable to public records not specifically set forth herein.

IF THE DEVELOPER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DEVELOPER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CERTIFICATE, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT RECORDS REQUEST, PALM BEACH COUNTY PUBLIC AFFAIRS DEPARTMENT, 301 NORTH OLIVE AVENUE, WEST PALM BEACH, FL 33401, BY E-MAIL AT RECORDSREQUEST@PBCGOV.ORG OR BY TELEPHONE AT (561) 355-6680.

10. Certification and Reporting Requirements: Developer shall within thirty (30) days of each anniversary date of the Declaration of Restrictions for Developer Affordable Rental Housing Units, provide the County an annual report in the form of an affidavit executed by a person authorized to bind the Developer. Each such affidavit shall contain the following:

- A certification that the Developer is in compliance with the requirements of the Declaration of Restrictions for Developer Affordable Rental Housing Units and the Certificate for the Project.
- Evidence of having obtained all building permits for the project from the building department with jurisdiction over the Project within one (1) year after the date of funding approval for the Project by the Palm Beach County Board of County Commissioners. (The Developer may discontinue submission of these items after this requirement has been met.)
- Evidence of having completed construction of all Affordable Rental Housing Units at the Project and obtained their certificates of occupancy from the building department with jurisdiction over the Project and evidence that all such units have been initially occupied by households as specified herein within four (4) years after the date of funding approval for the Project by the Palm Beach County Board of County Commissioners. (The Developer may discontinue submission of these items after this requirement has been met.)
- A certification listing all Affordable Rental Housing Units at the Project by unit number and bedroom size. This certification shall for each such unit include the lease date, the tenant's annual household income, the number of unit occupants, and the monthly rent amount for each unit.

Developer shall submit the Annual Report to:

Department of Housing and Economic Sustainability
100 Australian Avenue, Suite 500
West Palm Beach, FL 33406

11. Non-Discrimination: The Developer warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression, or genetic information.

Furthermore, Developer shall not discriminate on the basis of race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information, in the use, or occupancy of any housing unit constructed on the Property, nor shall any person on the basis of race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information, be excluded from the benefits of, or be subjected to discrimination under any activity carried out by the performance of the terms contained herein.

12. Exclusion of Third Party Beneficiaries: No provision herein is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party named herein, including but not limited to any citizen or employees of the County and/or the Developer.

13. Advertising/Marketing: Developer shall include the County logo in all marketing materials for the Project. During the period of the construction of the Project, the County shall have the right to install and maintain on the Property one or more signs identifying the County, or to be identified on such signs installed by others, as one of the entities participating in the development of the project. Sign or signs will be provided by the County and erected at Developer's expense.

14. Governing Law: The laws of the State of Florida shall govern the interpretation and enforcement of the terms contained herein and the venue shall be in Palm Beach County.

EXHIBIT A

Prepared by and return to:

Palm Beach County
Department of Housing
and Economic Sustainability
100 Australian Avenue, Suite 500
West Palm Beach, Florida 33406

DECLARATION OF RESTRICTIONS FOR DEVELOPER AFFORDABLE RENTAL HOUSING UNITS

The undersigned, Ocean Breeze East Apartments, LLC, a Florida Limited Liability Company, having its principal office at 7735 NW 146 Street, Suite 306, Miami Lakes, FL 33016, (hereinafter referred to as "Declarant", which term as used in every instance herein shall include Declarant's successors and assigns), for the property described below, in consideration for the receipt of a Certificate of Award for Developer Affordable Rental Housing Units (the "Certificate"), dated _____, under Palm Beach County's Impact Fee Affordable Housing Assistance Program (hereinafter referred to as "IFAHAP") and the receipt of a credit valued at Two Hundred Eleven Thousand Eight Hundred Forty-Nine and 00/100 Dollars (\$211,849.00) towards the payment of road impact fees as provided by Palm Beach County a political subdivision of the State of Florida (the "County"), does hereby grant to the County and impose the following restrictions against the subject property, hereinafter referred to as the Property, which is more fully described in Attachment 1 attached hereto and made a part hereof.

1. The restrictions contained in this Declaration of Restrictions for Developer Affordable Rental Housing Units (the "Declaration") shall be deemed a covenant running with the land and are binding upon the undersigned, their heirs, executors, successors, and assigns. These restrictions can only be terminated or released by the Palm Beach County Board of County Commissioners, and/or those persons to whom such authority is formally delegated, and executed with the same formalities as this document.

2. In consideration for the receipt of the Certificate and its associated credit of \$211,849.00 towards the payment of Zone 4 Road Impact Fees, the Declarant hereby covenants and agrees as follows:

- (a) To comply with the Conditions of Issuance contained in the Certificate referenced herein.
- (b) To construct no fewer than one hundred and twenty three (123) rental housing units on the Property, together with ancillary improvements, all of which shall be known as the Ocean Breeze East Apartments Project (the "Project"). The Project shall consist of 30 one-bedroom apartments, 63 two-bedroom apartments and 30 three-bedroom apartments. All aforesaid rental housing units shall be "Affordable Rental Housing Units" affected by the restrictions and conditions of this Declaration, and by those contained in the Certificate referenced herein. Each of the aforesaid Affordable Rental Housing Units shall be the unit tenant's home under the limits of a signed lease document. None of the Affordable Rental Housing Units may be used for transitional housing, for emergency shelters, or for other non-permanent housing.
- (c) For a period of twenty (20) years from the date hereof (the "Compliance Period"), the Declarant agrees:
 - (i) To obtain all building permits for the construction of the Project from the building department with jurisdiction over the Project no later than July 2, 2020.
 - (ii) To obtain certificates of occupancy from the building department with jurisdiction over the Project for all Affordable Rental Housing Units at the Project and initially lease all such units no later than July 2, 2023.

- (iii) To lease each of the aforesaid one hundred and twenty three (123) Affordable Rental Housing Units to a household whose gross incomes, adjusted for family size, is no more than one hundred and forty percent (140%) of Area Median Income (hereinafter "AMI") at the time the unit is first occupied, and thereafter, at any time a new tenant occupies the unit. AMI shall mean the most recent area median income published by the U. S. Department of Housing and Urban Development (hereinafter "HUD") for the West Palm Beach-Boca Raton Metropolitan Statistical Area.
- (iv) To lease each of the herein described Affordable Rental Housing Units at an affordable rental rate such that the sum of the actual monthly rent paid by the tenant of the Affordable Rental Housing Unit plus the cost of tenant paid utilities does not exceed the rent limit for households of one hundred and forty percent (140%) of AMI as shown for Palm Beach County in the Income Limits and Rent Limits chart published by the Florida Housing Finance Corporation from time to time for its Multifamily Rental Programs -- Except HOME and SHIP and fixed according to the number of bedrooms. Tenant paid utilities including gas, water/sewer, electric, and garbage shall be based on the current utility allowances from the HUD Utility Schedule Model. (Should publication of the Multifamily Rental Programs -- Except HOME and SHIP or the HUD Utility Schedule Model be discontinued, then the County shall designate an alternative source of information).

The above rental rate requirement shall apply to all initial leases with tenants, as well as all subsequent leases and lease renewals.

- (d) To submit annual reports to the County as outlined in the Certificate detailing the Declarant's compliance with the terms of the Certificate and this Declaration.
- (e) To maintain its records as provided for in the Certificate.
- (f) Not to discriminate on the basis of race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information, in the use, or occupancy of any housing unit constructed on the Property.

3. The Declarant shall pay, or cause to be paid, all taxes due relating to the Property, and the Declarant shall not voluntarily create, or permit or suffer to be created or to exist, on or against the Property, or any part thereof, any lien superior to the lien of this Declaration except for any other liens expressly approved by the County in writing. The Declarant shall keep and maintain the Property free from the claims of all parties supplying labor or materials unto the same. The Declarant agrees to notify the County of any liens, judgments or pending foreclosure on the Property within ten (10) working days of the receipt of said notice by Declarant.

4. Should Declarant change the use or planned use, or discontinue use, of the Property (including the beneficiaries of such use) from affordable rental housing, or should the Declarant sell, convey or transfer title to the Property prior to the end of the Compliance Period, then the Declarant shall pay the County an amount equal to the IFAHAP Repayment Amount as defined herein.

In the event of any proposed sale, conveyance or transfer of the Property prior to the end of the Compliance Period, the Declarant must obtain approval of the County. Any approved sale or conveyance of the Property by the Declarant will be contingent upon the receipt of the payment by the County in accordance with the above provisions, or the receipt of a commitment, executed by a subsequent owner acceptable to the County, confirming its acceptance of the restrictions and conditions provided herein for the duration of the Compliance Period.

Notwithstanding the foregoing, the restrictions set forth herein shall run with the land

whether or not such commitment is obtained from a subsequent owner.

5. The Declarant acknowledges and covenants that the Declarant's failure to perform any covenant, agreement, term, or condition contained herein, or in the Certificate referenced herein, shall constitute a default under this Declaration. The Declarant further acknowledges and covenants that a default under the First Mortgage, under any senior mortgage to this Declaration, or under any subordinate mortgage to this Declaration, shall constitute a default under this Declaration.

In the event of default, before the County shall pursue any of its rights or remedies under this Declaration, the County shall first give the Declarant written notice of the default complained. Such notice shall be given to the Declarant at their address shown herein. The Declarant shall then have thirty (30) calendar days from the date such notice is given to cure or correct any such default to the County's satisfaction.

If the Declarant fails, neglects, or refuses to perform any of the provisions, terms and conditions set forth herein, or in the Certificate, or fails to cure any breach of this Declaration or the Certificate within the period set forth above after the County provides notice to the Declarant as set forth above, the County may at any time thereafter, with or without notice or demand and without limiting any other right or remedy which the County may have hereunder or under the law by reason of such default or breach, elect to exercise any one of the following remedies:

- (a) Declare due from Declarant immediately upon demand an amount equal to the IFAHAP Repayment Amount as defined herein.
- (b) Declare due from Declarant immediately upon demand a penalty of One Thousand Five Hundred and 00/100 Dollars (\$1,500.00) per Affordable Rental Housing Unit per quarter where such default exists which penalty shall accrue from the date the default commenced. The Declarant shall pay said amount within ten (10) calendar days after the thirty (30) calendar day cure period specified above, and then on the first day of each quarter thereafter.

If the Declarant shall fail to pay any of the above amounts, the County shall have the right to file in a court of competent jurisdiction an action for collection of all due and unpaid amounts and penalties which the Declarant is obligated to pay hereunder. Any unpaid sum accrued hereunder shall accrue interest at the highest rate permissible by law and shall be secured by a lien against the Property.

Notwithstanding the foregoing, and at the sole discretion of the County, upon providing notice to the Declarant of its determination that the Declarant is in default of the terms of this Declaration, and upon the Declarant's failure to cure the default to the County's satisfaction, the County may, from time to time, cure each default under any covenant so curable in this Declaration, or in any instrument creating a lien upon the Property, or any part thereof, to such extent that the County determines, and each amount paid, if any, by the County to cure any such default shall be paid by the Declarant to the County in addition to interest at the highest rate permissible by law from the time of expenditure.

In addition to any remedy set forth herein, the County shall have such other remedies as are available at law or equity. The exercise or attempted exercise by the County of any right or remedy available under this Declaration shall not preclude the County from exercising any other right or remedy so available, nor shall any such exercise or attempted exercise constitute or be construed as an election of remedies. The Declarant shall pay any reasonable expenses, including reasonable attorney's fees and costs incurred by the County, under this Declaration and the preparation and delivery of notices required hereunder. The failure or omission by the County to enforce any of its rights or remedies upon breach of any of the covenants, terms or conditions of this Declaration shall not bar or breach any of the County's rights or remedies for any subsequent default.

6. The IFAHAP Repayment Amount shall be calculated as the sum of the amount secured by the Declaration plus three percent (3%) of said amount per year (or partial year) commencing with the recording date of this Declaration in the Public Records of Palm Beach County, Florida, plus \$1,500.

Upon receipt of the IFAHAP Repayment Amount by the County, the County shall issue the Declarant a release of restrictions releasing this Declaration from the Property.

7. All notices from the Declarant to the County and the County to the Declarant, and as otherwise required or permitted by any provision of this Declaration shall be in writing and sent by registered or certified mail and addressed as follows:

To County: Department of Housing and Economic Sustainability
Palm Beach County
100 Australian Avenue, Suite 500
West Palm Beach, FL 33406

With copy to:
County Attorney's Office
Palm Beach County
301 N. Olive Avenue, Suite 601
West Palm Beach, FL 33401

To Declarant: Ocean Breeze East Apartments, LLC
7735 NW 146 Street, Suite 306
Miami Lakes, FL 33016
Attention: Lewis Swezy

Such addresses may be changed by each party by written notice to the other parties.

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8. The Declarant shall cause this Declaration to be recorded in the Public Records of Palm Beach County, Florida, and thereafter the Declarant shall deliver this Declaration to the Director of the Department of Housing and Economic Sustainability, at 100 Australian Avenue, Suite 500, West Palm Beach, Florida 33406.

Executed this ____ day of _____, 20__.

Signed, sealed and delivered
in the presence of:

Witnesses: **Ocean Breeze East Apartments, LLC**
a Florida Limited Liability Company

Name: _____ By: Ocean Breeze Manager, LLC
Signature: a Florida Limited Liability Company,
its Manager

_____ By: _____
Lewis Swezy, Manager

Name: _____

Signature:

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by Lewis Swezy, as the Manager of Ocean Breeze Manager, LLC, a Florida Limited Liability Company, as the Manager of Ocean Breeze East Apartments, LLC, a Florida Limited Liability Company, who is personally known to me, or who has produced _____ as identification.

Signature: _____

(NOTARY SEAL ABOVE)

Notary Name: _____
Notary Public - State of Florida

ATTACHMENT 1
LEGAL DESCRIPTION OF THE PROPERTY

Lots 3 through 12 inclusive, in Block 1, AND Lots 1 and 2, in Block 1, LESS all that portion of Lots 1 and 2 lying West of the East right-of-way line for Seacrest Boulevard, as shown on Road Plat Book 5 at Page 182, AND LESS a 20 foot return curve area for road right-of-way, Palm Beach Club Estates, according to the Plat thereof, as recorded in Plat Book 11, Page 43, of the Public Records of Palm Beach County, Florida.

AND

The South ½ of the East 1/2 of Lot 2, of Subdivision of the West 1/2 of the Southeast 1/4 of Section 21, Township 45 South, Range 43 East, LESS the South 125 feet thereof; LESS the parcels conveyed to the City of Boynton Beach by Official Records Book 852, Page 642, AND LESS the right-of-way for Seacrest Boulevard, as shown on Road Plat Book 5, at Page 182, according to the Plat thereof, as recorded in Plat Book 1, Page 4, of the Public Records of Palm Beach County, Florida.

PALM BEACH COUNTY
IMPACT FEE AFFORDABLE HOUSING ASSISTANCE PROGRAM

CERTIFICATE OF AWARD
FOR DEVELOPER AFFORDABLE RENTAL HOUSING UNITS

OCT 22 2019

This Certificate is awarded on _____, by **PALM BEACH COUNTY**, a political subdivision of the State of Florida (the "County") to **Ocean Breeze East Apartments, LLC**, a Florida Limited Liability Company, whose Federal I.D. number is 82-4956544 (the "Developer"). This Certificate is awarded pursuant to funding approval by the Palm Beach County Board of County Commissioners on February 5, 2019, at which time authority was delegated to the Mayor to execute this Certificate.

The Developer may present this Certificate to the Palm Beach County Impact Fee Coordinator under the Impact Fee Affordable Housing Assistance Program (the "IFAHAP") to receive a credit of \$15,187 towards the payment of Public Buildings Impact Fees, and a credit of \$91,212 towards the payment of Zone 4 Road Impact Fees associated with the construction of one hundred and twenty three (123) affordable rental housing units in a housing development to be known as the Ocean Breeze East Apartments Project.

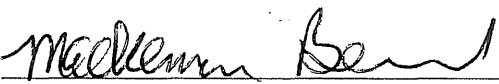
In exchange for the acceptance of this Certificate and the receipt of the aforementioned credits from the County towards the payment of impact fees associated with the Ocean Breeze East Apartments Project, the Developer expressly agrees to comply with, and to perform, all of the terms contained in the below enumerated Conditions of Issuance.

Furthermore, in exchange for the receipt of the aforementioned credit from the County towards the payment of impact fees associated with the Ocean Breeze East Apartments Project, the Developer also agrees to execute and deliver to the County the Declaration of Restrictions for Developer Affordable Rental Housing Units, attached hereto and made a part hereof, and to comply with the terms contained therein.

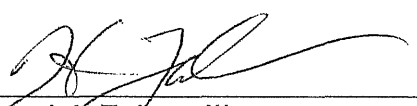
This Certificate, if not used for the purposes set forth herein, shall expire one (1) year from the date of funding approval for the Ocean Breeze East Apartments Project by the Palm Beach County Board of County Commissioners, that is, on February 5, 2020.

PALM BEACH COUNTY, FLORIDA, a
Political Subdivision of the State of Florida

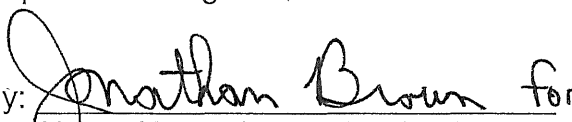
BOARD OF COUNTY COMMISSIONERS

By: 
Mack Bernard, Mayor

Approved as to Form and
Legal Sufficiency

By: 
Howard J. Falcon III
Assistant County Attorney

Approved as to Terms and Conditions
Dept. of Housing and Economic Sustainability

By:  for
Sherry Howard, Deputy Director

CONDITIONS OF ISSUANCE

1. Organization Status: Developer is a Florida Limited Liability Company duly organized and validly existing in good standing under the laws of the State of Florida with full power and authority to consummate the transactions contemplated herein.

2. Housing To Be Constructed: At the time of issuance of this Certificate to the Developer, the Developer has represented to the County that the Developer owns that certain real property (hereinafter "Property") located in Palm Beach County, Florida, as more particularly described in Attachment 1 to Exhibit A, attached hereto and made a part hereof. The Developer shall construct no fewer than one hundred and twenty three (123) rental housing units on the Property, together with ancillary improvements, all of which shall be known as the Ocean Breeze East Apartments Project (hereinafter "Project"). All aforesaid rental housing units shall be "Affordable Rental Housing Units" affected by these Conditions of Issuance and the Declaration of Restrictions referenced herein. Each of the aforesaid Affordable Rental Housing Units shall be the unit tenant's home under the limits of a signed lease document. None of the Affordable Rental Housing Units may be used for transitional housing, for emergency shelters, or for other non-permanent housing.

3. Declaration of Restrictions: The Developer shall, in exchange for the receipt of this Certificate deliver to the County a fully executed Declaration of Restrictions for Developer Affordable Rental Housing Units, attached hereto and made a part hereof, as Exhibit A, and shall comply with the terms contained therein.

4. Building Permits: Developer shall obtain all building permits for the construction of the Project from the building department with jurisdiction over the Project within one (1) year after the date of funding approval for the Project by the Palm Beach County Board of County Commissioners, that is, no later than February 5, 2020.

5. Certificates of Occupancy and Initial Lease: Developer shall obtain certificates of occupancy from the building department with jurisdiction over the Project for all Affordable Rental Housing Units at the Project and initially lease all such units within four (4) years after the date of funding approval for the Project by the Palm Beach County Board of County Commissioners, that is, no later than February 5, 2023.

6. Affordability of Rental Housing Units: Developer shall, for a period of twenty (20) years from the date of execution of the Declaration of Restrictions, lease each of the aforesaid one hundred and twenty three (123) Affordable Rental Housing Units to a household whose gross income, adjusted for family size, is no more than one hundred and forty percent (140%) of Area Median Income (hereinafter "AMI") at the time the unit is first occupied, and thereafter, at any time a new tenant occupies the unit. AMI shall mean the most recent area median income published by the U. S. Department of Housing and Urban Development (hereinafter "HUD") for the West Palm Beach-Boca Raton Metropolitan Statistical Area.

Developer shall, for the aforesaid twenty (20) year period, lease each of the aforesaid Affordable Rental Housing Units at an Affordable Rental Rate such that the sum of the actual monthly rent paid by the tenant of an Affordable Rental Housing Unit plus the cost of tenant paid utilities does not exceed the rent limit for households at one hundred and forty percent (140%) of AMI as shown for Palm Beach County in the Income Limits and Rent Limits chart published by the Florida Housing Finance Corporation from time to time for its Multifamily Rental Programs - Except HOME and SHIP and fixed according to the number of bedrooms. Tenant paid utilities including gas, water/sewer, electric, and garbage shall be based on the current utility allowances from the HUD Utility Schedule Model. (Should publication of the Multifamily Rental Programs -- Except HOME and SHIP or the HUD Utility Schedule Model be discontinued, then the County shall designate an alternative source of information).

The above rental rate requirement shall apply to all initial leases with tenants, as well as all subsequent leases and lease renewals.

7. Records to be Maintained by Developer: Developer shall, for each tenant that is leased any of the Affordable Rental Housing Units at the Project, comply with the below requirements and maintain a file that, at a minimum, contains the following:

- An application-for-lease, signed and dated by the applicant(s), identifying the household members that intend to occupy the unit and their household characteristics, and the household income they have disclosed.
- Documentation evidencing the Developer's verification of the applicant's household income and a computation sheet demonstrating the Developer's determination of the applicant's income eligibility to occupy the unit. Household income computation shall follow the HUD Section 8 method (24 CFR 5.609).
- A copy of the AMI showing the HUD income levels in effect at the time all leases are signed or renewed.
- A computation sheet demonstrating that in every initial lease, every subsequent lease, and every lease renewal, the rent is at an Affordable Rental Rate as defined herein.
- An original of each executed lease with the applicant/tenant identifying the apartment number and the rental rate. Developer shall utilize leases which require parents to be held legally and financially liable for the acts of their children in the apartment complex and which allow management to terminate the lease of any household where a household member is engaged in illegal or criminal activity or where a household member is engaged in anti-social behavior which denies the project's residents or area residents the quiet and peaceful enjoyment of their homes or businesses.
- Should the Developer elect to utilize criminal background information in the screening of prospective tenants or the retention/termination of tenants, the Developer must develop and implement tenant selection policies which comply with HUD guidance on the use of criminal background information.

Tenant selection/retention/termination shall not:

- (i) Exclude persons from housing based on records of arrests not resulting in conviction;
- (ii) Exclude persons from housing based solely on conviction of any type, with the exception of those identified by HUD (methamphetamine production and registered sex offender); and
- (iii) Be utilized to intentionally discriminate against protected classes of persons.

Tenant selection/retention/termination shall:

- (i) Serve a substantial, legitimate, and non-discriminatory interest of the housing provider;
- (ii) Distinguish between criminal conduct which indicates a demonstrable risk to resident safety and/or property and that which does not;
- (iii) Consider the nature, severity, and recency of the criminal offense;
- (iv) Consider relevant individualized evidence such as: circumstances surrounding the criminal conduct; the age of the individual at the time of the conduct; tenant history before and/or after the criminal conduct; and rehabilitation efforts; and

(v) Be applied equally among all classes of protected persons.

- Any other documentation evidencing the Developer's compliance with these Conditions of Issuance and the requirements of the Declaration of Restrictions for Developer Affordable Rental Housing Units.

8. Right to Audit and Access to Records: Developer shall maintain ongoing records related to each tenant at the Project, and shall maintain all tenant records for at least five (5) years after the end of each tenancy. The County shall have the option, but not the obligation, to verify the Developer's compliance with these Conditions of Issuance and the requirements of the Declaration of Restrictions for Developer Affordable Rental Housing Units. The County may, at its sole discretion, inspect or audit all tenant and owner records, and the Developer shall provide the County access to such books, records, and documents as required in this Section for the purpose of inspection or audit during normal business hours at the Developer's place of business.

Palm Beach County has established the Office of Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the Developer, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 – 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

9. Public Records: Notwithstanding anything contained herein, as provided under Section 119.0701, F.S., if the Developer: (i) provides a service; and (ii) acts on behalf of the County as provided under Section 119.011(2) F.S., the Developer shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time. The Developer is specifically required to:

- Keep and maintain public records required by the County to perform services as provided in this Certificate.
- Upon request from the County's Custodian of Public Records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. The Developer further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach County PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time.
- Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Agreement, if the Developer does not transfer the records to the public agency.

Failure of the Developer to comply with the requirements of this article shall be a material breach of this Certificate. The County shall have the right to exercise any and all remedies available to it, including but not limited to, the right to terminate for cause. The Developer acknowledges that it has familiarized itself with the requirements of Chapter 119, F.S., and other requirements of state law applicable to public records not specifically set forth herein.

IF THE DEVELOPER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DEVELOPER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CERTIFICATE, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT RECORDS REQUEST, PALM BEACH COUNTY PUBLIC AFFAIRS DEPARTMENT, 301 NORTH OLIVE AVENUE, WEST PALM BEACH, FL 33401, BY E-MAIL AT RECORDSREQUEST@PBCGOV.ORG OR BY TELEPHONE AT (561) 355-6680.

10. Certification and Reporting Requirements: Developer shall within thirty (30) days of each anniversary date of the Declaration of Restrictions for Developer Affordable Rental Housing Units, provide the County an annual report in the form of an affidavit executed by a person authorized to bind the Developer. Each such affidavit shall contain the following:

- A certification that the Developer is in compliance with the requirements of the Declaration of Restrictions for Developer Affordable Rental Housing Units and the Certificate for the Project.
- Evidence of having obtained all building permits for the project from the building department with jurisdiction over the Project within one (1) year after the date of funding approval for the Project by the Palm Beach County Board of County Commissioners. (The Developer may discontinue submission of these items after this requirement has been met.)
- Evidence of having completed construction of all Affordable Rental Housing Units at the Project and obtained their certificates of occupancy from the building department with jurisdiction over the Project and evidence that all such units have been initially occupied by households as specified herein within four (4) years after the date of funding approval for the Project by the Palm Beach County Board of County Commissioners. (The Developer may discontinue submission of these items after this requirement has been met.)
- A certification listing all Affordable Rental Housing Units at the Project by unit number and bedroom size. This certification shall for each such unit include the lease date, the tenant's annual household income, the number of unit occupants, and the monthly rent amount for each unit.

Developer shall submit the Annual Report to:

Department of Housing and Economic Sustainability
100 Australian Avenue, Suite 500
West Palm Beach, FL 33406

11. Non-Discrimination: The Developer warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression, or genetic information.

Furthermore, Developer shall not discriminate on the basis of race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information, in the use, or occupancy of any housing unit constructed on the Property, nor shall any person on the basis of race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information, be excluded from the benefits of, or be subjected to discrimination under any activity carried out by the performance of the terms contained herein.

12. Exclusion of Third Party Beneficiaries: No provision herein is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party named herein, including but not limited to any citizen or employees of the County and/or the Developer.

13. Advertising/Marketing: Developer shall include the County logo in all marketing materials for the Project. During the period of the construction of the Project, the County shall have the right to install and maintain on the Property one or more signs identifying the County, or to be identified on such signs installed by others, as one of the entities participating in the development of the project. Sign or signs will be provided by the County and erected at Developer's expense.

14. Governing Law: The laws of the State of Florida shall govern the interpretation and enforcement of the terms contained herein and the venue shall be in Palm Beach County.

EXHIBIT A

Prepared by and return to:

Palm Beach County
Department of Housing
and Economic Sustainability
100 Australian Avenue, Suite 500
West Palm Beach, Florida 33406

**DECLARATION OF RESTRICTIONS
FOR DEVELOPER AFFORDABLE RENTAL HOUSING UNITS**

The undersigned, **Ocean Breeze East Apartments, LLC**, a Florida Limited Liability Company, having its principal office at 7735 NW 146 Street, Suite 306, Miami Lakes, FL 33016, (hereinafter referred to as "Declarant", which term as used in every instance herein shall include Declarant's successors and assigns), for the property described below, in consideration for the receipt of a Certificate of Award for Developer Affordable Rental Housing Units (the "Certificate"), dated _____, under Palm Beach County's Impact Fee Affordable Housing Assistance Program (hereinafter referred to as "IFAHAP") and the receipt of a credit valued at One Hundred Six Thousand Three Hundred Ninety-Nine and 00/100 Dollars (\$106,399.00) towards the payment of road and public buildings impact fees as provided by Palm Beach County a political subdivision of the State of Florida (the "County"), does hereby grant to the County and impose the following restrictions against the subject property, hereinafter referred to as the Property, which is more fully described in Attachment 1 attached hereto and made a part hereof.

1. The restrictions contained in this Declaration of Restrictions for Developer Affordable Rental Housing Units (the "Declaration") shall be deemed a covenant running with the land and are binding upon the undersigned, their heirs, executors, successors, and assigns. These restrictions can only be terminated or released by the Palm Beach County Board of County Commissioners, and/or those persons to whom such authority is formally delegated, and executed with the same formalities as this document.

2. In consideration for the receipt of the Certificate and its associated credit of \$106,399.00 towards the payment of Public Buildings Impact Fees and Zone 4 Road Impact Fees, the Declarant hereby covenants and agrees as follows:

- (a) To comply with the Conditions of Issuance contained in the Certificate referenced herein.
- (b) To construct no fewer than one hundred and twenty three (123) rental housing units on the Property, together with ancillary improvements, all of which shall be known as the Ocean Breeze East Apartments Project (the "Project"). The Project shall consist of 30 one-bedroom apartments, 63 two-bedroom apartments and 30 three-bedroom apartments. All aforesaid rental housing units shall be "Affordable Rental Housing Units" affected by the restrictions and conditions of this Declaration, and by those contained in the Certificate referenced herein. Each of the aforesaid Affordable Rental Housing Units shall be the unit tenant's home under the limits of a signed lease document. None of the Affordable Rental Housing Units may be used for transitional housing, for emergency shelters, or for other non-permanent housing.
- (c) For a period of twenty (20) years from the date hereof (the "Compliance Period"), the Declarant agrees:
 - (i) To obtain all building permits for the construction of the Project from the building department with jurisdiction over the Project no later than February 5, 2020.
 - (ii) To obtain certificates of occupancy from the building department with jurisdiction over the Project for all Affordable Rental Housing Units at the Project and initially lease all such units no later than February 5, 2023.

- (iii) To lease each of the aforesaid one hundred and twenty three (123) Affordable Rental Housing Units to a household whose gross incomes, adjusted for family size, is no more than one hundred and forty percent (140%) of Area Median Income (hereinafter "AMI") at the time the unit is first occupied, and thereafter, at any time a new tenant occupies the unit. AMI shall mean the most recent area median income published by the U. S. Department of Housing and Urban Development (hereinafter "HUD") for the West Palm Beach-Boca Raton Metropolitan Statistical Area.
- (iv) To lease each of the herein described Affordable Rental Housing Units at an affordable rental rate such that the sum of the actual monthly rent paid by the tenant of the Affordable Rental Housing Unit plus the cost of tenant paid utilities does not exceed the rent limit for households of one hundred and forty percent (140%) of AMI as shown for Palm Beach County in the Income Limits and Rent Limits chart published by the Florida Housing Finance Corporation from time to time for its Multifamily Rental Programs -- Except HOME and SHIP and fixed according to the number of bedrooms. Tenant paid utilities including gas, water/sewer, electric, and garbage shall be based on the current utility allowances from the HUD Utility Schedule Model. (Should publication of the Multifamily Rental Programs -- Except HOME and SHIP or the HUD Utility Schedule Model be discontinued, then the County shall designate an alternative source of information).

The above rental rate requirement shall apply to all initial leases with tenants, as well as all subsequent leases and lease renewals.

- (d) To submit annual reports to the County as outlined in the Certificate detailing the Declarant's compliance with the terms of the Certificate and this Declaration.
- (e) To maintain its records as provided for in the Certificate.
- (f) Not to discriminate on the basis of race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information, in the use, or occupancy of any housing unit constructed on the Property.

3. The Declarant shall pay, or cause to be paid, all taxes due relating to the Property, and the Declarant shall not voluntarily create, or permit or suffer to be created or to exist, on or against the Property, or any part thereof, any lien superior to the lien of this Declaration except for any other liens expressly approved by the County in writing. The Declarant shall keep and maintain the Property free from the claims of all parties supplying labor or materials unto the same. The Declarant agrees to notify the County of any liens, judgments or pending foreclosure on the Property within ten (10) working days of the receipt of said notice by Declarant.

4. Should Declarant change the use or planned use, or discontinue use, of the Property (including the beneficiaries of such use) from affordable rental housing, or should the Declarant sell, convey or transfer title to the Property prior to the end of the Compliance Period, then the Declarant shall pay the County an amount equal to the IFAHAP Repayment Amount as defined herein.

In the event of any proposed sale, conveyance or transfer of the Property prior to the end of the Compliance Period, the Declarant must obtain approval of the County. Any approved sale or conveyance of the Property by the Declarant will be contingent upon the receipt of the payment by the County in accordance with the above provisions, or the receipt of a commitment, executed by a subsequent owner acceptable to the County, confirming its acceptance of the restrictions and conditions provided herein for the duration of this the Compliance Period.

Notwithstanding the foregoing, the restrictions set forth herein shall run with the land

whether or not such commitment is obtained from a subsequent owner.

5. The Declarant acknowledges and covenants that the Declarant's failure to perform any covenant, agreement, term, or condition contained herein, or in the Certificate referenced herein, shall constitute a default under this Declaration. The Declarant further acknowledges and covenants that a default under the First Mortgage, under any senior mortgage to this Declaration, or under any subordinate mortgage to this Declaration, shall constitute a default under this Declaration.

In the event of default, before the County shall pursue any of its rights or remedies under this Declaration, the County shall first give the Declarant written notice of the default complained. Such notice shall be given to the Declarant at their address shown herein. The Declarant shall then have thirty (30) calendar days from the date such notice is given to cure or correct any such default to the County's satisfaction.

If the Declarant fails, neglects, or refuses to perform any of the provisions, terms and conditions set forth herein, or in the Certificate, or fails to cure any breach of this Declaration or the Certificate within the period set forth above after the County provides notice to the Declarant as set forth above, the County may at any time thereafter, with or without notice or demand and without limiting any other right or remedy which the County may have hereunder or under the law by reason of such default or breach, elect to exercise any one of the following remedies:

- (a) Declare due from Declarant immediately upon demand an amount equal to the IFAHAP Repayment Amount as defined herein.
- (b) Declare due from Declarant immediately upon demand a penalty of One Thousand Five Hundred and 00/100 Dollars (\$1,500.00) per Affordable Rental Housing Unit per quarter where such default exists which penalty shall accrue from the date the default commenced. The Declarant shall pay said amount within ten (10) calendar days after the thirty (30) calendar day cure period specified above, and then on the first day of each quarter thereafter.

If the Declarant shall fail to pay any of the above amounts, the County shall have the right to file in a court of competent jurisdiction an action for collection of all due and unpaid amounts and penalties which the Declarant is obligated to pay hereunder. Any unpaid sum accrued hereunder shall accrue interest at the highest rate permissible by law and shall be secured by a lien against the Property.

Notwithstanding the foregoing, and at the sole discretion of the County, upon providing notice to the Declarant of its determination that the Declarant is in default of the terms of this Declaration, and upon the Declarant's failure to cure the default to the County's satisfaction, the County may, from time to time, cure each default under any covenant so curable in this Declaration, or in any instrument creating a lien upon the Property, or any part thereof, to such extent that the County determines, and each amount paid, if any, by the County to cure any such default shall be paid by the Declarant to the County in addition to interest at the highest rate permissible by law from the time of expenditure.

In addition to any remedy set forth herein, the County shall have such other remedies as are available at law or equity. The exercise or attempted exercise by the County of any right or remedy available under this Declaration shall not preclude the County from exercising any other right or remedy so available, nor shall any such exercise or attempted exercise constitute or be construed as an election of remedies. The Declarant shall pay any reasonable expenses, including reasonable attorney's fees and costs incurred by the County, under this Declaration and the preparation and delivery of notices required hereunder. The failure or omission by the County to enforce any of its rights or remedies upon breach of any of the covenants, terms or conditions of this Declaration shall not bar or breach any of the County's rights or remedies for any subsequent default.

6. The IFAHAP Repayment Amount shall be calculated as the sum of the amount secured by the Declaration plus three percent (3%) of said amount per year (or partial year) commencing with the recording date of this Declaration in the Public Records of Palm Beach County, Florida, plus \$1,500.

Upon receipt of the IFAHAP Repayment Amount by the County, the County shall issue the Declarant a release of restrictions releasing this Declaration from the Property.

7. All notices from the Declarant to the County and the County to the Declarant, and as otherwise required or permitted by any provision of this Declaration shall be in writing and sent by registered or certified mail and addressed as follows:

To County: Department of Housing and Economic Sustainability
Palm Beach County
100 Australian Avenue, Suite 500
West Palm Beach, FL 33406

With copy to:
County Attorney's Office
Palm Beach County
301 N. Olive Avenue, Suite 601
West Palm Beach, FL 33401

To Declarant: Ocean Breeze East Apartments, LLC
7735 NW 146 Street, Suite 306
Miami Lakes, FL 33016
Attention: Lewis Swezy

Such addresses may be changed by each party by written notice to the other parties.

THIS SPACE HAS BEEN INTENTIONALLY LEFT BLANK

8. The Declarant shall cause this Declaration to be recorded in the Public Records of Palm Beach County, Florida, and thereafter the Declarant shall deliver this Declaration to the Director of the Department of Housing and Economic Sustainability, at 100 Australian Avenue, Suite 500, West Palm Beach, Florida 33406.

Executed this ____ day of _____, 20__.

Signed, sealed and delivered
in the presence of:

Witnesses: **Ocean Breeze East Apartments, LLC**
a Florida Limited Liability Company

Name: _____ By: Ocean Breeze Manager, LLC
a Florida Limited Liability Company,
Signature: its Manager

_____ By: _____
Lewis Swezy, Manager

Name: _____

Signature: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by Lewis Swezy, as the Manager of Ocean Breeze Manager, LLC, a Florida Limited Liability Company, as the Manager of Ocean Breeze East Apartments, LLC, a Florida Limited Liability Company, who is personally known to me, or who has produced _____ as identification.

Signature: _____

(NOTARY SEAL ABOVE)

Notary Name: _____
Notary Public - State of Florida

ATTACHMENT 1
LEGAL DESCRIPTION OF THE PROPERTY

Lots 3 through 12 inclusive, in Block 1, AND Lots 1 and 2, in Block 1, LESS all that portion of Lots 1 and 2 lying West of the East right-of-way line for Seacrest Boulevard, as shown on Road Plat Book 5 at Page 182, AND LESS a 20 foot return curve area for road right-of-way, Palm Beach Club Estates, according to the Plat thereof, as recorded in Plat Book 11, Page 43, of the Public Records of Palm Beach County, Florida.

AND

The South ½ of the East 1/2 of Lot 2, of Subdivision of the West 1/2 of the Southeast 1/4 of Section 21, Township 45 South, Range 43 East, LESS the South 125 feet thereof; LESS the parcels conveyed to the City of Boynton Beach by Official Records Book 852, Page 642, AND LESS the right-of-way for Seacrest Boulevard, as shown on Road Plat Book 5, at Page 182, according to the Plat thereof, as recorded in Plat Book 1, Page 4, of the Public Records of Palm Beach County, Florida.