

Return to: (enclose self-addressed stamped envelope)

**Name: Bonnie L. Miskel, Esq.**

**Address:**

Siegel, Lipman, Dunay,  
Shepard, & Miskel, LLP  
5355 Town Center Road  
Suite 801  
Boca Raton, Florida 33486

**This Instrument Prepared by and return to:**

**Bonnie L. Miskel, Esq.**  
Siegel, Lipman, Dunay,  
Shepard, & Miskel, LLP  
5355 Town Center Road  
Suite 801  
Boca Raton, Florida 33486

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**THIRD AMENDED DECLARATION OF RESTRICTIVE COVENANTS**

**THIS THIRD AMENDED DECLARATION OF RESTRICTIVE COVENANTS** ("Third Amendment"), made this \_\_\_ day of \_\_\_\_\_, 2010, by Captiva Associates, LLC, a Florida Corporation, having an address of 2121 Ponce De Leon Boulevard, Penthouse II, Coral Gables, FL 33134 ("Declarant"), shall be for the benefit of the Broward County, a political subdivision of the State of Florida, with a post office address at 115 South Andrews Avenue, Fort Lauderdale, Florida 33026 ("County") and the School Board of Broward County located at 600 S.E. 3 Avenue, Fort Lauderdale, Florida 33301 ("School Board").

**WITNESSETH:**

WHEREAS, Declarant is the fee simple owner of approximately 5.4 gross acres of land generally located on the west side of Dixie Highway, between Southwest 11<sup>th</sup> Street and Southwest 13<sup>th</sup> Court in the City of Pompano Beach, Florida, and more particularly described in Exhibit "A" attached hereto ("Property"); and

WHEREAS, on March 21, 2006 the County approved Land Use Plan Amendment Application PC 06-12 which changed the land use designation of the Property from Commercial to Medium-High (25) Residential, permitting 135 residential units; and

WHEREAS, Declarant executed that certain Declaration of Restrictive Covenants ("Declaration") dated January 9, 2006 to and for the benefit of the County and the School Board, which among other things limited development to 80 residential units (56 villas and 24 townhomes) (the "Project") and provided for the voluntary mitigation of student impacts attributed to the overcrowded middle school; and

WHEREAS, Declarant amended the Declaration on September 6, 2006 to and for the benefit of the County and the School Board, which changed the residential unit mix of the Project and continued to provide for the voluntary mitigation of student impacts attributed to the overcrowded middle school ("First Amendment"); and

WHEREAS, Declarant executed a second amendment to the Declaration on September 11, 2007 modifying the Project to develop 56 garden apartments and 24 townhome units, and provided for the voluntary mitigation of student impacts attributed to the overcrowded middle school ("Second Amendment"); and

WHEREAS, the middle school which was previously over capacity is now operating under the adopted level of service standard of 110% of permanent capacity in the 2009/2010 school year; and

WHEREAS, 56 garden apartments and 24 townhome units are vested for public school concurrency requirements per Section 8.11(b)(1) of the Interlocal Agreement for Public School Facility Planning and are exempt from any further school concurrency review or any additional school mitigation payments other than outlined herein; and

WHEREAS, Declarant with this third amendment to the Declaration wishes to further modify the residential unit type and number of units to allow 123 garden apartments ("Third Amendment").

NOW, THEREFORE, in consideration of the promises and covenants herein contained, Declarant hereby declares that the Property shall be owned, held, used, transferred, sold, conveyed, demised and occupied subject to this Third Amendment as hereinafter set forth, all of which shall run with the land and be binding upon all parties having any right, title or interest in such property or any part thereof, their heirs, successors and assigns.

1. Recitations. The recitations set forth above are true and correct and are incorporated herein.

2. Property Development. Declarant shall restrict development of the Property to 120 garden apartments.

3. Mitigation/Payment Requirement. Prior to environmental review approval of construction plans as set forth within Chapter 27, Broward County Code of Ordinances, by the Development Management Division for the first building permit for construction or erection of the first garden apartment as described above, Developer shall mitigate the impact of the 11 middle school students established in accordance with PC 06-12 by making a one lump sum payment to the School Board for a total of \$332,450.00 (the "Mitigation Payment") for the minimum amount due for LUPA PC 06-12, as required by the recorded Declaration. The total Mitigation Payment amount shall be determined and shall be based on the Student Station Cost Factors in effect at the time of payment. However, the total Mitigation Payment shall be no less than \$332,450.00. The Mitigation Payment only applies to the 80 units subject to the LUPA PC 06-12. The additional 43 units shall pay educational impact fees if applicable, in accordance with Chapter 27 of the Broward County Land Development Code.

4. Amendments. This Third Amendment shall not be modified, amended or released as to any portion of the Property except by written instrument, executed by the then owner or owners of the portion of the Property affected by such modification, amendment, or release and approved in writing by the County. The appropriate governmental authority of the County shall execute a written instrument effectuating and acknowledging such modification, amendment or release. Any amendment, modification or release of this Third Amended Declaration shall be recorded in the Public Records of Broward County, Florida.

5. Applicability. Except as amended expressly herein, all other terms and conditions of the Declaration as amended by the First and Second Amendment shall remain in full force and effect.

6. Recordation and Effective Date. This instrument shall not become effective until recorded in the public records of Broward County, Florida. Once recorded, this Third Amendment shall run with the Property for the sole benefit of the County and shall bind all successors and assigns unless otherwise amended, modified or released in accordance with paragraph three above.

7. Severability. If any court of competent jurisdiction shall declare any section, paragraph or part of this Third Amendment invalid or unenforceable, then such judgment or decree shall have no effect on the enforcement or validity of any other section, paragraph or part hereof, and the same shall remain in full force and effect.

8. Captions, Headings and Titles. Articles and paragraph captions, headings and titles inserted throughout this Third Amendment are intended as a matter of convenience only and in no way shall such captions, headings or titles define, limit or in any way affect the subject matter or any of the terms and provisions of this Third Amendment.

9. Context. Whenever the context requires or admits, any pronoun used herein may be deemed to mean the corresponding masculine, feminine or neuter form thereof, and the singular form of any nouns or pronouns herein may be deemed to mean the corresponding plural form thereof and vice versa.

IN WITNESS WHEREOF, Declarant has executed this Third Amendment on the day first above written.

**WITNESSES:**

\_\_\_\_\_  
(Signature)  
Print name: \_\_\_\_\_

By: Captiva Associates, LLC  
its President

\_\_\_\_\_  
(Signature)  
Print name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: Leon Wolfe  
Title: President  
Address: 2121 Ponce de Leon Boulevard, PH II  
Coral Gables, FL 33134

STATE OF FLORIDA        )  
  ) SS.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2010, by Leon Wolfe, as President, of CAPTIVA ASSOCIATES, LLC, a Florida Corporation, freely and voluntarily on behalf of said corporation. He/She is personally known to me or has produced \_\_\_\_\_ as identification or is known to me personally.

\_\_\_\_\_  
NOTARY PUBLIC:

\_\_\_\_\_  
Typed, printed or stamped name of Notary Public

EXHIBIT "A"

Property Legal Description  
(TOGETHER WITH A PROPERTY SKETCH)

**DESCRIPTION:**

**A PORTION OF THE EAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 2, TOWNSHIP 49 SOUTH, RANGE 42 EAST, BROWARD COUNTY FLORIDA, DESCRIBED AS FOLLOWS:**

**BEGIN AT THE SOUTHWEST CORNER OF LOT 12, BLOCK 1, AMENDED PLAT OF FAIRVIEW, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 10, PAGE 25, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA, THENCE SOUTH 88°36'31" EAST, ALONG THE SOUTH BOUNDARY OF SAID BLOCK 1, A DISTANCE OF 438.97 FEET; THENCE SOUTH 14°12'31" WEST, ALONG THE WEST RIGHT OF WAY OF SOUTH DIXIE HIGHWAY PER FDOT RIGHT OF WAY MAP, SECTION 86170-2509, A DISTANCE OF 372.85 FEET; THENCE NORTH 88°15'21" WEST, ALONG A LINE 313.28 FEET NORTH OF, AS MEASURED AT RIGHT ANGLES TO AND PARALLEL WITH THE SOUTH LINE OF THE NORTH 1/2 OF THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 2, A DISTANCE OF 137.88 FEET; THENCE SOUTH 14°12'31" WEST, ALONG THE NORTHEASTERLY EXTENSION OF THE WEST BOUNDARY AND THE WEST BOUNDARY OF THE N & V LONG PLAT, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 149, PAGE 2, OF SAID PUBLIC RECORDS, A DISTANCE OF 320.84 FEET; THENCE NORTH 88°15'21" WEST, ALONG SAID SOUTH LINE OF THE NORTH 1/2 OF THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 2, A DISTANCE OF 142.23 FEET; THENCE NORTH 00°58'07" EAST, ALONG A LINE 30.00 FEET EAST OF, AS MEASURED AT RIGHT ANGLES TO AND PARALLEL WITH THE WEST LINE OF SAID EAST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 2, A DISTANCE OF 674.71 FEET TO THE POINT OF BEGINNING. THE LAST DESCRIBED COURSE BEING A SOUTHERLY EXTENSION OF THE EAST RIGHT-OF-WAY OF SOUTHWEST 5TH AVENUE.**

**SAID LANDS SITUATE IN THE CITY OF POMPANO BEACH, BROWARD COUNTY, FLORIDA, CONTAINING 199,731 SQUARE FEET OR 4.586 ACRES MORE OR LESS.**