

Return to: (enclose self-addressed stamp envelope)

Name: **Bonnie L. Miskel, Esq.**
Address: **5355 Town Center Road, Suite 801
Boca Raton, FL 33486**

This Instrument Prepared by:
**Bonnie L. Miskel, Esq.
Stegel, Lipman, Dunay, Shepard, & Miskel LLP
5355 Town Center Road, Suite 801
Boca Raton, Florida 33486**

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**AMENDMENT TO
DECLARATION OF RESTRICTIVE COVENANTS**

This Amended Declaration or Restrictive Covenants ("Amended Declaration") related to Broward County Public Schools student impacts is executed this 11th day of September, 2007 by CAPTIVA ASSOCIATES LLC, a Florida limited liability company, its successors and assigns ("Captiva"), whose address is 2121 Ponce De Leon Boulevard, PH 11, Coral Gables, Florida 33134, shall be for the benefit of BROWARD COUNTY, a political subdivision of the State of Florida, with a post office address at 115 South Andrews Avenue, Fort Lauderdale, FL 33301 ("County") and THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA, with a post office address of 600 Southeast 3rd Avenue, Fort Lauderdale, FL 33301 ("School Board").

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

WHEREAS, Captiva had submitted Land Use Plan Amendment Application PC-06-12, ("Application") for the Property, to change the Property's designation from Commercial to Medium-High (25) Residential, permitting an additional 135 units, which Application was approved on March 21, 2006; and

WHEREAS, Captiva originally proposed to develop 80 residential units as 64 villas and 16 townhouses. Subsequently Captiva determined that the 80 residential units will be comprised as 56 villas and 24 townhouse units (the "Project"). The restricted development as proposed with either alternative unit mix, was anticipated to generate a total of 22 additional students, consisting of 11 elementary, 5 middle and 6 high school students; and

WHEREAS, Captiva caused to be filed that certain Declaration of Restrictive Covenants dated September 6, 2006 and recorded September 13, 2006 in Official Records Book 42751, Page 1932- 1946 of the Public Records of Broward County, Florida ("Declaration"), for the benefit of the County and the School Board in which Captiva voluntarily agreed to restrict development of the Property to 80 residential units comprised of 56 villas and 24 townhouse units; and

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WHEREAS, Captiva desires to modify the Project to develop 56 garden apartments and 24 townhouse units which would generate 40 (19 elementary, 11 middle and 10 high school) students into Broward County Public Schools; and

WHEREAS, in connection with the Application, Captiva has voluntarily agreed to enter into this Amendment to the Declaration regarding the mitigation of student impacts for the 11 middle school students attributed to the overcrowded middle school, plus the cost per student station amount for 6 elementary school students consistent with the Public School Facility Impact Statement Report dated June 11, 2007, a copy of which is attached hereto as Exhibit "B"; and

WHEREAS, the School Board has agreed with the voluntary student mitigation plan outlined herein, and has requested the execution and recordation of this Amended Declaration;

NOW, THEREFORE, the undersigned agree and covenant to the following:



1. The above recitals are true and correct and are incorporated herein.
2. Captiva does hereby confirm, ratify and reaffirm, the covenants, restrictions and obligations contained in the Declaration of Restrictive Covenants dated September 6, 2006 and recorded September 13, 2006 in Official Records Book 42751, Page 1932- 1946 of the Public Records of Broward County, Florida.
3. 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 residential unit, Captiva shall mitigate the impact of the 11 middle school students by making a one lump sum payment to the School Board of the Florida established Student Station Cost Factors amount for 11 middle school students and an additional 6 elementary school students (the "Amended Mitigation Payment"). The total Amended Mitigation Payment amount due shall be determined at the time of payment, however the total mitigation payment shall be no less than \$332,450.00. Captiva shall obtain proof of such payment from the School Board and provide same to the Broward County Development Management Division. The School District has issued a letter dated June 11, 2007 a copy of which is attached hereto as Exhibit "C" stating its concurrence with the payment of the fees referenced herein as mitigation for the students generated by the Project.
4. Except as amended herein all other terms and conditions of the Declaration shall remain in full force and effect.
5. This Amended Declaration shall become effective upon its filing in the public records of Broward County, Florida and the provisions hereof shall constitute a covenant running with the land and shall remain in full force and effect and binding upon the undersigned, its heirs, legal representatives, estate successors, grantees and assigns until released as provided for herein.
6. The undersigned hereto expressly covenants and represents that he/she has the authority to execute this Amended Declaration and so bind all general partners and affiliated partnerships.

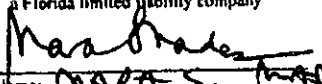
IN WITNESS WHEREOF, the undersigned has caused this Amended Declaration to be executed this 11th day of September, 2007.

Signed, sealed and delivered
in the presence of:

WITNESS:

CAPTIVA ASSOCIATES LLC,
a Florida limited liability company



Print Name: Alexandra Coo

Print Name: Debbie Ambrous

By: 
Print Name: Mark S. MaDES
Print Title: VP
Address: 2121 Ponce De Leon, PH 11
Coral Gables, FL 33134

STATE OF FLORIDA)
COUNTY OF ~~DADE~~ **MIAMI DADE**

The foregoing instrument was acknowledged before me this 11th day of July, 2007, by Mark S. MaDES, as VP of CAPTIVA ASSOCIATES LLC, a Florida limited liability company, freely and voluntarily on behalf of said Captiva Associates, LLC. He/She is personally known to me or has produced as identification

Seal: 
Leyani Roman
Commission # DD312446
Expires: Apr. 23, 2008
Bonded Thru
Atlantic Bonding Co. Inc.


Notary Public, State of Florida
My Commission Expires:

MORTGAGEE
JOINER AND CONSENT

GREAT FLORIDA BANK., a Florida corporation, having an address of 15050 North West 70th Court, Suite 200, Miami Lakes, Florida 33016, said Bank being the owner and holder of a Mortgage and Security Agreement given by CAPTIVA ASSOCIATES, LLC with a date of JANUARY 19, 2006 and recorded on FEBRUARY 7, 2006 in Official Records Book 41414, Page 496 of the Public Records of Broward County, Florida, does hereby join and consent to this Declaration of Restrictive Covenants (the "Declaration").

IN WITNESS WHEREOF, the undersigned, has caused these presents to be executed in its name this 4 day of SEPT, 2007.

Signed, sealed and delivered
In the presence of:

WITNESSES:

GREAT FLORIDA BANK.
a Florida corporation

Celin Ornest
Print Name: Celin Ornest
Marlene G. Sanchez
Print Name: Marlene G. Sanchez

By: Frank Hamad
Print Name: Frank Hamad
Title: VP
Address: 15050 NW 79th Suite 200
Miami Lakes, FL 33016

STATE OF MIAMI-DADE)
COUNTY OF Florida) SS

The foregoing instrument was acknowledged before me this 4 day of SEPT, 2007, by Frank Hamad as Vice President of GREAT FLORIDA BANK, on behalf of said Bank. He/She is personally known to me or has produced _____ as identification.

[Signature]
Notary Public, State of Florida
My Commission Expires:



EXHIBIT LIST

EXHIBIT "A"
PROPERTY LEGAL DESCRIPTION
(TOGETHER WITH A PROPERTY SKETCH)

EXHIBIT "B"
PUBLIC SCHOOL FACILITY IMPACT STATEMENT REPORT DATED JUNE 11, 2007.

EXHIBIT "C"
PUBLIC SCHOOL FACILITY IMPACT STATEMENT DATED JUNE 11, 2007

Exhibit A

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 8TH AVENUE.

SAID LANDS SITUATE IN THE CITY OF POMPANO BEACH, BROWARD COUNTY, FLORIDA, CONTAINING 199,751 SQUARE FEET OR 4.586 ACRES MORE OR LESS.



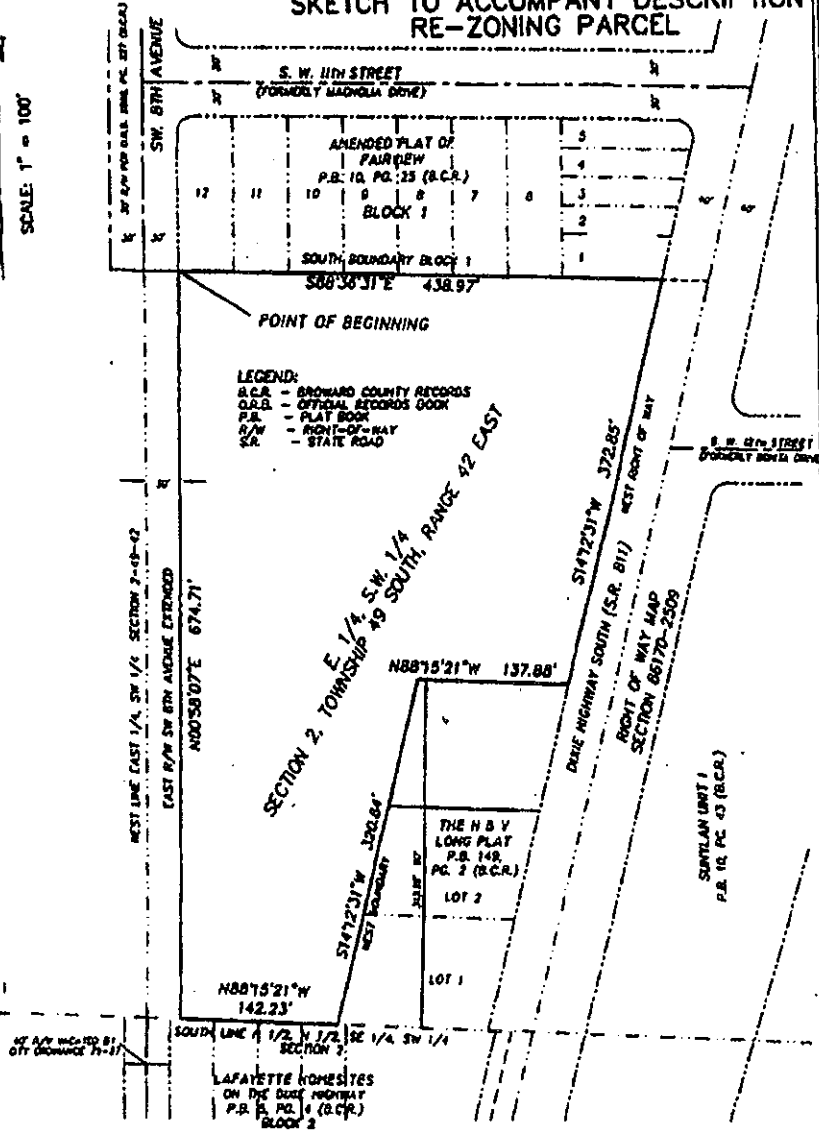
Craven-Thompson & Associates, Inc.
ENGINEERS • PLANNERS • SURVEYORS
 3563 N.W. 53RD STREET FORT LAUDERDALE, FLORIDA 33309 (954) 739-8400
 FAX: (954) 739-8408

FOR: **THE CORNERSTONE GROUP**

NOTE: This is not a sketch of survey, but only a graphic depiction of the description shown herein. There has been no field work, checking of the subject property, or measurements set in connection with the preparation of the information shown herein.

**SKETCH TO ACCOMPANY DESCRIPTION
 RE-ZONING PARCEL**

SCALE: 1" = 100'



UPDATES and/or REVISIONS	DATE	BY	CHKD

NOTE: The undersigned and Craven-Thompson & Associates, Inc. make no representation or guarantee as to the information reflected herein pertaining to easements, rights-of-way, set back lines, restrictions, covenants and other similar matters, and further, this instrument is not intended to reflect or set forth all such matters. Such information should be obtained and confirmed by others through appropriate title verification.

NOTE: Lands shown herein were not obstructed for right-of-way and/or easements at recording.

G:\2005\050051\DWG\SD 03 ZONING.DWG

SHEET 2 OF 2 SHEETS

Exhibit B

*for
Comments
5/21/07*



THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
 Broward Training Park, 6403 N. Northwest Parkway, Building B, Fort Lauderdale, Florida 33309 • TEL: 754-321-6300 •
 FAX: 754-321-6323

Chris G. Alington, Director
 Fiscal Management Division
 1100 N.W. Management, Planning & Research
 chris.alington@schoolsbo.k12.fl.us

SCHOOL ISLAND
 (b) OFFICER & LAND MANAGER
 (c) 1000 N.W. 10TH AVENUE
 SUITE 1000
 MIAMI, FLORIDA 33136
 TEL: 305-575-1100
 FAX: 305-575-1101
 WWW.SCHOOLISLAND.COM

James J. Norder
 Superintendent of Schools

June 11, 2007

Boris Miskel, Esq.
 Sigal, Lipsman, Dunay, Shepard & Miskel, LLP
 3305 Town Center Road
 Boca Raton, Florida 33323

Re: Revised School Mitigation for Land Use Plan Amendment PC 06-12 (Captiva)

Dear Ms. Miskel:

This correspondence is in response to your letter dated June 1, 2007, regarding the revised voluntary commitment proposal of your client for Land Use Plan Amendment (LUPA) PC 06-12 project known as Captiva, in the City of Pompano Beach. Your letter indicates that the developer has changed the unit mix for the development. The application was originally reviewed as a potential 80-townhouse units development anticipated to generate 23 additional (11 elementary, 5 middle and 6 high school) students into Broward County Public Schools. The review utilized 2005/06 school year data and at that time, Cypress Elementary School was neutral (>=90% to 110% of permanent capacity), Pompano Beach Middle School was overcrowded (>= 110% to 120% of permanent capacity) and Ely High School was under enrolled (<90% of permanent capacity). As such, mitigation was only due for the 5 middle school students. Based on the current school impact fee schedule (effective October 1, 2006), the school impact fee due for 80 (three or more bedrooms) townhouse units is \$177,040. Therefore, the mitigation of a modular classroom (\$347,000) is \$169,960 above impact fee and meets the provisions of School Board Policy. On March 7, 2006, the School Board accepted Captiva Associates LLC's proposed voluntary commitment to pay for one modular classroom as mitigation for the proposed development. Subsequently, the applicant entered into a Declaration of Restrictive Covenant requiring payment of the accepted mitigation.

According to your letter, the developer now intends to build 56 garden apartment and 24 townhouse units, which utilizing the student generation rates contained in the currently adopted Broward County Land Development Code (BCLDC), generates 40 (19 elementary, 11 middle and 10 high school) students. Therefore, per Policy, mitigation is now due for 11 middle school students. Based on the

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(Captiva)
June 11, 2007
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current school impact fee schedule (effective October 1, 2006), the impact fee currently due for 56 (three or more bedroom) garden apartment and 24 (three or more bedroom) townhome units is \$321,016, and payment of one modular classroom (\$247,000) no longer exists policy because it is less than the school impact fee due. You have indicated that your client now proposes to pay the Florida established Student Station Cost Factor (cost per student station) amount for the 11 middle school students and for an additional 6 elementary school students as mitigation for the Captiva Project.

Utilizing the June 2007 Student Station Cost Factor Schedule, the cost per student station amount for the 11 middle and 6 elementary school students is approximately \$330,990. Therefore, the proposed voluntary commitment is \$9,974 above the school impact fee due and meets the mitigation provisions of School Board Policy 1161. Please be advised that the Student Station Cost Factors amount is adjusted each month based on the consumer price index. Therefore, the total mitigation amount due will be based on the Student Station Cost Factors amount figures in effect when payment is made. However, this revised voluntary commitment is considered an alternative mitigation proposal, and as such, will be scheduled for School Board consideration at the July 24, 2007 Regular School Board Meeting. Additionally, your client must execute a Declaration of Restrictive Covenant to reflect the new residential unit and School Board approved mitigation commitment before any building permits can be issued for the development. At the minimum, the Restrictive Covenant must address the following:

1. The voluntary commitment cited above.
2. That the cited voluntary commitment must run with the property until the obligation is deemed fulfilled.
3. That payment of the total mitigation amount due will be made directly to the School Board of Broward County, Florida prior to the issuance of Broward County Department of Planning and Environmental Protection (DPEP) construction approval for the first building permit of the total units.

Correspondence containing this payment should be addressed to the attention of Chris Akaghou at the above stated address. Furthermore, the Declaration of Restrictive Covenant must be submitted to the Growth Management Division for review and deemed acceptable by the School Board Attorney's Office before execution and recordation. Also, an executed/recorded copy of the Restrictive Covenant must be provided to Broward County School District. Be advised that a copy of the School District's standard Declaration of Restrictive Covenant document can be obtained via www.browardschools.com, by accessing the web page of the Facility Management, Planning and Site Acquisition Department, and by clicking on the Growth Management Division.

As you may be aware, the class size constitutional amendment requires that by the year 2010, the maximum number of students in the following school grades must be: Pre-kindergarten through 3rd grade - 18 students, 4th through 8th grade - 21 students, and 9th through 12th grade - 25 students. It should be noted that the permanent school capacity or Florida Inventory of School Housing (FISH) for the impacted schools reflects compliance with the class size constitutional amendment.

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(Captive)
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You can obtain additional information regarding Broward County Public Schools at www.browardschools.com and accessing the web pages of the School Boundaries Department and the Facilities and Construction Management Division. If you have questions or need further information, please email me at lisa.wright@browardschools.com or call me at 754-321-8336.

Sincerely,



Lisa Wright, Planner
Growth Management Division
Facility Management, Planning & Site
Acquisition Department

LAW4w

Attachment 1: Public School Facilities Impact Statement Report PC 06-12

cc: Thomas J. Costes, Executive Director, Facility Management, Planning & Site Acquisition
Chris O. Alagbosa, Director, Growth Management Division
Henry Biazek, Executive Director, Broward County Planning Council
Jill Young, Director, Boundaries Department
Larry Schuster, City of Pompano Beach
Charles Fink, CFP Planning Services

Exhibit C

The Nation's Largest Fully Accredited School System

Facility Management, Planning & Site Acquisition Department
 605 S.E. 3rd Avenue, 4th Floor
 Fort Lauderdale, Florida 33301
 Land Use Plan Amendment Public School Facility Impact Statement

Property Description

Type: County
Amendment #: PC 00-12
Owner / Developer: Terrence Salt, Skycrest Coach Club, Inc.
Jurisdiction: City of Pompano Beach
Current Land Use: Commercial (Approx. 6.4 Acres)
Proposed Land Use: Medium-High (25) Residential (Approx. 6.4 Acres)

Estimated Student Increase	Additional Students	Commuter Student Demand
Relating Proposed Units: 0	Elementary Students: 10	Local Amendment: None
Proposed Units: 60	Middle Students: 11	N/A
Net Change: +60	High Students: 10	
	Total: 40	

* Note: Calculations are based upon the maximum student generation rates in the Land Development Code.

Currently Assigned Schools:

School	Capacity	2006 Day Enrollment	2006 (Actual) Enroll	2006	2011	2016	2021
Cypress Elementary	672	587	-10	600	600	640	1,020
Pompano Beach Middle	827	1,080	153	1,080	1,270	1,286	1,863
Dy High	3,001	3,487	-484	2,413	2,224	2,324	3,408

This report utilizes 2006-06 data but was updated to reflect a revised rate of units pursuant to information provided by the applicant in a letter dated June 1, 2007. Broward County Public Schools staff advised the Broward County Planning Council, Broward County Commission, the applicant (applicant's) and/or future developer(s) of the amendment site that based on the School District's 2000-06 Forward Day Report, Cypress Elementary School was needed (100% to 110% of projected capacity), Pompano Beach Middle School was over-needed (100 to 120% of projected capacity) and Dy High School was under-needed (-90% of projected capacity) in the 2006-06 school year. This project was reviewed as a potential 50 (3 in other scenarios) garden apartments and 24 (3 or more bedrooms) townhouse units estimated to generate 40 additional students into Broward County Public Schools. This applicant's application in Section 2.8 of the International Agreement for Public School Facility Planning and School Board Policy 1101 as it relates to proposed additional applications with increased density impacting overcrowded schools. In a letter dated June 1, 2007, the applicant voluntarily committed to pay for the Florida Residential Student Status Cost Factor for the down enrollment middle school students out of an additional 6 elementary school students. The proposed mitigation option meets Policy 1101, but must be scheduled for specific School Board approval. The applicant/owner is advised that consequently, the School Board utilizes other options such as portable classrooms, multi-year round education, double sessions or boundary changes to accommodate students generated from developments in the County.

* Note: 2006-06 School Year Data - School attendance rates are subject to change each year.
 ** Adjusted Cohort projections - Cohort Survival Model, School Statistics Department.

Elementary Schools: None
Middle Schools: Pompano Beach Middle: 6 classroom addition (Cap. 152) to replace portables. Under active bid. Also school
High Schools: None
Comments: In the 2006-06 school year, no charter school was located within a two-mile radius of the amendment site.

Date: June 11, 2007
 By: Facility Management, Planning & Site Acquisition Department
 Revised 4/20/07