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MEMORANDUM

TO: Jo Sesodia, Director
Urban Planning Division

FROM: Alexis Marrero Koratich, Assistant County Attorney

DATE: May 10, 2022

RE: **Subordination of Declaration of Restrictive Covenants; HTG VILLAGE VIEW, LLC**

HTG VILLAGE VIEW, LLC, a Florida limited liability company ("Owner") has requested the Board of County Commissioners ("Board") to consider entering into two (2) Subordination Agreements for Regulatory Agreement ("Subordination") to subordinate two (2) existing Declaration of Restrictive Covenants related to (i) the waiver of impact fees for the construction of affordable housing; and (ii) the waiver of impact fees for the construction of age restricted housing. The proposed Subordination subordinates the following:

- (i) Declaration of Restrictive Covenants (Age Restricted) dated August 9, 2019, recorded on December 12, 2019, at Instrument #116231456, in the Public Records of Broward County, securing Fifty-six Thousand Eight Hundred Twenty and 00/100 Dollars (\$56,820.00) in impact fees waived by Broward County for the construction of one hundred (100) units that restrict the age of its residents to prohibit the residence of school age children within the property in a manner consistent with federal, state, or local regulations ("Declaration I"). Declaration I requires that the units shall be sold or rented only to those persons meeting the applicable age restrictions in the Broward County Code of Ordinances. The restrictions in Declaration I are effective in perpetuity; and
- (ii) Declaration of Restrictive Covenants (Affordable Housing) dated September 30, 2019, recorded on December 12, 2019, at Instrument #116231455, in the public records of Broward County, securing Forty-Two Thousand Six Hundred Twenty-five and 00/100 Dollars (\$42,625.00) in fees waived by Broward County for the construction of fifteen (15) very low and eighty-five (85) low income affordable housing units ("Declaration II," Declaration I and Declaration II are collectively as the "Declarations"). Declaration II requires that the units constructed on the property be rented to persons meeting the low or very low income limitations for twenty (20) years. There are approximately seventeen (17) years remaining on the restriction period.

Owner has indicated that they are in the process of securing additional financing from Walker & Dunlop, LLC ("Lender"), in the original principal loan amount of Eight Million Five Hundred Seventy Thousand and 00/100 (\$8,570,000.00). As a condition of the loan, Lender is requiring that the Declarations be subordinated.

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Owner voluntarily entered into that certain Extended Low-Income Housing Agreement dated December 2, 2021, recorded on December 15, 2021, at Instrument #117804468, in the Public Records of Broward County with the Florida Housing Finance Corporation ("Substitute Assurance"). The Florida Housing Finance Corporation gave owner certain tax credits in exchange for owner entering into the Substitute Assurance. The Substitute Assurance requires that Owner irrevocably set aside for a term of fifty (50) years: (i) one hundred (100) residential units to be both rent-restricted and occupied by individuals whose income does not exceed certain specified income limitations; (ii) one hundred (100) residential units for the elderly, defined as persons sixty-two (62) years of age or older; and (iii) fifteen (15) units to be set aside for extremely low income persons, not less than eight (8) units of which must be committed to persons with special needs (as defined in the Substitute Assurance).

If the Board were to enter into the Subordination, the effect of Declaration I would be abrogated in time given the fact that the restrictions under Declaration I are effective in perpetuity and the Substitute Assurance only restricts the property for a term of fifty (50) years. Moreover, while the Substitute Assurance sets aside one hundred (100) residential units, the income restrictions differ from those specified in Declaration II. The Substitute Assurance specifically sets aside: (i) fifteen (15) residential units where the area median income ("AMI") of the individual resident does not exceed thirty percent (30%); (ii) forty (40) residential units the AMI does not exceed sixty percent (60%); and forty-five (45) units where the AMI does not exceed seventy (70%). Whereas, Declaration II specifically sets aside: (i) fifteen (15) very low income units, defined as fifty percent (50%) AMI and eighty-five (85) low income affordable housing units, defined as eighty percent (80%) AMI. Notwithstanding, it is worth noting that while the set aside units do differ between Declaration II and the Substitute Assurance, the Substitute Assurance restricts the property for fifty (50) years, which exceeds the term under Declaration II by about thirty (30) years.

In the event of foreclosure the County's right to restrict the property as outlined in Declaration I and Declaration II would not survive. Notwithstanding, the restrictions of the Substitute Assurance, unless terminated, would remain in place for fifty (50) years.

The proposed Subordination is in approvable form, subject to disclosure to the Board of the following nonstandard provisions:

- Provide that any transfer of the property in connection with the event of a foreclosure or deed in lieu of foreclosure will not require the County's consent.
- Obligate County to provide Lender with a concurrent copy of each material notice under or with respect to each Declaration.
- Provide that Lender shall have the right (but not be obligated) to cure any default under each Declaration.
- Provide that County shall not be permitted to modify, amend, change, or alter the Declarations without the written consent of Lender.
- Provide that in the event of foreclosure, deed in lieu of foreclosure, or similar disposition of the property by Lender, no consent will be required of the County.
- Limit County's ability to enforce the terms of the Declarations by any remedy available in law or in equity that could result in (i) the transfer of the property, (ii) collection or possession of rent generated from the property; (iii) appointment of a receiver for the property; (iv) application of insurance or condemnation proceeds other than as approved by Lender; (v) removal or replacement of the current property manager of the property; or (vi) a material adverse effect on Lender's security interest in the property.