

1 WHEREAS, the proposed amendment constitutes a Broward County permitted
2 small scale amendment to the Plan pursuant to Section 163.3187(1), Florida Statutes,

3 BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF
4 BROWARD COUNTY, FLORIDA:

5 Section 1. The Broward County Land Use Plan is hereby amended by
6 Amendment PC 21-6 in the City of Pompano Beach, set forth in Exhibit "A," attached
7 hereto and incorporated herein.

8 Section 2. Severability.

9 If any portion of this Ordinance is determined by any court to be invalid, the invalid
10 portion will be stricken, and such striking will not affect the validity of the remainder of this
11 Ordinance. If any court determines that this Ordinance, in whole or in part, cannot be
12 legally applied to any individual, group, entity, property, or circumstance, such
13 determination will not affect the applicability of this Ordinance to any other individual,
14 group, entity, property, or circumstance.

15 Section 3. Effective Date.

16 1. The effective date of the plan amendment set forth in this Ordinance shall
17 be the latter of:

18 (a) Thirty-one (31) days after the adoption of this Ordinance;

19 (b) The date a final order is issued by the Department of Economic Opportunity
20 or the Administration Commission finding the amendment to be in
21 compliance;

22 (c) If the Department of Economic Opportunity or the Administration
23 Commission finds the amendment to be in noncompliance, pursuant to
24 Section 163.3184(8)(b), Florida Statutes, the date the Board of County

Commissioners nonetheless, elects to make the plan amendment effective notwithstanding potential statutory sanctions;

(d) If a Declaration of Restrictive Covenants is applicable, as per Exhibit B, the date the Declaration of Restrictive Covenants is recorded in the Public Records of Broward County; or

(e) If recertification of the municipal land use plan amendment is required, the date the municipal amendment is recertified.

2. This Ordinance is effective as of the date provided by law.

ENACTED

FILED WITH THE DEPARTMENT OF STATE

EFFECTIVE

Approved as to form and legal sufficiency:
Andrew J. Meyers, County Attorney

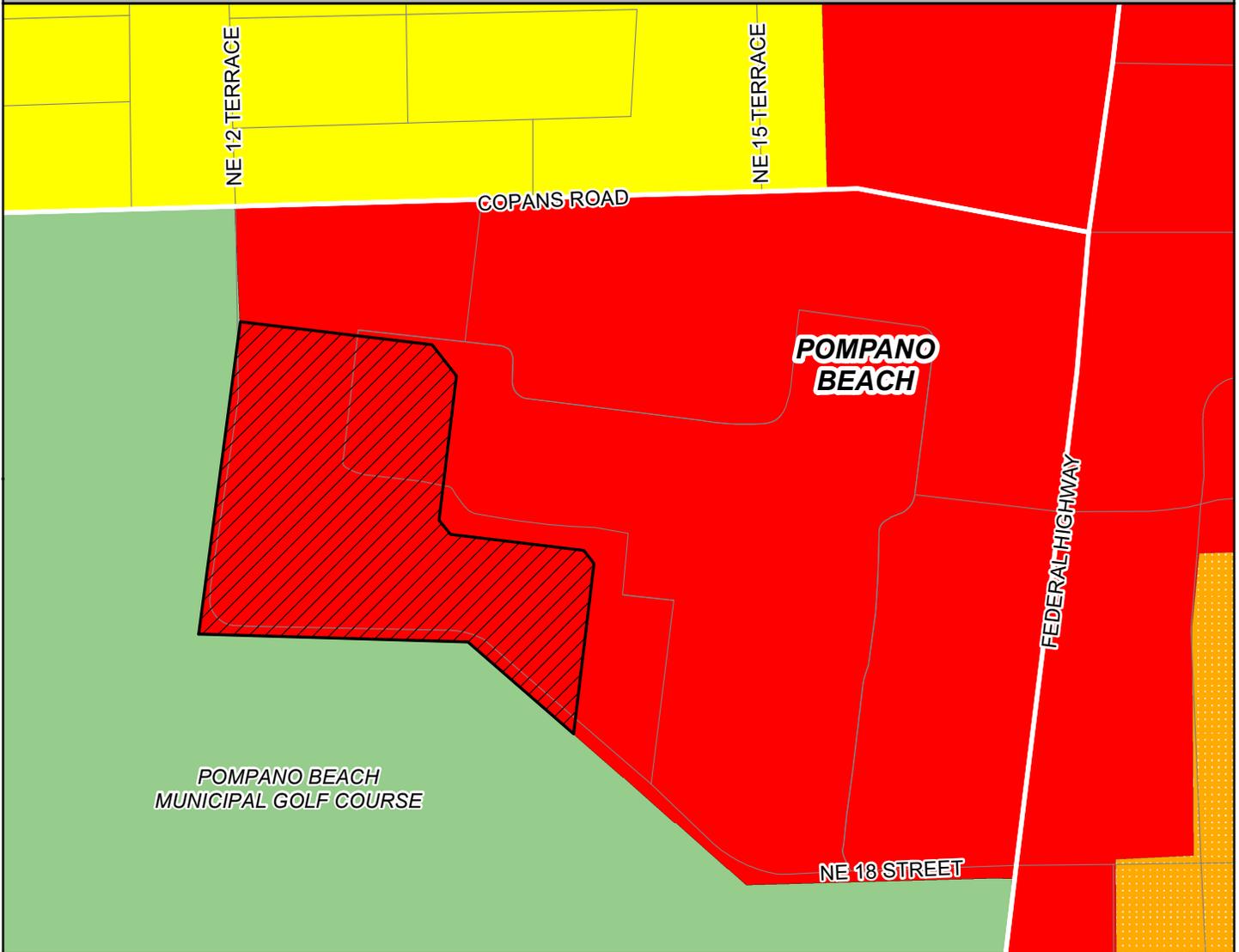
By /s/ Maite Azcoitia 07/28/2021
Maite Azcoitia (date)
Deputy County Attorney

MA/gmb
PC21-6 City of Pompano Beach.SmallScaleOrd.
07/28/21
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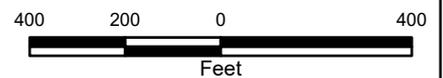
EXHIBIT A

BROWARDNEXT - BROWARD COUNTY LAND USE PLAN FUTURE LAND USE DESIGNATIONS AMENDMENT PC 21-6

Current Land Use: Commerce
Proposed Land Use: Irregular (29.5) Residential
Gross Acres: Approximately 12.1 acres



-  Site
-  Low (5) Residential
-  Low-Medium (10) Residential
-  Commerce
-  Recreation and Open Space



SECTION I
AMENDMENT REPORT
BROWARD COUNTY LAND USE PLAN
PROPOSED AMENDMENT PC 21-6
(POMPANO BEACH)

RECOMMENDATIONS/ACTIONS

DATE

I. Planning Council Staff Recommendation

June 15, 2021

Planning Council staff finds that the proposed amendment is generally consistent with the policies of the BrowardNext – Broward County Land Use Plan, recognizing the applicant’s voluntary commitments to 1) restrict 15% of the proposed dwelling units as moderate-income affordable housing units (up to 120% of median income) for a minimum of 30 years and 2) submit notice to the FAA prior to the issuance of residential building permits and provide written notification of the proximity to the Pompano Beach Airpark in any leases or deeds for residential units built on the property. Therefore, it is recommended that the proposed amendment be approved.

Effectiveness of the approval of the land use plan amendment shall not occur until the municipal recertification of the local amendment is complete, subject to the recordation in the public records of Broward County, Florida, to the satisfaction of Broward County, of a legally enforceable agreement, such as a Declaration of Restrictive Covenants, to memorialize the voluntary commitments proffered by the applicant, as an inducement for Broward County to favorably consider its application.

As the Planning Council is aware, the Broward County Charter requires at least one Planning Council public hearing and Article 1.2(A) of the *Administrative Rules Document: BrowardNext* outlines the following circumstances in which a second Planning Council public hearing may be recommended or required:

- (1) At its initial public hearing, the Planning Council takes an action to recommend denial of a proposed amendment; or
- (2) At its initial public hearing, the Planning Council takes an action to recommend approval subject to meeting specific criteria or policy prior to a second Planning Council public hearing; or
- (3) At its initial public hearing, the Planning Council votes by a majority of the members present with a minimum of six (6) affirmative votes for a second Planning Council public hearing; or
- (4) If the County Commission requests by a vote of the majority of members present to request a second Planning Council public hearing; or
- (5) If an objection or comment on adverse impacts to important state resources or facilities is issued during the State of Florida Chapter 163 review process; or
- (6) If State of Florida Chapter 163 requires or is modified to require a second local planning agency public hearing.

RECOMMENDATIONS/ACTIONS (continued)

DATE

I. Planning Council Staff Recommendation (continued)

June 15, 2021

If the Planning Council chooses to require a second Planning Council public hearing per Article 1.2(A)(1)(2) or (3), such recommendation must be made as part of its motion.

In addition, if the Planning Council does not require a second Planning Council public hearing and the Broward County Land Use Plan amendment is adopted by the County Commission, this action by the Planning Council shall be considered the “conditional” recertification of the municipal land use plan amendment, which directly correlates to the referenced BCLUP amendment. The land use plan amendment will not be deemed effective until such time as the Planning Council Executive Director and Attorney determine that the municipality has fulfilled all application requirements for recertification of local land use plans, as outlined in the *Administrative Rules Document: BrowardNext*. The Planning Council Executive Director will issue a written letter of effectiveness to the municipality upon satisfaction of the same.

II. Planning Council Public Hearing Recommendation

June 24, 2021

Approval per Planning Council staff recommendation, including not requiring a second Planning Council public hearing. (Vote of the board; Unanimous; 16-0: Blackwelder, Breslau, Brunson, Castillo, Gomez, Good, Grosso, Hardin, Maxey, Parness, Rich, Romaner, Rosenof, Ryan, Williams and DiGiorgio)

SECTION II
AMENDMENT REPORT
PROPOSED AMENDMENT PC 21-6

INTRODUCTION AND APPLICANT'S RATIONALE

- I. Municipality: Pompano Beach
- II. County Commission District: District 2
- III. Site Characteristics
- A. Size: Approximately 12.1 acres
- B. Location: In Section 25, Township 48 South, Range 42 East; generally located on the south side of Copans Road, between Federal Highway/U.S. 1 and Northeast 12 Terrace.
- C. Existing Use: Vacant retail and ancillary surface parking
- IV. Broward County Land Use Plan (BCLUP) Designations
- A. Current Designation: Commerce
- B. Proposed Designation: Irregular (29.5) Residential
- C. Estimated Net Effect: Addition of 356 dwelling units
Zero (0) dwelling units currently permitted by the Broward County Land Use Plan
Reduction of 12.1 acres of commerce use
- V. Existing Uses and BCLUP Designations Adjacent to the Amendment Site
- A. Existing Uses: *North:* Retail
East: Retail
South: Golf course
West: Golf course
- B. Planned Uses: *North:* Commerce
East: Commerce
South: Recreation and Open Space
West: Recreation and Open Space

INTRODUCTION AND APPLICANT'S RATIONALE (continued)

VI. Applicant/Petitioner

- A. *Applicant:* The Morgan Group
- B. *Agent:* Dennis D. Mele, Esq., Greenspoon Marder, LLP
- C. *Property Owners:* Sterling Organization
Macy's Inc.

VII. Recommendation of
Local Governing Body:

The City of Pompano Beach recommends approval of the proposed amendment.

EXHIBIT B

The attached draft “Declarations of Restrictive Covenants” have been submitted and are required to be executed and recorded by the applicant prior to the effective date.

ATTACHMENT 1

Return to: (enclose self-addressed stamped envelope)

Name: Elizabeth Adler, Esq.

Address:

Greenspoon Marder LLP
200 E. Broward Boulevard, Suite 1800
Fort Lauderdale, FL 33301

This Instrument Prepared by:

Elizabeth Adler, Esq.
Greenspoon Marder LLP
200 E. Broward Boulevard, Suite 1800
Fort Lauderdale, FL 33301



SPACE ABOVE THIS LINE FOR PROCESSING DATA

SPACE ABOVE THIS LINE FOR PROCESSING DATA

DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS ("Declaration") made this _____ of _____, 2021, by **MORGAN GROUP DEVELOPMENT LLC**, a Texas limited liability company, ("Declarant"), which shall be for the benefit of **BROWARD COUNTY, FLORIDA**, a political subdivision of the State of Florida ("County")

WITNESSETH:

WHEREAS, Declarant is the fee simple owner of land located in the City of Pompano Beach, Florida ("City"), more particularly described in **Exhibit "A"** ("Property"); and

WHEREAS, Declarant made applications to the City and the County Planning Council requesting that the land use plan designation on the Property be changed from Commercial on the City Land Use Plan and Commerce on the County Land Use Plan to Irregular (29.5) Residential on both the City Land Use Plan and County Land Use Plan in conjunction with redevelopment of the Property ("Project"); and

WHEREAS, the Property is being developed as a rental apartment complex, subject to the affordable housing restrictions set forth in this Declaration. Declarant reserves the right to convert the Property, or a portion thereof, to a condominium or other fee simple ownership structure in the future, subject to the affordable housing restrictions as set forth in this Declaration (a "Conversion"); and

WHEREAS, in connection with the Project, Declarant has voluntarily agreed to place certain restrictions on the development of the Property as set forth below in favor of the County and the City; and

WHEREAS, Declarant agrees to make certain provisions for affordable housing for the period of time provided herein.

NOW, THEREFORE, in consideration of the foregoing premises and the promises and covenants herein contained, Declarant hereby declares that the Property shall be subject to the covenants, restrictions, and regulations hereinafter set forth, all of which shall run with the land and which shall be binding upon all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns.

1. Recitations. The recitals set forth above are true and correct and are incorporated into this Declaration by this reference.

2. Covenants. Declarant hereby declares the following:

Fifteen (15) percent of the residential units to be constructed on the Property (as set forth on the final site plan approved by the City) shall be affordable moderate income units as defined in the County Comprehensive Plan, and as further restricted by this Declaration ("Affordable Housing Units"). If fifteen (15) percent of the actual residential units to be constructed on the Property does not yield a whole number of Affordable Housing Units, the partial of Affordable Housing Units yielded shall be rounded up to the next whole number.

3. Affordable Housing Units Offered For Sale. In the event of a Conversion, Declarant hereby declares all Affordable Housing Units offered for sale shall be purchased in accordance with the following:

- (a) All Affordable Housing Units constructed on the Property shall be used solely as each owner's principal residence and shall be used solely for residential purposes. No Affordable Housing Unit may be used for any non-residential purpose, other than home offices when permitted by applicable zoning regulations; and
- (b) All Affordable Housing Units shall be purchased solely by persons who meet the following criteria at the time of purchase of an Affordable Housing Unit. "Purchased" shall be defined to mean by sale, inheritance, court order, or other legal method of transfer or acquisition.

1) One or more natural persons or a family, the total annual adjusted gross household income of which does not exceed 120 percent of the median annual adjusted gross income for Broward County, adjusted for family size, shall occupy said Affordable Housing Unit. Said limits to be published annually by Broward County or other appropriate governmental entity designated by Broward County. For the purposes of this provision, the term "adjusted gross income" shall mean all wages, assets, regular cash or noncash contributions or gifts from persons outside the household and such other resources and benefits as may be determined to be income by the United States Department of Housing and Urban Development, adjusted for family size, less deductions allowable under section 62 of the Internal Revenue Code. For the purposes of this provision, the term

"adjusted for family size" means adjusted in a manner which results in an income eligibility level which is lower for households with fewer than four people, or higher for households with more than four people, based upon a formula as established by the United States Department of Housing and Urban Development; and

2) The purchaser of the Affordable Housing Unit shall have monthly mortgage payments (including taxes and insurance) that do not exceed thirty (30) percent of their monthly adjusted gross income; and

3) Excluding government subsidies, the down payment, if any, for the purchase of the Property must not exceed twenty (20) percent of the purchase price; and

4) During the term of this Declaration, as defined herein, every deed of sale or equivalent document transferring title to the Affordable Housing Unit shall include a restriction stating as follows:

This property is to be sold and occupied as an "Affordable Housing Unit," in accordance with the Declaration of Restrictive Covenants recorded in the Official Records of Broward County at O.R. Book _____, Page _____.

5) Prior to any transfer of title or closing on a purchase of an Affordable Housing Unit, each purchaser shall request written certification that the criteria in (b) 1), 2), and 3) above have been satisfied from the City or from an agent designated by the City for the purpose of providing such certifications. Purchaser shall not be required to comply with this provision if the City does not approve or deny the request within thirty (30) days of purchaser's request.

4. Affordable Housing Units Offered For Rent. Declarant hereby declares all Affordable Housing Units offered for rent shall be rented in accordance with the following:

(a) All Affordable Housing Units constructed on the Property shall be used solely as each renter's principal residence and shall be used solely for residential purposes. No Affordable Housing Unit may be used for any non-residential purpose, other than home offices when permitted by applicable zoning regulations; and

(b) All Affordable Housing Units shall be rented solely by persons who meet the following criteria at the time of lease:

1) One or more natural persons or a family, the total annual adjusted gross household income of which does not exceed 120 percent of the median annual adjusted gross income for Broward County, adjusted for family size, shall occupy said Affordable

Housing Unit. Said limits to be published annually by Broward County or other appropriate governmental entity designated by Broward County. For the purposes of this provision, the term "adjusted gross income" shall mean all wages, assets, regular cash or noncash contributions or gifts from persons outside the household and such other resources and benefits as may be determined to be income by the United States Department of Housing and Urban Development, adjusted for family size, less deductions allowable under section 62 of the Internal Revenue Code. For the purposes of this provision, the term "adjusted for family size" means adjusted in a manner which results in an income eligibility level which is lower for households with fewer than four people, or higher for households with more than four people, based upon a formula as established by the United States Department of Housing and Urban Development; and

2) The renter of an Affordable Housing Unit shall have monthly rental payments (including taxes and insurance) that do not exceed thirty (30) percent of their monthly adjusted gross income.

(c) On an annual basis, beginning no later than 12 months after the effective date of this Declaration, the owner of an Affordable Housing Unit offered for rent shall request written certification that the criteria in 4(b) has been satisfied from the City or from an agent designated by the City for the purpose of providing such certifications. Said owner of an Affordable Housing Unit offered for rent shall not be required to comply with this provision if the City does not approve or deny the request within thirty (30) days of said owner's request.

5. Amendments. Except as otherwise provided herein, this Declaration shall not be modified, amended or released as to any portion of the Property except by written instrument, executed by the then owner or owners(s) of the portion of the Property affected by such modification, amendment, or release and approved in writing by the County Commission and City. The appropriate governmental authority of the County and City shall execute a written instrument effectuating and acknowledging such modification, amendment or release. Any amendment, modification or release of this Declaration shall be recorded in the Public Records of Broward County, Florida, at the then owner's sole expense. No amendment to this Declaration shall be necessary in the event of a Conversion (as may occur from time to time).

6. Recordation and Effective Date.

(a) This Declaration shall not become effective ("Effective Date") until the later of (i) Final Approval and (ii) recordation amongst the Public Records of Broward County, Florida. As used herein, "Final Approval" shall mean final approval and adoption of the City plan amendment application and the County plan amendment application, and the expiration of any appeal periods applicable thereto without an appeal having been taken or, if taken, when finally dismissed with no further appeal permitted.

(b) Once recorded, this Declaration shall run with the Property for the sole benefit of the

City and the County and does not operate as a restriction in favor of any Property owner, and shall bind all successors and assigns to the title of the Property.

- (c) From and after such time as any Affordable Housing Unit is conveyed by Declarant to a third party purchaser, following a Conversion, Declarant shall have no further obligations under this Declaration with respect to that particular Affordable Housing Unit and such third party purchaser shall be obligated to comply with all of the provisions of this Declaration with respect to said Affordable Housing Unit.

7. Severability. If any court of competent jurisdiction shall declare any section, paragraph or part of this Declaration invalid or unenforceable, then such judgment or decree shall have no effect on the enforcement or validity of any other section, paragraph or part hereof, and the same shall remain in full force and effect.

8. Captions, Headings and Titles. Articles and paragraph captions, headings and titles inserted throughout this Declaration are intended as a matter of convenience only and in no way shall such captions, headings or titles define, limit or in any way affect the subject matter or any of the terms and provisions thereunder or the terms and provisions of this Declaration.

9. Context. Whenever the context requires or admits, any pronoun used herein may be deemed to mean the corresponding masculine, feminine or neuter form thereof, and the singular form of any nouns or pronouns herein may be deemed to mean the corresponding plural form thereof and vice versa.

10. Term, Release and Termination. The restrictions, covenants, rights and privileges granted, made and conveyed herein ("Affordable Housing Restrictions") shall be valid for a period of thirty (30) years from the Effective Date ("Term"); thereafter the Affordable Housing Restrictions shall be of no further force and effect and shall automatically terminate without the consent of the City or the County, or the necessity to record any instrument in the Public Records of Broward County, Florida.

11. Remedies for Violation. In the event the Declarant, its successors or assigns, violate any of the covenants and restrictions contained herein, Declarant hereby acknowledges and agrees that the County and/or City, as applicable, may withhold further permits and approvals with respect to the Property. The City and the County are the beneficiaries of these covenants and restrictions, and as such, the City and the County may enforce these covenants and restrictions by action at law or in equity, including without limitation, a decree of specific performance or mandatory or prohibitory injunction, against any person or persons, entity or entities, violating or attempting to violate the terms of these covenants and restrictions.

12. Waiver, Applicable Law, and Venue. Any failure of the City or the County to enforce these restrictive covenants shall not be deemed a waiver of the right to do so thereafter. This document shall be construed in accordance with the laws of Florida and venue shall be Broward County, Florida.

IN WITNESS WHEREOF, Declarant has executed this Declaration on the day first above written

**EXHIBIT A
LEGAL DESCRIPTION
PROPERTY**

LEGAL DESCRIPTION: (DEVELOPMENT PARCEL)

A PORTION OF PARCEL "A", "POMPANO CITI CENTRE PLAT", ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 174, PAGES 45 THRU 52, INCLUSIVE, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST WESTERLY SOUTHWEST CORNER OF SAID PARCEL "A"; THENCE NORTH 07°35'43" EAST ON THE WESTERLY LINE OF SAID PARCEL "A" 768.57 FEET; THENCE SOUTH 83°08'37" EAST 470.80 FEET; THENCE SOUTH 38°08'37" EAST 96.01 FEET; THENCE SOUTH 06°51'23" WEST 354.55 FEET; THENCE SOUTH 38°08'37" EAST 44.46 FEET; THENCE SOUTH 83°08'37" EAST 327.24 FEET; THENCE SOUTH 38°08'37" EAST 40.55 FEET; THENCE SOUTH 06°51'23" WEST 418.45 FEET TO A POINT ON THE SOUTH LINE OF SAID PARCEL "A"; THENCE NORTH 48°54'35" WEST ON SAID SOUTH LINE 340.83 FEET; THENCE NORTH 88°19'09" WEST ON SAID SOUTH LINE 656.86 FEET TO THE POINT OF BEGINNING.

SAID LANDS SITUATE, LYING AND BEING IN THE CITY OF POMPANO BEACH, BROWARD COUNTY, FLORIDA, AND CONTAIN 528,390 SQUARE FEET (12.1302 ACRES) MORE OR LESS.

ATTACHMENT 2

RECEIVED
6/14/2021

Return to: (enclose self-addressed stamped envelope)

Name: Elizabeth Adler, Esq.

Address:

Greenspoon Marder LLP
200 E. Broward Boulevard, Suite 1800
Fort Lauderdale, FL 33301

This Instrument Prepared by:

Elizabeth Adler, Esq.
Greenspoon Marder LLP
200 E. Broward Boulevard, Suite 1800
Fort Lauderdale, FL 33301

SPACE ABOVE THIS LINE FOR PROCESSING DATA

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DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS ("Covenant") made this _____ of _____, 2021, by, MORGAN GROUP DEVELOPMENT LLC, a Texas limited liability company ("Declarant"), which shall be for the benefit of **BROWARD COUNTY, FLORIDA**, a political subdivision of the State of Florida ("County").

WITNESSETH:

WHEREAS, the real property subject to this Covenant is that land located in the City of Pompano Beach, Florida ("City"), more particularly described in **Exhibit "A"** ("Property"); and

WHEREAS, Declarant made an application to the City and County to amend the City and County land use plans to designate the Property as Irregular (29.5) Residential (collectively "Application"); and

WHEREAS, in connection with the Application to amend the City and County land use plans, Declarant has agreed to place certain restrictions on the development of the Property as set forth below in favor of the County.

NOW, THEREFORE, in consideration of the foregoing premises and the covenants herein contained, Declarant hereby declares that the Property shall be subject to the covenants, restrictions, and regulations hereinafter set forth, all of which shall run with the land and which shall be binding upon all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns.

1. Recitations. The recitals set forth above are true and correct and are incorporated into this Covenant by this reference.

2. Covenants. Declarant declares the following:

a. The Declarant will submit the required Notice of Proposed Construction or Alteration (FAA Form 7460-1) to the Federal Aviation Administration (“FAA”) prior to issuance of a building permit for a residential dwelling unit on the Property. Evidence of said submission shall be provided to County with the application for Development Review Approval; and

b. Declarant shall provide written notification of the proximity of the Property to the City Airpark in any leases or deeds for residential units built on the Property.

3. Amendments. Except as otherwise provided herein, this Covenant shall not be modified, amended or released as to any portion of the Property except by written instrument, executed by the then owner or owners(s) of the portion of the Property affected by such modification, amendment, or release and approved in writing by the County Commission.

4. Recordation and Effective Date. This Covenant shall become effective and recorded in the Public Records of Broward County, Florida, upon approval by the County of the requested Application and the expiration of all appeal periods or, if an appeal is filed, the final conclusion of such appeal in a manner that does not materially and adversely affect the County’s approval of the Application (“Effective Date”). Once recorded, this Covenant shall run with the land for the sole benefit of the County and shall bind all successors-in-interest with respect to the Property. This Covenant shall not give rise to any other cause of action by any parties other than the County, and no parties other than the County shall be entitled to enforce this Covenant. Any failure by the County to enforce this Covenant shall not be deemed a waiver of the right to do so thereafter.

5. Severability. If any court of competent jurisdiction shall declare any section, paragraph or part of this Covenant invalid or unenforceable, then such judgment or decree shall have no effect on the enforcement or validity of any other section, paragraph or part hereof, and the same shall remain in full force and effect. The agreed upon venue for any disputes arising hereunder shall be Broward County, Florida.

6. Captions, Headings and Titles. Articles and paragraph captions, headings and titles inserted throughout this Covenant are intended as a matter of convenience only and in no way shall such captions, headings or titles define, limit or in any way affect the subject matter or any of the terms and provisions thereunder or the terms and provisions of this Covenant.

7. Context. Whenever the context requires or admits, any pronoun used herein may be deemed to mean the corresponding masculine, feminine or neuter form thereof, and the singular form of any nouns or pronouns herein may be deemed to mean the corresponding plural form thereof and vice versa.

IN WITNESS WHEREOF, Declarant has executed this Covenant on the day first above written.

**EXHIBIT A
LEGAL DESCRIPTION
PROPERTY**

LEGAL DESCRIPTION: (DEVELOPMENT PARCEL)

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DRY