



**Department of Planning,
Zoning & Building**

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West Palm Beach, FL 33411-2741
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Board of County
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MEMORANDUM

TO: The Honorable Steven L. Abrams, Chairman, and
Members of the Board of County Commissioners

FROM: Lorenzo Aghemo, Planning Director *L.A.*

DATE: January 10, 2013

RE: **Osprey Oaks, Replacement of Restrictive Covenant for Workforce
Housing**

The Board of County Commissioners (BCC) approved the Osprey Oaks PUD on May 25, 2006, via Resolution R-2006-928. The approval included 208 residential units of which 37 units were required to be deed restricted to families within the 80-120% of Area Median Income (AMI) range. The units were to be deed restricted for ten years under ownership or twenty years should they be rental. The property owner has now proposed the units as a rental product.

A Restrictive Covenant was recorded May 25, 2007 (OR Book 21720 Page 1256) which implemented the deed restricted unit obligation. The development was approved using the "Interim" Workforce Housing Program (WHP) prior to the establishment of the current WHP.

The document contained language that did not reflect the correct time limitations as outlined in the Development Order. The recorded document states 25 years for the term. The covenant is now being updated (attached) to include definitions and modify the requirements of the rental program. Specifically, the recorded document requires a thirty day waiting period prior to occupation. The current Workforce Housing Program does not contain a waiting period prior to occupation of rental units as this would be too onerous on both the potential tenant and the property owner. Additionally, the new covenant will identify rental pricing in accordance with the Florida Housing Finance Corporation Multifamily Rental Program annual rents, and will reflect the twenty year affordability period for rental units. Staff supports these changes.

With BCC approval the attached covenant will replace the current document.

Attachment

- C: Verdenia Baker, Deputy County Administrator
- Rebecca Caldwell, Executive Director, PZB
- Jon MacGillis, Zoning Director
- Robert P. Banks, Assistant County Attorney
- Patrick Rutter, Chief Planner, Planning Div.

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Prepared by and return to:

BR Osprey Oaks Acquisition LLC
c/o JKM Developers, LLC
102 NE 2nd Street, #203
Boca Raton, FL 33432

The MASTER DECLARATION OF RESTRICTIVE COVENANTS FOR WORKFORCE HOUSING IN ACCORDANCE WITH THE PALM BEACH COUNTY INTERIM WORKFORCE HOUSING PROGRAM Recorded at OR BK 21720 PG 1256 of the Public Records of Palm Beach County Florida is replaced and superseded in its entirety as follows:

THIS MASTER DECLARATION OF RESTRICTIVE COVENANTS FOR WORKFORCE HOUSING IN ACCORDANCE WITH THE PALM BEACH COUNTY INTERIM WORKFORCE HOUSING PROGRAM (the "Covenant") is made by and executed this _____ day of _____, 2013 by BR Osprey Acquisition, LLC, a Delaware limited liability company.

Declarant is the owner of that certain property which is described on Exhibit "A", attached hereto and made part hereof (the "Property"). Pursuant to the development order approving the Development containing Required Workforce Housing Units (hereinafter defined), Declarant has agreed to execute and record this Covenant whereby the Required Workforce Housing Units which are specified as follows

37 TOTAL WORKFORCE HOUSING UNITS

MODERATE 1 (80 to 100%)
MODERATE 2 (100+ to 120%)

and shall be owned, held, transferred, sold, conveyed, leased, used, occupied, mortgaged, or otherwise encumbered, by and subject to the provisions and restrictions of this Covenant.

1. Definitions: In this Covenant, the following words and phrases shall have the meanings indicated, unless the context requires otherwise.

a. "Compliance Period" shall be: twenty (20) years (non-recurring) from the date of the issuance of the certificate of occupancy for each building. Upon issuance of the last certificate of Occupancy for the Property the parties agree to amend this Covenant so as to properly identify the expiry date of the Compliance Period for each building. In the event the Development containing Required Workforce Housing Units is sold prior to expiration of the twenty (20) year term, the new Owner assumes the requirement for the number of remaining years as of the date of sale (other than a foreclosure sale of an Eligible Mortgage or deed in lieu of foreclosure transfer). This Covenant shall terminate if the Property is sold at a foreclosure sale resulting from the foreclosure of an Eligible Mortgage or a transfer by deed in lieu of foreclosure to an Institutional Lender as defined in 1 g of this Covenant.

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- b. “County”** means Palm Beach County, a political subdivision of the State of Florida.
- c. “Declarant”** means BR Osprey Acquisition, LLC, a Florida limited liability company, and its successors or assigns, including any or all successors or assigns holding an interest in a Required Workforce Housing Unit (other than any Institutional Lender holding an interest in a Required Workforce Housing Unit or any Resident who holds an interest under its Lease).
- d. “Development”** shall refer to that certain approved residential development to be located in Palm Beach County, Florida, approximately at the southeast corner of Hypoluxo Road and Jog Road, a/k/a/ Osprey Oaks PUD bearing Palm Beach County DRO file number 2005-130.
- e. “Eligible Household”** means a household income, within one of the following ranges, based on the Area Median Income (AMI) for Palm Beach County, for a household consisting of four persons as published annually by the United States Department of Housing and Urban Development (HUD), within the following categories: Moderate 1 (80 to 100%) and Moderate 2 (100+ to 120%).
- f. “Eligible Mortgage”** means any mortgage, deed of trust, or other security instrument held by an Institutional Lender.
- g. “Institutional Lender”** shall mean a bank, savings and loan association, insurance company, real estate or mortgage investment trust, pension fund, an agency of the United States Government, mortgage banker, credit union or any other lender generally recognized as an institutional lender that is independent from the Owner.
- h. “Lease”** means a written lease agreement conveying the right to the regular, exclusive occupancy of a unit including any Required Workforce Housing Unit in the Development by a person or persons other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to a fee, service, gratuity, or emolument.
- i. “Lease Addendum”** means the document approved by the Monitoring Entity which serves to verify the income of a resident occupying a unit. This document shall contain the rented unit number, the names of all residents, total income for all residents within the unit and the income category they fall within. This document shall be signed and notarized by both the resident and the Owner.
- j. “Monitoring Entity”** shall mean the Palm Beach County Administrator, his/her designee or another department or other entity assigned the responsibility by the Palm Beach County Administrator.

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k. “Owner” means the record title holder of the Development containing Required Workforce Housing Units, but not including (i) any Institutional Lender, (ii) any holder or beneficiary of a mortgage or other form of security instrument affecting title to the Required Workforce Housing Units, or (iii) any party acquiring title to the Property through a foreclosure sale of an Eligible Mortgage or a deed in lieu of foreclosure transfer of ownership. Declarant shall be deemed to be the Owner of the Development containing Required Workforce Housing Units until such time as Declarant conveys fee simple title of such Development containing Required Workforce Housing Units to another owner.

l. “Required Workforce Housing Unit” means those units within the Development for which the income and rent restrictions set forth in this Covenant shall be recorded in accordance with the provision of Section 2 of this Covenant. The Required Workforce Housing Units and the respective targeted income and rent categories of each unit are identified herein. There are 37 Required Workforce Housing Units within the Development. Allocated within the income ranges identified herein. Notwithstanding anything contained in this Covenant to the contrary, the Owner shall have the right to allow lower targeted income range Residents to lease units in the higher income categories provided Owner assesses such rents based on the Residents maximum rent category.

m. “Resident” means any person other than an Owner occupying all or any portion of a unit, including any Required Workforce Housing Unit in the Development pursuant to a Lease.

- 2. Occupancy:** A Required Workforce Housing Unit in the Development subject to this Covenant shall be leased only by an Eligible Household during the Compliance Period. Owner shall obtain documentation of eligibility (meeting County income standards as defined in this Covenant) prior to entering into a Lease for any Required Workforce Housing Unit. The Owner shall require, at Lease execution, the Resident and the Owner to execute a Lease Addendum certifying the household income. Said addendum shall be notarized. This addendum shall serve as the income verification information required by the Monitoring Entity for the purposes of approving the Resident for occupancy of a Workforce Housing Unit. The Owner shall forward the notarized addendum to the Monitoring Entity within ten (10) business days of execution of the Lease. The Monitoring Entity shall advise Owner of sufficiency of Lease Addendum within ten (10) business days of receipt. The County shall periodically confirm consistency for all Required Workforce Housing Units as provided in this Covenant. Each Required Workforce Housing Unit leased to another Eligible Household during the Compliance Period shall be leased at an attainable housing cost as provided for in Section 2 of this Covenant. Owner shall not require consent or approval of the Monitoring Entity prior to entering into a Lease.

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Rent ranges for Required Workforce Housing Units within the Moderate 1 (80 to 100%) and Moderate 2 (100+ to 120%) shall be based upon the annual "Florida Housing Finance Corporation Multifamily Rental Programs" schedule published annually by the Florida Housing Finance Corporation, and shall take into account the number of bedrooms contained in each Required Workforce Housing Unit.

Owner shall have the right during the term of the Compliance Period to set rents for the Property for each of the two (2) income categories anywhere between the low and top end rent ranges for that year based on the household income and bedroom count requirements as provided for in this Covenant. Owner shall have the right to set rents below the low end rent range should the rental market not support the low end rent range contemplated within this Covenant.

In the event the Florida Housing Finance Corporation Family Rental Program information is no longer published, the parties agree to work collectively to identify an alternative source for publishing this information. Such alternative source shall use a similar formula currently used by the Florida Housing Finance Corporation.

3. Recording and Term of Covenant: This Master Covenant shall be recorded prior to issuance of the first building permit and the affordability term shall commence upon certificate of occupancy of the first unit and shall expire twenty (20) years (non-recurring) thereafter. In the event the Development containing the Required Workforce Housing Units is sold prior to expiration of the twenty (20) year term (other than as a result of a foreclosure sale of an Eligible Mortgage or deed in lieu of foreclosure transfer of ownership), the new Owner assumes the requirement for the number of remaining years as of the date of sale. If the Development is converted to into a condominium or other "for sale" project (other than by a subsequent owner after a foreclosure sale of an Eligible Mortgage or deed in lieu of foreclosure transfer of ownership), then prior to entering into the first contract for sale of a Required Workforce Housing Unit as a "for sale" unit, the Owner of the Development shall enter into a new Covenant for a "for sale" project in accordance with the current restrictions for such units as established by the Monitoring Entity and shall require all purchasers to abide by the restrictions.

4. Restriction: Declarant shall include in every lease for a Required Workforce Housing Unit, a restriction stating as follows:

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“This unit is to be leased to and occupied by an Eligible Household in accordance with the Osprey Oaks PUD Master Declaration of Restrictive Covenants for Workforce Housing recorded in ORB _____ Page _____ of the Public Records of Palm Beach County, Florida”. This restriction shall be in effect for twenty (20) years (non-recurring) from the date of issuance of the certificate of occupancy for each building. Owner shall be responsible for the collection and verification of income and shall submit to the Monitoring Entity the Lease Addendum signed by the Resident and Owner properly notarized certifying the Residents income as required under this Covenant. Owner shall only be required to collect such information as would a prudent landlord leasing multi-family housing in the West Palm Beach marketplace. Income verification information may include (i) W-2 (ii) copy of Residents pay stub (iii) banking information, or similar types of financial information as deemed reasonable necessary by Owner to ensure the Resident is qualified to occupy a Workforce Housing Unit as provided for in this Covenant.

The Owner is obligated to provide all of the 37 Required Workforce Housing Units within the Development, allocated within the income ranges. The 37 Required Workforce Housing Units may only be leased and occupied by Eligible Households.

5. Certification of Eligible Households: The Declarant and the County and their successors and assigns agree that the procedures for certification of an Eligible Household of a Required Housing Unit under this paragraph shall not discriminate against any applicant based upon any protected class included in any federal, state or local fair housing law. Within the time frames provided for in this Covenant, the Owner shall provide the Monitoring Entity with a copy of the Lease Addendum certifying a Residents income. Owner shall not be required to obtain approval from the Monitoring Entity prior to execution of the Lease by an Eligible Household or occupancy by such Eligible Household of a Required Workforce Housing Unit. The Monitoring Entity shall be provided the right to enter the management office for the purposes of reviewing Residents files to ensure the Owner is in compliance with the provisions of this Covenant. All records shall be maintained within Palm Beach County and be available during normal business hours. The County shall have the right to copy any records related to performance of compliance with this Covenant.

If the Monitoring Entity determines that the Eligible Household occupying a Required Workforce Housing Unit is not an Eligible Household or is deemed Eligible but not within the identified WHP income category then the Monitoring Entity shall notify the Owner of that determination.

6. Occupancy of Workforce Units: (37) units in the Development have been identified and required by condition of approval for the Development to be leased only as Required Workforce Housing Units. These (37) units, out of a total of (208) units in the Development, may only be leased and occupied by Eligible Households. The remaining (171) units in the Development are non-restricted market units. It is the express intent of the Palm Beach County Board of County Commissioners did provide a density bonus above the allowable density for the Development in exchange for the provision of workforce housing opportunities.

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7. Compliance:

(a) The Owner of this Development containing Required Workforce Housing Units, its successors and assigns, shall furnish to the Monitoring Entity such information about the Required Workforce Housing Units as the County may request at each occasion of change in occupancy, including, but not limited to, the identity of the Eligible Household, the identity of the occupants, and the Lease Addendum signed and certified by the Resident and Owner certifying the household income as collected by the Owner at the time of leasing (but in no event other private financial information of Residents) all for the purpose of assuring compliance with this Covenant.

(b) The Owner of the Development containing the Required Workforce Housing Units shall disclose the terms of this Covenant to any subsequent owners, successors and assigns, in any and all sales documents, agreements, lease agreements, etc., and in deeds, leases or other instruments conveying an interest in the Development containing the Required Workforce Housing Units. It is further agreed that the covenants and restrictions herein are for public purposes.

(c) Should amendment(s) be made to the Workforce Housing ordinance during the term of this Covenant the Owner shall have the right but not the obligation to incorporate such changes into this Covenant. The Monitoring Agency agrees to work with the Owner to amend this Covenant through all necessary and normal procedures which are subject to the approval of the County, at its sole and absolute discretion.

8. Annual Report: No later than June 1 of each year during the Compliance Period, the Owner of the Development containing the Required Workforce Housing Units shall provide to the Monitoring Entity an annual report detailing compliance with the terms of this Covenant. The Annual Report shall be on a form provided by the Monitoring Entity and shall contain, at a minimum, sufficient information and documentation to prove the compliance of each Required Workforce Housing Unit with the terms of this Covenant as follows:

- (a) The unit number of the Required Workforce Housing Unit and the Owner/Lessee of such unit;
- (b) The names of all Residents of the Required Workforce Housing Unit;
- (c) Identify any changes in Owner/Residents of the Required Workforce Housing Unit from the previous year's report;
- (d) Documentation that the Owner verified and certified the income eligibility of the Eligible Household occupying the Required Workforce Housing Unit; and
- (e) The location of all designated Required Workforce Housing Units within the Development at the time of the Annual Report.

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9. Covenant to Run with the Land: it is intended and agreed that this Covenant and the restrictions contained in this Covenant shall run with the land constituting the Property and shall be binding upon any subsequent owner(s) of the Property, its successors and assigns for the benefit of and shall be enforceable by the County and its successors and assigns, and shall be binding on all parties and all persons claiming under it for the Compliance Period of this Covenant (see Section 1.a.), provided however, that this Covenant shall junior, subordinate and inferior to the lien of a holder of any first mortgage on the Development and in the event of a foreclosure sale by such holder or a deed in lieu of foreclosure transfer of ownership (or its successors or assigns) the terms of this Covenant shall be extinguished as follows:

(a) Third Party Notice Provision – Right of First Refusal: The Declarant/Owner shall require all loan/financing documentation for this Development containing Required Workforce Housing Units to contain a provision that at the initiation of any formal foreclosure proceedings, the lender shall provide the County with a Notice of Pending Foreclosure, in order to provide the County the right to cure, or assume the loan within one hundred twenty (120) days of receipt of this Notice, in order to protect the County's investment in this Development. Notwithstanding anything contained herein to the contrary, Lender shall not be obligated to remain at a standstill during the notice period and shall have the right to prosecute its claim against Owner but Lender shall not have the right to finalize its foreclosure proceedings or accept a deed in lieu of foreclosure transfer of ownership until expiration of the one hundred twenty (120) day notice period. This notice shall be provided to both the Executive Director and the Director of Planning, Palm Beach County Planning, Zoning and Building Department, 2300 N. Jog Road, West Palm Beach, Florida, 33411-2741.

(b) Should the one hundred and twenty (120) day Right of First Refusal time frame pass, these affordability restrictions will terminate only if the Lender (holder of a first mortgage) is an Institutional Lender, and upon occurrence of any of the following termination events: (i) foreclosure of an Eligible Mortgage, (ii) transfer by deed in lieu of foreclosure of an Eligible Mortgage, or (iii) assignment of an FHA insured mortgage to HUD.

(c) The County shall from time to time, within a reasonable response time consistent with the public records statute, after a written request from an Institutional Lender, execute, acknowledge and deliver a statement (i) certifying that this Covenant is unmodified and in full force and effect or, if modified, stating the nature of such modification and certifying that this Covenant as so modified, is in full force and effect, (ii) acknowledging that there are not, to the County's knowledge, any uncured defaults, or specifying such defaults if any are claimed, and (iii) certifying such other matters as such Institutional Lender may reasonably request.

10. Further Assurances: The County shall, upon request of any Institutional Lender, execute and deliver such further documents, agreements, and/or information as necessary to effectuate the subordination of this Covenant to any Eligible Mortgage provided that the County determines the form and content of such documents is legally sufficient and is consistent with this Covenant.

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11. Modifications: This Covenant shall not be extinguished, enlarged, modified, or replaced except with written authorization of the Board of County Commissioners of Palm Beach County and the Declarant.

12. Fair Housing: The Declarant, the County and the Owners of the Development containing Required Workforce Housing Units, and their successors and assigns, agree that the leasing of all Required Workforce Housing Units shall be conducted in conformity with federal, state, and local Fair Housing laws.

13. Enforcement: The County, its successors or assigns, in the event of the occupancy or vacancy of any Required Workforce Housing Unit in violation of the provisions hereof, shall be entitled to seek any relief available including, but not limited to, specific performance of the provisions hereof, injunctive relief, rescission of any unauthorized sale or lease, tolling of the time of the running time under the term of this Covenant and the Palm Beach County code enforcement process. The Monitoring Entity shall have the right to inspect and monitor the use of the Required Workforce Housing Units to insure compliance with this Covenant. In any action required to enforce the provisions of this Covenant, each party shall be responsible for their own attorney's fees and other costs of bringing the action.

14. County Review: Compliance with this Covenant is subject to audit by the Palm Beach County Internal Auditor and subject to review by the Palm Beach County Inspector General.

15. Severability and Conflicts: Subject to Section 8, in the event of any conflict between this Covenant and any other agreement entered into by the Owner, this Covenant shall control. Should any provision of this Covenant be found invalid or unenforceable by a court of competent jurisdiction, said invalidity, unenforceability or ineffectiveness shall not affect the validity of the remaining provisions which shall remain in full force and effect.

16. Inspection: the Monitoring Entity shall have the right to inspect and monitor the use of the Required Workforce Housing Units to insure compliance with this Covenant.

17. Reports: All notices and reports required hereunder shall be sent to the following addresses or a subsequent address as it may from time to time be changed: To the County: Executive Director, Department of Economic Sustainability, 100 Australian Avenue, Suite 500, West Palm Beach, Florida, 33406; and, Planning Director, Palm Beach County Planning Division, Vista Center Building, 2300 N. Jog Road, West Palm Beach, Florida 33411-2741. To the Declarant/Owner: BR Osprey Acquisition LLC, c/o JKM Developers, LLC., 102 NE 2nd Street, #203, Boca Raton, FL 33432.

18. Recorded in the Public Records: This Covenant shall be recorded in the Official Public Records of Palm Beach County within five (5) days of execution of this Covenant. A copy of the recorded Covenant shall be provided to the Planning Director, Palm Beach County Planning, Vista Center Building, 2300 N. Jog Road, West Palm Beach, Florida 33411-2741.

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19. Jurisdiction and Venue: The jurisdiction of any action regarding this Covenant shall be in the State of Florida. Venue of any court proceeding to enforce this covenant shall be in Palm Beach County, Florida.

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IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this _____ day of _____ 2012. Undersigned have executed this instrument on the date first above written.

Signed, Sealed and Delivered in the presence of:

Declarant:

BR Osprey Acquisition LLC,
a Delaware limited liability company
By: JKM Developers, LLC, a Florida
limited liability company, its Manager

(Witness Signature)

By: _____

(Print Name)

Name: _____

(Witness Signature)

Title: _____

(Print Name)

Date: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this _____ day of _____, 2012, by _____, as Managing Manager of JKM Developers, LLC, a Florida limited liability company, as Manager of BR Osprey Acquisition LLC, a Delaware limited liability company, on behalf of said company, who is personally known to me or has produced _____ as a type of identification.

Notary Signature

Print Name: _____

Notary Public, State of: _____

Serial Number, if any: _____

My commission expires: _____

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Board of County Commissioners of Palm Beach County, Florida,

on the ____ day of _____, 2013.

SHARON R. BOCK, CLERK
& COMPTROLLER

PALM BEACH COUNTY, FLORIDA,
BY ITS BOARD OF COUNTY COMMISSIONERS

By: _____

Deputy Clerk

By: _____

Chair

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

County Attorney

Prepared by and return to:

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EXHIBIT "A"

Legal Description