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MEMORANDUM

TO: Jo Sesodia, Director
Planning and Development Management Division

FROM: Alexis Marrero Koratich, Assistant County Attorney /s/ Alexis Marrero Koratich

DATE: May 13, 2021

RE: Proposed Amendments Subordinating Declaration of Restrictive Covenants; Pinnacle at Peacefield, Ltd.

In conjunction with the refinancing of the property, the Board of County Commissioners ("Board") has been asked to consider four (4) Amendments ("Amendments") subordinating two (2) Declarations of Restrictive Covenants related to the waiver of impact fees for the construction of affordable housing and two (2) Declarations of Restrictive Covenants related to the waiver of educational impact fees prohibiting the residence of school aged children in a manner consistent with federal, state, or local laws or regulations. The proposed Amendments subordinate the following (items (i), (ii), (iii), and (iv) below are hereinafter referred to individually as the "Declaration", collectively as the "Declarations"):

- (i) Declaration of Restrictive Covenants (Age Restricted) dated September 28, 2018, recorded on November 1, 2018, at Instrument #115422444, in the public records of Broward County, securing Fifty-eight Thousand, Seven Hundred and 00/100 Dollars (\$58,700.00) in educational impact fees waived by Broward County for the construction of thirty-one (31) units, which 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. The Declaration 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 this Declaration are effective in perpetuity; and
- (ii) Declaration of Restrictive Covenants (Age Restricted) dated September 28, 2018, recorded on November 1, 2018, at Instrument #115422168, in the public records of Broward County, securing One Hundred Seventy-four Thousand, Six Hundred Twenty-eight and 00/100 Dollars (\$174,628.00) in educational impact fees waived by Broward County for the construction of 89 units, which 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. The Declaration 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 this Declaration are effective in perpetuity; and

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- (iii) Declaration of Restrictive Covenants (Affordable Housing) dated September 28, 2018, recorded on November 1, 2018, at Instrument #115422527, in the public records of Broward County, securing Twenty Thousand, Three Hundred Twenty-nine and 00/100 Dollars (\$20,329.00) in fees waived by Broward County for the construction of three (3) very low and twenty-eight (28) low income affordable housing units. The Declaration 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; and
- (iv) Declaration of Restrictive Covenants (Affordable Housing) dated September 28, 2018, recorded on November 1, 2018, at Instrument #115422487, in the public records of Broward County, securing Fifty-eight Thousand, Three Hundred Sixty-four and 00/100 Dollars (\$58,364.00) in fees waived by Broward County for the construction of nine (9) very low and eighty (80) low income affordable housing units. The Declaration 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.

Pinnacle at Peacefield, Ltd., the owner of the property ("Pinnacle"), has indicated that they are in the process of refinancing a loan secured by the property through a loan to be made by Freddie Mac by and through Citibank, N.A., in the original principal loan amount of Three Million Five Hundred Thousand (\$3,500,000.00) pursuant to a Multifamily Loan and Security Agreement between Federal Home Loan Mortgage Corporation ("Lender") and Pinnacle. Notwithstanding the foregoing, Pinnacle voluntarily entered into the following agreements (items (i), (ii), and (iii) below are hereinafter referred to individually as the "Supplemental Declaration", collectively as the "Supplemental Declarations"):

- (i) Declaration of Restrictive Covenants for Home Multi-Family Rental United dated December 18, 2018, and recorded on December 19, 2018, at Instrument #115512514, in the public records of Broward County. The Supplemental Declaration confirms that in consideration of Pinnacle having received certain HOME Funds from the City of Hollywood, Pinnacle voluntarily agreed to restrict the use of the property to (i) allow only for the development and operation of affordable multi-family residential units; and (ii) to rent the units located on the Property only to Income Eligible Households as defined in and required by the HOME and NSP-1 Funding Agreement. The term Income Eligible Household refers to household(s) as defined in 24 CFR Section 92.2, consisting of a family as defined in 24 CFR Part 5.403, that is/are eligible for one (1) of the five (5) designated Low-Home Rent Units and have an anticipated gross income that does not exceed fifty percent (50%) of the median annual income for the area, as determined by HUD, with adjustments for family size for households within Broward County. Both of the restrictions in this Supplemental Declaration are binding on the property for a period of thirty (30) years, twenty-seven (27) years of which are remaining and are not affected by the Amendments; and

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- (ii) Declaration of Restrictive Covenants for NSP-1 Multi-Family Rental Units dated December 18, 2018, and recorded on December 19, 2018, at Instrument #115512516, in the public records of Broward County. The Supplemental Declaration confirms that in consideration of Pinnacle having received certain NSP-1 Funds from the City of Hollywood, Pinnacle voluntarily agreed to restrict the use of the property to (i) allow only for the development and operation of affordable multi-family residential units; and (ii) to rent the units located on the Property only to Income Eligible Households as defined in 24 CFR Section 92.2, consisting of a family as defined in 24 CFR Part 5.403, with an annual anticipated gross income at the time of initial occupancy that does not exceed sixty percent (60%) of the median annual income for the area, as determined by HUD, with adjustments for family size for households within the metropolitan statistical area for Broward County, Florida, or the non-metropolitan statistical area for the State of Florida, whichever is greater. Both of the restrictions in this Supplemental Declaration are binding on the property for a period of thirty (30) years, twenty-seven (27) years of which are remaining and are not affected by the Amendments; and

- (iii) Extended Low-Income Housing Agreement dated November 13, 2020, and recorded on November 16, 2020, at Instrument #116865573, in the public records of Broward County. The Supplemental Declaration confirms (i) that in consideration of Pinnacle having received certain tax credits from the Florida Housing Finance Corporation, Pinnacle voluntarily agreed that forty percent (40%) or more of the residential units would be rent-restricted and occupied by individuals whose income is sixty percent (60%) or less of the area median income; (ii) for an irrevocable commitment of fifty (50) year period; and (iii) to irrevocably waive for the period of fifty (50) years the right to charge or collect rents on the set aisle units at rates determined by the rental market. The agreement further confirms that Pinnacle agreed to set aside certain rental units for the Elderly in accordance with the Fair Housing Act and that six (6) out of the twelve (12) extremely low income units set aside be for those with Special Needs as defined in the agreement. The developed property owned by Pinnacle has a total of one hundred twenty (120) units. Under Declarations (i) and (ii), all one hundred twenty (120) units were restricted with respect to the age of the units' residents to prohibit the residence of school age children within the property in a manner not inconsistent with federal, state, or local regulations. Notwithstanding the foregoing, there is no indication in this Supplemental Declaration as to the exact number of units set aside for the Elderly in accordance with the Fair Housing Act. The restrictions in this Supplemental Declaration are binding on the property for a period of fifty (50) years, forty-nine (49) of which are remaining and not affected by the Amendments. As stated above the restrictions found in Declarations (i) and (ii) are effective in perpetuity, and the restrictions found in Declarations (iii) and (iv) are effective for twenty (20) years, seventeen (17) of which are remaining.

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In sum, adopting the Amendments would abrogate the effect of Declarations (i) and (ii) in time given the fact that the restrictions under Declarations (i) and (ii) are effective in perpetuity. Additionally, since there is no indication as to the exact number of units that will be set aside for the Elderly in accordance with the Fair Housing Act under Supplemental Declaration (iii), the scope of Declarations (i) and (ii) may be abrogated in scope. Moreover, Declarations (iii) and (iv) in the aggregate call for twelve (12) very low income units and one hundred eight (108) low income units to be set aside for rental purposes for twenty (20) years in order to obtain the fee waivers. Supplemental Declaration (i) satisfies the requirement that one hundred eight (108) low income units be set aside, however, it only sets aside five (5) very low income units. Supplemental Declaration (ii) also sets aside forty percent (40%) of the units for low income units, but does not make any provisions for very low income units. Therefore, the effect of adopting the Amendments would also abrogate the scope of Declaration (iii) and (iv) with respect to the set aside of very low income units.

The proposed Amendments are 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.