

Meeting Date:

1-24-12

Agenda Item

15

REQUESTED COMMISSION ACTION:

Consent

Ordinance

Resolution

Consideration/  
Discussion

Presentation

SHORT TITLE

Execution of a Declaration of Restrictive Covenants (Affordable Housing) regarding the property known as Captiva Club Plat.

Summary of Purpose and Why:

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A DECLARATION OF RESTRICTIVE COVENANTS (AFFORDABLE HOUSING) RELATED TO PROPERTY KNOWN AS CAPTIVA CLUB PLAT; PROVIDING AN EFFECTIVE DATE.**

- (1) Origin of request for this action: Commissioner Poitier and Commissioner Hardin
- (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

DEPARTMENTAL  
RECOMMENDATION

DEPARTMENTAL HEAD SIGNATURE

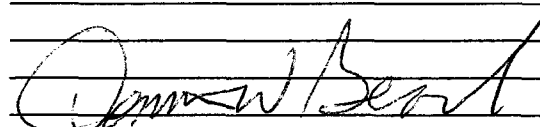
City Attorney

1/19/12

Approval

See City Attorney's Comm. #2012-435 

City Manager



ACTION TAKEN BY COMMISSION:

Ordinance

Resolution

Consideration

Workshop

1<sup>st</sup> Reading

1<sup>st</sup> Reading

Results:

Results:

2<sup>nd</sup> Reading



**City Attorney's Communication #2012-435**  
January 19, 2012

**TO:** Dennis W. Beach, City Manager  
**FROM:** Gordon B. Linn, City Attorney  
**RE:** Declaration of Restrictive Covenants – Captiva Club Plat

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, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A DECLARATION OF RESTRICTIVE COVENANTS (AFFORDABLE HOUSING) RELATED TO PROPERTY KNOWN AS CAPTIVA CLUB PLAT; PROVIDING AN EFFECTIVE DATE.**

Please place this matter on the January 24, 2012 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.



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GORDON B. LINN

GBL/jrm  
l:cor/manager/2012-435

Attachments

RESOLUTION NO. 2012-\_\_\_\_\_

**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 DECLARATION OF RESTRICTIVE COVENANTS (AFFORDABLE HOUSING) RELATED TO PROPERTY KNOWN AS CAPTIVA CLUB PLAT; PROVIDING AN EFFECTIVE DATE.**

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

**SECTION 1.** That a Declaration of Restrictive Covenants related to property known as Captiva Club Plat, a copy of which Declaration is attached hereto and incorporated herein by reference as if set forth in full, is hereby approved.

**SECTION 2.** That the proper City officials are hereby authorized to execute said Declaration by the City of Pompano Beach.

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

**PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

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

**ATTEST:**

\_\_\_\_\_  
**MARY L. CHAMBERS, CITY CLERK**

Return recorded document to:

Evangeline G. Kalus  
Development and Environmental  
Regulation Division  
1 North University Drive  
Building A, Suite 102  
Plantation, FL 33324

Document prepared by:

Evangeline G. Kalus  
Development and Environmental  
Regulation Division  
1 North University Drive  
Building A, Suite 102  
Plantation, FL 33324

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**DECLARATION OF RESTRICTIVE COVENANTS  
(AFFORDABLE HOUSING)**

This Declaration of Restrictive Covenants, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by Captiva Cove Associates Ltd, hereinafter referred to as "OWNER," and Florida Housing Finance Corporation as MORTGAGEE (if property described in Exhibit "A" is encumbered by a mortgage).

WHEREAS, OWNER is the fee title owner of that certain real property known as the Captiva Club Plat ("Plat"), located in Broward County, Florida, and legally described in Exhibit "A," attached hereto and incorporated herein (the "Property"); and

WHEREAS, OWNER hereby covenants that OWNER is lawfully seized of said Property in fee simple; that the Property is free and clear of all encumbrances that are inconsistent with the terms of this Declaration and all mortgagees have been joined or subordinated; that OWNER has good right and lawful authority to make this Declaration; and that OWNER agrees to fully warrant and defend this Declaration against the claims of all persons whomsoever; and

WHEREAS, OWNER intends to build affordable housing units on the Property and has applied to BROWARD COUNTY for the waiver of Three Hundred and Ninety-Nine Thousand Six Hundred and Ten Dollars and 0 /100 (\$399,610) in impact and/or administrative fees related to the Plat; and

WHEREAS, pursuant to Section 5-184 of the Broward County Land Development Code, a condition of waiving the impact and/or administrative fees for affordable housing is that OWNER must reasonably ensure that affordable housing units are rented or sold to persons meeting the income limitations defined in Section 5-201 of the Broward County Code of Ordinances; and

WHEREAS, OWNER, in fulfillment of that obligation hereby places certain restrictions on the use of the Property; NOW, THEREFORE:

1. The recitals set forth above are true and correct and are incorporated into these restrictive covenants.
2. OWNER hereby declares that the Property shall be held, maintained, transferred, sold, conveyed, and owned subject to the following designations and restrictive covenants:

OWNER hereby agrees Three Hundred and Ninety-Nine Thousand Six Hundred and Ten Dollars and 0 /100 (\$399,610) in impact and/or administrative fees have been waived for the Plat for the construction of:

53 very low income garden apartments  
211 low income garden apartments

within the Plat. OWNER shall ensure that the aforementioned units shall be sold and rented to persons meeting the applicable income limitations, as defined in Section 5-201 of the Broward County Code of Ordinances.

3. This Declaration of Restrictive Covenants shall be recorded in the Public Records of Broward County, Florida, and shall run with the Property at the specified income level(s) for a period of at least:
  - Twenty (20) years for rental housing, or
  - Ten (10) years for owner-occupied housing.
4. BROWARD COUNTY, at the request of OWNER or its successor, shall cause a release to be recorded in the Official Records of Broward County, Florida upon payment of all applicable impact fees at the rate in effect at the time of the request for the release of the restrictive covenant prior to the above referenced time periods.
5. BROWARD COUNTY, through its Board of County Commissioners, its successors and assigns, is the beneficiary of these restrictive covenants and as such, BROWARD COUNTY may enforce these restrictive covenants by an action at law or in equity against any person or persons, entity or entities, violating or attempting to violate the terms of these restrictions. Additionally, BROWARD COUNTY may institute foreclosure proceedings against the Property for the amount of fees that OWNER is bound to repay.
6. Any failure of BROWARD COUNTY to enforce these restrictive covenants shall not be deemed a waiver of the right to do so thereafter.
7. Invalidation of any one of these restrictive covenants by judgment or court order shall in no way affect any other conditions which remain in full force and effect.

8. This Declaration of Restrictive Covenants shall be recorded in the Public Records of Broward County, Florida, and shall become effective upon recordation.
9. (a) If there is a mortgage against the Property described in Exhibit "A," MORTGAGEE hereby agrees that the Mortgage it holds from OWNER recorded in Official Records Book \_\_\_\_\_, Page \_\_\_\_\_, of the Public Records of Broward County, Florida, all of which encumber the Property described herein shall be and are subordinate to the restrictive covenants set forth above, restricting the use of the real Property for the time periods set forth above.
- (b) In the event of a foreclosure whereby MORTGAGEE takes title to the Property, MORTGAGEE may request the release of the restrictive covenant restricting the Property included in Exhibit "A." The County Administrator is authorized to execute a release of the restrictive covenant upon payment of all applicable impact fees at the rate in effect at the time of the request for the release of the restrictive covenant.

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**EXHIBIT "A"**

**LEGAL DESCRIPTION**

All of Parcel A of the Captiva Club Plat as recorded in Plat Book 176, Page 144 of the Public Records of Broward County, Florida.