

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
A HOME FUNDING AGREEMENT BETWEEN THE CITY OF POMPANO
BEACH AND CAPTIVA COVE ASSOCIATES, LTD. PROVIDING FOR NEW
CONSTRUCTION OF CAPTIVA COVE A 264 UNIT MULTI-FAMILY RENTAL
AN EFFECTIVE DATE. (HOME FUNDS \$950,000 – Previously Contributed)

Summary of Purpose and Why:

This resolution authorizes approval and signature by the City of a replacement HOME Funding Agreement between the City and Captiva Cove Associates, Ltd, which completed development its first 264 units of affordable rental housing at Captiva Cove, 1201 W. Dixie Highway (Phase I) in 2013. The City has already contributed \$950,000 in HOME funds to Phase I, pursuant to Resolution No. 2010-306, which authorized and approved the Development Agreement between the City and Captiva Cove Associates, Ltd.

Resolutions 2015-66 and 2016-132 were subsequently adopted, approving and authorizing HOME Funding Agreements for Captiva Cove Phase II that contributed \$186,559 and \$100,327.00, respectively, towards construction of Phase II. Phase II is comprised of the final 88 units necessary to build out the development and is almost finished.

As recited on the first page of the present replacement HOME Funding Agreement, neither of the parties has been able to locate a prior executed copy of the HOME Funding Agreement covering Phase I. It normally would have been authorized and approved at or near the same time as the Development Agreement that was the subject of Resolution No. 2010-306.

Tonight's Resolution and the HOME Funding Agreement that it enables do not impose additional financial obligations on the City. All funds payable by the City to Captiva Cove Associates, Ltd. under it have been paid and Captiva Cove Phase I is complete. However, HOME project funding regulations require that the Agreement be in place and recorded with the Broward County Clerk and Recorder.

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 - \$950,000.00 (previously contributed)

| DEPARTMENTAL COORDINATION | DATE | DEPARTMENTAL RECOMMENDATION | DEPARTMENTAL HEAD SIGNATURE |
|---------------------------|---------------|-----------------------------|-----------------------------|
| OHUI | <u>6/9/16</u> | Approval | |
| City Attorney | <u>6/3/16</u> | | |
| Finance | <u>6/3/16</u> | Approval | |

City Manager JENNIFER BEARD

ACTION TAKEN BY COMMISSION:

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

MEMORANDUM

DATE: June 3, 2016
TO: Dennis Beach, City Manager
THROUGH: Mark Berman, City Attorney
FROM: Miriam Carrillo, Director *MC*
RE: **Agenda Item – Captive Cove Phase I Replacement HOME Funding Agreement**

This Resolution authorizes approval and signature by the City of a replacement HOME Funding Agreement between the City and Captiva Cove Associates, Ltd, which completed development its first 264 units of affordable rental housing at Captiva Cove, 1201 W. Dixie Highway (Phase I) in 2013. The City has already contributed \$950,000 in HOME funds to Phase I, pursuant to Resolution No. 2010-306 (attached), which authorized and approved the Development Agreement between the City and Captiva Cove Associates, Ltd.

Willie Hopkins and Gordon Linn handled this transaction for the City. However, neither OHUI nor Cornerstone and its attorneys have been able to locate a final, recorded version of the HOME Funding Agreement, which normally would have been approved and signed at the same time as the Development Agreement. We are, therefore, treating it as a lost document. The attached version recites that fact.

HOME regulations require that this funding agreement be in place and on record with the Broward County Clerk and Recorder.

As recited on the first page of the present replacement HOME Funding Agreement, neither of the parties has been able to locate a prior executed copy of the HOME Funding Agreement covering Phase I. It normally would have been authorized and approved at or near the same time as the Development Agreement that was the subject of Resolution No. 2010-306.

The present Resolution and the HOME Funding Agreement that it enables do not impose additional financial obligations on the City. All funds payable by the City to Captiva Cove Associates, Ltd. under it have been paid, and Captiva Cove Phase I is complete.

Please present the attached Resolution and Satisfaction of Mortgage to the City Commission on June 14, 2016 for approval.

Thank you.

Attachments: Resolution
Replacement HOME Funding Agreement
Resolution 2010-306



City Attorney's Communication #2016-867
June 1, 2016

TO: Mark Korman, Program Compliance Manager
FROM: Mark E. Berman, City Attorney
RE: Resolution – Home Funding Agreement / Captiva Cove

As requested, I have prepared and attached the following form of resolution:

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 ASSOCIATES, LTD. PROVIDING FOR NEW CONSTRUCTION OF CAPTIVA COVE, A 264 UNIT MULTI-FAMILY RENTAL DEVELOPMENT; PROVIDING AN EFFECTIVE DATE.

Please feel free to contact me if I may be of further assistance.



MARK E. BERMAN

MEB/jrm
L:cor/comdev/2016-867

Attachment

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 ASSOCIATES, LTD. PROVIDING FOR NEW CONSTRUCTION OF CAPTIVA COVE, A 264 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 Associates, Ltd. providing for new construction of Captiva Cove, a 264 unit multi-family rental development, a copy of which Agreement is attached hereto 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 Associates, Ltd.

SECTION 3. This 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 ASSOCIATES, LTD. PROVIDING FOR
NEW CONSTRUCTION OF CAPTIVA COVE A 264 UNIT
MULTI-FAMILY RENTAL DEVELOPMENT**

EXHIBITS

| | |
|-------------------------|---|
| EXHIBIT "A" | PROJECT DESCRIPTION |
| EXHIBIT "B" | COSTS/BUDGET FOR PROJECT |
| EXHIBIT "C" | TIMETABLE/SCHEDULE FOR PROJECT |
| EXHIBIT "D" | MORTGAGE ATTACHMENT "A" TO EXHIBIT "D" — PROMISSORY NOTE ATTACHMENT "B" TO EXHIBIT "D" — LEGAL DESCRIPTION |
| EXHIBIT "D-1" RENTAL | DECLARATION OF RESTRICTIVE COVENANTS FOR UNITS |
| EXHIBIT "E" | MONTHLY PROGRESS REPORT |
| EXHIBIT "F" | FINAL ACCOUNTING FOR PROJECT |
| EXHIBIT "G" | REQUEST FOR PAYMENT FORM |
| EXHIBIT "H" | RENTAL SET UP AND COMPLETION FORM |
| EXHIBIT "I" | PROJECT RENTS |

HOME FUNDING AGREEMENT

between

CITY OF POMPANO BEACH

and

CAPTIVA COVE ASSOCIATES, LTD. PROVIDING FOR
NEW CONSTRUCTION OF CAPTIVA COVE A 264 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 ASSOCIATES, LTD., a Florida for-profit Limited Liability Company, its successors in interest, hereinafter referred to as "CAPTIVA COVE."

WHEREAS, the Parties cannot locate a prior executed copy of the Home Funding Agreement, by and between CITY and CAPTIVA COVE, effective December 13, 2011, and wish to re-execute such Agreement to memorialize the terms of the Agreement, in connection with the financing of the Project by CITY, in the amount of Nine Hundred Fifty Thousand and 00/100 (\$950,000.00), as set forth herein; and

WHEREAS, re-execution of such Agreement does not impose any additional promise or obligation in connection with the financing of the Project by CITY, in the amount of Nine Hundred Fifty Thousand and 00/100 (\$950,000.00), such amount having already been paid by CITY according to the terms set forth herein; and

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, September 14, 2010, the CITY Commission adopted Resolution 2010-306 approving funding to CAPTIVA COVE as a sub-recipient of funding under CITY's HOME Program, for the provision of a multi-family rental new construction housing project under the terms and conditions more specifically described herein; 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, in consideration of the mutual terms and conditions, promises, covenants and payments, hereinafter set forth, CITY and CAPTIVA COVE agree as follows:

ARTICLE 1 – DEFINITIONS AND IDENTIFICATIONS

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 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 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 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 and the Project, in H.U.D.'s judgment, complies with the requirements of 24 C.F.R 92, (including the property standards); the final drawdown has been disbursed for the Project; and a Project Completion Report has been submitted and processed in the Cash and Management Information System in a form required by H.U.D.

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 April 1, 2001), 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

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

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 ten (10) units of the total number of Two Hundred and Sixty-Four (264) 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 number of 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 with the flexibility to designate different units in the Project at different times as HOME Assisted Units; provided, however, that CAPTIVA COVE maintains the amount of total units with the same unit mix (i.e., number by each bedroom size).

3.3 CAPTIVA COVE agrees that one hundred percent (100%) of the 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 shall be responsible for obtaining initial income certification at the time of the initial leasing of the HOME Assisted Units to Income Eligible Households. Thereafter, on a yearly basis, CAPTIVA COVE 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.

ARTICLE 4 - TERM OF AGREEMENT

4.1 The term of this Agreement, shall commence on the date of execution by CITY, which date shall relate back to September 14, 2010, and shall end on December 31,

2012, 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 is obtaining funding for the Project from various sources. The HOME funds to be provided to CAPTIVA COVE by CITY under this Agreement for the Project were allocated in FY 2009/2011. The maximum amount payable by CITY under this Agreement shall be Nine Hundred and Fifty Thousand Dollars and 00/100 (\$950,000.00). The HOME funds provided by CITY to CAPTIVA COVE shall be in the form of a deferred payment loan and payment to CAPTIVA COVE shall be made by CITY at Loan closing subject to the terms and conditions set forth herein.

5.2 At Loan closing, CAPTIVA COVE shall execute and CITY shall record, at CAPTIVA COVE's expense, in the Public Records of Broward County, Florida, a Mortgage (Exhibit "D"), and a Promissory Note ("Note") (Attachment "A" to Exhibit "D"); each in substantially the forms attached hereto. Additionally, CAPTIVA COVE shall execute and CITY shall record, at CAPTIVA COVE's expense, in the Public Records of Broward County, Florida, a Declaration of Restrictive Covenants, in substantially the form attached hereto as Exhibit "D-1," 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 for the acquisition costs by CAPTIVA COVE, CITY will process payment of same for Loan closing.

5.3.1 CITY shall pay CAPTIVA COVE within thirty (30) calendar days from receipt of CAPTIVA COVE'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 at:

Mara S. Mades, V.P.
Cornerstone Captive Cove, LLC, Managing Member for Captive Cove
Associates, Ltd.
2100 Hollywood Boulevard
Hollywood, Florida 33020

5.4 CAPTIVA COVE shall provide CITY with Monthly Progress Reports, in the form attached as Exhibit "E," or other reports required by the Division.

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

5.6 CAPTIVA COVE 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. All HOME funds not expended within the term of this Agreement shall remain in the custody and control of CITY. In the Directors discretion, unexpended HOME funds may be reallocated to other HOME Program projects which have been approved for funding by the CITY.

5.7 CITY shall pay CAPTIVA COVE 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.

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. In such event, in accordance with Section 12.3 herein, CITY shall provide notice of such default, specifying the nature of the default, and shall provide CAPTIVA COVE with an opportunity to cure said default within thirty (30) calendar days of the date of the notice. In the event CAPTIVA COVE fails to cure the default, CITY shall have the right to terminate this Agreement and may enforce the terms of the Declaration of Restrictive Covenants against CAPTIVA COVE. 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 shall charge as rent for any HOME Assisted Unit shall be governed by the rent limitations described in 24 CFR 92.252 (a), 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.

6.3 CAPTIVA COVE 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 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 and the Income Eligible Households, CAPTIVA COVE must obtain CITY's written approval prior to increasing the rental amount of a HOME Assisted Unit, CAPTIVA COVE, 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's leases shall not contain language prohibited per 24 CFR 92.253 (b) pertaining to tenant protection.

6.7 CAPTIVA COVE 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 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 shall adopt written tenant selection policies and criteria that 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 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.

ARTICLE 7 – PROJECT ACQUISITION

7.1 CAPTIVA COVE 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 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 and maintenance of the rental units shall meet or exceed all federal, state and local housing quality standards and code requirements.

7.3 Broward County 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 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 shall provide CITY with Monthly Progress Reports, 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 shall meet with CITY during regular CITY business hours to address the Project upon reasonable notice provided by CITY.

7.6 CAPTIVA COVE 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 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 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 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, this assurance shall obligate CAPTIVA COVE 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 a similar services or benefits.

8.4 CAPTIVA COVE 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,

8.5 CAPTIVA COVE 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.

8.6 CAPTIVA COVE 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 does not assume CITY's responsibilities for environmental review under 24 C.F.R. 92.352.

8.7 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.

8.8 CAPTIVA COVE certifies that pursuant to 24 C.F.R. 24, incorporated herein by reference, neither CAPTIVA COVE nor its principals are presently debarred, suspended, proposed for debarment declared ineligible or voluntarily excluded from participating in the Project.

8.9 CAPTIVA COVE shall comply with applicable uniform administrative requirements, as described in 24 C.F.R. 92.505.

8.10 HOME funds may not be provided to primarily religious organizations as further specified In 24 C.F.R, 92.257

8.11 CAPTIVA COVE shall keep such books and records as will allow CITY to comply with the record keeping requirements of 24 C.F.R. 92.

8.12 CAPTIVA COVE 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.

ARTICLE 9 – FINANCIAL RESPONSIBILITY

9.1 Except when prohibited by federal or state law, CAPTIVA COVE 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 that are related to this Agreement. CAPTIVA COVE 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 agrees that, in the event CITY determines that HOME funds are due back to CITY, CITY may, in its sole discretion, require CAPTIVA COVE to pay interest on those funds, which interest shall be calculated from the date that CITY incorrectly paid CAPTIVA COVE.

9.3 CAPTIVA COVE 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's records, CAPTIVA COVE 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. 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 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 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 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, 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 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 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 shall give prompt notice to the Insurance carrier and CITY. CITY may make proof of loss if not made promptly by CAPTIVA COVE.

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. If the Property is abandoned by CAPTIVA COVE or if CAPTIVA COVE 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 shall specifically protect CITY by naming City of Pompano Beach as an additional insured and certificate holder.

11.1.4 CAPTIVA COVE 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 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 Three Hundred Thousand Dollars (\$300,000.00) 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 shall require its General Contractor to provide the same coverages 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 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.

11.6 Coverage is not to cease and is to remain in force (subject to cancellation until all performance required of CAPTIVA COVE 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 in accordance with Article 13, Notices, herein. Notwithstanding the notice of termination provided by CITY to CAPTIVA COVE, CITY shall not be required to reimburse CAPTIVA COVE 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 shall be required to repay CITY all HOME funds provided to CAPTIVA COVE under this Agreement.

12.3 If, through any cause, CAPTIVA COVE 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, in accordance with Article 13, Notices, specifying the nature of the default and providing CAPTIVA COVE with an opportunity to cure said default within thirty (30) calendar days of the date of the notice. In the event CAPTIVA COVE fails to cure the default to the reasonable satisfaction of CITY, CITY shall have the right to terminate this Agreement.

12.4 CAPTIVA COVE shall not be relieved of liability to CITY for damages sustained by CITY by virtue of any breach of this Agreement by CAPTIVA COVE, 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 with respect to the Project.

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

ARTICLE 13- NOTICES

13.1 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, Florida 33000

FOR CAPTIVA COVE:

Mara S. Mades
Cornerstone Captive Cove, LLC,
Manager for Captive Cove Associates, Ltd.
2100 Hollywood Boulevard
Hollywood, Florida 33020

ARTICLE 14- EEO AND CBE COMPLIANCE

14.1 EEO COMPLIANCE: CAPTIVA COVE 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 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 1 which may result in the termination of this Agreement or such other remedy as CITY deems appropriate.

CAPTIVA COVE 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 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 shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

By execution of this Agreement, CAPTIVA COVE represents that H 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 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 INDEPENDENT CONTRACTOR CAPTIVA COVE is an independent contractor under this Agreement Services provided by CAPTIVA COVE shall be performed by employees of CAPTIVA COVE and subject to supervision by CAPTIVA COVE, 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, which policies of CAPTIVA COVE 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 or CAPTIVA COVE's agents any authority of any kind to bind CITY in any respect whatsoever.

15.2 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.

15.3 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 Administrator 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.

15.4 ASSIGNMENT AND PERFORMANCE. CAPTIVA COVE 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 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 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 shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of CAPTIVA COVE'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.

15.5 REPORTS, PLANS AND OTHER AGREEMENTS .All reports, plans, information, and documents, developed, prepared, assembled or completed by CAPTIVA COVE 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 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.

15.6 CONFLICT OF INTEREST. CAPTIVA COVE covenants it shall comply with the requirements of 24 CFR 92.358 relative to the Conflict of Interest provisions. CAPTIVA COVE, its officers, employees, agents, or consultants who exercise or have exercised any functions or responsibilities with respect to the Project or who are in a position to participate in a decision making process or gain inside information with regard to the Project, shall not obtain a financial interest or benefit from the Project, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one (1) year thereafter. CAPTIVA COVE, its officers, employees, agents or consultants shall not occupy any HOME Assisted Unit provided for under this Agreement. Any possible conflicting interest on the part of CAPTIVA COVE, its employees, or agents, shall be disclosed in writing to the Division.

15.7 CONFLICTS. Neither CAPTIVA COVE 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's loyal and conscientious exercise of judgment related to its performance under this Agreement. CAPTIVA COVE 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 is permitted to utilize subcontractors to perform any services required by this Agreement, CAPTIVA COVE 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 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 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 othe1Wise, 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 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 shall at all times observe and comply with all such laws, ordinances, regulations, orders and decrees.

15.12 PUBLIC ENTITY CRIMES ACT. CAPTIVA COVE 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 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 has been placed on the convicted vendor list.

15.13 THIRD PARTY BENEFICIARIES. Neither CAPTIVA COVE 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 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 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 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" - "I" 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 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 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 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 personally warrant that he or she has full authority to execute this Agreement on behalf of CAPTIVA COVE.

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

"CITY":

Witnesses:

CITY OF POMPANO BEACH

By: _____
LAMAR FISHER, MAYOR

By: _____
DENNIS W. BEACH, CITY MANAGER

Attest:

ASCELETA HAMMOND, CITY CLERK

(SEAL)

Approved As To Form:

MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2016 by **LAMAR FISHER** as Mayor, **DENNIS W. BEACH** as City Manager and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal 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
CAPTIVA COVE, LLC PROVIDING FOR NEW CONSTRUCTION OF

CAPTIVA COVE (a/k/a "CAPTIVA COVE"), A 264 UNIT MULTI-FAMILY RENTAL DEVELOPMENT

CAPTIVA COVE:

WITNESSES:

CAPTIVA COVE ASSOCIATES, LTD.

M. Wolfe
Signature

MARA MADE
Print Name

M. Wolfe
Signature

Lea Wolfe
Print Name

By *M. Made*
Mara S. Made, Vice President of
Cornerstone Captiva Cove, L.L.C.

STATE OF FLORIDA)
) ss
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this 17 day of May, 2016, by Mara S. Made, as vice president of Cornerstone Captiva Cove, L.L.C., a Florida limited liability company, the general partner of CAPTIVA COVE ASSOCIATES, LTD., a Florida limited partnership on behalf of the partnership. She is personally known to me or has produced _____ as identification and did/did not take an oath.

NOTARY PUBLIC
Elaine Santiago
Print name: Elaine Santiago
Commission No.:

(seal)
My commission expires:

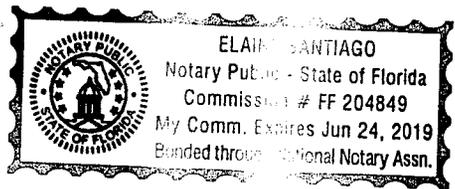


EXHIBIT "A"

PROJECT DESCRIPTION

Project Address

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

CAPTIVA COVE 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. CAPTIVA COVE will consist of Two Hundred Sixty-four (264) 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 eleven (11) residential buildings, one (1) clubhouse containing management offices and an assortment of resident amenities, a swimming pool and other related improvements. Under the terms of the Agreement CAPTIVA COVE shall provide ten (10) HOME Assisted Units for the Affordability Period of thirty three (33) years described in the Agreement; 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 (Cont'd)

A PORTION OF PARCELS A AND B, OF "CAPTIVA CLUB" ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 176, AT PAGE 144, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHWEST CORNER OF PARCEL A; THENCE S88°15'37"E (AS A BASIS OF BEARINGS PER SAID PLAT) ALONG THE SOUTH LINE OF SAID PARCEL A, FOR 661.01 FEET; THENCE N01°44'23"E, FOR 30.00; THENCE N05°00'07"E, FOR 66.64 FEET; THENCE N06°06'00"E, FOR 289.89 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE CONCAVE TO THE NORTHWEST, HAVING FOR ITS ELEMENT A RADIUS OF 84.00 FEET AND DELTA OF 10°50'19", A RADIAL TO SAID POINT BEARS S15°13'39"E; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE FOR 15.89 FEET; THENCE N73°26'18"E, FOR 10.65 FEET; THENCE N06°05'59"E, FOR 16.42 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE CONCAVE TO THE SOUTHEAST, HAVING FOR ITS ELEMENT A RADIUS OF 15.00 FEET AND DELTA OF 36°01'47"; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE FOR 9.43 FEET TO A POINT OF REVERSE CURVE; THENCE NORTHEASTERLY ALONG A CURVE CONCAVE TO THE NORTHWEST HAVING FOR ITS ELEMENTS A RADIUS OF 71.00 FEET AND A DELTA OF 21°46'10", FOR 26.98 FEET TO A POINT OF REVERSE CURVE; THENCE NORTHEASTERLY ALONG A CURVE CONCAVE TO THE SOUTHEAST HAVING FOR ITS ELEMENTS A RADIUS OF 4.00 FEET AND A DELTA OF 59°06'32", FOR 4.13 FEET; THENCE N79°28'07"E, FOR 15.51 FEET; THENCE N10°31'53"W, FOR 11.00 FEET; THENCE N79°28'07"E, FOR 0.77' FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE CONCAVE TO THE SOUTHWEST, HAVING FOR ITS ELEMENT A RADIUS OF 84.00 FEET AND DELTA OF 75°30'46", A RADIAL TO SAID POINT BEARS S84°16'53"E; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE FOR 110.70 FEET; THENCE N00°58'07"E, FOR 56.57 FEET; THENCE N89°58'53"E, FOR 13.55 FEET; THENCE N02°06'11"E, FOR 72.06 FEET TO ITS INTERSECTION WITH THE NORTH LINE OF PARCEL B; THENCE N88°36'36"W, ALONG SAID NORTH LINE OF PARCEL B AND PARCEL A FOR 74.98 FEET; THENCE N00°58'07"E, FOR 337.17 FEET TO THE MOST NORTH EASTERLY CORNER OF PARCEL A; THENCE N88°50'58"W ALONG THE NORTH LINE OF SAID PARCEL A, FOR 612.99 FEET TO THE NORTHWEST CORNER OF SAID PARCEL A; THENCE S00°34'58"W ALONG THE WEST LINE OF SAID PARCEL A, FOR 334.24; THENCE N88°35'58"W ALONG THE BOUNDARY LINE OF SAID PARCEL A FOR 30.00 FEET; THENCE S00°34'58"W ALONG THE WEST LINE OF SAID PARCEL A, FOR 670.81 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL A AND POINT OF BEGINNING. LYING AND BEING IN BROWARD COUNTY, FLORIDA.

EXHIBIT "B"
COSTS/BUDGET FOR PROJECT

EXHIBIT "C"

SCHEDULE FOR PROJECT

| | |
|---------------|---|
| October 2011 | Closing on Financing |
| November 2011 | Commence Site work |
| December 2011 | Commence Construction of Clubhouse |
| January 2012 | Commence Construction of Apartment Buildings |
| April 2012 | Complete Construction of Clubhouse |
| June 2012 | Buildings begin to be completed; move-in commence |
| December 2012 | Construction Completion |

EXHIBIT "D"

This Mortgage and the Note secured hereby arrives 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 __, 2011 by CAPTIVA COVE 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 Nine Hundred Fifty Thousand and 00/100 Dollars (\$950,000.00) ("**Loan**"), which indebtedness is evidenced by that certain Promissory Note of even date herewith ("**Promissory Note**" or "**Note**") made by Mortgage, 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 dated December __, 2011, to be recorded in Broward County (including any reimbursement mortgage(s) from the Mortgagor to JPMorgan Chase Bank, N.A. or to Fannie Mae, the "**First Mortgage**") securing that certain Note or Notes having an aggregate original principal face amount of Twenty Million Five Hundred Thousand Dollars and 00/100 (\$20,500,000), dated December __, 2011 (including any reimbursement note(s) given by Mortgagor to JPMorgan Chase Bank, N.A. or to Fannie Mae, the "**First Note**"), made by Mortgagor payable to Florida Housing Finance Corporation as the First Mortgagee; (ii) that certain mortgage from Mortgagor to Florida Housing Finance Corporation dated December __, 2011, to be recorded

in Broward County ("**Second Mortgage**") securing that certain Home Loan Note having an original principal face amount of Five Million and 00/100 (\$5,000,000), dated December __, 2011 ("**Second Note**"), made by Mortgagor payable to Florida Housing Finance Corporation as the Second Mortgage; (iii) that certain mortgage from Mortgagor to Broward County, a political subdivision of the state of Florida, dated December __, 2011 ("**Third Mortgage**") securing that certain SHIP Loan Note having an original principal face amount of Nine Hundred Fifty-Nine Thousand, Two Hundred Forty and 00/100 Dollars (\$959,240.00), dated December __, 2011 ("**Third Note**"); (iv) that certain mortgage from Mortgagor to Broward County, a political subdivision of the state of Florida, dated December __, 2011 ("**Fourth Mortgage**") securing that certain HOME Loan Note having an original principal face amount of Nine Hundred Fifty Thousand and 00/100 Dollars (\$950,000.00), dated December 13, 2011 ("**Fourth Note**"), as well as to any refinancings thereof (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 renew 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 acquisition) resulting from damage to the Property prior to the sale or acquisition 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 condemner 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 special limited partner, Stratford SLP, Inc., with an address at c/o Stratford Capital Group, 100 Corporate Place, Suite 404, Peabody, MA 01960 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 13, 2011 (the "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 affect any transfer of limited partner interests, shall not be necessary.

The withdrawal, removal, and/or replacement of a general 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 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 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 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 limited partner(s) shall have the right, but not the obligation, to cure any Mortgagor defaults.

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 the Amended and Restated Limited Partnership Agreement dated as of December 13, 2011 (the "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 affect 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 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.

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 ASSOCIATES, LTD., has executed this Mortgage.

MORTGAGOR:

WITNESSES:

Signature of Witness

Print Name of Witness

Signature of Witness

Print Name of Witness

CAPTIVA COVE ASSOCIATES, LTD., a
Florida limited partnership
By: Cornerstone Captiva Cove, 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 _____, 2011, by Mara S. Mades, as Vice President of Cornerstone Captiva Cove, L.L.C., a Florida limited liability company, general partner of Captiva Cove 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:

ATTACHMENT "A" TO EXHIBIT "D"

THE TAX HAS BEEN PAID AND THE PROPER DOCUMENTARY STAMPS HAVE BEEN AFFIXED TO THE MORTGAGE AND SECURITY AGREEMENT SECURING THIS NOTE.

PROMISSORY NOTE

FOR VALUE RECEIVED the undersigned, CAPTIVA COVE 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 Nine Hundred and Fifty Thousand and 00/100 Dollars (\$950,000.00), 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 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.: 2010-306 of the City Commission of the City of Pompano Beach, Florida ("Authorizing Resolution"), and that certain Development Agreement dated October 24, 2011 by and among MAKER and HOLDER ("Development Agreement") for the construction of a 264 unit apartment complex to be constructed 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, 2046 ("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 of even date herewith, executed by MAKER, as mortgagor, to and in favor of HOLDER, to be recorded in the Official Public Records of Broward County, Florida ("Mortgage").

8. If MAKER performs all covenants and conditions of this Note and the Development Agreement, 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.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, MAKER, CAPTIVA COVE ASSOCIATES, LTD., has executed this Note this _____ day of December, 2011.

WITNESS:

Print Name: _____

Print Name: _____

MAKER:

CAPTIVA COVE ASSOCIATES, LTD., a Florida limited partnership

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

By: _____
Mara S. Mades
Vice President

By
STATE OF FLORIDA)
) SS
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by Mara S. Mades, as Vice President of Cornerstone Captiva Cove, L.L.C., a Florida limited liability company, general partner of Captiva Cove 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-1"

DECLARATION OF RESTRICTIVE COVENANTS
RENTAL UNITS

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

DECLARATION OF RESTRICTIVE COVENANTS
RENTAL UNITS

It is understood and agreed by Declarant, CAPTIVA COVE 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 December 13, 2011, 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 _____ day of _____, 2011.

WITNESSES:

CAPTIVA COVE ASSOCIATES, LTD.
a Florida limited partnership

By: Cornerstone Captive Cove, LLC a Florida
limited liability company, its
General Manager

By: _____
Mara S. Mades,
Vice President

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

The foregoing instrument was acknowledged before me this day of _____
2011 by Mara S. Mades, as Vice President of Comerstone Captive Cove, LLC, a Florida
limited liability company, the Managing Member of CAPTIVA COVE 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

| Measurable Objective | Specific Task Qualified | Projected Yearly Total | Monthly Progress | Progress Year-to Date | Supporting Documentation |
|-----------------------------|--------------------------------|-------------------------------|-------------------------|------------------------------|---------------------------------|
| | | | | | |

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

| | | | | |
|---|----------------------|------------------|---|--|
| TO (OWNER): FROM (CONTRACTOR): CONTRACT FOR: CONTRACTOR'S APPLICATION FOR PAYMENT | | | PROJECT No: _____ APPLICATION NO.: _____ CONTRACT DATE: _____ TO: _____ Application is made for Payment, as shown below, in connection with the Contract. | |
| | | | 1. ORIGINAL CONTRACT SUM \$ _____ | |
| | | | 2. Net change by Change Orders \$ _____ | |
| | | | 3.. CONTRACT SUM TO DATE (Use 1 + 2) \$ _____ | |
| | | | 4. TOTAL COMPLETED & STORED TO DATE \$ _____ | |
| CHANGE ORDER SUMMARY | | | | |
| Change Orders Approved in previous months by Owner | | ADDITIONS | DECUCTIONS | |
| TOTAL | | | | |
| Approved this Month | | | | |
| Number | Date Approved | | | |
| TOTALS | | | | |
| Net change by Change Orders | | | | |
| 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. CONTRACTOR: By: _____ Date: _____ | | | (Column G)S_ | |
| | | | RETAINAGE | |
| | | | a. 10% of Completed Work \$ _____ | |
| | | | (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) \$ _____ | | | | |
| | | | | |
| State of Florida County of Broward | | | | |
| Subscribed and sworn to before me this _____ day of _____ 20____ | | | | |
| Notary Public | | | | |
| My Commission Expires: | | | | |
| 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. | | | | |

<< 91.69 591 1S6

**EXHIBIT "I"
PROJECT RENTS**

FORT LAUDERDALE, FL HMFA*

(June 2011)

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

Source: US Department of Housing and Urban Development

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 DEVELOPMENT AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND CAPTIVA COVE ASSOCIATES I, LTD. RELATING TO DEVELOPMENT OF PROPERTY LOCATED AT 1201 W. DIXIE HIGHWAY FOR AFFORDABLE HOUSING; 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 Associates I, Ltd., a copy of which Agreement is attached hereto 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 Associates I, Ltd.

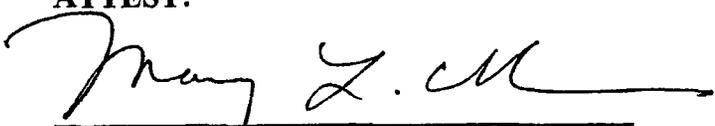
SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this 14th day of September, 2010.



LAMAR FISHER, MAYOR

ATTEST:



MARY L. CHAMBERS, CITY CLERK

DEVELOPMENT AGREEMENT

THIS AGREEMENT ("Agreement"), made and entered as of the 24 day of October, 2011, by and among

CITY OF POMPANO BEACH, a public body corporate and politic, whose address is 100 West Atlantic Boulevard, Pompano Beach, Florida, (hereinafter referred to as "City")

and

CAPTIVA COVE ASSOCIATES, LTD., a Florida limited partnership whose address is 2100 Hollywood Blvd., Hollywood, Florida 33020, (hereinafter referred to as "DEVELOPER").

WITNESSETH:

WHEREAS, the parties hereto desire to enter into a development agreement setting forth the mutual understandings and undertakings regarding the development of a parcel of property ("Property") located at 1201 W. Dixie Highway, Pompano Beach, Florida upon which Developer intends to build a 360 unit affordable housing development ("Project") and Developer's role in designing, developing, constructing and marketing the property hereinabove referred to; and

WHEREAS, the CITY has determined that the Project is consistent with and furthers the goals and objectives of the City and that development of Project will promote the health, safety, morals and welfare of the residents of the City.

Now, THEREFORE, in consideration of the conditions, covenants and mutual promises set forth, Developer and CITY agree as follows:

1. **Recital.** The foregoing recitations are true and correct and are hereby incorporated herein by reference. All Exhibits to this Agreement are hereby deemed a part hereof.

2. **Definitions.** In addition to other defined terms in this Agreement, as used herein the following terms shall have the meaning set opposite each:

2.1 **Infrastructure Improvements.** Improvements on public property to be constructed with and in support of the Project, including, but not limited to, paving, lighting, irrigation, landscaping, water, sewer and storm drainage systems to service the Project; off-site sewers and sewer connections, sewer upgrade or lift stations, if required, roads and sidewalks and other improvements.

2.2 **Plans and Specifications.** The documents required for the construction of the Project will include, but not be limited to, construction documents, pre-design plans and drawings, concept documents, preliminary plans and drawings, schematic design documents, design development documents, together with all amendments and modifications thereof, prepared by a professional engineer.

3. **Project Overview.** (hereinafter referred to as the “project” or PROJECT)

3.1 Project. Developer will develop the Property and will construct the Project thereon.

3.2 In carrying out the Project, Developer will submit to the CITY an operational plan due not later than ninety (90) days after the signing of this Agreement.

4. **Project Schedule**

4.1 Developer expressly agrees to complete all work required by this Agreement in accordance with the timetable set forth on Exhibit 1 attached hereto. Timely completion of the work specified in this Agreement is an integral part of performance. By acceptance and execution of this Agreement, it is understood and agreed by Developer that the Project will be completed as expeditiously as possible and that Developer will make every effort to ensure that the project will proceed and will not be delayed. Failure to meet these deadlines shall be considered an Event of Default after notice and opportunity to cure and may result in termination of this Agreement.

4.2 In the event Developer is unable to meet the above schedule or complete the above services because of delays resulting from Acts of nature, untimely review and approval by the CITY, CITY and or other governmental authorities having jurisdiction over the PROJECT, or other delays that are not caused by Developer, the CITY shall grant a reasonable extension of time for completion of the PROJECT. It shall be the responsibility of Developer to notify the CITY promptly in writing whenever a delay is anticipated or experienced, and to inform the CITY of all facts and details related to the delay.

5. **Permitted Development Uses.** The CITY will assist with the expediting of permits for the development of the Property

6. **Scope of Work**

6.1 Developer shall perform all services necessary to complete the development and construction of the PROJECT in full compliance with the terms of this Agreement as follows:

- a. Developing an operational plan for carrying out the PROJECT;
- b. Securing project financing;

- c. Securing building permits;
- d. Monitoring the development of the PROJECT throughout the course of the project and submit quarterly reports to the CITY.
- e. Developer will complete the Project substantially in accordance with the Project Schedule attached hereto as Exhibit 1.

7. **Procurement Standards**

7.1 Developer shall establish procurement procedures to ensure that materials and services are obtained in a cost-effective and equitable manner and that the use of any consultants for services, which may include but not limited to legal, financial, marketing, and design should not be done so without consultation with the CITY.

8. **Conflict of Interest Provisions**

8.1 Developer warrants and covenants that it presently has no interest and shall not acquire any interest, directly or indirectly, which could conflict in any manner or degree with the performance of its services hereunder. Developer further warrants and covenants that in the performance of this agreement, no person having such interest shall be employed. No employee, agent, consultant, elected official, or appointed official of Developer may obtain a financial interest or unit benefits from this activity, either for themselves or those with whom they have family or business ties, during their tenure or for two years thereafter.

9. **Labor, Training and Business Opportunity**

9.1 It is agreed upon that to the greatest extent feasible, opportunities for training and employment be given low and moderate income residents of the City, and that contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the City. It is also agreed upon that Developer will obtain from selected contractors and/or builders an agreement as to how they will incorporate this objective into carrying out the PROJECT.

10. **Compliance with Federal, State and Local Laws**

10.1 Developer covenants and warrants that it will comply with all applicable laws, ordinances, codes, rules and regulations of the local, state and federal governments, and all amendments thereto, including, but not limited to: Title 8 of the Civil Rights Act of 1968 PL.90-284; Executive Order 11063 on Equal Opportunity and Housing, Section 3 of the Housing and Urban Development Act of 1968 and the Housing and Community Development Act of 1974. Developer agrees to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857 (h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations 40 CFR part 15.

11. **Reporting Responsibilities**

11.1 Developer agrees to submit any and all quarterly reports required by the CITY to the Office of Housing and Urban Improvement (OHUI) on the following due dates:

- 1st Quarterly Report (October/November/December) - February 1st
- 2nd Quarterly Report (January/February/March) - May 1st
- 3rd Quarterly Report (April/May/June) - August 1st
- 4th Quarterly Report (July/August/September) - November 15th

The OHUI will send Developer one reminder notice if the quarterly report has not been received seven (7) days after the due date. If Developer has not submitted a report thirty (30) days after the date on the reminder notice, this shall be considered an Event of Default and may result in termination of this Agreement.

12. **Inspection, Monitoring and Access to Records**

12.1 The CITY reserves the right to inspect, monitor, and observe work and services performed by Developer at any and all reasonable times. The CITY reserves the right to audit the records of Developer any time during the performance of this Agreement and for a period of five (5) years after completion of the PROJECT. Access shall be immediately granted to the CITY or any of its duly authorized representatives to any books, documents, papers, and records of Developer or its contractors or consultants, which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

13. **Training and Capacity Building Responsibilities**

13.1 As part of this Agreement, Set Free Coalition Outreach Programs, Inc. agrees to participate in and complete ongoing capacity building training throughout this PROJECT in which completion of such training will be a requirement for participation in future projects as well as a part of future certification and re-certification as a CHDO with the City of Pompano Beach. The capacity building program will be designed to augment previously provided training to Developer members and further the capacity of Developer to undertake and manage future community and economic development projects.

14. **CITY Financial Assistance**

14.1 CITY Financial Assistance. The CITY shall provide up to **NINE HUNDRED FIFTY THOUSAND (\$950,000.00)** ("CITY Funds") toward the hard costs incurred in connection with the construction of the Project.

14.2 Method of Disbursement of CITY Funds. During the period of the development of the PROJECT, Developer shall submit to the CITY certified statements for payment.

14.3 Repayment of HOME funds. The HOME funds (or so much as has been advanced by the City shall be repaid as follows: commencing twelve (12) months after a final certificate of occupancy has been issued for the Project and continuing annually thereafter for a period of thirty (30) years thereafter (the "Maturity Date"), Subject to approval of the senior lenders, Developer shall pay interest only at the rate of two (2%) percent per annum. All interest and the principal balance shall be due and payable in full on the Maturity Date. City and Developer agree to execute such agreements, documents, and promissory note as may be required to evidence the loan and such subordination agreements to institutional and/or governmental entities as may be required by senior lenders to the Project. No interest shall be payable during the construction period.

15. Developer Obligations. Developer shall have the following obligations with respect to the Developer PROJECT:

15.1 Project Financing. Developer will secure the necessary financing to develop and complete the Project as indicated in Section 3.1 of this agreement. Developer will submit to the CITY such documentation as will reasonably demonstrate to the CITY the Developer financial commitment to commence construction of the PROJECT within two hundred ten (210) days following execution of this Agreement by both parties.

15.2 Other Conditions.

a. The principal use permitted in the Project shall be multi-family rental as depicted on the Conceptual Plan attached hereto as Exhibit "B" ("Conceptual Plan"). The Project may also contain accessory uses customarily incidental to the principal use permitted. Portions of the Developer Project shown on the Conceptual Plan for use as recreation or open space or otherwise restricted to recreation and/or open space shall be devoted exclusively to the common use and enjoyment of the occupants of the Project and not to members of the general public, unless otherwise approved by the CITY. No business shall be carried on or operated in conjunction with the recreational facilities.

b. It is understood and agreed to by Developer that the rental dwellings shall be rented to families with incomes that meet up to HUD's sixty percent (60%) of Broward County median income in accordance with the applicable Florida law. In addition, Developer agrees to provide the OHUI information as it relates to eligibility of occupants for this designated PROJECT in the format prescribed by OHUI on a monthly basis.

c. Lot coverage and open space within the Project shall conform to the City's land development code.

d. No building or other improvements shall be constructed on, over, or within the boundary lines of any rights-of-way or easements within the Developer Project unless such construction has been approved by the CITY and the holder or owner of such easements.

e. The Project and all buildings and improvements located therein, when completed, shall be maintained in a clean, sanitary, and safe condition. The Project shall be

appropriately landscaped, such landscaping to be maintained with a mechanical sprinkling system and in accordance with the City land development code. No portion of the Project shall be allowed to become or remain overgrown or unsightly.

f. No portion of the Project shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste must be kept in sanitary containers, placed in the trash enclosures, and screened from public view.

g. No travel trailer, mobile home, recreational vehicle, boat, tent, storage building, garage, barn or out-building erected within the Project shall at any time be used as a residence, temporarily or permanently.

h. No signs of any kind shall be displayed to the public view in the Project except signs approved by the City in accordance with its sign code.

i. No animals, livestock or poultry of any kind shall be raised, bred or kept within the Project, except that dogs, cats or other domestic pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose. All animals must be housed inside the residence.

j. No individual water wells, septic tanks or other individual sewage, disposal facility shall be permitted within the Project. This provision, however, shall not be construed to prohibit private water wells for irrigation.

k. No chain link type fence shall be permanently constructed or installed within the Developer Project except as has been approved by the City.

l. There shall be no discrimination in the use of any building or improvement located within the Project on the basis of race, color, religion, sex, disability, familial status or country of national origin.

m. The Property shall be maintained in a clean, sanitary and safe condition with landscaping, no overgrowth or unsightliness.

It is intended and agreed that the Developer will execute a declaration reasonably satisfactory to the CITY this Agreement and the covenants referenced herein shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in the Agreement, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by the CITY and the CITY, their successors and assigns, any successor in interest to the CITY Property, or any part thereof or any interest therein, and any party in possession or occupancy of the CITY Property or any part thereof. The Developer, its successors or assigns, may not modify, amend, repeal or alter the restrictive covenants the referenced in this Agreement, in whole or in part, without the written consent of the CITY or the CITY. Invalidation, in whole or in part, of any of the restrictive covenants referenced herein by a court of competent jurisdiction shall in no way effect any other provisions or parts thereof which will remain in full force and effect. The Developer will provide a draft of said declaration

to the CITY on or before September 30, 2010 and the CITY will provide comments to Developer in a timely manner.

15.6 The Project shall be constructed, used and maintained substantially in accordance with the Conceptual Plan attached hereto as Exhibit "C" and the terms of this Agreement.

15.7 The Project shall be constructed in accordance with the Florida Building Code, ordinances and all other applicable City, State and Federal laws, rules, regulations and requirements. The quality of the workmanship shall be equal to or greater than the quality of other projects built by affiliate of the Developer, such as Eagle Pointe on Atlantic Boulevard..

15.9 Following execution of the Agreement, Developer shall prepare or have prepared applications for all necessary Governmental Approvals and diligently process such applications through the appropriate governmental approval process.

15.10 Following issuance of all Governmental Approvals and all development permits required for construction of the Project, including building permits, the Developer shall proceed with and complete construction of the Project. The buildings and improvements to be constructed on the Property by Developer shall be of a unified architectural design as shown on the Conceptual Plan.

15.11 During construction of the buildings and improvements, Developer covenants and agrees that it shall safely maintain the site of construction activities and protect against damage to persons and property by reason of construction activities and will provide adequate security during non-construction periods. In the case of damage or loss to the buildings and improvements constructed on the Property by Developer in accordance with this Agreement, Developer shall, as soon as possible after the occurrence of such loss or damage, repair or rebuild the buildings and improvements in such manner that the buildings and improvements after such repairing or rebuilding shall be of the same general condition as existed prior to such loss or damage and at least equal in value to the buildings and improvements prior to such loss or damage. Such repairs shall be begun within sixty (60) calendar days after such occurrence or if rebuilding is required, such rebuilding shall be begun within one hundred twenty (120) calendar days after such occurrence and in either case shall be completed in a reasonable time, permitted delays excepted, provided insurance funds are available, but in no event shall commencement of repairs or rebuilding be delayed beyond one hundred eighty (180) days from the date of occurrence. Developer shall pay for all such repairing and rebuilding so that the Property and the buildings and improvements shall be free and clear of all liens of mechanics and material-men and similar liens arising out of such repair, rebuilding or reconstruction of the buildings and improvements.

15.12 Developer shall complete the Project, subject to extension for Permitted Delays, not later than **thirty (30) months** from the effective date of this Agreement (the "Completion Date"). By completion, it is understood and agreed that the same shall mean that it is ready for the issuance of the Notice of Completion and final Certificate of Occupancy. The failure of Developer to complete construction of the Project by the Completion Date, subject to

extension for Permitted Delays, shall constitute material Default in accordance with the provisions of this Agreement.

16. **Required Insurance.** Throughout the term of this Agreement, Developer and all contractors shall maintain in full force and effect, at its sole cost, the insurance coverage set forth below in a form, content, and amount acceptable to the City's Risk Manager:

a. **Fire and Extended Coverage: (Builder's Risk Policy)** Developer shall require the Builder/General Contractor, at his expense, to provide full theft, windstorm, fire and extended coverage on improvements constructed, and personal property located on the premises, for the benefit of the CITY and Developer, as each party's interests may appear, in an amount not less than one hundred percent (100%) of the replacement value of the improvements. Such insurance shall provide that the interests of the CITY are included as a loss payee and contain a waiver of subrogation rights by the Builder's/General Contractor's carrier against the CITY.

b. **Worker's Compensation:** Developer shall provide, carry, maintain and pay for all necessary Worker's Compensation insurance for the benefit of its employees with the following limits: Worker's Compensation-statutory limits; Employer's Liability – one hundred thousand dollars (\$100,000.00).

c. **General Liability Insurance:** Developer shall, at his own expense, provide, pay for, and continuously maintain, comprehensive and all inclusive public liability and property damage insurance for the benefit of the City, with a policy limit of not less than one million dollars (\$1,000,000.00), combined single limits, which coverage shall include property damage and personal injuries, including death, and shall include the CITY as an additional named insured.

Whenever, under the provisions of the Agreement, insurance is required of Developer, Developer shall promptly provide the following: (i) certificates of insurance evidencing the required coverage; (ii) names and addresses of companies providing coverage; (iii) effective and expiration dates of policies; (iv) a provision in all policies affording the CITY thirty (30) days written notice by a carrier of any cancellation or material change in any policy. In the event of destruction of or damage to any of the premises and contents covered by insurance, the funds payable in pursuance of said insurance policies for repair and/or reconstruction shall be deposited in a commercial national bank located in Pompano Beach, Florida, selected by the CITY, as a trust fund. Said funds shall be used for the purposes of reconstruction or repair, as the case may be, first, all or any portion of the premises, second, improvements and third, personal property, so damaged or destroyed. Such reconstruction and repair work shall be done by Developer or the Builder/General Contractor in strict conformity with the ordinances of the City and all governmental agencies having jurisdiction. Should the cost of reconstruction or repair exceed the amount of funds available from the proceeds of such insurance policy, then in such event, such funds shall be used as far as the same will permit in paying the cost of said reconstruction or repair and Developer shall be responsible for the remaining funds. In the event that the cost of such reconstruction or repair work shall be less than the proceeds derived for such insurance policies, the surplus shall be payable to Developer. Should any of the required

insurance policies be canceled before the expiration date or non-renewed, the issuing company will provide thirty (30) days written notice to the certificate holder. Developer may self insure all or a portion of the insurance coverage and limit requirements required by this Section 9.10. In the event Developer does self-insure, Developer shall not be required to comply with the requirements of naming the CITY as co-insured; and

17. **Developer Default, Remedies, Termination and Further Rights.**

17.1 **Event of Default.** The occurrence of any one or more of the following shall constitute an Event of Default hereunder:

a. If Developer defaults in the performance of an obligation imposed upon it under this Agreement or if Developer fails to complete construction of the Project, and Developer does not commence to cure such default within thirty (30) days after delivery of notice of such default from the CITY and diligently pursue to cure such default within sixty (60) days after delivery of such notice; or

b. If any statement or representation made by Developer herein or in any writing now or hereafter furnished in connection herewith shall be false in any material respect.

c. If after notice and opportunity to cure Developer fails to participate in the training and capacity building programs offered by the CITY designed to augment previously provided training related to community and economic development projects.

d. If there is filed by or against the Developer a petition in bankruptcy or a petition for the appointment of a receiver or trustee of the Property of the Developer, which, in the reasonable judgment of City, will cause material interference with the timely completion of the Project, and any such petition not filed by the Developer is not dismissed within ninety (90) days of the date of filing.

If an Event of Default occurs and there is no cure within the time provided herein, then Section 17.2 shall be applicable.

17.2 **Remedies.** Upon the occurrence of any Event of Default hereunder, the CITY shall have the following non-exclusive rights: (i) to terminate the Agreement, without cost or liability to Developer; (ii) to cease any further disbursements of CITY Funds; (iii) to immediately enforce all of its rights under this Agreement; and (iv) to avail itself of any right it may have at law or in equity.

18. **CITY Default, Remedies, Termination and Further Rights.**

18.1 **Default by CITY.** If the CITY fails to disburse CITY Funds within thirty (30) days of submittal of a proper invoices pursuant to the provisions of Section 7 of this Agreement, such failure shall constitute a default by the CITY. The CITY shall have thirty (30) days after delivery of notice of such default from Developer to cure said default.

If there is no cure of the default within the time provided herein, then Section 18.2 shall be applicable.

18.2 Remedies. In the event of default by the CITY, Developer shall have the following non-exclusive rights: (i) to terminate the Agreement without cost or liability to the CITY; (ii) to immediately enforce all of its rights under this Agreement; and (iii) to avail itself of any right it may have at law or in equity.

19. General Provisions.

19.1 Non-liability of CITY Officials. No member, official or employee of the CITY shall be personally liable to Developer or to any person with whom Developer shall have entered into any contract, or for any amount which may become due to Developer under the terms of this Agreement.

19.2 Notices. All notices to be given hereunder shall be in writing and personally delivered or sent by registered or certified mail, return receipt requested, or delivered by an air courier service utilizing return receipts to the parties at the following addresses (or to such other or further addresses as the parties may designate by like notice similarly sent) and such notices shall be deemed given and received for all purposes under this Agreement three (3) business days after the date same are deposited in the United States mail, if sent by registered or certified mail, or the date actually received if sent by personal delivery or air courier service, except that notice of a change in address shall be effective only upon receipt.

If to the CITY:

Department of City Manager
Attn: Willie Hopkins
100 West Atlantic Boulevard
Pompano Beach, Florida 33060
Telephone No. (954) 786-4606
Fax No. (954) 786-4504

If to Developer:

Captiva Cove Associates, Ltd.
2100 Hollywood, FL, 33020
Telephone No. (305) 443-8288
Fax No. (305) 443-9339

19.3 Entire Agreement. This Agreement, including all exhibits attached hereto and which are expressly incorporated herein by this reference, sets forth all of the promises and covenants between the parties hereto, and supersedes all prior and contemporaneous agreements, understandings, inducements or conditions, express or implied, oral or written, except as herein contained.

19.4 Pronouns. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine and neuter, singular or plural, as the identity of the party or parties, personal representatives, successors or assigns may require.

19.5 Severability. The invalidity of any provision hereof shall in no way affect or invalidate the remainder of this Agreement.

19.6 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same instrument.

19.7 Headings. The headings contained in this Agreement are inserted for convenience only and shall not affect, in any way, the meaning or interpretation of the Agreement.

19.8 Governing Law. This Agreement shall be construed in accordance with the laws of the State of Florida, and any proceeding arising between the parties in any manner pertaining to this Agreement shall, to the extent permitted by law, be held in Broward County, Florida.

19.9 Binding Effect. The obligations imposed pursuant to this Agreement upon Developer shall be binding upon and enforceable by and against the parties hereto, their personal representatives, heirs, successors, grantees and assigns.

19.10 Amendments. This Agreement may not be amended, modified or terminated orally, but only in writing signed by the parties hereto.

19.11 Authority of Developer. By execution of this Agreement, Developer does certify to the CITY that the officer executing this Agreement has been duly authorized by proper resolution(s) of the Board of Directors of Developer to enter into, execute and deliver this Agreement and all other documents, certificates, agreements, consents and receipts, and to take any and all other actions of any kind whatsoever in order to accomplish the purposes and undertakings of this Agreement.

19.12 Assignment. This Agreement shall be binding upon and enforceable by and against the parties hereto, their successors and assigns, and inure to the benefit of the successors and assigns of the parties. Developer agrees that it shall not assign or transfer this Agreement to another party without the prior written consent of the CITY, which consent shall not be unreasonably withheld or delayed.

19.13 Contingent Fee. Developer represents and warrants that it has not employed or retained any person to solicit or secure this Agreement and that it has not paid or agreed or promised to pay any person any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the execution of this Agreement.

19.14. Indemnification. Developer shall protect, defend, indemnify and hold harmless the CITY, its officers, employees and agents from and against any and all lawsuits, penalties, damages, settlements, judgments, decrees, costs, charges, and other expenses including reasonable attorney's fees or liabilities of every kind in connection with or arising directly out of the improvement, operation, or possession of the Property by Developer except for any occurrence arising out of or resulting from intentional torts or gross negligence of the CITY, the City or their respective officers, agents and employees. CITY and/or City shall provide notice of any lawsuits or claims within four (4) business days of service. Without limiting the foregoing, any and all such claims, suits, causes of action, etc., relating to personal injury, death, damage to property, defects in construction, rehabilitation or restoration of the buildings and improvements, actual or alleged infringement of any patent, trademark, copyright, or of any other tangible or intangible personal or real property right, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation or decree of any court, is included in the indemnity. Developer further agrees to investigate, handle, respond to, provide defense for, and defend any such claims at its sole expense and agrees to bear all other costs and expenses related thereto, even if the claim(s) is/are groundless, false or fraudulent. The foregoing indemnification shall not be operative as to any claims by Developer for breach of warranties under the deed(s) or any causes of action Developer has or may have for breaches or defaults by the CITY under this Agreement.

19.15 Approvals. Wherever in this Agreement CITY approval or approval of the CITY designees shall be required for any action, said approvals shall not be withheld unreasonably.

19.16 Permitted Delays. Subject to providing written notice of such and event and the party's intention to exercise the applicability of this provision, no party to this Agreement shall be deemed in default, and the time for performance of any required act hereunder shall be extended for such period, where such a default is based on a delay in performance as a result of war, insurrection, strikes, lockouts, riots, floods earthquakes, fires, casualty, acts of God, epidemic, quarantine restrictions, freight embargo, shortage of labor or materials, interruption of utilities service, lack of transportation, government restrictions of priority, litigation, severe weather and other acts or figures beyond the control or without the control of either party; provided, however, that the extension of time granted for any delay caused by any of the foregoing shall not exceed the actual period of such delay, and in no event shall any of the foregoing excuse any financial inability of a party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

CITY

Signed, Sealed and Witnessed

In the Presence of:

Shelley R. Bartholomew

Shelley R. Bartholomew

Name of Witness Printed Above

Willie A. Hopkins

Name of Witness Printed Above

By: [Signature]
Lamar Fisher, Mayor

Attest:
By: [Signature]
Mary L. Chambers

STATE OF FLORIDA
COUNTY OF BROWARD

I HEREBY CERTIFY that on this 27th day of October, 2011, before me personally appeared Lamar Fisher, mayor of the City of Pompano Beach, Florida, who is personally known to me or who produced _____, (type of identification) as identification, and he acknowledged that he executed the foregoing instrument as the proper official of the City of Pompano Beach, and the same is the act and deed of said City of Pompano Beach.

NOTARY'S SEAL:

Christine Wodka
NOTARY PUBLIC STATE OF FLORIDA
(Signature of Notary Taking Acknowledgement)

Christine Wodka
(Name of Acknowledger Typed, Printed or Stamped)

EE 136205
Commission Number



"CITY":

Witness:

CITY OF POMPANO BEACH

Shelby R. Bartholomew

By: Dennis W. Beach
DENNIS W. BEACH
CITY MANAGER

Attest:

Mary L. Chambers
MARY L. CHAMBERS
CITY CLERK

(SEAL)

Approved As To Form:

Gordon B. Linn
GORDON B. LINN
CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

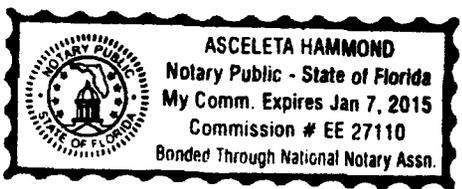
The foregoing instrument was acknowledged before me this 1st day of November, 2011 by **DENNIS W. BEACH**, as City Manager and **MARY L. CHAMBERS** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who is personally known to me.

NOTARY'S SEAL:

Asceletha Hammond
NOTARY PUBLIC, STATE OF FLORIDA
Asceletha Hammond

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number



DEVELOPER

Leyani Roman

Leyani Roman

Name of Witness Printed Above

Pablo Lopez

Pablo Lopez

Name of Witness Printed Above

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

By: *[Signature]*

Name: *Leon T. Nafie*

Title: *V. Pres. of C.P.*

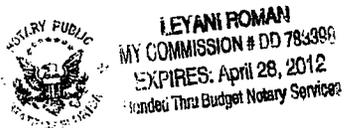
STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this *25* day of October, 2011, by *LEON T. NAFIE* as *V.P.* of Captiva Cove Associates, Ltd., who is personally known to me.

NOTARY'S SEAL:

[Signature]
NOTARY PUBLIC STATE OF FLORIDA

(Signature of Notary Taking Acknowledgement)



(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

Exhibit 1

| Milestone | Deadline |
|---|-----------------|
| Interim Milestones/Deadlines <i>(list below)</i> | |
| Development Team Operational Plan | 90 days |
| Proposed Project Schedule and Project Budget | 90 days |
| Securing of Project Financing | 180 days |
| Selection of Engineer for Plans, Specifications, Installation, and Construction of Infrastructure | 45 days |
| Completion of Land Infrastructure Improvements etc. | 270 days |
| Creation of Marketing Program for Project | 270 days |
| Securing Building Permits | 180 days |
| Begin Construction | 210 days |
| Complete Project | 24 months total |
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