

Meeting Date: March 8, 2016

Agenda Item 6

**REQUESTED COMMISSION ACTION:**

Consent       Ordinance       Resolution       Consideration       Workshop

SHORT TITLE OR MOTION: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE AN ADDITIONAL HOME FUNDING AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND CAPTIVA COVE II ASSOCIATES, LTD. PROVIDING FOR NEW CONSTRUCTION OF CAPTIVA COVE II, AN 88 UNIT MULTI-FAMILY RENTAL DEV. PROVIDING AN EFFECTIVE DATE. (HOME FUNDS \$100,327)

**Summary of Purpose and Why:**

This resolution authorizes approval and signature by the City of an additional HOME Funding Agreement between the City and Captiva Cove II Associates, Ltd, and Captiva Cove Associates II, Ltd., which is developing its final 88 units of affordable rental housing at Captiva Cove, 1201 W. Dixie Highway. The City previously contributed \$950,000 in HOME funds to Phase I, which is complete.

Resolution 2015-66 was adopted on November 10, 2014, approving and authorizing a HOME Funding Agreement for Captiva Cove Phase II that contributed \$186,559 towards its construction. Phase II is comprised of the final 88 units necessary to build out the development.

This evening's additional HOME Funding Agreement provides an additional \$100,327 of HOME funding in order to assure that the project is completed as planned. These additional funds are available because the money was repaid to the City's HOME Program from the sale of an earlier, unrelated HOME Program project.

**QUESTIONS TO BE ANSWERED BY ORIGINATING DEPARTMENT:**

- (1) Origin of request for this action: Office of Housing and Urban Improvement
- (2) Primary staff contact: Miriam Carrillo/Mark Korman Ext. 4656
- (3) Expiration of contract, if applicable: \_\_\_\_\_
- (4) Fiscal impact and source of funding: HOME Funds - \$100,327.00 (304-8113-587-9910)

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
OHUI	<u>2/26/16</u>	Approval	<u>[Signature]</u>
City Attorney	<u>2/26/16</u>	Approval	<u>[Signature]</u>
Finance	<u>2/26/16</u>	Approval	<u>[Signature]</u>
<u>[Signature]</u>			<u>[Signature]</u>
<input checked="" type="checkbox"/> City Manager			<u>[Signature]</u>

**ACTION TAKEN BY COMMISSION:**

<u>Ordinance</u>	<u>Resolution</u>	<u>Consideration</u>	<u>Workshop</u>
1st Reading _____	1st Reading _____	Results: _____	Results: _____

RESOLUTION NO. 2016-\_\_\_\_\_

**CITY OF POMPANO BEACH**  
**Broward County, Florida**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A HOME FUNDING AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND CAPTIVA COVE II ASSOCIATES, LTD. PROVIDING FOR NEW CONSTRUCTION OF CAPTIVA COVE II, AN 88 UNIT MULTI-FAMILY RENTAL DEVELOPMENT; PROVIDING AN EFFECTIVE DATE.**

**BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:**

**SECTION 1.** That an Agreement between the City of Pompano Beach and Captiva Cove II Associates, Ltd., providing for new construction of Captiva Cove II, an 88 unit multi-family rental development, a copy of which Agreement is attached and incorporated by reference as if set forth in full, is hereby approved.

**SECTION 2.** That the proper City officials are hereby authorized to execute said Agreement between the City of Pompano Beach and Captiva Cove II Associates, Ltd.

**SECTION 3.** That Resolution shall become effective upon passage.

**PASSED AND ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
**LAMAR FISHER, MAYOR**

**ATTEST:**

\_\_\_\_\_  
**ASCELETA HAMMOND, CITY CLERK**

**HOME FUNDING AGREEMENT**  
**Between**  
**CITY OF POMPANO BEACH**  
**and**  
**CAPTIVA COVE II ASSOCIATES, LTD.**  
**PROVIDING FOR**  
**NEW CONSTRUCTION OF CAPTIVA COVE II**  
**AN 88 UNIT**  
**MULTI-FAMILY RENTAL DEVELOPMENT**

## EXHIBITS

<b>EXHIBIT "A"</b>	<b>PROJECT DESCRIPTION</b>
<b>EXHIBIT "B"</b>	<b>COSTS/BUDGET FOR PROJECT</b>
<b>EXHIBIT "C"</b>	<b>TIMETABLE/SCHEDULE FOR PROJECT</b>
<b>EXHIBIT "D"</b>	<b>MORTGAGE AMENDMENT TO MORTGAGE ATTACHMENT "A" TO EXHIBIT "D" — FUTURE ADVANCE NOTE</b>
<b>EXHIBIT "D-1"</b>	<b>DECLARATION OF RESTRICTIVE COVENANTS FOR RENTAL UNITS</b>
<b>EXHIBIT "E"</b>	<b>MONTHLY PROGRESS REPORT</b>
<b>EXHIBIT "F"</b>	<b>FINAL ACCOUNTING FOR PROJECT</b>
<b>EXHIBIT "G"</b>	<b>REQUEST FOR PAYMENT FORM</b>
<b>EXHIBIT "H"</b>	<b>RENTAL SET UP AND COMPLETION FORM</b>
<b>EXHIBIT "I"</b>	<b>PROJECT RENTS</b>
<b>Exhibit "J"</b>	<b>FINANCIAL CONDITION REPORT</b>

**HOME FUNDING AGREEMENT**

**Between**

**CITY OF POMPANO BEACH**

**and**

**CAPTIVA COVE II ASSOCIATES, LTD.**

**PROVIDING FOR**

**NEW CONSTRUCTION OF CAPTIVA COVE II  
AN 88 UNIT  
MULTI-FAMILY RENTAL DEVELOPMENT**

**This is a Home Funding Agreement ("Agreement") between: CITY OF POMPANO BEACH, a municipal corporation of the state of Florida, its successors and assigns, hereinafter referred to as "CITY,"**

**AND**

**CAPTIVA COVE II ASSOCIATES, LTD., a Florida for-profit Limited Partnership its successors in interest, hereinafter referred to as "CAPTIVA COVE II."**

**WHEREAS, CITY is a recipient of Home Investment Partnerships (HOME) grant funds from the United States Department of Housing and Urban Development pursuant to 24 CFR 92; and**

**WHEREAS, on July 8, 2014, the CITY Commission approved funding to CAPTIVA COVE II as a Developer of funding under CITY's HOME Program as part of its FY 2014-2015 Action Plan, for the provision of a multi-family rental new construction housing project under the terms and conditions of that certain Home Funding Agreement, between CITY and CAPTIVA COVE II, dated December 16, 2014; and**

**WHEREAS, CAPTIVA COVE II shall now receive additional funding under CITY's HOME Program for the Project, in the amount of One Hundred Thousand Three Hundred Twenty-Seven and 00/100 (\$100,327.00) (the "HOME Funds"); and**

**WHEREAS, the purpose of this Agreement is to increase the availability of affordable residential units by complementing and expanding existing low income housing initiatives currently funded by public and private funds, reduce the cost of housing, and thereby providing rental opportunities for Very-low, and Low Income Families in City of Pompano Beach; NOW, THEREFORE,**

**WITNESSETH:** In consideration of the mutual terms and conditions, promises, covenants and payments, hereinafter set forth, CITY and CAPTIVA COVE II agree as follows:

## **ARTICLE 1**

For the purposes of this Agreement, the exhibits thereto, and the various covenants, conditions, terms and provisions which follow, the DEFINITIONS and IDENTIFICATIONS set forth below are true and correct and are agreed upon by the parties.

- 1.1 Assurances:** means those assurances made by CAPTIVA COVE II to CITY as specifically set forth in Article 8 of this Agreement.
- 1.2 Affordability Period:** means the thirty three (33) year period of time the HOME Assisted Units under this Agreement shall remain affordable in compliance with In 24 CFR 92.252 and 24 CFR 92.254 and the same thirty three (33) year period that all rental units under this Agreement shall remain affordable in compliance with CITY policy.
- 1.3 CITY:** means the City of Pompano Beach, Florida.
- 1.4 Contract Administrator:** means CITY'S Office of Housing and Urban Improvement Director. The primary responsibilities of the Contract Administrator are to coordinate and communicate with CAPTIVA COVE II and to manage and supervise execution and completion of the Project and the terms and conditions of this Agreement as set forth herein. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely on the instructions or determinations made by the Contract Administrator; provided, however, that such instructions and determinations do not change the Project.
- 1.5 CITY Manager:** The City Manager of CITY.
- 1.6 CITY Attorney:** The chief legal counsel for CITY who directs and supervises the Office of the CITY Attorney.
- 1.7 Division:** means the Office of Housing and Urban Improvement of City of Pompano Beach, Florida.
- 1.8 HOME:** means the Home Investment Partnerships Program.
- 1.9 H.U.D.:** means the United States Department of Housing and Urban Development.
- 1.10 Income Eligible Households:** means (i) one or more natural persons or a family, (including students who reside in the household), that have a gross income for the household that does not exceed sixty percent (60%) of the area median income (AMI) adjusted for family size for households within the metropolitan statistical area (MSA) for City of Pompano Beach; and, (ii) in accordance with H.U.D.'s requirement for projects with five (5) or more HOME Assisted Units, the term also means that at least twenty percent (20%) of the HOME Assisted Units must be for one or more natural persons or a family (including students who reside in the household) that have a gross income for the household that does

not exceed fifty percent (50%) of AMI adjusted for family size for households within the MSA for City of Pompano Beach.

- 1.11 **Project:** means the project set forth in Article 2 hereof, and Exhibit "A," entitled Project Description, which includes a site or sites together with any building , or buildings, located on the site, that are under common ownership, management, and financing and are to be assisted with HOME funds provided by CITY. The term Project includes all the activities associated with the site and building.
- 1.12 **Project Completion:** means that all necessary title transfer requirements and construction work have been performed; the project complies with the requirements of this part (including the property standards under §92.251); the final drawdown of the HOME funds has been disbursed for the project; and the project completion information has been entered into the disbursement and information system established by HUD, except that with respect to rental housing project completion, for the purposes of §92.502(d) of this part, project completion occurs upon completion of construction and before occupancy . Project must be completed within 4 years of commitment or sooner based on project schedule provided in Exhibit C.
- 1.13 **Rules and Regulations of H.U.D.:** shall include but not be limited to 24 C.F.R. 92 (HOME Investment Partnerships Program Final Rule, revised August 15, 2014), Fair Housing Act - Section 301 of the Housing and Urban-Rural Recovery Act of 1983; Pub. Law No. 98-181, 97 Stat. 1166, CPD Notice 92-18, Procedures for the Cash and Management Information (C/MI) System for the HOME Program, and as may be amended from time to time; copies of which are incorporated herein by reference.

## **ARTICLE 2— PROJECT**

**CAPTIVA COVE II** agrees to provide and implement the Project in accordance with the terms of this Agreement on the real property more specifically described in Exhibit "A".

## **ARTICLE 3- AFFORDABILITY**

- 3.1 The Affordability Period for the Project described in this Agreement and more fully described in Exhibit "A," Project Description, shall be thirty three (33) years. CAPTIVA shall ensure that three one bedroom units of the total number of the eighty-eight (88) units to be constructed for the Project pursuant to the terms of this Agreement shall be designated as HOME Assisted Units for the Affordability Period.
- 3.2 "HOME Assisted Units" shall mean the three one bedroom units that can receive HOME funds based on required subsidy limits as specified in 24 C.F.R. Part 92.250, Sub Part F. The Affordability Period shall begin on the date the HOME Assisted Units have reached Project Completion, as defined in Section 1.12 above. HOME Assisted Units are deemed floating units providing CAPTIVA COVE II with the flexibility to designate different units in the Project at different times as HOME Assisted Units; provided, however, that CAPTIVA COVE II maintains the amount of total units with the same unit mix (i.e., number by each bedroom size).

- 3.3 CAPTIVA COVE II agrees that one hundred percent (100%) of the HOME assisted rental units shall be occupied by Income Eligible Households as defined in Section 1.10 above and the rent shall meet the requirements of 24 C.F.R. 92.252(b)(1) or (2). CAPTIVA COVE II shall be responsible for obtaining initial income certification at the time of the initial leasing of the HOME Assisted Units to Income Eligible Households as evidence by submission of Exhibit H to the City upon project completion and resale. Thereafter, on a yearly basis, CAPTIVA COVE II shall obtain income certification from the Income Eligible Households in accordance with 24 C.F.R. 92.203 and provide same to CITY, upon CITY's request. The CITY has adopted the income determination methodology as defined at 24 CFR 5.609. CAPTIVA COVE II agrees that, in accordance with 24 CFR 92.252(f) 2, all subsequent rents during the affordability must be approved by the CITY. The CITY agrees to provide Developer with information on update HOME rents and utility allowances. Further Developer agrees to provide the CITY with information on rents and occupancy annually.**
- 3.4 In the event that, within six (6) months of project completion, a rental unit remains unoccupied, an enhanced marketing plan must be provided to CITY for review and approval. The plan shall be provided no later than 7 months after project completion.**
- 3.5 In the event that, eighteen (18) months from the date of project completion, efforts to market unoccupied units are not successful, and the unit(s) are not occupied by HOME eligible tenants, all HOME funds provided to Developer by CITY must be repaid no later than 19 months following project completion.**

#### **ARTICLE 4 - TERM OF AGREEMENT**

**The term of this Agreement, shall commence on the date of execution by CITY, and shall end on December 31, 2016 unless extended or terminated earlier as provided for herein. Notwithstanding the expiration date of this Agreement as it relates to construction of the Project, this Agreement shall survive and remain in effect for purposes of enforcing the Affordability Period,**

#### **ARTICLE 5- FUNDING AND METHOD OF PAYMENT**

- 5.1 CAPTIVA COVE II is obtaining funding for the Project from various sources. The HOME funds to be provided to CAPTIVA COVE II by CITY under this Agreement for the Project were allocated in FY 2016. The maximum amount payable by CITY under this Agreement shall be One Hundred Thousand Three Hundred Twenty-Seven Dollars and 00/100 (\$100,327.00). The HOME funds provided by CITY to CAPTIVA COVE II shall be in the form of a deferred payment loan and payment to CAPTIVA COVE II shall be made by CITY at Loan closing subject to the terms and conditions set forth herein.**

**5.2 The Parties agree that the HOME Funds shall be secured by that certain Mortgage, executed by the Parties on December 16, 2014, and recorded in the Official Public Records of Broward County, Florida, BK 51326, PG 1206, as amended by that certain Amendment to Mortgage, executed by the Parties hereto and dated on an even date herewith (Exhibit "D"), together with that certain Future Advance Note, executed by the Parties hereto and dated on an even date herewith ("Note") (Attachment "A" to Exhibit "D"); each in substantially the forms attached hereto. Additionally, CAPTIVA COVE II executed and CITY recorded in the Public Records of Broward County, Florida, BK 51326, PG 1204, a Declaration of Restrictive Covenants, to ensure that the rental units remain affordable during the Affordability Period described in Section 3.1 above.**

**5.3 Upon CITY's acceptance of a properly submitted Request for Payment, Exhibit G, for the construction costs by CAPTIVA COVE II, CITY will process payment of same for Loan closing.**

**5.3.1 CITY shall pay CAPTIVA COVE II within thirty (30) calendar days from receipt of CAPTIVA COVE II's Request for Payment, as provided for in this Section 5.3, for reimbursement of Eligible Costs in accordance with CITY's Prompt Payment Ordinance, Sec 1-51.6, as may be amended from time to time.**

**5.3.2 Payment shall be made to CAPTIVA COVE II at:**

**Mara S. Mades  
Cornerstone Captiva Cove II, L.L.C., General Partner of  
Captiva Cove II Associates, Ltd.  
2100 Hollywood Boulevard  
Hollywood, Florida 33020**

**5.4 CAPTIVA COVE II shall provide CITY with Monthly Progress Reports, in the form attached as Exhibit "E" or other reports required by the Division. CAPTIVA COVE II agrees to report beneficiary data as units are rented after project completion.**

**5.5 CAPTIVA COVE II shall have an adequate financial system and internal fiscal controls in accordance with H.U.D. and CITY requirements.**

**5.6 CAPTIVA COVE II agrees to provide the CITY with financial condition reports (Exhibit J) for the Project in sufficient detail that the CITY can evaluate the continued viability throughout the affordability period.**

**5.7 CAPTIVA COVE II agrees to expend HOME funds provided by CITY under this Agreement in accordance with Exhibit "B," Costs/Budget for Project. HOME funds shall not be paid by CITY until the funds are needed for the payment of Eligible Costs as defined by 24 CFR 92.206. All HOME funds not expended within the term of this Agreement shall remain in the custody and control of CITY. In the Director's discretion, unexpended HOME funds may be reallocated to other HOME Program projects which have been approved for funding by the CITY.**

**5.8 CITY shall pay CAPTIVA COVE II as specific consideration for the indemnification contained in Article 10, indemnification, the sum of One Dollar (\$1.00) in cash, the receipt of which is acknowledged by CAPTIVA COVE II.**

## ARTICLE 6— RENTAL UNITS

### 6.1 If, following Project Completion any of the rental units fail to remain

affordable during the Affordability Period described in Section 3.1 above, it shall be deemed an event of default under this Agreement. CAPTIVA COVE II shall be required to repay to CITY all HOME funds provided by CITY under this Agreement within in 30 days of CITY's determination and written notification to Developer that the Affordability provisions have not been met. Additionally, in such event, the terms of the Declaration of Restrictive Covenants may be enforced against CAPTIVA COVE II. The affordability restrictions may, in the sole discretion of CITY, terminate upon foreclosure or transfer in lieu of foreclosure or upon repayment of HOME funds, unless otherwise provided by law.

6.2 The maximum amount CAPTIVA COVE II shall charge as rent for any HOME Assisted Unit shall be governed by the rent limitations described in 24 CFR 92.252 (a) and (b), as may be amended from time to time. The HOME Assisted Units shall be rented at the amounts set forth in Exhibit "I," Project Rents, for the type and size of unit and adjusted for utilities. The City will provide developer with utility allowances

6.3 CAPTIVA COVE II shall not refuse to lease a HOME Assisted Unit to a certificate or voucher HOLDER under 24 C.F.R. 982, Section 8, Tenant Based Assistance, Unified Rule for Tenant Based Assistance under the Section 8 Rental Certificate Program and Section 8 Rental Voucher Program, incorporated herein by reference, or the HOLDER of a comparable document evidencing participation in a HOME tenant based rental assistance program because of the status of the prospective tenant as a HOLDER of such certificate voucher or comparable HOME tenant based assistance document.

6.4 CAPTIVA COVE II shall enter into a written lease with Income Eligible Households for a period of not less than one (1) year, unless a mutual agreement is reached between CAPTIVA COVE II and the Income Eligible Households, CAPTIVA COVE II must obtain CITY's written approval prior to increasing the rental amount of a HOME Assisted Unit, CAPTIVA COVE II, where not inconsistent with the terms of a written lease, shall provide the Income Eligible Households with not less than thirty (30) days prior written notice before implementing any increase in rent.

6.5 Income Eligible Households who no longer qualify for the HOME Assisted Units must pay rent as set forth in 24 C.F.R. 92.252(i)(2).

6.6 CAPTIVA COVE II's leases shall not contain language prohibited per 24 CFR 92.253 (b) pertaining to tenant protection.

6.7 CAPTIVA COVE II may not terminate the tenancy or refuse to renew the lease of a tenant in a HOME Assisted Unit except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable federal, state, or local law; for completion of the tenancy period for transitional housing; or for other good cause. To terminate or refuse to renew tenancy, CAPTIVA COVE II shall serve written notice upon the tenant specifying the grounds for the action at least thirty (30) days before the termination of tenancy.

- 6.8 **CAPTIVA COVE II shall adopt and follow written tenant selection policies and criteria that are compliant with 24 CFR 92.252 (d)(1) and (2) and are consistent with the purpose of providing housing for Income Eligible Households; are**
- reasonably related to program eligibility and the applicants' ability to perform the obligations of the lease; give reasonable consideration to the housing needs of families that would have a federal preference under Section 6(c)(4)(A) of the Housing Act of 1937; provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable; and give prompt written notification to any rejected applicant of the grounds for rejection.
- 6.9 **CAPTIVA COVE II agrees to comply with the provisions of 24 CFR 92.253 (c) which states that the tenant leases for HOME assisted units may not be terminated without good cause. Good cause is defined as repeated violations of lease terms or violations of federal, State or local law; or in the case of transitional housing, completion of the transitional housing period tenancy period.**
- 6.10 **CITY shall have the right to perform on-site inspections of HOME Assisted Units to determine compliance with the property standards set forth in 24 C.F.R. 92.251 and to verify the information submitted to CITY by CAPTIVA COVE II.**

#### **ARTICLE 7 – PROJECT CONSTRUCTION AND CONSTRUCTION STANDARDS**

- 7.1 **CAPTIVA COVE II agrees to acquire the property for the Project in accordance with the terms and conditions set forth in this Agreement, consistent with Exhibit "B," Costs/Budget for Project, and Exhibit "C," Timetable/Schedule for Project. Failure of CAPTIVA COVE II to maintain the Timetable/Schedule for Project within sixty (60) days of the deadlines identified in the Timetable/Schedule for Project shall warrant a full review by the Division's staff.**
- 7.2 **The construction standards shall meet or exceed the requirements of 92.252(2) and ongoing maintenance of the rental units shall meet or exceed all federal, state and local housing quality standards and code requirements as well as the provisions of 24 CFR 92.251(f)**
- 7.3 **CITY will perform annual monitoring and evaluation activities during the term of this Agreement, including the Affordability Period, to determine compliance with the terms of this Agreement. Upon request by Broward County or CITY, CAPTIVA COVE II shall furnish to Broward County, the CITY or their designees, such records and other documentation deemed necessary by Broward County or CITY to complete its annual monitoring and evaluation activities.**
- 7.4 **CAPTIVA COVE II shall provide CITY with Monthly Progress Reports, in the form attached hereto as Exhibit "E," indicating the status of all outstanding work including the planned versus actual progress of activities and related budgets under this Agreement. Such Monthly Progress Reports shall be submitted to the Contract Administrator on the first business day following the end of the preceding month.**
- 7.5 **CAPTIVA COVE II shall meet with CITY during regular CITY business hours to address the Project upon reasonable notice provided by CITY.**

- 7.6 **CAPTIVA COVE II shall display a sign identifying CITY and H.U.D. as contributing lenders utilizing HOME funds on the encumbered property during the construction period.**

## **ARTICLE 8- ASSURANCES**

- 8.1 **The Assurances set forth herein shall survive the expiration or earlier termination of this Agreement.**
- 8.2 **This Project is funded with grant funds provided by the United States Department of Housing and Urban Development. CAPTIVA COVE II shall comply with all applicable federal, state and CITY laws, ordinances, and codes and regulations. Any conflict or inconsistency between the federal, state or CITY guidelines or regulations and this Agreement shall be resolved in favor of the more restrictive guidelines or regulations.**
- 8.3 **CAPTIVA COVE II shall act in accordance with Title VI of the Civil Rights Act of 1964 (Pl. 88-352), which provides in part that, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which CAPTIVA COVE II receives federal financial assistance and will immediately take any measures necessary to effectuate this Agreement. If any real property or structure thereon is provided or improved with the aid of federal financial assistance extended to CAPTIVA COVE II, this assurance shall obligate CAPTIVA COVE II or, in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar Services or benefits.**
- 8.4 **CAPTIVA COVE II shall comply with the anti-lobbying legislation set forth in 24 CFR Part 87 and in CITY's Consolidated Plan submitted to H.U.D. for the HOME Program; both incorporated herein by reference.**
- 8.5 **CAPTIVA COVE II shall administer, in good faith, a policy designed to assure a workplace free from the illegal use, possession or distribution of drugs or alcohol by its beneficiaries.**
- 8.6 **CAPTIVA COVE II shall comply with Title I and Title II of the Americans with Disabilities Act regarding nondiscrimination on the basis of disability in employment and in state and local government services, in the course of providing any services funded in whole or in part by CITY.**
- 8.7 **CAPTIVA COVE II shall take all reasonable steps pursuant to 24 C.F.R. 92, subpart 11, to minimize the displacement of persons as a result of the Project and carry out those activities described in subpart H, except CAPTIVA COVE II does not assume CITY's responsibilities for environmental review under 24 C.F.R. 92.352**
- 8.8 **Housing assisted with HOME funds constitutes H.U.D. associated housing for the purpose of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, et. seq.) and is, therefore, subject to 24 C.F.R. 35, incorporated herein by reference.**

- 8.9 **CAPTIVA COVE II certifies that, pursuant to 24 C.F.R. 24, incorporated herein by reference, neither CAPTIVA COVE II nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participating in the Project.**
- 8.10 **CAPTIVA COVE II shall comply with applicable uniform administrative requirements, as described in 24 C.F.R. 92.505.**
- 8.11 **HOME funds may not be provided to primarily religious organizations as further specified In 24 C.F.R, 92.257.**
- 8.12 **CAPTIVA COVE II shall keep such books and records as will allow CITY to comply with the record keeping requirements of 24 C.F.R. 92.**

#### **ARTICLE 9- FINANCIAL RESPONSIBILITY**

- 9.1 **Except when prohibited by federal or state law, CAPTIVA COVE II hereby gives CITY, H.U.D., and the U.S. Comptroller General, through any of its authorized representatives, access to and the right to examine all records, books, papers, or documents relating to the Project.**
- 9.2 **CITY shall have the right to audit the books, records, papers, accounts, or documents of CAPTIVA COVE II that are related to this Agreement. CAPTIVA COVE II shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement for the Affordability Period. CAPTIVA COVE II agrees that, in the event CITY determines that HOME funds are due back to CITY, CITY may, in its sole discretion, require CAPTIVA COVE II to pay interest on those funds, at the rate stated in the Note, which interest shall be calculated from the date that CITY incorrectly paid CAPTIVA COVE II.**
- 9.3 **CAPTIVA COVE II shall preserve and make available, at reasonable times for examination and audit by CITY, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the Affordability Period. If any audit has been initiated and audit findings have not been resolved at the end of Affordability Period, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by CITY to be applicable to CAPTIVA COVE II's records, CAPTIVA COVE II shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by CAPTIVA COVE II. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for CITY's disallowance and recovery of any payment upon such entry.**
- 9.4 **CAPTIVA COVE II shall disclose to CITY any and all third party funding, whether public or private, for the Project. No CITY funding shall be used to supplant existing third party funding.**
- 9.5 **CAPTIVA COVE II shall submit to the Division within thirty (30) days of Project Completion, a complete financial accounting of all its Project activities, as provided for In Exhibit "F," Final Accounting for Project.**

## ARTICLE 10 - INDEMNIFICATION

- 10.1 **CAPTIVA COVE II shall at all times hereafter indemnify, hold harmless and, at the CITY Attorney's option, defend or pay for an attorney selected by the CITY Attorney to defend CITY, its officers, agents, servants, and employees against any and all claims, losses, liabilities, and expenditures of any kind, including attorney fees, court costs, and expenses, caused by any intentional or negligent act or omission of**

**CAPTIVA COVE II, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, demands, or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. The provisions of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the Contract Administrator and the CITY Attorney, any sums due CAPTIVA COVE II under this Agreement may be retained by CITY until all of CITY's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved; and any amount withheld shall not be subject to payment of interest by CITY.**

## ARTICLE 11 — INSURANCE

- 11.1 **CAPTIVA COVE II shall keep the Improvements hereafter erected on the Property subject to this Agreement insured against loss by fire, extended flood coverage, vandalism and malicious mischief, hazards, and such other hazards as CITY may require and in such amounts and for the Affordability Period as CITY may require.**

11.1.1 **In the event of loss, CAPTIVA COVE II shall give prompt notice to the Insurance carrier and CITY. CITY may make proof of loss if not made promptly by CAPTIVA COVE II.**

11.1.2 **Unless the Parties otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, provided such restoration or repair is economically feasible and CITY's interest is not thereby impaired. If such restoration or repair is not economically feasible or if CITY's interest would be impaired, the insurance proceeds shall be applied to the sums contemplated in this Agreement, with the excess, if any, paid to CAPTIVA COVE II. If the Property is abandoned by CAPTIVA COVE II or if CAPTIVA COVE II fails to respond to CITY within thirty (30) days from the date notice is mailed by CITY that the insurance carrier offers to settle a claim for insurance benefits, CITY is authorized to collect and apply the insurance proceeds at CITY's option either to restoration or repair of the Property or to the sums contemplated under this Agreement.**

11.1.3 **Such policy or policies shall be issued by approved companies authorized to do business in the state of Florida, and having agents upon whom service of process may be made in City of Pompano Beach, Florida. CAPTIVA COVE II shall specifically protect CITY by naming City of Pompano Beach as an additional insured and certificate holder.**

**11.1.4 CAPTIVA COVE II shall furnish to CITY Certificates of Insurance or endorsements and a copy of the Declarations Page evidencing the insurance coverage specified in this Article prior to beginning performance of work under this Agreement**

**11.1.5 All policies must be endorsed to provide CITY with at least thirty (30) days' notice of cancellation and/or restriction. If any of the insurance coverage will expire prior to the required term, copies of renewal policies shall be furnished at least thirty (30) days prior to the date of their expiration.**

**11.2 CAPTIVA COVE II shall provide for and maintain the following insurance coverage:**

**11.2.1 In order to insure the Indemnification obligation contained in Article 10 above, CAPTIVA COVE shall, as a minimum, provide, pay for, and maintain in force at all times during the term of this Agreement and for the Affordability Period as CITY may require (unless otherwise provided), the insurance coverage set forth in this Article 11 in accordance with the terms and conditions required by this Article.**

**11.2.2 A Commercial General Liability Insurance Policy shall be provided which shall contain minimum limits of One Million Dollars (\$1,000,000.00) per occurrence combined single limit for bodily injury liability and property damage liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office and must include:**

**11.2.2. Premises and/or operations.**

**11.2.2.2 Independent contractors.**

**11.2.2.3 Broad Form Contractual Coverage applicable to this specific Contract, including any hold harmless and/or indemnification agreement.**

**11.2.2.4 Personal Injury Coverage with Employee and Contractual Exclusions removed, with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability.**

**11.3 Workers' Compensation insurance to apply for all employees in compliance with the 'Workers' Compensation Laws' of the State of Florida and all applicable federal laws. In addition, the policy(ies) must include Employers' Liability with a limit of Five Hundred Thousand Dollars (\$500,000.00) each accident, Five Hundred Thousand Dollars (\$500,000.00) each employee and Five Hundred Thousand Dollars (\$500,000.00) each disease.**

**11.4 CAPTIVA COVE II shall require its General Contractor to provide the same coverage's and limits set forth in Sections 11.2.2 and 11.3 herein and Builder's Risk in the amount of one hundred percent (100%) of replacement value of the completed structure. Such Builder's Risk policy shall be an all risk form with a deductible not to exceed Ten Thousand Dollars (\$10,000.00)**

each claim and shall contain a loss payable clause to include City of Pompano Beach.

- 11.5 **CAPTIVA COVE II shall furnish to the Contract Administrator Certificates of Insurance or endorsements evidencing the insurance coverage specified by this Article prior to beginning performance of work under this Agreement.**
- 11.8 **Coverage is not to cease and is to remain in force (subject to cancellation until all performance required of CAPTIVA COVE II is completed. All policies must be endorsed to provide CITY with at least thirty (30) days' notice of cancellation and/or restriction. If any of the insurance coverage will expire prior to the completion of the work, copies of renewal policies shall be furnished at least thirty (30) days prior to the date of their expiration.**

#### **ARTICLE 12- TERMINATION**

- 12.1 **This Agreement is subject to the availability of funds from H.U.D. In the event H.U.D. makes a determination that HOME funds shall no longer be available to CITY, in accordance with 24 CFR 85.44 incorporated herein by reference, CITY shall have a right to terminate this Agreement for convenience and shall provide no less than thirty (30) days' notice to CAPTIVA COVE II in accordance with Article 13, Notices, herein. Notwithstanding the notice of termination provided by CITY to CAPTIVA COVE II, CITY shall not be required to reimburse CAPTIVA COVE II for any of its Eligible Costs under this Agreement up to the date of termination if CITY is not able to obtain such funding from H.U.D. for the payment of these costs.**
- 12.2 **In the event that the Project is terminated prior to completion, either voluntarily or otherwise, CAPTIVA COVE II shall be required to repay CITY all HOME funds provided to CAPTIVA COVE II under this Agreement.**
- 12.3 **If, through any cause, CAPTIVA COVE II fails to fulfill its obligations under or violates any of the terms of this Agreement, CITY shall, pursuant to 24 C.F.R. 85.43, incorporated herein by reference, provide notice to CAPTIVA COVE II, in accordance with Article 13, Notices, specifying the nature of the default and providing CAPTIVA COVE II with an opportunity to cure said default within thirty (30) calendar days of the date of the notice. In the event CAPTIVA COVE II fails to cure the default to the reasonable satisfaction of CITY, CITY shall have the right to terminate this Agreement.**
- 12.4 **CAPTIVA COVE II shall not be relieved of liability to CITY for damages sustained by CITY by virtue of any breach of this Agreement by CAPTIVA COVE II, and CITY may take any action at law or in equity or otherwise, whether for specific performance of any covenant in this Agreement or such other remedy as may be deemed most effectual by CITY to enforce the obligations of CAPTIVA COVE II with respect to the Project.**
- 12.5 **In the event that CAPTIVA COVE II is under investigation or charged with violation of any State or Federal law with respect to and directly related to CAPTIVA COVE II's contractual relationship with CITY, this Agreement**

shall terminate immediately upon notice from CITY to CAPTIVA COVE II in accordance with Article 13, Notices. In the event CAPTIVA COVE II is ultimately cleared of any wrongdoing, CITY shall pay CAPTIVA COVE II for Eligible Costs properly documented and committed to a third party up to the date of termination. However, if CAPTIVA COVE II is found to have violated any State or Federal law relative to this Agreement, CAPTIVA COVE II shall be required to repay CITY all HOME funds that have been paid to CAPTIVA COVE II.

- 12.6 In the even that, eighteen (18) months from the date of project completion, HOME assisted unit(s) are no occupied by HOME eligible tenants, all HOME funds provided to Developer by City must be repaid.

## ARTICLE 13- NOTICES

Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom It is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

FOR CITY: Miriam Carrillo, Director  
City of Pompano Beach Office of Housing and Urban  
Improvement  
100 West Atlantic Blvd., Rm. 220  
Pompano Beach, FL 333060

FOR CAPTIVA COVE II: Mara S. Mades, V.P.  
Cornerstone Captiva Cove II, L.L.C., General Partner of  
Captiva Cove II Associates, Ltd.  
2100 Hollywood Boulevard  
Hollywood, Florida 33020

## ARTICLE 14— EEO AND CBE COMPLIANCE

- 14.1 **EEO COMPLIANCE:** CAPTIVA COVE II shall not unlawfully discriminate on the basis of race, color, national origin, sex, religion, age, marital status, political affiliation, disability, pregnancy, gender identity and expression, or sexual orientation as may be amended from time to time, in the performance of this Agreement, the solicitation for or purchase of goods or services relating to this Agreement, or in subcontracting work in the performance of this Agreement. CAPTIVA COVE II shall include the foregoing or similar language in its contracts with any subcontractors or sub-consultants, except that any project assisted by the U.S. Department of Transportation funds shall comply with the non-discrimination requirements in 49 C.F.R. Parts 23 and 26, as amended. Failure to comply with the foregoing requirements is a material breach of this Agreement,

which may result in the termination of this Agreement or such other remedy as CITY deems appropriate.

**CAPTIVA COVE II shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement, CAPTIVA COVE II shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by CITY, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, CAPTIVA COVE II shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.**

**By execution of this Agreement, CAPTIVA COVE II represents that it has not been placed on the discriminatory vendor list (as provided in Section 287,134, Florida Statutes, as may be amended from time to time). CITY hereby materially relies on such representation in entering into this Agreement. An untrue representation of the foregoing shall entitle CITY to terminate this Agreement and recover from CAPTIVA COVE II all monies paid by CITY pursuant to this Agreement, and may result in debarment from CITY's competitive procurement activities.**

#### **ARTICLE 15 — MISCELLANEOUS**

- 15.1 Affirmative marketing and Minority Outreach – in accordance with 24 CFR 92.351, CITY has adopted guidance on affirmative procedures and has provided same to CAPTIVA COVE II prior to execution of this Agreement. CAPTIVA COVE II agrees to follow CITY's guidance when marketing units.**
- 15.2 INDEPENDENT CONTRACTOR. CAPTIVA COVE II is an independent contractor under this Agreement Services provided by CAPTIVA COVE II shall be performed by employees of CAPTIVA COVE II and subject to supervision by CAPTIVA COVE II, and shall not be deemed officers, employees, or agents of CITY. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement shall be those of CAPTIVA COVE II, which policies of CAPTIVA COVE II shall not conflict with CITY, or State of Florida policies, rules or regulations relating to the use of HOME Funds provided by CITY under this Agreement. No partnership, joint venture, or other joint relationship is created hereby. CITY does not extend to CAPTIVA COVE II or CAPTIVA COVE II's agents any authority of any kind to bind CITY in any respect whatsoever.**
- 15.3 PRIOR AGREEMENTS SUPERSEDED. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained; and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms shall be predicated upon any prior representations or agreements whether oral or written.**
- 15.4 AMENDMENTS. CITY may, in its discretion, amend this Agreement to conform to changes in federal, state, local, and/or CITY directives and objectives. Such amendments shall in be in writing and the CITY Manager is**

authorized to execute said amendments as well as amendments that change the term of this Agreement, reduce funding, or that change the Project, so long as the Project consists of eligible activities under 24 C.F.R. 92. Except for the provisions as set forth herein, no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

- 15.5 ASSIGNMENT AND PERFORMANCE.** CAPTIVA COVE II shall not transfer or assign the performance of services for the Project under this Agreement. CITY may terminate this Agreement, effective immediately, if there is any assignment, or attempted assignment, transfer, or encumbrance, by

CAPTIVA COVE II of this Agreement or any right or interest herein without CITY's written consent. However, this Agreement shall run to CITY or its successors.

CAPTIVA COVE II represents that each person who will render services pursuant to this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and that each such person is reasonably experienced and skilled in the area(s) for which he or she will render his or her services.

CAPTIVA COVE II shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of CAPTIVA COVE II's performance and all interim and final product(s) provided to or on behalf of CITY shall be comparable to the best local and national standards.

- 15.6 REPORTS, PLANS AND OTHER AGREEMENTS.** All reports, plans, information, and documents, developed, prepared, assembled or completed by CAPTIVA COVE II for the purposes of this Agreement shall become the property of CITY without restriction, reservation or limitation of their use and shall be made available by CAPTIVA COVE II at any time upon request by CITY or the Division. Upon Project Completion, copies of all of the above data shall be delivered to the Division Director upon written request, including but not limited to any project set-up and completion reports requested by H.U.D.

- 15.7 CONFLICT OF INTEREST.** CAPTIVA COVE II covenants it shall comply with the requirements of 24 CFR 92.356 (f) relative to the Conflict of Interest provisions which states that no Owner, Developer or Sponsor of a project assisted with HOME funds (or officer, employee, agent, elected or appointed official, or consultant of the Owner, Developer or Sponsor or immediate family member of an officer, employee, agent, elected or appointed office, or consultant of the Owner, Developer or Sponsor, whether private, for profit or nonprofit (including CHDOs) may occupy a HOME assisted affordable housing unit in a project during the required affordability period. Any possible conflicting interest on the part of CAPTIVA COVE II, its employees, or agents, shall be disclosed in writing to the Division within 10 business days of identifying such a conflict.

- 15.7.1 CONFLICTS.** Neither CAPTIVA COVE II nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with CAPTIVA COVE II's loyal and conscientious exercise of judgment related to its performance under this Agreement. CAPTIVA COVE II agrees that

none of its employees shall, during the term of this Agreement, serve as an adverse or hostile expert witness against CITY in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process, nor shall such persons give sworn testimony or issue a report or writing, as an expression of his or her opinion, which is adverse or prejudicial to the interests of CITY in any such pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude such persons from representing themselves in any action or in any administrative or legal proceeding regarding this Agreement. In the event CAPTIVA COVE II is permitted to utilize subcontractors to perform any services required by this Agreement, CAPTIVA COVE II agrees to prohibit such subcontractors, by written contract, from having any conflicts as within the meaning of this section.

**15.8 GOVERNING LAW; VENUE, WAIVER OF JURY TRIAL.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. All parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Seventeenth Judicial Circuit in City of Pompano Beach, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. BY ENTERING INTO THIS AGREEMENT, CAPTIVA COVE II AND CITY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.

**15.9 SEVERANCE.** In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless CITY or CAPTIVA COVE II elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

**15.10 LEGAL PROVISIONS DEEMED INCLUDED.** Each and every provision of any law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein, and this Agreement shall be read and enforced as though it were included herein and if, through mistake or otherwise, any such provision is not inserted or is not correctly inserted, then upon application of either party this Agreement shall forthwith be amended to make such insertion.

**15.11 KNOWLEDGE AND COMPLIANCE WITH APPLICABLE LAWS.** CAPTIVA COVE II shall keep fully informed of all Federal and State laws, all local laws, ordinances and regulations, and all orders and decrees of bodies or tribunals having jurisdiction or authority which, in any manner, affect work authorized under the terms of this Agreement. CAPTIVA COVE II shall at all times observe and comply with all such laws, ordinances, regulations, orders and decrees.

**15.12 PUBLIC ENTITY CRIMES ACT.** CAPTIVA COVE II represents that the execution of this Agreement will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a contractor, consultant or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to CITY, may not submit a bid on a contract with CITY for the construction or repair of a public building or public work, may not submit bids on leases of real property to CITY, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under

a contract with CITY, and may not transact any business with CITY in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid hereto, and may result in debarment from CITY's competitive procurement activities. In addition to the foregoing, CAPTIVA COVE II further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether CAPTIVA COVE II has been placed on the convicted vendor list.

**15.13 THIRD PARTY BENEFICIARIES.** Neither CAPTIVA COVE II nor CITY intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.

**15.14 WAIVER OF BREACH AND MATERIALITY.** Failure by CITY to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. No waiver shall be effective unless it is in writing and signed by the party against whom it is asserted. A waiver of any provision of this Agreement or failure to perform any of the terms, covenants, and conditions of this Agreement shall not be deemed a waiver of any prior or subsequent failure to perform any term, covenant or condition of this Agreement and shall not be construed to be a modification of the terms of this Agreement. CITY and CAPTIVA COVE II agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.

**15.15 JOINT PREPARATION.** CITY and CAPTIVA COVE II acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations under this Agreement, and the preparation of this Agreement has been a joint effort of CITY and CAPTIVA COVE II and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.

**15.16 PRIORITY OF PROVISIONS.** If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached

hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 15 of this Agreement shall prevail and be given effect. In the event of a conflict between any provision(s) set forth in this Agreement and a more stringent State or Federal provision applicable to any services performed under this Agreement, the more stringent State or Federal provision shall prevail.

**15.17 INCORPORATION BY REFERENCE.** The truth and accuracy of each WHEREAS clause set forth above is acknowledged by the parties. The attached Exhibits "A" — "J" are incorporated into and made a part of this Agreement Any rules and regulations of H.U.D. addressed in this Agreement which are not specifically identified in the definition contained in Section 1.13 herein shall be deemed incorporated herein by reference.

**15.18 SURVIVAL.** Either party's right to monitor, evaluate, enforce, indemnify and insure, audit and review, and any assurances and items of financial responsibility shall survive the expiration or earlier termination of this Agreement until the conclusion of the Affordability Period. Any provision of this Agreement which contains a restriction or requirement which extends beyond the date of termination or expiration set forth herein shall survive termination or expiration of this Agreement and be enforceable.

**15.19 COOPERATION.** CAPTIVA COVE II and CITY agree to execute, acknowledge, deliver, and cause to be done, executed, acknowledged, and delivered, all such further documents and perform such acts as shall reasonably be requested of it to carry out this Agreement and give effect hereto. Accordingly, without in any manner limiting the specific rights and obligations set forth in this Agreement, the parties declare their intention to cooperate with each other in effectuating the terms of this Agreement.

**15.20 WAIVER OF CLAIMS.** CAPTIVA COVE II hereby waives any claim against CITY, and its agents, servants and employees for loss of anticipated profits caused by any suit or proceedings directly or indirectly attacking the validity of this Agreement or any part thereof, or by any judgment of award in any suit or proceeding declaring this Agreement null, void or voidable, delaying the same or any part thereof, from being carried out.

**15.21 CUMULATIVE RIGHTS.** All rights and remedies of CITY hereunder or at law or in equity are cumulative and shall be in addition to any other rights and remedies available. The exercise of any right or remedy shall not be taken to exclude or waive the right to the exercise of any other. Failure by CITY to promptly exercise any of its rights shall not operate to forfeit or be treated as a waiver of any such rights.

**15.22 SPECIFIC PERFORMANCE.** CAPTIVA COVE II agrees that, in addition to all other remedies, its obligations contained herein shall be subject to the remedy of specific performance by appropriate action commenced in a court of proper Jurisdiction.

**15.23 FORCE MAJEURE.** if the performance of this Agreement, or any obligation hereunder is prevented by reason of hurricane, earthquake, or

other casualty caused by nature, or by labor strike, war, or by a law, order, proclamation, regulation, ordinance of any governmental agency, the party so affected, upon giving prompt notice to the other party, shall be excused from such performance to the extent of such prevention, provided that the party so affected shall first have taken reasonable steps to avoid and remove such cause of nonperformance and shall continue to take reasonable steps to avoid and remove such cause, and shall promptly notify the other party in writing and resume performance hereunder whenever such causes are removed; provided, however, that if such non-performance exceeds sixty (80) days, the party that is not prevented from performance by the force majeure event shall have the right to terminate this Agreement upon written notice to the party so affected. This section shall not supersede or prevent the exercise of any right the parties may otherwise have to terminate this Agreement.

**15.24 EXECUTION AUTHORITY.** The individuals executing this Agreement on behalf of CAPTIVA COVE II personally warrant that he or she has full authority to execute this Agreement on behalf of CAPTIVA COVE II.

**15.25 EXECUTION.** This document may be executed in four (4) counterparts, each of which shall be deemed to be an original.

**15.26 SUBORDINATION.** Captiva Cove II and the City hereby expressly acknowledge and agree that this Agreement is (i) subordinate to that certain Mortgage and Security Agreement dated as of December 16, 2014, made by Captiva Cove II to and for the benefit of Florida Housing Finance Corporation, as recorded December 18, 2014, in Official Records Book 51326, Page 1071, pursuant to and as further described in that certain Subordination Agreement dated as of December 16, 2014 and recorded December 18, 2014, in Official Records Book 51326, Page 1272 (the "Subordination Agreement"), all of the Public Records of Broward County, Florida, and (ii) subject to the Subordination Agreement.

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]**

**CITY:**

Witnesses:

\_\_\_\_\_  
\_\_\_\_\_

CITY OF POMPANO BEACH

By: \_\_\_\_\_  
\_\_\_\_\_, MAYOR

By: \_\_\_\_\_  
\_\_\_\_\_, CITY MANAGER

Attest:

\_\_\_\_\_  
[name]  
CITY CLERK  
Approved As to Form:

(SEAL)

\_\_\_\_\_  
[name]  
CITY ATTORNEY  
STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016 by \_\_\_\_\_, as Mayor, \_\_\_\_\_, as City Manager and \_\_\_\_\_, as City Clerk of the City of Pompano Beach, a municipal Florida corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA

\_\_\_\_\_  
(Name of Acknowledger Typed, Printed or Stamped)

\_\_\_\_\_  
Commission Number

**HOME FUNDING AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND CAPTIVIA COVE, LLC PROVIDING FOR NEW CONSTRUCTION OF CAPTIVIA COVE II (a/k/a "CAPTIVIA COVE II"), AN 88 UNIT MULTI-FAMILY RENTAL DEVELOPMENT**

**CAPTIVIA COVE II:**

**WITNESSES:**

**CAPTIVIA COVE II ASSOCIATES, LTD.**

Signature Meryl Wolfe

Print Name Meryl Wolfe

Signature Sonia Rodriguez

Print Name Sonia Rodriguez

By Leon J. Wolfe

**Leon J. Wolfe, President of  
✓ Cornerstone Captiva Cove II, L.L.C.**



## **EXHIBIT "A"**

### **PROJECT DESCRIPTION**

#### **Project Address**

**1201 S. Dixie Highway West, Pompano Beach, FL 33060**

**CAPTIVA COVE II shall utilize the HOME funds provided by CITY under the Agreement to acquire property to construct a multi-family affordable rental development to be known as CAPTIVA COVE II. CAPTIVA COVE II will consist of EIGHTY-EIGHT (88) units financed with tax-exempt bonds Issued by the Florida Housing Finance Corporation, Four percent (4%) tax credits awarded by the Florida Housing Finance Corporation, HOME funds awarded by the Florida Housing Finance Corporation, local subsidy and the HOME funds provided by CITY under the Agreement. The development will consist of four (4) residential buildings. Under the terms of this Agreement and the Home Funding Agreement dated November 10, 2014 as approved by the City Commission of the City of Pompano Beach by Resolution 2015-66, CAPTIVA COVE II shall provide a total of ten (10) HOME Assisted Units for the Affordability Period of thirty three (33) years described in the Agreements; however, all the rental units shall be affordable for households consistent with the terms of the Agreement for the Affordability Period set for therein.**

## **EXHIBIT "A"**

### **PROJECT DESCRIPTION, CONTINUED**

#### **Legal Description:**

PARCELS A AND B OF CAPTIVA CLUB ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 176, AT PAGE 143, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA.

BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF SAID PARCEL B; THENCE S.29°48'54"W., A DISTANCE OF 38.03 FEET; THENCE S.14°10'21"W., A DISTANCE OF 155.00 FEET; THENCE S.75°49'39"E., A DISTANCE OF 12.00 FEET; THENCE S.14°10'21"W., A DISTANCE OF 10.00 FEET; THENCE S.25°28'57"W., A DISTANCE OF 61.19 FEET; THENCE N.75°49'39"W., A DISTANCE OF 3.00 FEET; THENCE S.14°10'21"W., A DISTANCE OF 50.00 FEET; THENCE S.75°49'39"E., A DISTANCE OF 3.00 FEET; THENCE S.04°15'44"E., A DISTANCE OF 37.95 FEET; THENCE S.14°10'21"W., A DISTANCE OF 24.66 FEET, THE PREVIOUS 10 COURSES AND DISTANCES BEING COINCIDENT WITH THE EAST LINE OF SAID PARCEL B AND THE WEST RIGHT OF WAY LINE FOR DIXIE HIGHWAY (STATE ROAD 811); THENCE N.88°15'37"W., ALONG THE MOST NORTHERLY SOUTH LINE OF SAID PARCEL B, A DISTANCE OF 136.63 FEET; THENCE S.14°10'21"W., ALONG THE EAST LINE OF SAID PARCEL B, A DISTANCE OF 320.80 FEET; THENCE N.88°15'37"W., ALONG THE SOUTH LINE OF SAID PARCEL A AND B, A DISTANCE OF 178.65 FEET; THENCE N.01°44'23"E., A DISTANCE OF 30.00 FEET; THENCE N.05°00'07"E., A DISTANCE OF 66.64 FEET; THENCE N.06°06'00"E., A DISTANCE OF 289.89 FEET TO A POINT ON THE ARC OF A NON-TANGENT CURVE CONCAVE TO THE NORTHWEST, A RADIAL LINE OF SAID CURVE THROUGH SAID POINT HAVING A BEARING OF S.15°13'39"E.; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE, TO THE LEFT, HAVING A CENTRAL ANGLE OF 10°50'19" AND A RADIUS OF 84.00 FEET FOR AN ARC DISTANCE OF 15.89 FEET TO A POINT ON A NON-TANGENT LINE; THENCE N.73°26'18"E., A DISTANCE OF 10.65 FEET; THENCE N.06°05'59"E., A DISTANCE OF 16.42 FEET TO POINT OF CURVATURE OF TANGENT CURVE CONCAVE TO THE SOUTHEAST; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE, TO THE RIGHT, HAVING A CENTRAL ANGLE OF 36°01'47" AND A RADIUS OF 15.00 FEET FOR AN ARC DISTANCE OF 9.43 FEET TO A POINT OF REVERSE CURVATURE OF A TANGENT CURVE CONCAVE TO THE NORTHWEST; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE, TO THE LEFT, HAVING A CENTRAL ANGLE OF 21°46'10" AND A RADIUS OF 71.00 FEET FOR AN ARC DISTANCE OF 26.98 FEET TO A POINT OF REVERSE CURVATURE OF A TANGENT CURVE CONCAVE TO THE SOUTHEAST; THENCE NORTHEASTERLY AND EASTERLY ALONG THE ARC OF SAID CURVE, TO THE RIGHT, HAVING A CENTRAL ANGLE OF 59°06'31" AND A RADIUS OF 4.00 FEET FOR AN ARC DISTANCE OF 4.13 FEET TO A POINT OF TANGENCY; THENCE N.79°28'07"E., ALONG A LINE TANGENT TO THE LAST DESCRIBED CURVE, A DISTANCE OF 15.51 FEET; THENCE N.10°31'53"W., A DISTANCE OF 11.00 FEET; THENCE N.79°28'07"E., A DISTANCE OF 0.77 FEET TO A POINT ON THE ARC OF A NON-TANGENT CURVE CONCAVE TO THE SOUTHWEST, A RADIAL LINE OF SAID CURVE THROUGH SAID POINT HAVING A BEARING OF S.84°16'53"E. THENCE NORTHERLY AND NORTHWESTERLY ALONG THE ARC OF SAID CURVE, TO THE LEFT, HAVING A CENTRAL ANGLE OF 75°30'46" AND A RADIUS OF 84.00 FEET FOR AN ARC DISTANCE OF 110.71 FEET TO A POINT ON A NON-TANGENT LINE; THENCE N.00°58'07"E., ALONG THE WEST LINE OF SAID PARCEL B, A DISTANCE OF 56.57 FEET; THENCE N.89°58'53"E., A DISTANCE OF 13.55 FEET; THENCE N.02°06'11"E., A DISTANCE OF 72.05 FEET TO A POINT ON THE NORTH LINE OF SAID PARCEL B; THENCE S.88°36'36"E., ALONG SAID NORTH LINE, A DISTANCE OF 421.65 FEET, TO THE POINT OF BEGINNING.

SAID LANDS SITUATE AND BEING WITHIN THE CITY OF POMPANO BEACH AND CONTAINING 4.538 ACRES (197,685.55 SQUARE FEET), MORE OR LESS.

## EXHIBIT "B"

### COSTS/BUDGET FOR PROJECT

	COST/ SQ FT	COST/ UNIT	TOTAL COST
<b>A. Uses</b>			
Acquisition	\$28.44	\$28,523	\$2,510,000
Land Carry	\$0.00	\$0	\$0
County Impact fees	\$3.96	\$3,971	\$349,438
City Impact Fees	\$0.81	\$1,100	\$71,212
W&S Fees	\$0.06	\$57	\$5,000
Architect	\$0.79	\$795	\$70,000
Engineer	\$0.32	\$320	\$28,120
Survey	\$0.11	\$114	\$10,000
Environmental/Soils	\$0.16	\$163	\$14,350
Borrower Legal Counsel, Profess. Fees	\$1.25	\$1,250	\$110,000
Finance Fees	\$5.09	\$5,101	\$ 448,868
Bldrs Risk Insurance	\$0.57	\$850	\$50,000
Insurance	\$0.18	\$178	\$ 15,620
Taxes	\$0.35	\$347	\$ 30,569
Title & Recording	\$0.74	\$739	\$65,000
Special Inspector	\$0.00	\$0	\$0
Inspection	\$0.43	\$432	\$38,000
Appraisal	\$0.06	\$63	\$5,500
Market Study	\$0.05	\$51	\$4,500
Accounting	\$0.45	\$455	\$40,000
Tax Credit Fees	\$0.84	\$842	\$74,115
Construction Interest	\$2.38	\$2,386	\$210,000
Marketing & Start Up	\$0.06	\$57	\$5,000
Miscellaneous	\$0.00	\$0	\$0
Building Permits	\$3.11	\$3,117	\$ 274,286
Construction Costs	\$102.93	\$103,239	\$9,085,000
P&P Bond	\$0.80	\$804	\$70,780
HC Contingency (in GC Contract)	\$0.00	\$0	\$0
Reserves	\$3.03	\$3,034	\$267,000
Developer's OH	\$5.02	\$5,034	\$443,014
Developer's Fee	\$17.57	\$17,620	\$1,550,550
<b>Total Uses</b>	<b>\$179.53</b>	<b>\$180,067</b>	<b>\$15,845,922</b>

<b>B. Sources</b>			
Tax Credit Equity	\$54.68	\$54,841	\$4,826,000
1st Mortgage	\$96.30	\$96,591	\$8,500,000
Bond Redemption	(\$36.25)	(\$36,364)	(\$3,200,000)
Grant	\$5.66	\$5,682	\$500,000
Pompano Beach, inclusive of \$100,327	\$4.38	\$4,396	\$386,886
County HOME 2014	\$5.30	\$5,318	\$467,993
FHFC HOME	\$31.72	\$31,818	\$2,800,000
Developer Note	\$17.73	\$17,785	\$1,565,043
Other	\$0.00	\$0	\$0
<b>Total Sources</b>	<b>\$179.53</b>	<b>\$180,067</b>	<b>\$15,845,922</b>

**EXHIBIT "C"**  
**APPROXIMATE TIMETABLE/SCHEDULE FOR PROJECT**

- **Anticipated closing date - October 31 , 2014**
- **Anticipated construction starting date - November 3, 2014**
  - **Building 1- August 31, 2015**
  - **Building 2- September 15, 2015**
  - **Building 3- September 30, 2015**
  - **Building 4- October 15, 2015**
- **Anticipated completion date - April 30, 2016**

## EXHIBIT "D"

Prepared by and return to:

Zimmerman Kiser Sutcliffe, P.A.  
315 East Robinson Street, Suite 600  
Orlando FL 32801  
Attention: John P. Grygiel, Esq.

This Mortgage and the Note secured hereby arises out of or given to secure the repayment of a loan issued in connection with the financing of housing pursuant to the issuance of certain bonds by the Florida Housing Finance Corporation and is therefore exempt from the payment of Documentary Stamp and intangible taxes pursuant to the provisions of Section 420.513(1) and Section 199.183(1), respectively, of the Florida statutes.

### MORTGAGE

THIS MORTGAGE ("**Mortgage**"), entered into as of December 16, 2014 by CAPTIVA COVE II ASSOCIATES, LTD., a Florida limited partnership (whether one or more, "**MORTGAGOR**") and CITY OF POMPANO BEACH, a public body corporate and politic ("**MORTGAGEE**"), collectively referred to herein as the "**Parties**."

WHEREAS, MORTGAGOR is indebted to Mortgagee in the amount of One Hundred Eighty-Six Thousand Eight Hundred Eighty-Six Dollars (\$186,886) ("**Loan**"), which indebtedness is evidenced by that certain Promissory Note of even date herewith ("**Promissory Note**" or "**Note**") made by Mortgageor, as maker, to and in favor of Mortgagee, as holder; and

To secure to Mortgagee (a) the payment of the Loan, and all extensions and modifications of the Promissory Note; and (b) the performance of MORTGAGOR's covenants and agreements under this Mortgage and the Promissory Note which shall be attached to this Mortgage as Attachment A after execution by MORTGAGOR. MORTGAGOR mortgages, grants, and conveys to Mortgagee the property described in the legal description included in the Promissory Note and more particularly set forth on Attachment B attached hereto, and located in Broward County, Florida, together with all improvements now or later erected on the property, and all easements, rights, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water, water rights, and water stock, and all fixtures now or later attached to the property, all of which, including replacements and additions, shall be deemed to be and remain a part of the property covered by this Mortgage; and all of the foregoing shall constitute and refer to the "**Property**."

MORTGAGOR covenants that MORTGAGOR is lawfully seized of the Property in fee, and has the right to mortgage, grant and convey its interest in the Property as provided herein; that title to the Property is marketable and free and clear of all encumbrances except for encumbrances and matters of record; and that MORTGAGOR will warrant and defend the title to the Property against the lawful claims of all persons whomsoever, except for encumbrances and matters of record as of the date hereof.

This Mortgage is expressly made subject and subordinate to the terms and conditions specified in (i) that certain mortgage from Mortgagor to Florida Housing Finance Corporation ("FHFC") dated December 16, 2014, to be recorded in Broward County, as assigned by FHFC to the Bank of New York Mellon, N.A. (the "**First Mortgage**") securing that certain Note or Notes having an aggregate original principal face amount of \$8,500,000, dated December 16, 2014 (the "**First Note**"), made by Mortgagor payable to Florida Housing Finance Corporation as the First Mortgagee; (ii) that certain mortgage from Mortgagor to FHFC dated December 16, 2014, to be recorded in Broward County ("**Second Mortgage**") securing that certain Home Loan Note having an original principal face amount of \$2,800,000 dated December 16, 2014 ("**Second Note**"), made by Mortgagor payable to Florida Housing Finance Corporation as the Second Mortgagee; and (iii) that certain mortgage from Mortgagor to Broward County, a political subdivision of the state of Florida, dated December 16, 2014 ("**Third Mortgage**") securing that certain HOME Loan Note having an original principal face amount of \$467,993, dated December 16, 2014 ("**Third Note**"), as well as to any refinancings of the foregoing (collectively, the "**Prior Mortgages**"), but only if the purpose of the refinance is the lowering of the interest rate on the First Note and Second Note.

**UNIFORM COVENANTS.** The Parties covenant and agree as follows:

1. **Payment of Debt.** MORTGAGOR shall pay when due, the debt evidenced by the Promissory Note. Payment due under the Promissory Note and this Mortgage shall be made in U.S. currency. However, if any check or other instrument received by Mortgagee as payment under the Promissory Note, or this Mortgage is returned to Mortgagee unpaid, Mortgagee may require that any, or all subsequent payments due under the Promissory Note and this Mortgage be made in one or more of the following forms, as selected by Mortgagee: (a) money order; (b) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (c) electronic funds transfer.

Payments are deemed received by Mortgagee when received at the location designated in the Promissory Note or at such other location as may be designated by Mortgagee in accordance with the notice provision herein. Mortgagee may return any payment or partial payment if the payment or partial payment is insufficient to bring the loan current. Mortgagee may accept any payment or partial payment insufficient to bring the loan current, without waiver of any rights, or prejudice to its rights to refuse such payment or partial payment in the future, but Mortgagee is not obligated to apply such payments at the time such payments are accepted.

2. **Charges; Liens.** MORTGAGOR shall pay all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Mortgage prior to delinquency. MORTGAGOR shall promptly furnish to Mortgagee receipts, or other such documents acceptable to the Mortgagee, evidencing such payments.

MORTGAGOR shall not voluntarily create, or permit, suffer to be created, or to exist, on or against the Property, or any part thereof, any lien superior to the lien of this Mortgage, exclusive of the Prior Mortgages or liens, if any, to which this Mortgage is made subordinate to as set forth above or as set forth in that certain marked title commitment delivered to Mortgagee contemporaneously with this Mortgage.

3. **Hazard Insurance.** MORTGAGOR shall keep the improvements now existing or later erected on the Property insured against loss by fire and such other hazards included within the term "extended coverage," and any other hazards including, but not limited to earthquakes and/or floods for which insurance is required and as Mortgagee may require, in such amounts and for such periods as Mortgagee may require; provided, that Mortgagee shall not require that the amount of such coverage exceed that amount of coverage required to pay the sums secured by this Mortgage.

Unless otherwise required by the Mortgagee, subject to the terms of the Prior Mortgages, all such insurance shall be affected by Standard Fire and Extended Coverage Insurance policies, in amounts not less than necessary to comply with the coinsurance clause percentage of the value applicable to the location and character of the property to be covered. All such insurance shall be carried in companies approved by the Mortgagee and all policies therefore shall be in such form and shall have attached loss payable clauses in favor of the Mortgagee and any other party as shall be satisfactory to the Mortgagee. The insurance carrier providing the insurance shall be chosen by MORTGAGOR, subject to the Mortgagee's approval; provided that such approval shall not be unreasonably withheld.

Subject to the terms of the Prior Mortgages, all insurance policies and renewals shall be in a form acceptable to the Mortgagee and shall include a standard mortgage clause in favor of and in a form acceptable to the Mortgagee. MORTGAGOR shall promptly furnish to the Mortgagee all renewal notices and all receipts of paid premiums. In the event of loss, MORTGAGOR shall give prompt notice to the insurance carrier and the Mortgagee, and the Mortgagee may make proof of loss if not made promptly by MORTGAGOR.

Unless the Parties otherwise agree in writing, and subject to the terms of the Prior Mortgages, insurance proceeds shall be applied to restoration or repair of the Property damaged, provided such restoration or repair is economically feasible, and the security of this Mortgage is not impaired. If such restoration or repair is not economically feasible, or if the security of this Mortgage would be impaired, the insurance proceeds shall be applied to the sums secured by this Mortgage, with the excess, if any, paid to MORTGAGOR. If the Property is abandoned by MORTGAGOR or if MORTGAGOR fails to respond to the Mortgagee within thirty (30) days after notice by the Mortgagee to MORTGAGOR that the insurance carrier offers to settle a claim for insurance benefits, the Mortgagee is authorized to collect and apply insurance proceeds at the Mortgagee's option either to restoration or repair of the Property or to the sums secured by this Mortgage.

Subject to the terms of the Prior Mortgages, during such repair and restoration period, the Mortgagee shall have the right to hold such insurance proceeds until the Mortgagee has had an opportunity to inspect such Property to ensure the work has been completed to the Mortgagee's satisfaction, provided that such inspection shall be undertaken promptly.

Subject to the terms of the Prior Mortgages, if the Property is acquired by the Mortgagee, all right, title, and interest of MORTGAGOR in and to any insurance policies and, in and to the proceeds (to the extent of the sums secured by this Mortgage immediately prior to such sale or construction) resulting from damage to the Property prior to the sale or construction shall pass to the Mortgagee.

The Mortgagee or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, the Mortgagee may inspect the interior of the Property

including improvements, if applicable. The Mortgagee shall give MORTGAGOR notice at the time of, or prior to, such an interior inspection specifying such reasonable cause.

4. **Preservation and Maintenance of Property.** MORTGAGOR shall keep the Property in good repair and shall not permit or commit waste, impairment, or deterioration of the Property, and will promptly comply with all the requirements of federal, state, and local governments pertaining to such property or any part. Except for repairs or replacements in the ordinary course of business or except for any emergency repairs, no building or other structure or improvement, fixture or personal property mortgaged, shall be removed or demolished without the written consent of the Mortgagee, except for obsolete, or worn out property that is replaced in the ordinary course of business. Except for repairs or replacements in the ordinary course of business or except for any emergency repairs, MORTGAGOR shall not make, permit, or suffer any alteration or addition to any building or other structure or improvement now, or which may later be erected or installed upon the mortgaged property, or any part, nor will MORTGAGOR use, or permit or suffer the use of, any of the mortgaged property for any purpose other than the purpose or purposes for which the same is now intended to be used, without the prior written consent of the Mortgagee.

5. **Protection of Mortgagee's Security.** The Mortgagee may, at its option, upon notice to MORTGAGOR, make such appearances, disburse such sums, and take such action as is necessary to protect the Mortgagee's interest, if MORTGAGOR fails to perform the covenants or agreements contained in this Mortgage or, if any action or proceeding is commenced which materially affects the Mortgagee's interests in the Property subject to this Mortgage, including but not limited to, eminent domain, insolvency, code enforcement, arrangements, or proceedings involving a bankruptcy.

6. Subject to MORTGAGOR's ability to cure as set forth in Paragraph 16 of this Mortgage, the amount of the loan shall become due at the option of the Mortgagee: (a) after MORTGAGOR's failure to exhibit to the Mortgagee, within ten (10) calendar days after demand, receipts showing payment of all taxes, water rates, sewer rates, and assessments; or (b) after the actual or threatened alteration, demolition, or removal of any building on the Property without the written consent of the Mortgagee; or (c) after the transfer of title to the Property, or any part thereof, without the written consent of the Mortgagee except as permitted under Section 4 of this Mortgage, and except for leases of residential units made in compliance with the Development Agreement ("Development Agreement") between MORTGAGOR and Mortgagee, and except for easements granted to governmental entities or other providers for utility or similar services necessary for the construction, use, occupancy, repair and maintenance of the property; or (d) if the buildings on the Property are not maintained in reasonably good repair; or (e) after failure to comply with any requirement, order, notice of violation of law, or ordinance issued by any governmental entity claiming jurisdiction over the Property; or (f) in the event of the removal, demolition, or destruction in whole, or in part, of any of the fixtures, chattels or articles of personal property covered, unless the same are promptly replaced by similar fixtures, chattels and articles of personal property at least equal in quality and condition to those replaced, free from chattel mortgages or other encumbrances and free from any retention of title; or (g) after thirty (30) calendar days' notice to MORTGAGOR, in the event of the passage of any law deducting from the value of land for the purpose of taxation any lien thereon, or changing in any way the taxation of mortgages or debts secured thereby for state or local purposes; or (h) if any default occurs thirty (30) calendar days after notice and demand; or (i) after default, notice, and demand either in assigning and delivering the policies insuring the buildings against loss by fire or in

reimbursing the Mortgagee for premiums paid on such insurance, as provided in this Mortgage; or (j) if MORTGAGOR fails to keep, observe and perform any of the other covenants, conditions or agreements contained in this Mortgage.

7. If any action or proceeding is commenced (except an action to foreclose this Mortgage or to collect the debt secured by this Mortgage), to which action or proceeding the Mortgagee is made a party, or in which it becomes necessary to defend or uphold the lien of this Mortgage, all sums paid by the Mortgagee for the expense of any litigation to prosecute or defend the rights and lien created by this Mortgage (including reasonable attorneys' fees), shall be paid by MORTGAGOR to the extent Mortgagee prevails, together with interest at the statutory rate per annum from the date demand for payment is made on MORTGAGOR, and any such sum including the related interest shall be a lien on the Property, prior to any right, or title to, interest in or claim upon the property attaching or accruing subsequent to the lien of this Mortgage, and shall be deemed to be secured by this Mortgage. In any action or proceeding to foreclose this Mortgage, or to recover or collect the debt secured by this Mortgage, the provisions of law respecting the recovering of costs, disbursements and allowances shall prevail unaffected by this covenant.

8. **MORTGAGOR's Loan Application.** MORTGAGOR shall be in default if, MORTGAGOR or any persons or entities acting at the direction of MORTGAGOR or with MORTGAGOR's knowledge or consent, gives materially false, misleading, or inaccurate information or statements to the Mortgagee (or failed to provide the Mortgagee with material information) in connection with the Loan.

9. **Condemnation.** Subject to the terms of the Prior Mortgages, the proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property or any part, or for conveyance in lieu of condemnation, are assigned and shall be paid to the Mortgagee. The proceeds referred to in this paragraph shall be applied to the sums secured by this Mortgage with the excess, if any, paid to MORTGAGOR. If the Property is abandoned by MORTGAGOR, or if, after notice by the Mortgagee to MORTGAGOR that the condemnor offers to make an award or settle a claim for damages, MORTGAGOR fails to respond to the Mortgagee within thirty (30) days after the date the notice is mailed, Mortgagee is, subject to the terms of the Prior Mortgages, authorized to collect and apply the proceeds, at the Mortgagee's option, either to restoration or repair of the Property, to the sums secured by this Mortgage.

10. **MORTGAGOR Not Released; Forbearance by the Mortgagee Not a Waiver.** Extension of time for payment or modification or amortization of the sums secured by this Mortgage Agreement granted by the Mortgagee to any successor in interest of MORTGAGOR shall not operate to release, in any manner, the liability of the original MORTGAGOR and MORTGAGOR's successor in interest. The Mortgagee shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Mortgage by reason of any demand made by the original MORTGAGOR and MORTGAGOR's successors in interest. Any forbearance by the Mortgagee for exercising any right or remedy, including, without limitation, the Mortgagee's acceptance of payments from third persons, entities or successors in interest or in amounts less than the amount then due, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy.

11. **Remedies Cumulative.** All remedies provided in this Mortgage are distinct and cumulative to any other right or remedy under this Mortgage or afforded by law or equity, and may be exercised concurrently, independently or successively.

12. **Joint and Several Liability; Successors and Assigns Bound; Captions.** MORTGAGOR covenants and agrees that MORTGAGOR's obligations and liability shall be joint and several. Any successor in interest of MORTGAGOR who assumes MORTGAGOR's obligations under this Mortgage in writing, and is approved by the Mortgagee, shall obtain all of MORTGAGOR's rights and benefits under this Mortgage. MORTGAGOR shall not be released from MORTGAGOR's obligations and liability under this Mortgage unless Mortgagee agrees to such release in writing. The covenants and agreements of this Mortgage shall bind and benefit the successors and assigns of Mortgagee. The captions and headings of the paragraphs of this Mortgage are for convenience only and are not to be used to interpret or define any specific provision.

13. **Notice.** All notices given by MORTGAGOR or the Mortgagee in connection with this Mortgage must be in writing. Any notice to MORTGAGOR (which shall simultaneously be delivered to the Borrower's investor limited partner, Stratford Captiva II Investors Limited Partnership, with an address at c/o Stratford Capital Group, 100 Corporate Place, Suite 404, Peabody, MA 01960, Attn: Asset Management (Captiva II), or such other address as the same may direct) in connection with this Mortgage shall be deemed to have been given to MORTGAGOR when mailed by first class mail or when actually delivered to MORTGAGOR's notice address if sent by other means. The notice address shall be the Property address unless MORTGAGOR has designated a substitute notice address by notice to Mortgagee. MORTGAGOR shall promptly notify the Mortgagee of MORTGAGOR's change of address. If the Mortgagee specifies a procedure for reporting MORTGAGOR's change of address, then MORTGAGOR shall only report a change of address through that specified procedure. There may be only one designated notice address under this Mortgage at any one time. Any notice to the Mortgagee shall be given by delivering it or by mailing it by first class mail to the Mortgagee's address unless the Mortgagee has designated another address by notice to MORTGAGOR. Any notice in connection with this Mortgage shall not be deemed to have been given to the Mortgagee until actually received by the Mortgagee. If any notice required by this Mortgage is also required under Florida law, the Florida law requirement will satisfy the corresponding requirement under this Mortgage.

14. **Governing Law; Severability; Rules of Construction.** This Mortgage shall be governed by Florida law and the laws of the jurisdiction in which the Property is located. In the event that any provision or clause of this Mortgage conflicts with Florida law, such conflict shall not affect other provisions of this Mortgage or the Promissory Note to be attached to this Mortgage as Attachment A following execution by MORTGAGOR, which can be given effect without the conflicting provision, and to this end, the provisions of this Mortgage and the Promissory Note are declared to be severable.

As used in this Mortgage: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

15. **Transfer of the Property; Assumption.** Except as provided in Paragraph 6(c) above or except for those transfers of the Property or Interests therein (in whole or part)

permitted under the Prior Mortgages, no part of the Property or any interest in the Property shall be sold or transferred by MORTGAGOR without the Mortgagee's consent consistent with Paragraph 21. If MORTGAGOR sells or transfers any interest or part in the Property, in violation of the terms and conditions of this Mortgage, the sums secured by this Mortgage shall become immediately due and payable. Notwithstanding the foregoing, the transfer of (i) any limited partnership interests in MORTGAGOR or (ii) any ownership interests in the Limited Partners of MORTGAGOR, as such term is defined in the Amended and Restated Limited Partnership Agreement dated as of December 16, 2014 (the "Partnership Agreement"), shall not require the consent of the Mortgagor, shall not be a default under the Loan documents, the Mortgagee shall not have the right to accelerate the Loan based on such transfers, and the Mortgagee shall not have the right to raise the interest rate under the Loan documents or impose any transfer fee. The Mortgagee's further consent to the execution of any documents, including without limitation any amendment to the Partnership Agreement to affect any transfer of limited partner interests, shall not be necessary.

The withdrawal, removal, and/or replacement of a general partner of the Mortgagor pursuant to the terms of the Partnership Agreement shall not constitute a default under any of the Loan documents, and any such actions shall not accelerate the maturity of the Loan, provided that any required substitute general partner is reasonably acceptable to the Mortgagee and is selected with reasonable promptness. The Mortgagee hereby approves Stratford SLP, Inc., MORTGAGOR's "Special Limited Partner" or any affiliate of the Special Limited Partner as a substitute general partner, and the Mortgagee's consent, nor acknowledgement, shall be required to any amendment to the Partnership Agreement necessary to effectuate the substitution of the Special Limited Partner, or any affiliate, as general partner.

If the amount becomes due and payable, the Mortgagee shall mail MORTGAGOR a Notice of Acceleration. Such Notice shall provide a period of not less than thirty (30) days from the date the Notice is received within which MORTGAGOR may pay the sums declared due. If MORTGAGOR fails to pay such sums prior to the expiration of such period, the Mortgagee may without further notice or demand on MORTGAGOR, invoke any available legal remedies.

**NONUNIFORM COVENANTS.** MORTGAGOR and the Mortgagee further covenant and agree as follows:

16. **Acceleration; Remedies.** Upon MORTGAGOR's breach of any covenant in this Mortgage or the Promissory Note to be attached as Attachment A following execution of same by MORTGAGOR, including the covenants to pay, when due, which breach is not cured after notice from the Mortgagee to MORTGAGOR and to Stratford Captiva II Investors Limited Partnership (the "Investor Limited Partner") and Special Limited Partner within any applicable curative period any sums secured by this Mortgage shall be accelerated. The Mortgagee prior to acceleration shall mail notice to MORTGAGOR specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than thirty (30) days from the date the notice is received by MORTGAGOR, by which such breach must be cured (provided, however, for any defaults or breaches other than failure to pay, such thirty (30) days shall be extended if a cure cannot reasonably be made within such time, in which case the time to cure shall be extended by a reasonable number of days to permit a cure as determined by Mortgagee in its sole and reasonable discretion, so long as Mortgagor is diligently attempting a cure); and (4) that failure to cure such breach on or before the date specified in the notice may result in any action in law or equity, as the Mortgagee determines to be most effectual to enforce

MORTGAGOR's obligations, including an action for specific performance, acceleration of the sums secured by this Mortgage, foreclosure by judicial proceeding and sale of the Property. Notwithstanding the foregoing, the Investor Limited Partner, or its designee, of MORTGAGOR shall have the right but not the obligation to cure any event of default under this Mortgage. The Mortgagee agrees to such performance as though the same has been performed by MORTGAGOR. If the breach is not cured on or before the date specified in the notice, the Mortgagee at the Mortgagee's option may declare all the sums secured by this Mortgage to be immediately due and payable without further demand and may foreclose this Mortgage by judicial proceeding. The Mortgagee shall be entitled to collect in such proceeding all expenses of foreclosure, including but not limited to, reasonable attorney's fees, and costs of documentary evidence, abstracts and title reports.

Notwithstanding anything in this Mortgage or the other documents evidencing or securing this Loan, in no event shall the Mortgagor or any partner thereof be personally liable for the principal and interest due on the Note, and the Mortgagee's sole recourse shall be to foreclose on the Property.

17. **MORTGAGOR's Right to Reinstate.** Notwithstanding the Mortgagee's acceleration of the sums secured by this Mortgage, MORTGAGOR shall have the right to have any proceedings begun by the Mortgagee to enforce this Mortgage discontinued at any time prior to an entry of a judgment enforcing this Mortgage if: (a) MORTGAGOR pays the Mortgagee all sums which would be then due under this Mortgage had no acceleration occurred; (b) MORTGAGOR cures all breaches of this Mortgage; (c) MORTGAGOR pays all reasonable expenses incurred by the Mortgagee in enforcing the covenants and agreements of MORTGAGOR contained in this Mortgage, including but not limited to reasonable attorney's fees; and (d) MORTGAGOR takes such action as the Mortgagee may reasonably require to assure that the lien of this Mortgage, the Mortgagee's interest in the Property and MORTGAGOR's obligation to pay the sums secured by this Mortgage shall remain in full force and effect.

18. After the occurrence of any default which is not cured within any applicable notice and curative period, MORTGAGOR shall, upon demand of the Mortgagee, surrender possession of the Property to the Mortgagee, and the Mortgagee may enter such property, and let the same and collect all rents which are due or to become due, and apply the same, after payment of all charges and expenses on account of indebtedness secured by this Mortgage, and all such rents and all leases existing at the time of such default are assigned to the Mortgagee as further security for the payment of the indebtedness secured; and the Mortgagee may also dispossess, by the usual summary proceedings, any tenant defaulting in the payment of any rent to the Mortgagee.

Mortgagor's Investor Limited Partner, Special Limited Partner, and/or their designees, shall have the right, but not the obligation, to cure any Mortgagor defaults, and the Mortgagee shall accept such cure on the same basis as if rendered by the Mortgagor.

19. The Mortgagee in any action to foreclose this Mortgage shall be entitled to the appointment of a receiver without notice, as a matter of right and without regard to the value of the mortgaged property, or the solvency or insolvency of MORTGAGOR or other party liable for the payment of the Promissory Note and other indebtedness secured by this Mortgage.

20. The amount due under the Promissory Note shall be paid at the end of thirty three (33) years, from and after the date that the Project to be constructed on the Property has been completed and a Certificate of Occupancy is issued with respect thereto. If, however, except as provided in Section 6(c) above, MORTGAGOR fails to utilize the Property during the thirty three (33) year Affordability Period for the purposes stated in the Promissory Note, to be attached to this Mortgage as Attachment A following execution by MORTGAGOR, which is secured hereby, or fails to comply with the terms and conditions of this Mortgage following the expiration of any grace or cure period, the amount of the Promissory Note shall immediately become due and payable to the Mortgagee.

21. **Transfer of the Property or a Beneficial Interest in MORTGAGOR.** "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by MORTGAGOR at a future date to a purchaser.

Except as permitted in Section 6(c) above or except as permitted under the Prior Mortgages, if all or any part of the Property, or any interest in the Property, is sold or transferred (or if MORTGAGOR is not a natural person and a general partner interest in MORTGAGOR is sold or transferred, except pursuant to section 15 above and as set forth below) without the Mortgagee's prior written consent, the Mortgagee may require immediate payment in full of all sums secured by this Mortgage. However, this option shall not be exercised by the Mortgagee if such exercise is prohibited by federal and state law.

If the Mortgagee exercises this option, the Mortgagee shall give MORTGAGOR notice of acceleration. The notice shall provide a period of not less than thirty (30) days from the date the notice is given in accordance with Section 13 within which MORTGAGOR must pay all sums secured by this Mortgage. If MORTGAGOR fails to pay these sums prior to the expiration of this period, the Mortgagee may invoke any remedies permitted by this Mortgage without further notice or demand on MORTGAGOR.

Notwithstanding the foregoing, the transfer or pledge of (i) any limited partnership interests in MORTGAGOR or (ii) any ownership interests in the Limited Partners of MORTGAGOR, as such term is defined in Partnership Agreement, shall not require the Mortgagee's consent, shall not be a default under the Loan documents, the Mortgagee shall not have the right to accelerate the Loan based on such transfers, and the Mortgagee shall not have the right to raise the interest rate under the Loan documents or impose any transfer fee. The Mortgagee's further consent to the execution of any documents, including without limitation any amendment to the Partnership Agreement to effect any transfer of limited partner interests, shall not be necessary.

The withdrawal, removal, and/or replacement of a general partner or limited partner of the Partnership pursuant to the terms of the Partnership Agreement shall not constitute a default under any of the Loan documents, and any such actions shall not accelerate the maturity

of the Loan, provided that any required substitute general partner is reasonably acceptable to the Mortgagee and is selected with reasonable promptness. The Mortgagee hereby approves the Special Limited Partner or any affiliate of the Special Limited Partner as a substitute general partner, and the Mortgagee's consent, nor acknowledgement, shall be required to any

amendment to the Partnership Agreement necessary to effectuate the substitution of the Special Limited Partner, or any affiliate, as general partner.

22. **MORTGAGOR's Right to Reinstate After Acceleration.** If MORTGAGOR meets certain conditions, MORTGAGOR shall have the right to have enforcement of this Mortgage discontinued at any time prior to the earliest of: (a) such period as federal and state law might specify for the termination of MORTGAGOR's right to reinstate; or (b) entry of a judgment foreclosing this Mortgage. Those conditions are that MORTGAGOR: (a) pays the Mortgagee all sums which then would be due under this Mortgage and the Promissory Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Mortgage, including, but not limited to, reasonable attorneys' fees, Property inspection and valuation fees, and other fees incurred for the purpose of protecting the Mortgagee's interest in the Property and rights under this Mortgage; and (d) takes such action as the Mortgagee may reasonably require to assure that the Mortgagee's interest in the Property and rights under this Mortgage, and MORTGAGOR's obligation to pay the sums secured by this Mortgage shall continue unchanged. The Mortgagee may require that MORTGAGOR pay such reinstatement sums and expenses in one or more of the following forms, as selected by the Mortgagee: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, secured instrument and obligations shall remain fully effective as if no acceleration had occurred.

Neither MORTGAGOR nor the Mortgagee may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Mortgage or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Mortgage until such MORTGAGOR or the Mortgagee has notified the other party of such alleged breach and afforded the other party a reasonable period after the giving of such notice to take corrective action. If Florida law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph.

23. **Hazardous Substances.** As used in this Section: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup. Hazardous Substances shall exclude substances generally used for household purposes and substances in amounts permitted by applicable laws.

MORTGAGOR shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. MORTGAGOR shall not do, nor voluntarily allow (to the extent permitted by law) anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two (2) sentences shall not apply to the presence, use, or storage on

the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

MORTGAGOR shall promptly give the Mortgagee written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which MORTGAGOR has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If MORTGAGOR learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, MORTGAGOR shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing in this Mortgage shall create any obligation on Mortgagee for an Environmental Cleanup.

24. **Attorneys' Fees.** As used in this Mortgage and the Promissory Note to be attached hereto as Attachment A following execution by MORTGAGOR, attorneys' fees shall include those awarded by a trial court, an appellate court and any attorneys' fees incurred in a bankruptcy proceeding.

25. **Jury Trial Waiver.** MORTGAGOR waives any right to a trial by jury in any action, proceeding, claim, or counterclaim, whether in contract or tort, at law or in equity, arising out of or in any way related to this Mortgage or the Promissory Note.

26. **Recordation.** This Mortgage shall be recorded in the Public Records of Broward County, Florida, by the Mortgagee at the expense of MORTGAGOR.

27. **Release.** Upon payment or reduction of all sums secured by this Mortgage and performance of all improvements and obligations provided for in the Note, the Mortgagee shall satisfy and release this Mortgage without charge to MORTGAGOR. MORTGAGOR shall pay all costs of recordation, if any.

28. **MORTGAGOR's Copy.** MORTGAGOR shall be given one (1) copy of the Promissory Note and this Mortgage.

29. **EXTENDED LOW-INCOME HOUSING COMMITMENT.** Mortgagee agrees that the lien of this Instrument shall be subordinate to any extended low-income housing commitment (as such term is defined in Section 42(h)(6)(B) of the Internal Revenue Code) (the "Extended Use Agreement") recorded against the Property; provided that such Extended Use Agreement, by its terms, must terminate upon foreclosure under this Instrument or upon a transfer of the Property by instrument in lieu of foreclosure, in accordance with Section 42(h)(6)(E) of the Internal Revenue Code.

BY SIGNING BELOW, MORTGAGOR accepts and agrees to the terms and covenants contained in this Mortgage and in any Rider approved by the Mortgagee and executed by MORTGAGOR and recorded with it.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, MORTGAGOR, CAPTIVA COVE II ASSOCIATES, LTD., has executed this Mortgage.

**MORTGAGOR:**

WITNESSES:

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Print Name of Witness

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Print Name of Witness

CAPTIVA COVE II ASSOCIATES, LTD., a  
Florida limited partnership

By: Cornerstone Captiva Cove II, L.L.C.,  
Florida limited liability company, its  
general partner

By: \_\_\_\_\_

Mara S. Mades  
Vice President

STATE OF FLORIDA            )  
  SS  
COUNTY OF BROWARD        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2014, by Mara S. Mades, as Vice President of Cornerstone Captiva Cove II, L.L.C., a Florida limited liability company, general partner of Captiva Cove II Associates, Ltd., a Florida limited partnership, on behalf of the companies. She is personally known to me or has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public, State of Florida at Large  
Commission No. \_\_\_\_\_

My Commission Expires:

**EXHIBIT "D" CONTINUED  
AMENDMENT TO MORTGAGE**

Prepared by and return to:

Zimmerman Kiser Sutcliffe, P.A.  
315 East Robinson Street, Suite 600  
Orlando FL 32801  
Attention: John P. Grygiel, Esq.

**AMENDMENT TO MORTGAGE**

THIS AMENDMENT TO MORTGAGE ("Amendment"), entered into as of \_\_\_\_\_, 2016 by CAPTIVA COVE II ASSOCIATES, LTD., a Florida limited partnership (whether one or more, "Mortgagor") and CITY OF POMPANO BEACH, a public body corporate and politic ("Mortgagee"), collectively referred to herein as the "Parties."

WHEREAS, the Parties executed that certain Mortgage, dated December 16, 2014, and recorded on December 18, 2014, in Official Records Book 51326, Page 1206, in the Public Records of Broward County, Florida 2014 (the "Original Mortgage", and as amended hereby, the "Mortgage"), wherein Mortgagor became indebted to Mortgagee in the amount of One Hundred Eighty-Six Thousand Eight Hundred Eighty-Six Dollars (\$186,886) ("Original Loan"), which indebtedness is evidenced by that certain Promissory Note of even date therewith ("Original Promissory Note" or "Original Note") made by Mortgagor, as maker, to and in favor of Mortgagee, as holder; and

WHEREAS, upon the request of the Mortgagor, Mortgagee has agreed to advance Mortgagor an additional sum of \$100,327, and in connection therewith they have executed that certain Home Funding Agreement, dated \_\_\_\_\_, 2016, wherein the Mortgagee agreed to advance to Mortgagor One Hundred Thousand Three Hundred Twenty-Seven Dollars (\$100,327) (the "Advance"); and

WHEREAS, to evidence the Advance, the Mortgagor has delivered to Mortgagee a Future Advance Note; and

WHEREAS, to secure the Advance, Mortgagor and Mortgagee now wish to amend the Original Mortgage.

NOW, THEREFORE, for good and other valuable consideration, the receipt of which is hereby acknowledged, the Original Mortgage is amended as follows:

1. The following shall be added to the Original Mortgage as paragraph 30:

**Future Advances.** Mortgagee may, at Mortgagee's option prior to release of this Mortgage, make Future Advances to Mortgagor. Such Future Advances, with interest thereon, shall be secured by this Mortgage when evidenced by any such future advance note(s) or amendments to the Original Note.

2. Any and all references to the Loan in the Original Mortgage shall refer to the principal amount of \$287,213, as evidenced by that certain \$186,886 promissory

note executed by Mortgagor on December 16, 2014, and that certain \$100,327 Future Advance Note from Mortgagor to Mortgagee made on \_\_\_\_\_, 2016.

3. The Original Mortgage, as amended and modified hereby, is hereby in all respects ratified and confirmed.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, MORTGAGOR, CAPTIVA COVE II ASSOCIATES, LTD., has executed this Amendment to Mortgage.

**MORTGAGOR:**

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CAPTIVA COVE II ASSOCIATES, LTD.,  
a Florida limited partnership

By: Cornerstone Captiva Cove II,  
L.L.C., a Florida limited liability company,  
its general partner

By: \_\_\_\_\_

Mara S. Mades  
Vice President

STATE OF FLORIDA     )  
  SS  
COUNTY OF BROWARD )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016, by Mara S. Mades, as Vice President of Cornerstone Captiva Cove II, L.L.C., a Florida limited liability company, general partner of Captiva Cove II Associates, Ltd., a Florida limited partnership, on behalf of the companies. She is personally known to me or has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public, State of Florida at Large  
Commission No. \_\_\_\_\_

My Commission Expires:

**MORTGAGEE:**

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

CITY OF POMPANO BEACH

By: \_\_\_\_\_  
\_\_\_\_\_, MAYOR

By: \_\_\_\_\_  
\_\_\_\_\_, CITY MANAGER

Attest:

(SEAL)

\_\_\_\_\_  
[name]  
CITY CLERK  
Approved As to Form:

\_\_\_\_\_  
[name]  
CITY ATTORNEY

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016 by \_\_\_\_\_, as Mayor, \_\_\_\_\_, as City Manager and \_\_\_\_\_, as City Clerk of the City of Pompano Beach, a municipal Florida corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public, State of Florida at Large  
Commission No. \_\_\_\_\_

My Commission Expires:

**ATTACHMENT "A" TO EXHIBIT "D"**  
**FUTURE ADVANCE NOTE**

FOR VALUE RECEIVED the undersigned, CAPTIVA COVE II ASSOCIATES, LTD., a Florida limited partnership ("MAKER"), promises to pay to the order of the CITY OF POMPANO BEACH, a public body corporate and politic, together with any other holder ("HOLDER") at 100 West Atlantic Boulevard, Pompano Beach, Florida 33060, or such other place as HOLDER may from time to time designate in writing, in lawful currency of the United States of America, the sum of \$100,327 or so much of said sum as has been advanced and is then outstanding under this Note, together with interest thereon as hereinafter set forth ("Loan").

This Future Advance Note ("Note") is a Note under which advances may be made from time to time, subject to the terms and conditions of this Note, and pursuant to the terms of Resolution No.: \_\_\_\_\_ of the City Commission of the City of Pompano Beach, Florida ("Authorizing Resolution"), and that Home Loan Agreement dated \_\_\_\_\_ between Maker and Holder with respect to an 88-unit apartment complex located at 1201 S. Dixie Highway West, Pompano Beach, Broward County, Florida 33060 ("Project").

The terms of this Note are as follows:

1. The property securing repayment of the Loan ("Property") is legally described as: See Exhibit A attached.
2. Advances made hereunder shall accrue interest at the rate of zero percent (0.00%) from the date hereof until the last day of the second year following the issuance of a certificate of occupancy on the Project, and at the rate of two percent (2.00%) per annum thereafter, until the Maturity Date, at which point the entire principal balance then outstanding shall be due and payable. Interest shall be payable quarterly, out of 75% of available cash flow remaining after paying amounts due under the notes secured by the Prior Mortgages (as defined in the Mortgage), on the first day of April, June, October and January of each year for which interest is payable hereunder. This Note shall mature on January 1, 2049 ("Maturity Date"). If, however, MAKER transfers title to the Property prior to the Maturity Date, or fails to utilize the Property for the purpose stated in the Mortgage (defined below), or fails to comply with the terms and conditions of the Authorizing Resolution or Development Agreement, or the Mortgage, this Note shall immediately become due and payable to HOLDER.
3. The principal balance advanced under this Note, subject to Section 2 above, shall be due and payable upon transfer or sale of the Property. If this Note is reduced to judgment, such judgment shall bear the statutory interest rate on judgments.
4. The principal balance advanced under this Note is payable, subject to Section 2, upon the conveyance of title (legal or equitable) to all or any portion of the Property, except as permitted in Section 6(c) of the Mortgage, or abandonment of the Property or use of the Property for nonresidential purposes.
5. If suit is instituted by HOLDER to recover under this Note, the undersigned agrees to pay all costs of such collection including reasonable attorneys' fees and court costs. This Note is subject to the nonrecourse provisions in the Mortgage described in paragraph 7 herein.

6. Demand, protest and notice of demand and protest are waived and the undersigned waives, to the extent authorized by law, any and all homestead and other exemption rights which otherwise would apply to the debt evidenced by this Note.

7. This Note is secured by that certain mortgage from Maker to Holder dated December 16, 2014, and recorded on December 18, 2014, in Official Records Book 51326, Page 1206, in the Public Records of Broward County, Florida 2014 , and as amended by that certain amendment thereto dated an even date hereof (as amended, the "Mortgage").

8. If MAKER performs all covenants and conditions of this Note and the Mortgage, then the Loan and all other documents evidenced by the Loan shall cease and terminate and, upon request of MAKER, HOLDER shall issue a Satisfaction of Mortgage.

THIS NOTE IS EXEMPT FROM DOCUMENTARY STAMP TAXES

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, MAKER, CAPTIVA COVE II ASSOCIATES, LTD., has executed this Note this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**WITNESS:**

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

**MAKER:**

CAPTIVA COVE II ASSOCIATES, LTD., a Florida limited partnership

By: Cornerstone Captiva Cove II, L.L.C., a Florida limited liability company, its general partner

By: \_\_\_\_\_  
Mara S. Mades  
Vice President

STATE OF FLORIDA        )  
                                  ) SS  
COUNTY OF BROWARD    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by Mara S. Mades, as Vice President of Cornerstone Captiva Cove II, L.L.C., a Florida limited liability company, general partner of Captiva Cove II Associates, Ltd., a Florida limited partnership, on behalf of the companies. She is personally known to me or has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public, State of Florida at Large  
Commission No. \_\_\_\_\_

My Commission Expires:

Prepared by:  
Housing Finance & Community Development Division  
110 N.E. Third Street  
Fort Lauderdale, Florida 33301

**EXHIBIT "D-1"**

**DECLARATION OF RESTRICTIVE COVENANTS**  
**RENTAL UNITS**

It is understood and agreed by Declarant, CAPTIVA COVE II ASSOCIATES, LTD., a Florida limited partnership, that the Project referenced herein on the Property described herein is being funded under the HOME Investment Partnerships (HOME) Program, collectively referred to herein as the "Program." Pursuant to the Program, HOME funds provided by City of Pompano Beach (the "CITY") pursuant to a HOME Funding Agreement executed by the parties dated November 4, 2014, are being expended by Declarant to acquire real property for improvements to be constructed at the Property located at 1201 S. Dixie Highway West, Pompano Beach, City of Pompano Beach, Florida (the "Project").

Under the Program, the above-referenced HOME funds have been provided as a deferred payment loan with no monthly payments required. However, as a condition of the loan, I agree that Declarant shall use the Property only for development of affordable multi-family residential rental units as described in the HOME Funding Agreement. This Declaration of Restrictive Covenants shall remain in effect following Project Completion, as defined in the HOME Funding Agreement, for all rental units, including the HOME Assisted Units, until the Affordability Period of thirty three (33) years expires. Declarant shall rent the units, including the HOME Assisted Units only to Income Eligible Households as defined in and as required by the HOME Funding Agreement for the Affordability Period.

This Declaration of Restrictive Covenants shall be extinguished and released by City of Pompano Beach in whole, or in part, in accordance with the terms contained herein.

I have read the foregoing requirements and have been explained to me and/or I fully understand their terms.

Dated this 16<sup>th</sup> day of December, 2014

WITNESSES:

CAPTIVA COVE II ASSOCIATES, LTD.  
a Florida limited partnership

By: Cornerstone Captive Cove II, L.L.C. a  
Florida limited liability company, its  
general partner

Signature

By: \_\_\_\_\_

Signature

Mara S. Mades,  
Vice President

STATE OF FLORIDA       )  
  ) SS  
CITY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of  
2014 by Mara S. Mades, as vice president of Cornerstone Captiva Cove II, L.L.C., a Florida  
limited liability company, the general partner of CAPTIVA COVE II ASSOCIATES, LTD., a  
Florida limited partnership, on behalf of the companies. She ( ) is personally known to me  
or ( ) has \_\_\_\_\_  
produced \_\_\_\_\_ as identification.

Name: \_\_\_\_\_

Print  
Notary Public, State of Florida at Large  
Commission

No, \_\_\_\_\_  
My Commission Expires:

**EXHIBIT "E"**

**MONTHLY PROGRESS REPORT**

**PROGRAM OBJECTIVE**

<b>Measurable Objective</b>	<b>Specific Task Qualified</b>	<b>Projected Yearly Total</b>	<b>Monthly Progress</b>	<b>Progress Year-to Date</b>	<b>Supporting Documentation</b>

EXHIBIT "E" Continued

MONTHLY PROGRESS REPORT

Period Covered: \_\_\_\_\_ to \_\_\_\_\_

A. Property information Date of Report:

Agency: \_\_\_\_\_

Person Preparing the Report: \_\_\_\_\_

Title: \_\_\_\_\_

Signature:

Project Title and Number: \_\_\_\_\_

Project Start-Up Date: \_\_\_\_\_

Project Completion Date:

B.1(a)	<u>Project Cost</u>	<u>Funds Expended To Date</u>	<u>Percentage</u>
Total Project	\$ _____	\$ _____	_____
HOME Funding	\$ _____	\$ _____	_____
Other Funding	\$ _____	\$ _____	_____
(State Source)	_____		

B.1 (b) Declaration of Agency Budget Chances

Proclaim Income:

Source of Program Income: \_\_\_\_\_

**EXHIBIT "E" Continued**

**B.1(c) Other Grant Awards**

**Dates):** \_\_\_\_\_ **Dollar Amount(s):** \_\_\_\_\_

**Funding Sources):** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Funding Contact Person(s):** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**B.1 (d) Describe other attempts to secure additional funding:** \_\_\_\_\_

**B.2 (a) Percent of Project Completed to Date:** \_\_\_\_\_

- 1. Office Hours:** \_\_\_\_\_
- 2. Resignations:** \_\_\_\_\_
- 3. Part-time of Full-time Employees(s)** \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT "E" Continued**

**C.1 Brief Project Description & Project Location:**

**C.2 Describe Specific Work Tasks and Qualified Accomplishments Completed This Month:**

<u>Task</u>	<u>Qualified Accomplishments this Month</u>
-------------	---

**C.3 Describe Success or Problems Encountered with the Project.**

**C.4 Anticipated problems or concerns with project: Please identify technical assistance needed and/or requested from CITY staff.**

**C.5 Anticipated advertisements and/or other contractual services: if so, has CITY staff been advised and appropriate steps taken to assure compliance?**

**C.8 If applicable, please complete the following direct Benefit Report Form on all program participants.**

**EXHIBIT "F"**  
**FINAL ACCOUNTING FOR PROJECT**

Project Name \_\_\_\_\_

Initial HOME funding Amount \_\_\_\_\_

Amended HOME funding Amount \_\_\_\_\_

Amount Expended \_\_\_\_\_

Amount Unexpended \_\_\_\_\_

For each HOME Assisted Unit, furnish the following:

- household size
- race
- rental or homeowner
- number of bedrooms
- percent of median income
  
- female head of household — Answer

Other sources of Project funding:

- type
- interest rate
- loan term
- amount

For all rental units constructed with HOME funds provided under the Agreement for the Project, include the following information for each unit:

- Rent
- Amount of Utility allowance
- Tenant contribution
- Rental subsidy

**Exhibit "G"**  
**REQUEST FOR PAYMENT FORM**

<b>TO (OWNER):</b>  <b>FROM (CONTRACTOR):</b>  <b>CONTRACT FOR:</b>  <b>CONTRACTOR'S APPLICATION FOR PAYMENT</b>			<b>PROJECT No:</b> _____ <b>APPLICATION NO.:</b> _____ <b>FROM:</b> _____ <b>TO:</b> _____ CONTRACT DATE: _____ Application is made for Payment, as shown below, in connection with the Contract. _																																																											
<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th colspan="2" style="text-align: left;">CHANGE ORDER SUMMARY</th> <th style="width:15%;">ADDITIONS</th> <th style="width:15%;">DECUCTIONS</th> </tr> <tr> <td colspan="2" style="text-align: left;">Change Orders Approved in previous months by Owner</td> <td></td> <td></td> </tr> <tr> <td colspan="2" style="text-align: left;"><b>TOTAL</b></td> <td></td> <td></td> </tr> <tr> <td colspan="2" style="text-align: left;">Approved this Month</td> <td></td> <td></td> </tr> <tr> <td style="width:10%;">Number</td> <td style="width:15%;">Date Approved</td> <td></td> <td></td> </tr> <tr> <td colspan="2" style="text-align: center;"><b>TOTALS</b></td> <td></td> <td></td> </tr> <tr> <td colspan="2" style="text-align: left;">Net change by Change Orders</td> <td></td> <td></td> </tr> </table>			CHANGE ORDER SUMMARY		ADDITIONS	DECUCTIONS	Change Orders Approved in previous months by Owner				<b>TOTAL</b>				Approved this Month				Number	Date Approved			<b>TOTALS</b>				Net change by Change Orders				<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%;">1. ORIGINAL CONTRACT SUM</td> <td style="width:50%; text-align: right;">\$</td> </tr> <tr> <td>2. Net change by Change Orders</td> <td style="text-align: right;">\$</td> </tr> <tr> <td>3.. CONTRACT SUM TO DATE (Use 1 + 2)</td> <td style="text-align: right;">\$</td> </tr> <tr> <td>4. TOTAL COMPLETED &amp; STORED TO DATE</td> <td style="text-align: right;">\$</td> </tr> <tr> <td colspan="2" style="text-align: center;">(Column G)</td> </tr> <tr> <td>5. RETAINAGE</td> <td></td> </tr> <tr> <td colspan="2" style="text-align: center;">(Column D + E)</td> </tr> <tr> <td>b. % of Stored Material</td> <td style="text-align: right;">\$</td> </tr> <tr> <td colspan="2" style="text-align: center;">(Column F)</td> </tr> <tr> <td colspan="2" style="text-align: center;">Total Retainage (Line 5a + 5B or Total in Column in I)</td> </tr> <tr> <td></td> <td style="text-align: right;">\$</td> </tr> <tr> <td>8. TOTAL EARNED LESS RETAINAGE (Line 4 less Line 5 Total)</td> <td style="text-align: right;">\$</td> </tr> <tr> <td>7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (One 6 from prior Certificate)</td> <td style="text-align: right;">\$ ,</td> </tr> <tr> <td>8. CURRENT PAYMENT DUE</td> <td style="text-align: right;">\$</td> </tr> <tr> <td>9. BALANCE TO FINISH. PLUS RETAINAGE (Line 3 less Line 6)</td> <td style="text-align: right;">\$</td> </tr> </table>		1. ORIGINAL CONTRACT SUM	\$	2. Net change by Change Orders	\$	3.. CONTRACT SUM TO DATE (Use 1 + 2)	\$	4. TOTAL COMPLETED & STORED TO DATE	\$	(Column G)		5. RETAINAGE		(Column D + E)		b. % of Stored Material	\$	(Column F)		Total Retainage (Line 5a + 5B or Total in Column in I)			\$	8. TOTAL EARNED LESS RETAINAGE (Line 4 less Line 5 Total)	\$	7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (One 6 from prior Certificate)	\$ ,	8. CURRENT PAYMENT DUE	\$	9. BALANCE TO FINISH. PLUS RETAINAGE (Line 3 less Line 6)	\$
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The undersigned Contractor certifies to the Owner that the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.			State of Florida _____ County of Broward _____ Subscribed and sworn to before me this _____ day of _____ 20____ Notary Public My Commission Expires: _____																																																											
<b>CONTRACTOR:</b>  By: _____ Date: _____			AMOUNT CERTIFIED \$ _____ <i>Attach explanation if amount certified differs from the amount applied for.</i>  By _____ Date: _____ This certificate is not negotiable. The AMOUNT CERTIFIED Is payable only to the Contractor named herein. Issuance, payment, and acceptance of payment is without prejudice to any rights of the Owner under the Contract.																																																											

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**EXHIBIT "I"  
PROJECT RENTS**

**FORT LAUDERDALE, FL HMFA\***

**(June 2011)**

<b>Number of Bedrooms</b>	<b>Fair Market Rent</b>	<b>Low HOME</b>	<b>High HOME</b>
<b>Efficiency</b>	<b>\$956</b>	<b>\$693</b>	<b>\$881</b>
<b>1</b>	<b>1,069</b>	<b>743</b>	<b>946</b>
<b>2</b>	<b>1,285</b>	<b>891</b>	<b>1,137</b>
<b>3</b>	<b>1,777</b>	<b>1,030</b>	<b>1,305</b>
<b>4</b>	<b>2,256</b>	<b>1,148</b>	<b>1,436</b>
<b>5</b>	<b>2,594</b>	<b>1,268</b>	<b>1,567</b>
<b>6</b>	<b>2,933</b>	<b>1,386</b>	<b>1,697</b>

**\*Source: U.S. Department of Housing and Urban Development.**