

ATTACHMENT A
Additional Documents
for Application Package
Part II

The City's Development Services department requested a summary review of the below declarations in connection with the proposed affordable housing development located at 1101 Hillcrest Drive ("Hillcrest Village").

By way of background, Hillcrest Village is an attainable housing development that encompasses the three parcels outlined below as Parcel 1 (Blue), Parcel 2 (Yellow), and Parcel 3 (Red). The residential building, community amenities, and most of the parking will be located on Parcel 3; there will also be some parking located on Parcel 2:



Attached to this memorandum is an Affidavit of Land Surveyor dated June 17, 2025 ("Affidavit").

Declaration Review:

1. **Declaration of Restrictions dated March 2, 1976 and recorded March 10, 1976 in the Public Records of Broward County, Florida at OR Book 6515, Page 916, and re-recorded on March 23, 1976 in the Public Records of Broward County, Florida at OR Book 6529, Page 709 ("Declaration")**
 - a. Parcels affected:
 - i. Parcels 1 and 2 are included in this Declaration, see Affidavit ¶ 4.a.i.
 - b. Scope of Declaration:
 - i. Restricts property described in Declaration to golf course and recreation, unless majority of then owners agree to change covenant.
 - ii. Contains reservation of rights for Owner to develop residential dwellings units under certain circumstances.
 - c. Affidavits of Compliance with Declaration:
 - i. **Developer Affidavit, dated October 29, 2009, recorded at Instrument 109037853, OR BK 46744, Page 983 of the Official Records of Broward County, Florida ("Original**

Affidavit”)

1. Parcels affected:

- a. Parcels 1 and 2 are included in the legal description in Exhibit A, *see* Affidavit ¶ 4.b.i.

2. Scope of Affidavit:

- a. Superseded by First Amended Affidavit. See below.

ii. **First Amended and Restated Developer Affidavit, dated June 17, 2016, recorded at Instrument 113841558 and re-recorded at Instrument 113769743 of the Official Records of Broward County, Florida (“Amended Affidavit”)**

1. Parcels affected:

- a. Exhibit A is the property owned by the affiant/Owner; Exhibit B is the property where approval needed to develop residential units; Exhibit C is the contribution agreement.
- b. Parcel 1 and Parcel 2 are included in the legal within Exhibit A, *see* Affidavit ¶ 4.c.i.
- c. Only Parcel 1 is included in the legal within Exhibit B, *see* Affidavit ¶ 4.c.ii.

2. Scope of Affidavit:

- a. Pursuant to paragraph 11, the Amended Affidavit supersedes the Original Affidavit.
- b. Pursuant to the Declaration, required to obtain majority approval for development plan. Amended Affidavit confirms approval obtained and details the contribution agreement provided.
- c. Plans attached to the contribution agreement in Exhibit C do not include Parcel 3.

2. **Declaration of Restrictive Covenants, dated March 26, 2009, recorded at Instrument 108516219, OR BK 46115, Page 669 of the Official Records of Broward County, Florida. (“Original Declaration”)**

a. Parcels affected:

- i. Parcel 1 and Parcel 2 are included in the legal within Exhibit A, *see* Affidavit ¶ 4.d.i.
- ii. Parcel 1 is included in the legal description within Exhibit B recorded at page 677. However, Parcel 1 is not included in the legal description within Exhibit B recorded starting at page 678, *see* Affidavit ¶ 4.d.ii.

b. Scope of Original Declaration:

- i. Entered in conjunction with land use plan amendment.
- ii. Declarant/Owner – Hillcrest Country Club, LP.
- iii. For the benefit of Broward County.
- iv. Defines “Project” as the Hillcrest Golf & Country Club development.
- v. Outlines: (i) various roadway improvements to be developed prior to issuance of a certificate of occupancy for any residential use approved as part of the Project; (ii) an easement to be recorded prior to issuance of building permits for the Project;

and (iii) landscape design for the Project.

- vi. Exhibit A is property owned by Declarant.
- vii. Exhibit B is area of easement, which is for a “fifteen (15) foot wide strip along the northern edge of the Property for the purpose of expanding the public right-of-way along Washington Street...”
 - 1. See section a. above where Exhibit B includes two different Exhibit Bs. The second Exhibit B, starting at page 678, appears to match the easement location per the Original Declaration. This second Exhibit B does not include any of the relevant parcels.

c. Amendments to this Original Declaration:

- i. **Amendment to Declaration of Restrictive Covenant dated August 9, 2016 recorded in Official Records Instrument No. 113886678 (“First Amendment”)**
 - 1. Declarant/Owner – Pulte Home Corporation.
 - 2. Revisions to roadway improvements and timeline in Original Declaration.
 - 3. Does not affect Parcels 1, 2, or 3, see Affidavit ¶ 4.e.i.
- ii. **Second Amendment to Declaration of Restrictive Covenants dated August 1, 2019 in Official Records Instrument No. 116271897 (“Second Amendment”)**
 - 1. Declarant/Owner – Pulte Home Company, LLC.
 - 2. Revisions to roadway improvements and timeline in Original Declaration.
 - 3. Does not affect Parcels 1, 2, or 3, see Affidavit ¶ 4.f.i.
- iii. **Third Amendment to Declaration of Restrictive Covenants dated November 10, 2020 and recorded in Official Records Instrument No. 117095252**
 - 1. Declarant/Owner – Pulte Home Company, LLC.
 - 2. Revisions to roadway improvements and timeline in Original Declaration.
 - 3. Owner agreed to post security for roadway improvements.
 - 4. Does not affect Parcels 1, 2, or 3, see Affidavit ¶ 4.g.i.

3. **Declaration of Restrictive Covenants, dated June 17, 2016, recorded at Instrument 113769741 of the Official Records of Broward County, Florida, re-recorded at Instrument 113841556 of the Official Records of Broward County, Florida.**

a. Parcels affected:

- i. This declaration has four exhibits – Exhibit A is the “Property” owned by the declarant; Exhibit B is the “Concept Plan” to be developed; Exhibit C is the location of the real property where the houses for the development are located; Exhibit D is the location of the neighborhood parks to be constructed by developer.
 - 1. Parcel 1 and Parcel 2 are included within the legal description in Exhibit A, see Affidavit ¶ 4.h.i.
 - 2. Parcel 3 is not included within the legal description in Exhibit A, see Affidavit ¶ 4.h.ii.
 - 3. Parcel 1, Parcel 2, and Parcel 3 are not included within the legal description in Exhibit C, see Affidavit ¶ 4.h.iii.

b. Scope of declaration:

- i. Noted above, the declaration attaches a “Concept Plan” as Exhibit B. The declaration requires that the development be done in “substantial conformity” with the Concept Plan. The declaration then goes further to describe what it means to develop the Concept Plan in “substantial conformity”:

For purposes of this Declaration, the term “substantial conformity” shall mean that the development density and intensity as depicted and described on the Concept Plan have not “materially changed”. The Concept Plan shall be deemed to have “materially changed” only if: (1) the residential density exceeds 645 units; (2) the number of buildings shown on the Concept Plan have increased by more than 20%; and (3) the height of buildings exceeds thirty-eight (38) feet when measured from finish ground floor elevation to median roof elevation. Without limiting the foregoing, the Property shall also be deemed to be developed in substantial conformity with the Concept Plan in the event the location, orientation, configuration, engineering features and architectural features of the proposed residential improvements are modified (i) to comply with governmental regulations, mandates, approvals, development agreements and all other requirements necessary to obtain building and other applicable permits and (ii) as set forth in paragraph 6 of this Agreement.

1. The requirements for being a “material change” are connected with the phrase “and” – thus, all three are required to qualify.
- ii. **In addition to not being a part of the legal for property owned by the declarant in Exhibit A, Parcel 3 also does not appear to be included in the Concept Plan attached to the declaration.**
- iii. It is our reading of the declaration that the development planned for Parcels 1 and 2 as part of Hillcrest Village (green space, drainage, parking) does not rise to the level of a “material change” as defined in the declaration and thus does not disrupt the declaration requirement that the Concept Plan be developed in “substantial conformity.”
 1. See also, City Ordinance O-2019-23, which Ordinance memorializes the land swap relating to Parcels 1 and 2, removing those Parcels from the subject site plan.
 2. See also, paragraph 19 of the declaration which provides:
 19. Presumption of Compliance. Where construction of the Project has occurred on the Property or any portion thereof, pursuant to a lawful permit issued by the City (or any successor municipal corporation), and inspections made and approval of occupancy given by the City (or any successor municipal corporation), then such construction, inspection and approval shall create a rebuttable presumption that the buildings or structures thus constructed comply with the intent and spirit of this Declaration.
- iv. Paragraph 15 of the declaration requires 80% approval for an amendment to this declaration from the then residential unit owners. Based on the above information detailing that (i) Parcel 3 is not a part of the declaration or Concept Plan; (ii) that Parcels 1 and 2 were removed from the ultimate site plan that constructed the Concept Plan; (iii) and/or that the Hillcrest Village development does not constitute a “material change” to the Concept Plan, it is our position that the proposed Hillcrest Village does not require any amendment to the declaration and therefore

the approval provision of paragraph 15 does not apply.

4. **Declaration of Restrictive Covenants, dated June 17, 2016, recorded at Instrument 113769742 of the Official Records of Broward County, Florida, re-recorded at Instrument 113841557 of the Official Records of Broward County, Florida.**
 - a. Parcel 3 is not included in the legal description in Exhibit A, *see* Affidavit ¶ 4.i.i.
 - b. Parcel 1, Parcel 2, and Parcel 3 are not included in the legal description in Exhibit B, *see* Affidavit ¶ 4.i.ii.
5. **Declaration of Restrictive Covenants, dated August 9, 2016, recorded at Instrument 113886677 of the Official Records of Broward County, Florida.**
 - a. Parcel 1 and Parcel 2 are included in the legal within Exhibit A, *see* Affidavit ¶ 4.j.i.
 - i. See item 7. below- this declaration was corrected, and Parcel 1 and Parcel 2 were removed from the legal description.
6. **Declaration of Restrictive Covenants, dated September 26, 2016, recorded at Instrument 113956146 of the Official Records of Broward County, Florida.**
 - a. Parcel 1, Parcel 2, and Parcel 3 are not included in the legal description, *see* Affidavit ¶ 4.k.i.
7. **(Corrective) Declaration of Restrictive Covenants, dated September 26, 2016, recorded at Instrument 113956147 of the Official Records of Broward County, Florida.**
 - a. Parcel 1, Parcel 2, and Parcel 3 are not included in the legal description, *see* Affidavit ¶ 4.l.i.
8. **Bldg. 21 Rev AE 9 18 17- Caufield & Wheeler, Inc. legal dated 9/18/17**
 - a. Parcels affected:
 - i. Parcel 1, Parcel 2, and Parcel 3 are not included in the legal description, *see* Affidavit ¶ 4.m.i.
9. **Ordinance No. O-2013-11**
 - a. Parcel 1, Parcel 2, and Parcel 3 are not included in the legal description in Exhibit A, *see* Affidavit ¶ 4.n.i.
10. **Undated Declaration of Restrictive Covenants**
 - a. This document is unsigned, and no information was provided by the City as to whether this document has been executed and/or recorded. Note that the “Concept Plan” attached as Exhibit “B” shows that Parcel 3 is not included on this “Concept Plan.”