



ANDREW J. MEYERS, County Attorney

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MEMORANDUM

TO: Jo Sesodia, Director, Urban Planning Division

FROM: Alexis I. Marrero Koratich, Assistant County Attorney /s/ *Alexis I. Marrero Koratich*

DATE: June 1, 2023

RE: **Subordination of Declaration of Restrictive Covenants; Tallman Pines HR, Ltd.**

Tallman Pines HR, Ltd., a Florida limited partnership ("Project Owner") has requested that the Board of County Commissioners ("Board") consider entering into that certain Agreement to Subordinate to HUD Declaration of Restrictive Covenants and Use Agreement, thereby subordinating the County's interest in 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 "Subordination"). The following are proposed for subordination:

- Declaration of Restrictive Covenants (Affordable Housing) dated March 13, 2023, recorded on March 30, 2023, at Instrument #118762970, in the Official Records of Broward County, securing Thirty-One Thousand Nine Hundred Sixty-Nine and 00/100 Dollars (\$31,969.00) in impact fees waived by Broward County for the construction of eight (8) very low income and sixty-seven (67) low income affordable housing units ("Declaration I"). Declaration I requires that the units constructed on the property be rented to persons meeting the low or very low income limitations for thirty (30) years. There are approximately thirty (30) years remaining on the restriction period; and
- Declaration of Restrictive Covenants (Age Restricted) dated March 13, 2023, recorded on March 30, 2023, at Instrument #118762946, in the Official Records of Broward County, securing Sixty-One Thousand One Hundred Twenty-five and 00/100 Dollars (\$61,125.00) in fees waived by Broward County for the construction of seventy-five (75) units that meet the definition of "housing for older persons" in a manner consistent with federal, state, or local laws and regulations ("Declaration II," Declaration I and Declaration II are collectively referred to as the "Declarations"). Declaration II 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 II are effective in perpetuity.

The U.S. Department of Housing and Urban Development ("HUD") has authorized the disposition of a long-term leasehold interest in the property from the Broward County Housing Authority ("PHA"), as property owner, to the Project Owner. As a condition of HUD's disposition approval, the PHA and Project Owner will execute that certain Declaration of Restrictive Covenants and

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Use Agreement for the benefit of HUD ("Substitute Assurance"). HUD requires, as a condition of the disposition, that the County and the PHA agree to subordinate the Declarations to the Substitute Assurance. The Substitute Assurance requires that Project Owner construct an affordable housing development, that will include seventy-five (75) dwelling units, for a term of thirty (30) years.

If the Board were to enter into the Subordination, Declaration I would be abrogated in scope. While the Substitute Assurance requires that Project Owner construct an affordable housing development, including seventy-five (75) dwelling units for a term of thirty (30) years, the income limitation is specifically for "households with incomes at or below eighty percent (80%) of area median income at initial occupancy or otherwise permitted by HUD, or that provide services or amenities that will be used primarily by low-income households as defined by the [U.S. Housing Act of 1937, as amended, 42 U.S.C. 1437 et. seq.]." Whereas Declaration I specifically sets aside: (i) eight (8) very low income units, defined as fifty percent (50%) AMI; and (ii) sixty-seven (67) low income affordable housing units, defined as eighty percent (80%) AMI. Moreover, Declaration II would be abrogated completely in scope and in time. The Substitute Assurance does not contain any age restrictions. The restrictions in Declaration II are effective in perpetuity.

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 thirty (30) years.

The Board should be made aware of the following nonstandard provisions in the Subordination:

- So long as the Substitute Assurance, and all extensions thereto, is in effect, the Declarations shall in all respects be subordinate.
- The Subordination extends to and continues in effect with respect to any future amendment, extension, renewal, or any other modification of the Substitute Assurance or the Declarations.
- In the event of conflict between/among the Declarations and the Substitute Assurance, the Substitute Assurance controls.
- The Subordination will survive bankruptcy and foreclosure.