

Meeting Date:

Agenda Item

September 13, 2011

39

REQUESTED COMMISSION ACTION:

Consent

Ordinance

Resolution

Consideration/
Discussion

Presentation

SHORT TITLE

Repealing Resolution No 2010-307, which approved a proposed agreement between the city and Captiva Cove Associates, Ltd.

Summary of Purpose and Why:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, REPEALING CITY RESOLUTION NO. 2010-307 WHICH APPROVED A PROPOSED AGREEMENT BETWEEN CAPTIVA COVE ASSOCIATES, LTD AND THE CITY OF POMPANO BEACH TO PROVIDE FUNDS FOR A MULTI-FAMILY RENTAL PROJECT IN THE CITY; AND IF DEEMED NECESSARY, AUTHORIZING THE CITY TO EXECUTE A NOTICE OF TERMINATION FOR CONVENIENCE; PROVIDING AN EFFECTIVE DATE.

TABLED FROM 7/26/11 CITY COMMISSION MEETING

(1) Origin of request for this action:

(2) Primary staff contact: Gordon B. Linn, City Attorney

Ext. 4614

(3) Expiration of contract, if applicable:

(4) Fiscal impact and source of funding:

DEPARTMENTAL
COORDINATION

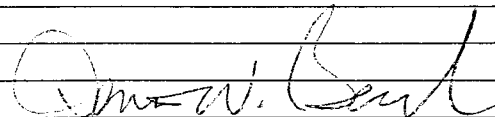
DATE
7/14/11

DEPARTMENTAL
RECOMMENDATION

DEPARTMENTAL HEAD SIGNATURE

See City Attorney's Comm. #2011-1379

City Manager



ACTION TAKEN BY COMMISSION:

Ordinance
1st Reading

Resolution
1st Reading

Consideration
Results:

Workshop
Results:

2nd Reading



City Attorney's Communication #2011-1378

July 14, 2011

TO: Dennis W. Beach, City Manager
FROM: Gordon B. Linn, City Attorney
RE: Repealing Resolution #2010-307 – Captiva Cove Associates, Ltd.

Attached please find the following captioned Resolution addressing the above-referenced matter:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, REPEALING CITY RESOLUTION NO. 2010-307 WHICH APPROVED A PROPOSED AGREEMENT BETWEEN CAPTIVA COVE ASSOCIATES, LTD AND THE CITY OF POMPANO BEACH TO PROVIDE FUNDS FOR A MULTI-FAMILY RENTAL PROJECT IN THE CITY; AND IF DEEMED NECESSARY, AUTHORIZING THE CITY TO EXECUTE A NOTICE OF TERMINATION FOR CONVENIENCE; PROVIDING AN EFFECTIVE DATE.

Please place this matter on the July 26, 2011 City Commission Agenda. I have attached a Commission Agenda Cover Sheet for your convenience.

Should you have any questions regarding this matter, please feel free to contact me.



GORDON B. LINN

GBL/jrm
l:cor/manager/2011-1378

Attachments

CITY OF POMPANO BEACH
Broward County, Florida

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, REPEALING CITY RESOLUTION NO. 2010-307 WHICH APPROVED A PROPOSED AGREEMENT BETWEEN CAPTIVA COVE ASSOCIATES, LTD AND THE CITY OF POMPANO BEACH TO PROVIDE FUNDS FOR A MULTI-FAMILY RENTAL PROJECT IN THE CITY; AND IF DEEMED NECESSARY, AUTHORIZING THE CITY TO EXECUTE A NOTICE OF TERMINATION FOR CONVENIENCE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Commission approved by resolution an agreement with Captiva Cove Associates, Ltd to provide funding for a multi-family rental project; and

WHEREAS, the said proposed agreement was never signed by the city nor were original signatures from Captiva even received by the city; and.

WHEREAS, the said proposed agreement provided for the right to termination for convenience upon notice; and

WHEREAS, the city does not now desire to proceed with the proposed agreement; now, therefore,

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

SECTION 1. That City Resolution No. 2010-307 is hereby repealed and the related proposed agreement to said resolution is hereby rejected and unsigned.

SECTION 2. That the city is hereby authorized to provide notice of termination for convenience to Captiva Cove Associates, Ltd. as provided by said proposed agreement if deemed necessary by the City Attorney.

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of _____, 2011.

LAMAR FISHER, MAYOR

ATTEST:

MARY L. CHAMBERS, CITY CLERK

GBL/jrm
7/14/11
l:reso/2011-358

Meeting Date: September 14, 2010


Agenda Item 38

REQUESTED COMMISSION ACTION:

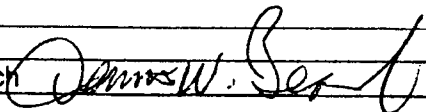
Consent Ordinance Resolution Consideration/Discussion Presentation

SHORT TITLE A Resolution of the City Commission of the City of Pompano Beach, Florida approving and authorizing the proper City Officials to execute a Neighborhood Stabilization Project (NSP) Agreement between the City of Pompano Beach and Captiva Cove Associates I, LTD in connection with the development of a 360 unit affordable multi-family rental community at 1201 W. Dixie Highway

Summary of Purpose and Why: At the June 22, 2010 meeting, the City Commission voted to allocate \$2 million loan to The Cornerstone Group in order to support the construction of the Captiva Club apartments, a 360-unit development on 20 acres located at 1201 South Dixie Highway. Approximately \$1 million of the loan includes NSP program income. This resolution approves and authorizes the proper City officials to execute a Neighborhood Stabilization Project Agreement between the City of Pompano Beach and Captiva Cove Associate I, Ltd., in connection with the development of a multi-family rental community at 1201 W. Dixie Highway.

- (1) Origin of request for this action: _____
- (2) Primary staff contact: Willie A. Hopkins Jr.  Ext. 4606
- (3) Expiration of contract, if applicable: _____
- (4) Fiscal impact and source of funding: None at this time

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE

City Manager Dennis W. Beach 

ACTION TAKEN BY COMMISSION:

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

RESOLUTION NO. 2010-

307

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 NEIGHBORHOOD STABILIZATION PROJECT AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND CAPTIVA COVE ASSOCIATES I, LTD. IN CONNECTION WITH THE DEVELOPMENT OF A 360 UNIT AFFORDABLE MULTIFAMILY RENTAL COMMUNITY 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 _____ day of _____, 2010.

LAMAR FISHER, MAYOR

ATTEST:

MARY L. CHAMBERS, CITY CLERK

**NEIGHBORHOOD STABILIZATION PROJECT (NSP1) AGREEMENT
BETWEEN THE CITY OF POMPANO BEACH AND
CAPTIVA COVE ASSOCIATES I, LTD.**

This Agreement made and entered into this ___ day of _____, 2010, by and between the **CITY OF POMPANO BEACH**, a Florida municipal corporation having its principal office at _____ Pompano Beach, Florida, 33139, (hereinafter referred to as "City"), and Captiva Cove Associates, Ltd., a Florida limited partnership having its principal office at 2100 Hollywood Blvd., Hollywood, Florida, 33020 (hereinafter referred to as "Developer").

WHEREAS, on July 31, 2008, the United States Congress enacted the Housing and Economic Recovery Act of 2008 (HERA), thereby creating the NSP1; and

WHEREAS, on December 1, 2008, the State of Florida, acting through its Department of Community Affairs (OHUI), published its NSP1 Substantial Amendment, pursuant to the requirements of HERA; and

WHEREAS, on _____, the City Commission adopted Resolution No. _____, approving the City's planned use of and application for NSP1 funds, and related application to OHUI, which was _____ in the City of Pompano Beach target areas, to benefit income-qualified households in accordance with NSP1; and

WHEREAS, on July 22, 2010, the City Commission adopted Resolution No. _____, accepting Developer's proposal for the use of NSP1 funds in connection with the development of Captiva Cove, a 360 unit affordable multifamily rental community (the "Project") that will serve families earning sixty (60%) percent or less of the median income in Broward County, and authorizing the Mayor and the City Clerk to execute an agreement with Developer.

NOW, THEREFORE, in consideration of the mutual benefits contained herein, the City and Developer agree as follows:

Section 1. Agreement Documents: Agreement documents shall consist of this Agreement and attachments, all of which are incorporated by reference into this Agreement:

- Attachment I is the Project Scope of Work.
- Attachment II is the Operating Proforma for the Project.
- Attachment III is the Insurance Certificate.

Section 2. Project/Statement of Work: Development of the Project at 1201 W. Dixie Highway, Pompano Beach, Florida.

Section 3. Agreement Amount: Subject to the availability of funds, the City agrees to make available for contracted activities according to the terms and conditions contained within this contract in the amount not to exceed **ONE MILLION, FIFTY FOUR THOUSAND AND NO/100**

Section 4 Alterations: Any proposed alterations in the Project, including with limitation, the descriptions and budgets shall first be submitted, reviewed, and approved in writing, by the City Manager, in his sole reasonable judgment and discretion.

Section 5. Method of Payment and Reporting Requirements: The Developer may request a drawdown of funds for the acquisition costs as per the availability of NSP Program Income (or as soon as the funds become available). Any advance payment is subject to Federal OMB Circulars A-87, A-10, A-22, and the Cash Management Improvement Act of 1990.

The Developer shall submit monthly Project progress reports to the Director of the City's Office of Housing and Urban Improvements Department, on the 10th day of each month, during the development of the Project. The Developer shall also submit, a close-out report thirty (30) days after completion of activities, including a comprehensive final report covering the agreed-upon Project objectives, activities, and expenditures during the Term of this Agreement, and performance data on client feedback. Other reporting requirements may be required by DCA or the City if the Project changes; the need for additional information or documentation arises; and/or if legislative amendments are enacted. The Developer shall be informed, in writing, if any changes become necessary. Reports and/or requested documentation not received by the due date shall be considered delinquent and may be considered by the City Manager, in his sole discretion, as sufficient cause to suspend pending additional NSP1 payments to the Developer, and/or terminate the Agreement for cause, pursuant to Section 12.2 hereof.

Section 6. Monitoring: The City shall monitor Developer's performance, as well as that of its subcontractors that are paid from funds provided under this Agreement. The Developer shall comply and cooperate with any monitoring procedures or processes, as reasonably deemed necessary and appropriate by the City.

Section 7. Additional Conditions and Compensation: It is expressly understood and agreed by the parties hereto that the monies to be made available to Developer pursuant to this Agreement, originate from NSP1 funds from the U.S. Department of Housing and Urban Development (HUD), through the State of Florida Department of Community Affairs (DCA), and must be implemented in full compliance with all applicable rules and regulations (including without limitation, such applicable rules of HUD and Florida DCA, respectively). It is expressly understood and agreed that in the event of curtailment or non-production of said funds, the financial sources necessary to continue to pay the Developer all or any portions of the funds contemplated herein will not be available, and that this Agreement will thereby terminate, without any liability to the City, effective as of the time that it is determined by the City Manager, (in his sole discretion and judgment), that said funds are no longer available. In the event of such termination, the Developer agrees that it will not look to, nor seek to hold liable, the City, nor any individual member of the City Commission and/or City Administration personally, for the performance of this Agreement, and that the City shall be released from further liability to Developer under the terms of this Agreement.

Developer must execute a restrictive covenant with the City of Pompano Beach for the grant award and the use of the land to ensure its use as a NSP1/NSP1 project for a minimum of the prescribed fifteen (15) year retention period.

Section 8. Compliance with Local, State and Federal Regulations: The Developer agrees to comply with all applicable federal regulations as they may apply to Project administration, and to carry out each activity in compliance with the laws and regulations as described in 24 CFR 570 Subpart K, as same may be amended from time to time. Additionally, the Developer will comply with all applicable State and local (City and Broward County) laws, ordinances, rules and regulations. It shall be the Developer's sole and absolute responsibility to continually familiarize itself with any and all such applicable federal, State, County, and City laws, ordinances, rules and/or regulations.

Section 9. Restriction for Certain Resident Aliens: Certain newly legalized aliens, as described in 24 CFR Part 49, are not eligible for benefits under covered activities funded by the NSP1 Program. "Benefits" under this section means financial assistance, public services, jobs, and access to new or rehabilitated housing and other facilities made available under activities funded by the NSP1 Program. "Benefits" do not include relocation services and payments to which displaces are entitled by law.

Section 10. Assignment/Subcontract: No part of this Agreement may be assigned or subcontracted without the prior written consent of the City, which consent, if given at all, shall be at the City's sole discretion and judgment.

Section 11. Term: This contract shall begin upon execution by both parties, and shall end eighteen (18) months after the date signed, unless terminated earlier in accordance with the provisions of Section 11 of this Agreement. Any costs incurred by the Developer prior to the effective date of this contract which were not approved by the City, will not be reimbursed by the City. Contract extensions will be at the City Manager's discretion and shall be contingent upon approval by the State of Florida in accordance with the guidelines established in the 2008 State of Florida Action Plan Substantial Amendment.

Section 12. Termination of Agreement:

12.1 Termination for Convenience: The City and Developer agree that this Agreement may be terminated, for convenience and without cause, by the City, upon written notice to Developer, at least thirty (30) days prior to the effective date of such termination. In the event of such termination for convenience, the City shall cease any payments to Developer for costs resulting from obligations which were not properly incurred before the effective date of termination. Developer shall be solely responsible for immediately returning an unused or unapproved Funds as of the date of termination and shall also be solely responsible for submitting a final report, as provided in Section 5 hereof, detailing all Program objectives, activities and expenditures (up to the effective date of the termination). Said final report shall be due within five (5) working days following the effective date of termination. Upon timely receipt of Developer's final

report, the City, at its sole discretion, shall determine the amount (if any) of any additional portion of the Fund to be returned to the City as a result of any unused or incomplete Program items, and/or items not satisfactorily performed, and shall provide Developer with written notice of any monies due. Said additional monies shall be due and payable immediately upon receipt of such notice by Developer. Notwithstanding the preceding, the City reserves any and all legal rights and remedies it may have with regard to recapture of all or any portion of the Funds, or any assets acquired or improved in whole or in part with said Funds.

12.2 Termination for Cause: Notwithstanding Subsection 12.1 above, the City may also place the Developer in default of this Agreement, and may terminate this Agreement for cause. "Cause" shall include, but not be limited to, the following:

- a. Failure to comply and/or perform in a material way, as same shall be determined by the City Manager, in his sole discretion and judgment, in accordance with the terms of this Agreement, or any Federal, State, County or City law, or regulation.
- b. Submitting reports to the City which are late, incorrect, or incomplete in any material respect.
- c. Implementation of this Agreement, for any reason, is rendered impossible or infeasible.
- d. Failure to respond in writing to any concerns raised by the City, including substantiating documents when required/requested by the City.
- e. Any evidence of fraud, mismanagement, and/or waste, as determined by the City's monitoring and applicable HUD rules and regulations.

The City shall notify the Developer in writing when the Developer has been placed in default. Such notification shall include: (i) actions taken by or to be taken by the City, such as withholding of payments; (ii) actions to be taken by the Developer as a condition precedent to curing the default; and (iii) a reasonable cure period, which shall be no more than thirty (30) days from notification date. In the event the Developer fails to cure such default within the foretasted cure period, this Agreement shall be considered terminated for cause by the City, without further notice to Developer, and Developer shall be solely responsible for repayment to the City of all or any portion of the Funds disbursed to Developer under this Agreement. Said monies shall be immediately due and payable by Developer. Notwithstanding the preceding, the City reserves any and all legal rights and remedies it may have with regard to recapture of all or any portion of the Funds, or any assets acquired or improved in whole or in part with said Funds.

12.3 Termination for Lack of Funds: In the event of curtailment of, or regulatory constraints placed on the Funds by HUD, this Agreement will terminate, effective as of the time that it is determined by the City Manager that such Funds are no longer available. Costs of the Developer resulting from obligations incurred after a termination are not allowable unless the

City Manager expressly authorizes them in writing, whether in the notice of termination or subsequent thereto. Other costs after termination which are necessary and not reasonably avoidable must also be authorized by the City Manager in writing and shall only be allowable if, in the sole discretion of the City Manager:

- a. The costs resulted from obligations which were properly incurred before the effective date of termination, were not in anticipation of it, and are non-cancelable; and
- b. The costs would be allowable if the Agreement expired normally at the end of its Term.

Section 13. Equal Employment Opportunities: The Provider shall comply with equal employment opportunities as stated in Executive Order 11246, entitled "Equal Employment Opportunity" as amended Executive Order 11375, and as supplemented in Department of Labor regulations.

Section 14. Program Income: All "Program Income" (as such term is defined under applicable Federal regulations) gained from any activity of the Developer funded by NSP1 funds shall be returned to the State for reallocation based on greatest need and capacity to obligate and spend NSP funds. Any generated program income must be reported to DCA and must comply with the requirements set out in 24 CFR.489(3)(3) and the Federal Register Notice that states the requirements of NSP funds.

Any Program Income received on or after July 30, 2013, may not be retained by the local government and must be remitted to the State to be returned to HUD.

Section 15. Religious Organization or Owned Property: NSP1 funds may be used by religious organizations or on property owned by religious organizations only with prior written approval from the City Manager and only in accordance with requirements set in 24 CFR §570.200(j). The Developer shall comply with First Amendment Church/State principles, as follows:

- a. It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion.
- b. It will not discriminate against any person applying for public services on the basis of religion and will not limit such services or give preference to persons on the basis of religion.
- c. It will retain its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct NSP1 funds to support any inherently religious activities, such as worship, religious instruction, or proselytizing.
- d. The funds received under this Agreement shall not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious

activities. Where a structure is used for both eligible and inherently religious activities, NSP1 funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to NSP1 funds in this part. Sanctuaries, chapels, or other rooms that a NSP1-funded religious congregation uses as its principal place of worship, however, are ineligible for NSP1-funded improvements.

Section 16. Reversion of Assets: In the event of a termination of this Agreement pursuant to Section 12 herein, or upon expiration of the Agreement, the Developer shall immediately transfer to the City any NSP1 funds on hand at the time of termination or expiration and any account receivable attributable to the use of NSP1.

Any real property under the Developer's control that was acquired or improved in whole or in part with NSP1 funds (including NSP1 funds provided to the Developer in the form of a loan) in excess of \$25,000 must either:

- a. Be used to meet one of the national objectives in 24 CFR 570.208 until at least fifteen (15) years after expiration of the Term of this Agreement, or for such longer period of time as determined to be appropriate by the City and as memorialized by the City and Developer in an amendment to this Agreement or such instrument as the City, at its discretion, determines appropriate; or
- b. If not used in accordance with the above subsection (a), the Developer shall pay to the City an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-NSP1 funds for the acquisition of, or improvement to, the property. No payment is required after the period of time specified in subsection (a).

Section 17. Conformity to HUD regulations: The Developer agrees to abide by guidelines set forth by HUD for the administration and implementation of the NSP1 Program, including applicable Uniform Administrative Requirements set forth in 24 CFR 570.502, and applicable federal laws and regulations in 24 CFR 570.600, *et seq.* In this regard, the Developer agrees that duly authorized representatives of HUD shall have access to any books, documents, papers and records of the Developer that are directly pertinent to this Agreement for the purpose of making audits, examinations, excerpts and transcriptions. The Developer shall comply with the requirements and standards of OMB Circular No. A-122, "Cost Principles for Non-profit Organizations", or OMB Circular No. A-21, "Cost Principles for Educational Institutions" as applicable. The Developer shall comply with the following provisions of the Uniform Administrative requirements of OMB Circular A-110 (implemented at 24 CFR Part 84, "Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations") or the related NSP1 provision, as specified in this section:

- a. Subpart A - "General";

- b. Subpart B - "Pre-Award Requirements", except for 84.12, "Forms for Applying for Federal Assistance";
- c. Subpart C - "Post-Award Requirements", except for:
 - (1) Section 84.22, "Payment Requirements" - Grantees shall follow the standards of 85.20(b)(7) and 85.21 in making payments to sub-recipients;
 - (2) Section 84.23, "Cost Sharing and Matching";
 - (3) Section 84.24, "Program Income" - In lieu of 84.24, NSP1 sub-recipients shall follow 570.504;
 - (4) Section 84.25, "Revision of Budget and Program Plans";
 - (5) Section 84.32, "Real Property" - In lieu of 84.32, NSP1 sub-recipients shall follow 570.505;
 - (6) Section 84.34(g), "Equipment" - In lieu of the disposition provisions of 84.34(g), the following applies:
 - a. In all cases in which equipment is sold, the proceeds shall be program income (pro-rated to reflect the extent to which NSP1 funds were used to acquire the equipment); and
 - b. Equipment not needed by the sub-recipient for NSP1 activities shall be transferred to the recipient for the NSP1 program or shall be retained after compensating the recipient;
 - (7) Section 84.51(b), (c), (d), (e), (f), (g), and (h), "Monitoring and Reporting Program Performance";
 - (8) Section 84.52, "Financial Reporting";
 - (9) Section 84.53(b), "Retention and access requirements for records". Section 84.53(b) applies with the following exceptions:
 - a. The retention period referenced in 84.53(b) pertaining to individual NSP1 activities shall be four years; and
 - b. The retention period starts from the date of submission of the annual performance and evaluation report, as prescribed in 24 CFR 91.520, in which the specific activity is reported on for the final time rather than from the date of submission of the final expenditure report for the award;
 - (10) Section 84.61, "Termination" - In lieu of the provisions of 84.61, NSP1 sub recipients shall comply with 570.503(b)(7); and

- d. Subpart D - "After-the-Award Requirements" - except for 84.71, "Closeout Procedures".

Section 18. Sponsorships: The Developer agrees that all notices, informational pamphlets, press releases, advertisements, descriptions of the sponsorship of the Program, research reports, and similar public notices prepared and released by the Developer for, on behalf of, and/or about the Program, shall include the statement:

"FUNDED BY THE CITY OF POMPANO BEACH, STATE OF FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS, AND U.S. DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT NEIGHBORHOOD STABILIZATION PROJECT"

Section 19. Recordkeeping: As applicable, the Developer's performance under this Agreement shall be subject to federal "Common Rule: Uniform Administrative Requirements for State and Local Governments" (53 Federal Register 8034) or OMB Circular No. A-122, "Cost Principles for Nonprofit Organizations" and all applicable laws, ordinances, rules and regulations. This documentation shall include, but not be limited to, the following:

- a. Books, records and documents in accordance with generally accepted accounting principles, procedures and practices, which sufficiently and properly reflect all revenues and expenditures of funds provided directly or indirectly by this Agreement, including matching funds and Program income. These records shall be maintained to the extent of such detail as will properly reflect all net costs, direct and indirect labor, materials, equipment, supplies and services, and other costs and expenses of whatever nature for which reimbursement is claimed under the provisions of this Agreement.
- b. Time sheets for split-funded employees, which work on more than one activity, in order to record the NSP1 activity delivery cost by Program and the non-NSP1 related charges.
- c. The recipient shall retain sufficient records to show its compliance with the terms of this Agreement, and the compliance of all subcontractors or consultants paid under this Agreement, for a period of six (6) years from the date the audit report is issued, and shall allow the City or its designee, the State Chief Financial Officer or the State Auditor General access to the records upon request. The Developer shall ensure that audit working papers are available to them upon request for a period of six years from the date the audit report is issued, unless extended by the City or the State for the following exceptions:
 - 1. If any litigation, claim or audit is started before the six year period expires, and extends beyond the six year period, the records shall be retained until all litigation, claims and audit findings involving the records have been resolved. The City shall be informed, in writing, of the address where the records are to be kept.

2. Records for the disposition of non-expendable property valued at \$5,000 or more at the time it is acquired shall be retained for six years after final disposition.
 3. Records relating to real property acquired shall be retained for six years after the closing on the transfer of title.
- d. The Developer shall maintain all records for all subcontractors or consultants to be paid from this Agreement, including documentation of all program costs, in a form sufficient to determine compliance with the requirements and objectives of the Budget and Scope of Work – Attachment I and III – and all other applicable laws and regulations.
- e. The Developer, its employees or agents, including all subcontractors or consultants to be paid from funds provided under this Agreement, shall allow access to its records at reasonable times, to the City, its employees, and agents. "Reasonable" shall ordinarily mean during normal business hours of 8:00 a.m. to 5:00 p.m., local time, on Monday through Friday.

Section 20. Audits and Inspections: the Developer agrees to maintain financial procedures and support documents, in accordance with generally accepted accounting principles, to account for the receipt and expenditures of funds under this Agreement. At any time during normal business hours, and as often as the City, DCA, and/or federal government representatives may deem necessary, the Developer shall make available all records, documentation, and any other data relating to all matters covered by the Agreement for review, inspection or audit.

If the Developer is a non-profit organization as defined in OMB Circular A-133, as revised, and in the event that the Developer expends \$500,000 or more in Federal awards in its fiscal year, a single audit or program-specific audit shall be conducted for each fiscal year for which federal awards attributable to this contract have been received by the Developer. If this Agreement is closed-out prior to the receipt of an audit report, the City reserves the right to recover any disallowed costs identified in an audit after such closeout.

Section 21. Indemnification/Insurance Requirements: The Developer shall indemnify and hold harmless the City, its officers, employees, contractors, and agents, from any and all claims, liability, losses and causes of action which may arise out of any act, error, omission, negligence or misconduct on the part of Developer or any of its officers, directors, employees, contractors, agents, patrons, guests, clients, licensees or invitees, pursuant to and/or related to this Agreement and/or the Project. The Developer shall pay all claims and losses of any nature whatsoever in connection therewith and shall defend all suits in the name of the City, when applicable, and shall pay all costs (including attorney's fees) and judgments which may issue thereon. This Indemnification shall survive the termination and/or expiration of the Term of this Agreement.

The Developer shall not commence any work and/or services pursuant to this Agreement until all insurance required under this Section has been obtained and approved by the City's Risk Manager. In the event evidence of any required insurance is not forwarded to the City's Risk Manager within thirty (30) days after

the execution of this Agreement, this Agreement shall become null and void and the City shall have no obligation and/or liability under the terms hereof.

The Developer shall maintain and carry in full force during the Term of this Agreement or throughout the duration of the Project, whichever is longer, the following insurance:

- a. General Liability Policy with coverage for Bodily Injury and Property Damage, in the amount of \$1,000,000 single limit. The policy must include coverage for contractual liability to cover Developer's indemnification agreement, as set forth in this Section.
- b. Worker's Compensation and Employers Liability, as required pursuant to Florida Statutes.
- c. Automobile and vehicle coverage shall be required when the use of automobiles and other vehicles are involved in any way in the performance of the Agreement. Limits for such coverage shall be in the amount of \$500,000.

The City of Pompano Beach, Florida shall be named as an additional insured under all required insurance policies. The insurance must be furnished by insurance companies authorized to do business in the State of Florida, and approved by the City's Risk Manager. The companies must be rated no less than "B+" as to management, and not less than "Class VI" as to strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent. Original certificates of insurance for any required coverage the above coverage must be submitted to the City's Risk Manager for approval prior to any work commencing, and will be kept on file in the Office of the Office of Housing and Urban Improvement Pompano Beach City Hall.

All insurance required by this section of the Agreement shall be and remain in full force and effect for the entire term of the Agreement and/or throughout the duration of the Project, whichever is greater. Each required certificate or policy shall carry the provision that the insurance shall not terminate, lapse or otherwise expire, prior to thirty (30) days written notice to that effect, given by the insurance carrier to the City, and that the insurance carrier will not invoke the defense of performance of a governmental function by the Developer in performing this contract.

Compliance with the foregoing requirements shall not relieve the Developer of the liabilities and obligations under this Section, or under any other portion of this Agreement. The City shall have the right to obtain from the Developer specimen copies of the insurance policies in the event that submitted certificates of insurance are inadequate to ascertain compliance with required coverage. All of Developer's certificates shall contain endorsements providing that written notice shall be given to the City at least thirty (30) days prior to termination, cancellation, or reduction in coverage of the policy.

Thirty (30) days written notice of cancellation or substantial modification of any required insurance coverage must be given to the City's Risk Manager by the Developer or his/her insurance company.

Section 22. Conflict of Interest: The Developer covenants that no person under its employ who presently exercises any functions or responsibilities in connection with HUD or DCA funded activities has any personal financial interests, direct or indirect, in this Agreement. The Developer covenants that in the performance of this Agreement, no person having such conflicting interest shall be employed. The Developer covenants that it will comply with all provisions of 24 CFR 570.611 "Conflict of Interest", and the Federal, State, County and City of Pompano Beach laws governing conflicts of interest. The Developer shall disclose, in writing, to the City any possible conflicting interest that is covered by the above provisions. This disclosure shall occur immediately upon knowledge of such possible conflict. The City will then render an opinion, which shall be binding on both parties.

Section 23. Venue: This Agreement shall be enforceable in Broward County, Florida, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for the enforcement of the same shall lie in Broward County, Florida.

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida, both substantive and remedial, without regard to principles of conflict of laws. The exclusive venue for any litigation arising out of this Agreement shall be Broward County, Florida, if in state court, and the U.S. District Court, Southern District of Florida, if in federal court. BY ENTERING INTO THIS AGREEMENT, CITY AND DEVELOPER EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.

Section 24. Notices: All notices required under this Agreement shall be sent to the parties at the following address:

City: Office of Housing & Urban Improvement
Attn: Miriam Carrillo
100 West Atlantic Boulevard
Pompano Beach, FL 33060

Developer: Leon J. Wolfe, President
Cornerstone Captiva Cove, LLC
2100 Hollywood Blvd.
Pompano Beach, FL 33020

Section 25. Limitation of Liability: The City desires to enter into this Agreement only if in so doing the City can place a limit on City's liability for any cause of action for money damages due to an alleged breach by the City of this Agreement, so that its liability for any such breach never exceeds the sum of \$10,000. Developer hereby expresses its willingness to enter into this Agreement with Developer's recovery from the City for any damage action for breach of contract to be limited to a maximum amount of \$10,000, less the amount of all funds actually paid by the City to Developer pursuant to this Agreement.

Accordingly, Developer hereby agrees that the City shall not be liable to Developer for damages in an amount in excess of \$10,000, which amount shall be reduced by the amount of the funding actually paid by the City to Developer pursuant to this Agreement, for any action or claim for breach of contract arising out of the performance or nonperformance of any obligations imposed upon the City by this Agreement. Nothing contained in this subparagraph or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon City's liability as set forth in Florida Statutes, Section 768.28.

Section 26: This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officials on the day and date first above indicated.

CAPTIVA COVE ASSOCIATES, LTD
a Florida limited partnership
By: Cornerstone Captiva Cove, LLC


ATTEST:



Secretary

Marea S. Mades

Print Name



✓ President Signature

Leon J. Wolfe, President

Print Name and Title

CITY OF POMPANO BEACH
a Florida Municipal corporation

ATTEST:

City Clerk

Mayor

Print Name

Lamar Fisher, Mayor

Print Name and Title

Captiva Club Apartments



Presented by:



Cornerstone
GROUP

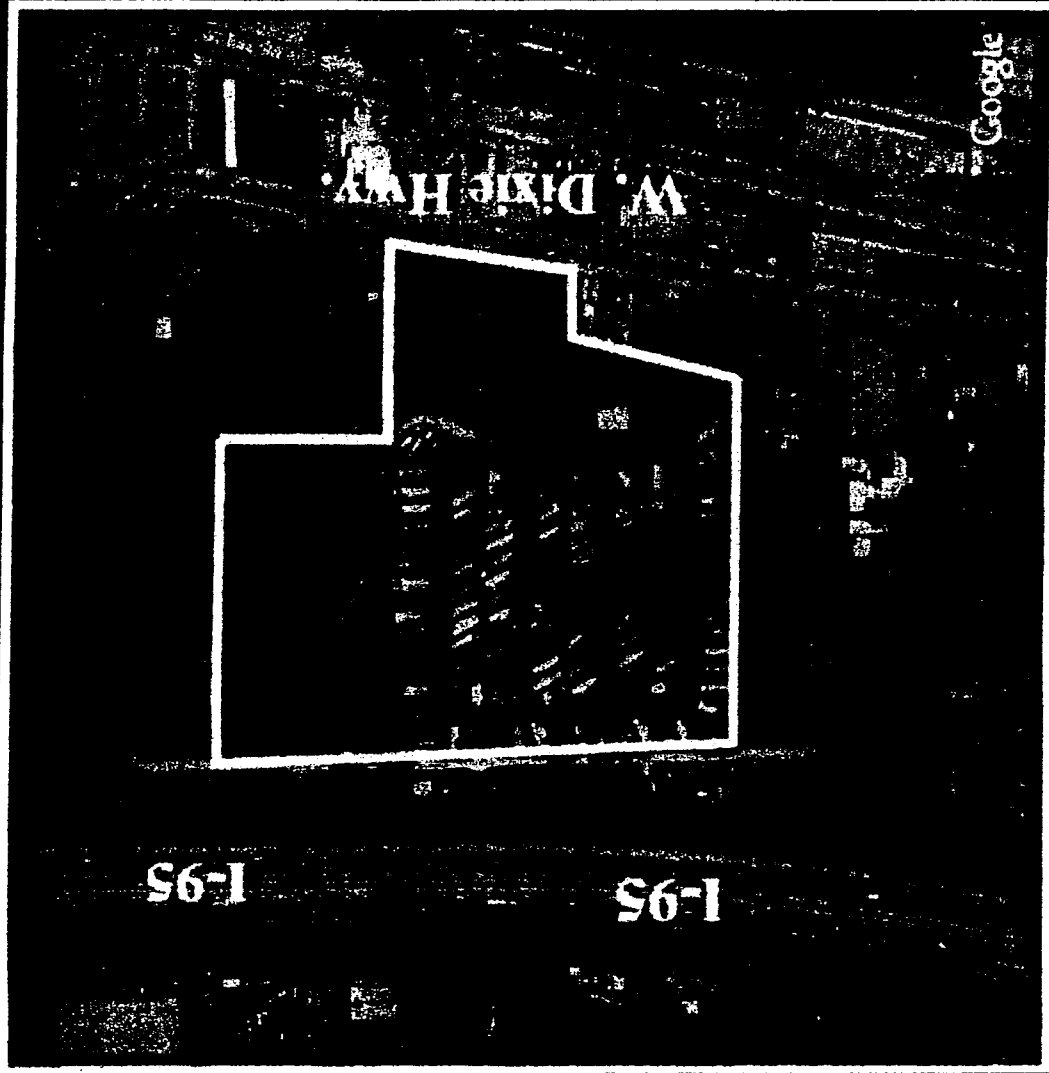
Captiva Club

Executive Summary

- Captiva Club is a new construction, affordable rental housing community, situated in Broward County, Pompano Beach, Florida. One hundred percent of the units at Captiva Club will be provided to tenants whose household income is 60% or less of the Broward County median income. A number of the units will be made available to households earning 50% or less of the median county income.
- The neighborhood is a desirable area for family and elderly households. Located minutes from Interstate-95 and US-1, the area is near schools, medical facilities and shopping plazas that include Publix, Winn Dixie, Whole Foods, Walmart and Costco.
- The project will have outstanding visibility from South Dixie Highway, a major thoroughfare that runs generally north to south parallel to I-95.
- The unit mix at Captiva Club will consist of 72 one-bedroom, 184 two-bedroom, and 104 three bedroom apartment homes. Each apartment will feature wall-to-wall carpeting in the living room, vertical blinds, central air-conditioning, and European-style kitchens equipped with a frost-free refrigerator, disposal, and dishwasher. Common area amenities will consist of a swimming pool, clubhouse, exercise room, laundry facilities, tot-lot, library, and computer room.
- Construction will consist of monolithic concrete slab-on-grade for the foundation, formed concrete slab for intermediate floors, formed concrete and concrete block walls for the structure, painted stucco for the exterior finish, metal framing with painted drywall for the interior walls, knockdown texture finish for the ceilings.



Location

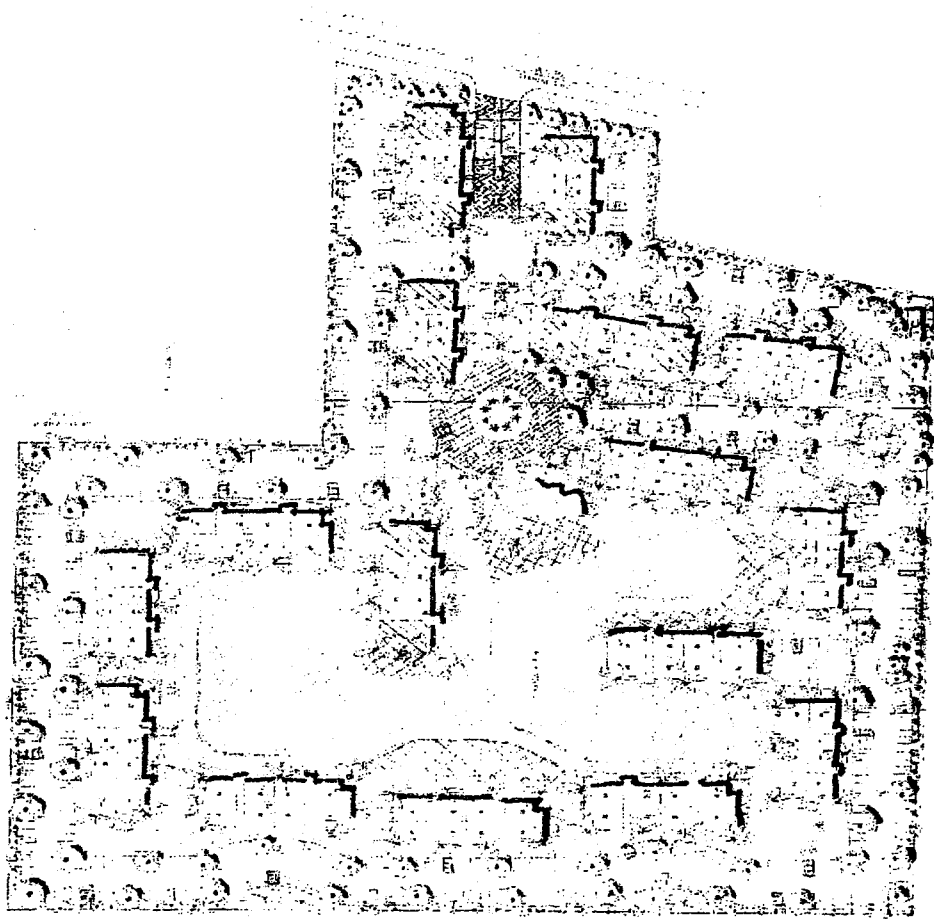


1201 South Dixie Highway, West

Pompano Beach, Florida 33060



Captiva Club Apartments



CAPTIVA ASSOCIATES
1111 S. W. 15th Ave.
Miami, Florida 33135

CAPTIVA CLUB
APARTMENTS

Cornerstone
GROUP

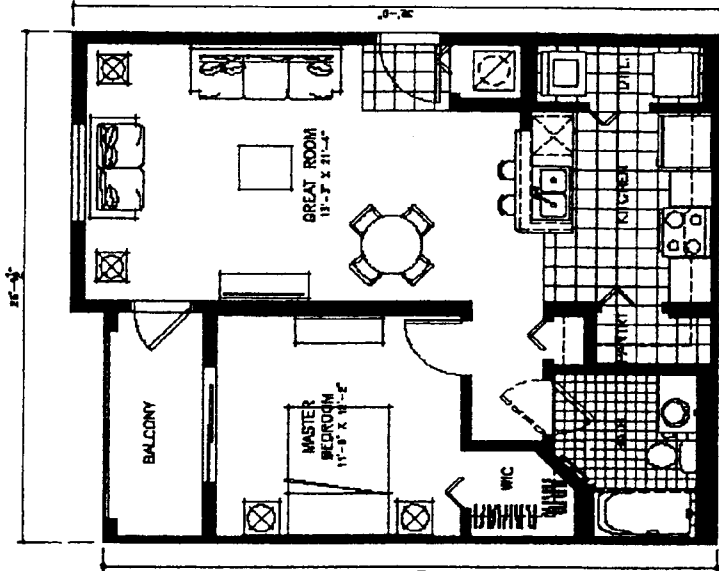


Unit Mix

# of Units	# of Bedrooms	# of Baths	Square Feet A/C Area
72	1	1	765
184	2	2	1,027
104	3	2	1,192



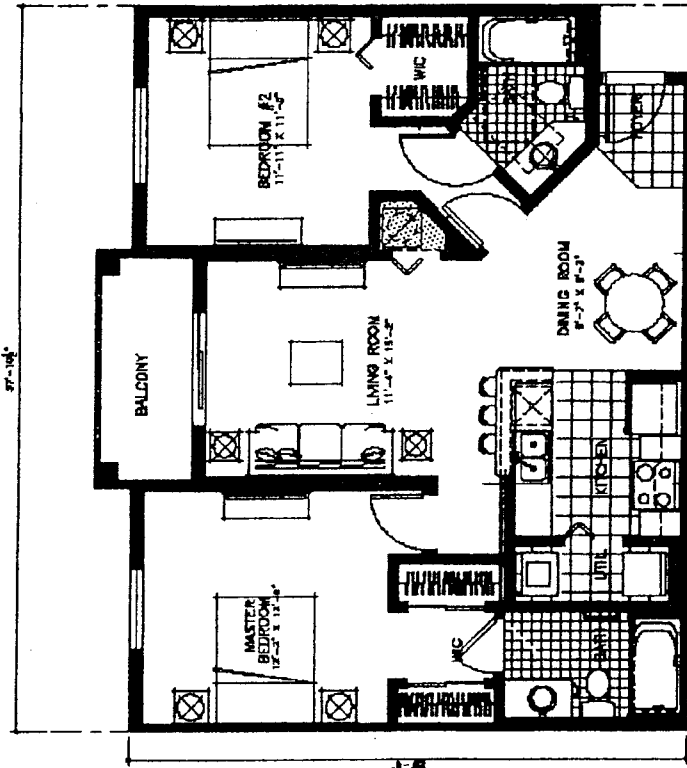
1 Bedroom Unit



UNIT A

A/C AREA	765 S.F.
BALCONY AREA	58 S.F.
TOTAL	823 S.F.

2 Bedroom Unit

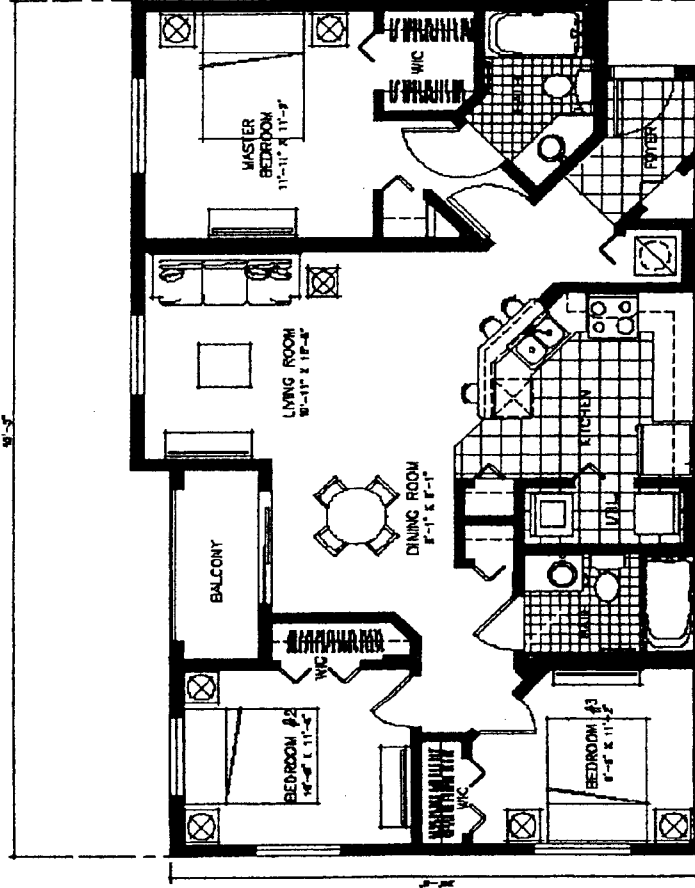


UNIT B

A/C AREA	1027 S.F.
BALCONY AREA	59 S.F.
TOTAL	1086 S.F.

SCALE 1/8" = 1'-0"

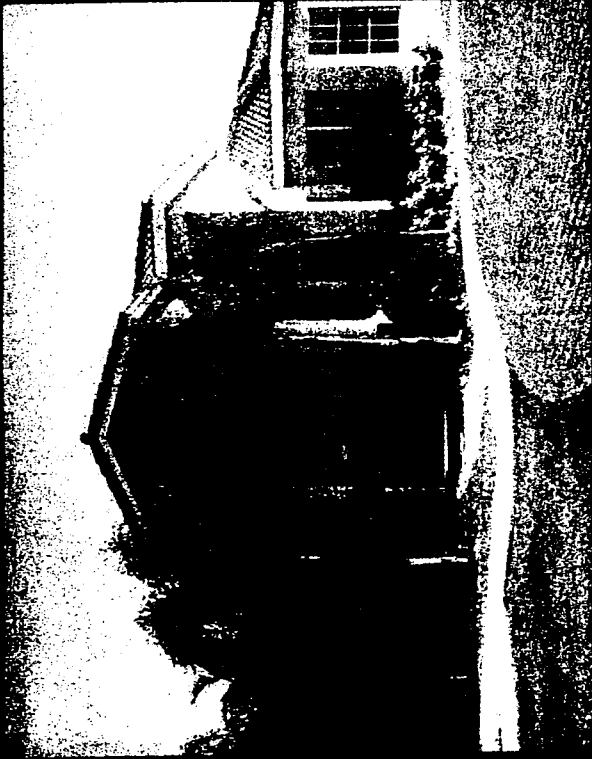
3 Bedroom Unit



UNIT C

A/C AREA	1192 S.F.	BUILD 1/4" = 1'-0"
BALCONY AREA	44 S.F.	
TOTAL	1236 S.F.	

Amenities



Attachment II

Capiva Cove

DEVELOPMENT COST PROFORMA

360

		COST/ SQ FT	COST/ UNIT	TOTAL COST	TAXCRED COSTS
A. Uses					
Acquisition		\$16.80	\$17,222	\$6,200,000	\$0
Land Carry		\$0.00	\$0	\$0	\$0
County Impact fees, net of waivers & credits		\$1.60	\$1,640	\$590,356	\$590,356
City Impact Fees		\$0.56	\$570	\$205,050	\$205,050
W&S Fees		\$1.95	\$2,000	\$720,000	\$720,000
Architect		\$0.94	\$964	\$347,000	\$347,000
Engineer		\$0.29	\$300	\$108,000	\$108,000
Survey		\$0.09	\$97	\$35,000	\$35,000
Environmental/Soils		\$0.04	\$42	\$15,000	\$15,000
Borrower Legal Counsel, Profess. Fees		\$0.34	\$347	\$125,000	\$25,000
Finance Fees		\$3.05	\$3,122	\$1,124,000	\$305,117
Bldrs Risk Insurance		\$0.98	\$1,000	\$360,000	\$216,000
Insurance		\$0.00	\$0	\$0	\$0
Taxes		\$0.27	\$278	\$100,000	\$60,000
Title & Recording		\$0.41	\$417	\$150,000	\$45,000
Special Inspector		\$0.00	\$0	\$0	\$0
Inspection		\$0.08	\$83	\$30,000	\$30,000
Appraisal		\$0.02	\$17	\$6,000	\$6,000
Market Study		\$0.02	\$21	\$7,500	\$7,500
Accounting		\$0.09	\$97	\$35,000	\$35,000
Tax Credit Fees		\$0.41	\$425	\$153,000	\$0
Construction Interest		\$4.57	\$4,683	\$1,686,000	\$1,180,200
Marketing & Start Up		\$0.27	\$278	\$100,000	\$0
Miscellaneous		\$0.11	\$111	\$40,000	\$20,000
Building Permits		\$0.98	\$1,000	\$360,000	\$360,000
Construction Cost		\$72.87	\$74,678	\$26,884,000	\$26,884,000
MIP	0.90%	\$0.60	\$619	\$222,750	\$222,750
Hard Cost Contingency	3.00%	\$2.19	\$2,240	\$806,520	\$806,520
Clubhouse Furniture		\$0.23	\$236	\$85,000	\$85,000
Repl. Res.		\$0.00	\$0	\$0	\$0
Reserves (4 months)	\$990,000	\$2.98	\$3,056	\$1,100,000	\$0
Developer's OH	4.00%	\$3.72	\$3,811	\$1,372,000	\$1,372,000
Developer's Fee	14.00%	\$13.01	\$13,336	\$4,801,000	\$4,801,000
Total Uses		\$129.47	\$132,689	\$47,768,176	\$38,481,492
Threshold:	22,856,801	50.50%			
Net Fee:	3,162,464				
B. Sources					
Tax Credit Equity		\$31.45	\$32,231	\$11,603,000	\$11,603,000
1st Mortgage, NIBP		\$67.08	\$68,750	\$24,750,000	\$24,750,000
Market Rate Bonds		\$0.00	\$0	\$0	\$0
Market Rate Bond redemption		\$0.00	\$0	\$0	\$0
FHFC HOME		\$13.55	\$13,889	\$5,000,000	\$5,000,000
Local Subsidy		\$3.81	\$3,902	\$1,404,640	\$1,404,640
NSP		\$2.17	\$2,222	\$800,000	\$800,000
Deferred Dvpr Fee		\$8.16	\$8,363	\$3,010,536	\$3,010,536
Pompano HOME/CDBG		\$3.25	\$3,333	\$1,200,000	\$1,200,000
Total Sources		\$129.47	\$132,689	\$47,768,176	\$47,768,176