

Andrew J. Meyers  
County Attorney



OFFICE OF THE COUNTY ATTORNEY  
115 S. Andrews Avenue, Suite 423  
Fort Lauderdale, Florida 33301

954-357-7600 · FAX 954-357-7641

**MEMORANDUM**

**TO:** Jo Sesodia, Director  
Planning and Development Management Division

**FROM:** Maite Azcoitia, Deputy County Attorney /s/ Maite Azcoitia

**DATE:** April 23, 2021

**RE:** **Proposed Amendment Subordinating Declaration of Restrictive Covenants; Northwest Gardens III**

In conjunction with the refinancing of the property, the Board of County Commissioners ("Board") has been asked to consider an Amendment subordinating a Declaration of Restrictive Covenants related to the waiver of impact fees for the construction of affordable housing ("Amendment"). The proposed Amendment subordinates the Declaration of Restrictive Covenants recorded on May 2, 2011, at Instrument #110017347, Official Records Book 47887, page 103, of the public records of Broward County, securing One Hundred Sixty-four Thousand Three Hundred Eighty-seven Dollars (\$164,387) in fees waived by Broward County for the construction of 30 very low (50% of AMI) and 120 low (80% of AMI) income affordable housing units ("Declaration"). 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 ten (10) years remaining on the restriction period.

Northwest Properties III, Ltd., the lessor of the property and owner of the project, has indicated that the new mortgage will be insured through the Federal Housing Administration, which requires that at least 90% of the units be covered by: (i) a Section 8 Project Based Rental Assistance contract or similar rental assistance program serving very low income residents or (ii) an affordability use restriction under the Low Income Housing Tax Credit ("LIHTC") program or similar state or locally sponsored program, with rents sized at no greater than 30% of the income eligibility requirements for occupancy under the LIHTC program, for at least fifteen (15) years. Additionally, as per that certain First Amendment to Extended Low-Income Housing Agreement in favor of the Florida Housing Finance Corporation, recorded on December 14, 2010, at Instrument #109756309, Official Records Book 47585, page 1168, of the public records of Broward County, a minimum of 30 units are to be rented to persons meeting extremely-low (30% of AMI) income requirements and the remaining up to 120 units are to be rented to persons meeting the low income requirements for the first 15 years of the project. Thereafter, a minimum of 15 units are to be rented to persons meeting the extremely-low income requirements and the remaining up to 135 units are to be rented to persons meeting low income requirements for the following 35 years.

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

- Provides for termination of the Declaration upon foreclosure or deed in lieu of foreclosure
- Limits County's ability to enforce the terms of the Declaration to available surplus cash from the project