



AGENDA

COMMUNITY REDEVELOPMENT AGENCY

February 2, 2021

3:00 PM

Council Chambers

PLEDGE OF CIVILITY

We will be respectful of each other even when we disagree.
We will direct all comments to the issues. We will avoid personal attacks.

VIDEO

1. MEETING CALLED TO ORDER

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

4. ADOPTION OF AGENDA

5. APPROVAL OF MINUTES

A. November 4, 2020 Regular Meeting

6. CITIZENS INPUT TIME

7. BUSINESS

B. CONSENT AGENDA

1. Continuance of Waiver of Installation Fees South Cape Street Banner Program

8. UNFINISHED BUSINESS

- A. Approval of Resolution 01-21, Madison Square Project
- B. Update - Roundabout Public Art Display
- C. Draft Land Development Code Regulations for Mobile Food Dispensing Vehicles

9. NEW BUSINESS

- A. Board Appointments for Cape Coral Community Redevelopment Agency's 2021 Chair and Vice Chair.

B. Project Dolphin Development Agreement

10. REPORTS - STAFF

11. COMMENTS - BOARD

12. TIME AND PLACE OF FUTURE MEETINGS

A. Tuesday, April 6, 2021 at 3:00 p.m. in Council Chambers

13. MOTION TO ADJOURN

Item Number:	5.A.
Meeting Date:	2/2/2021
Item Type:	APPROVAL OF MINUTES

AGENDA REQUEST FORM



TITLE:

November 4, 2020 Regular Meeting

SUMMARY:

Minutes of the Regular Meeting of the
Cape Coral Community Redevelopment Agency
Tuesday, November 4, 2020

ADDITIONAL INFORMATION:

Action Requested

A motion to approve

ATTACHMENTS:

Description

Type

- ☐ Minutes of the November 4, 2020 Regular Meeting Backup Material

**MINUTES OF THE REGULAR MEETING OF THE
CAPE CORAL COMMUNITY REDEVELOPMENT AGENCY
TUESDAY, NOVEMBER 4, 2020**

Council Chambers

3:00 PM

Meeting called to order by Chair Lomonaco at 3:00 p.m.

Pledge of Allegiance

Roll Call: Chair Lomonaco. Commissioners Biondi, Gebhard, Keim, and St. Peter were present.

ADOPTION OF AGENDA

Commissioner Keim moved, seconded by Commissioner Biondi to adopt the agenda as presented.

Voice Poll: All "ayes". 5-0 Motion carried.

**APPROVAL OF MINUTES
October 6, 2020 Regular Meeting**

Commissioner Biondi moved, seconded by Commissioner St. Peter to approve the minutes of the October 6, 2020 Regular Meeting as presented.

Voice Poll: All "ayes". 5-0 Motion carried.

**CITIZENS INPUT TIME
None**

**BUSINESS
CONSENT AGENDA
None**

**ORDER OF UNFINISHED BUSINESS
None**

ORDER OF NEW BUSINESS

**Board Appointments for Cape Coral Community Redevelopment Agency's
2021 Chair and Vice Chair**

Commissioner Keim recommended retaining Chair Lomonaco and Vice-Chair for the 2021 term.

Discussion held.

Commissioner Keim moved, seconded by Commissioner St. Peter to recommend retaining Chair Lomonaco and Vice Chair Biondi for City Council's appointment for the 2021 term.

Commissioner polled as follows: Lomonaco, Biondi, Keim, Gebhard, and St. Peter voted "Aye." 5-0 Motion carried.

**Approval of the Cape Coral Community Redevelopment Agency's
2021 Meeting Schedule**

Commissioner Gebhard moved, seconded by Commissioner St. Peter to approve the 2021 CRA Meeting Schedule as presented.

Voice Poll: All "ayes". 5-0 Motion carried.

Food Truck(s) Land Development Code Regulations Discussion

Executive Director Hernandez wanted to inform the Board of the recent changes in legislation as it pertained to food trucks.

Planning Manager Pederson stated House Bill 1193 was approved by the Governor on July 30, 2020. Amongst other changes, HB1193 included provisions that preempt most local regulation of "Mobile Food Dispensing Vehicles" (i.e., food trucks). He reviewed the key points of the statute. Presently, no specific food truck regulations exist in the Land Development Code. The former Land Use and Development Regulations did not address food trucks. Food trucks are required to obtain a Business Tax Receipt from the City.

Discussion held on gated communities, impervious surfaces and designated electric outlets.

Commissioner Keim expressed concern on overnight parking of food trucks on public right of ways.

Design and Construction Manager Smith stated the public parking lots have restrictions on overnight parking.

Discussion held on parking food trucks on private property and how they should not block public property.

Vice Chair Biondi expressed concern for the brick and mortar restaurants.

Planning Manager Pederson stated special events were different because the food vendors were not there all the time. The real issue was allowing them in the zoning districts. There would need to be more discussion on having food trucks on private

property. He was seeking recommendations, such as, should there be food trucks on public parking lots. What were the hours of operation, where should they be parked, etc.?

Commissioner St. Peter thought food trucks were great and was looking forward to seeing the ordinance

Councilmember Gunter expressed concerned about public parking lots and street parking in front of businesses. Consideration should be made for where the food trucks could park. Written permission should be obtained from the private property owners and from the City for parks and public parking lots.

Discussion held.

South Cape Architectural Design Standards Review and Discussion

Executive Director Hernandez stated the purpose of this discussion is to assure the CRA Commissioners were aware of the current standards and to receive input on potential amendments to the city's Land Development Code. He would like for staff to develop a user-friendly guide with graphics which would be available online.

Planning Team Coordinator Struve reviewed the presentation on the South Cape Architectural Design Standards. The City took a cafeteria style of building standards and maintained a high level of appeal. The City required scaled elevations, there were 5 categories such as glazing, elements of the exterior of the building, building materials, finishes, and color. There was a category for roofs, changes in the height of the roof plans, overhanging eaves, screening standards for equipment such as A/C and for loading areas.

Commissioner Keim stated she liked seeing the uniqueness of each building and outdoor dining.

Commissioner Gebhard asked about developer credits for environmental elements.

Chair Lomonaco asked about designed standards for Cape Coral Parkway.

Planning Team Coordinator Struve replied in certain cases standards differ for buildings on primary streets than secondary streets.

Discussion held.

REPORTS – STAFF

Public Works Director Clinghan stated the Big John the parking lot sealing would begin in November. The streetlights on Cape Coral Parkway to be painted and refurbished would begin in November. The drawings were 90% complete for the Lafayette Street streetlights

and to extend electric to the trees on they were on schedule for February 2021start date. The hydrants for Club Square were still on schedule for construction starting February or March 2021. The CRA building on Lafayette Street were on schedule for tenant move in on December 1, 2021. There were working with DCD for the permits for interior build out.

Utilities Director Pearson stated he would be receiving the proposals on November 5 for the force main and master pump station. Once an engineering firm was onboard, they would begin the design, and that would be early next year.

COMMENTS – BOARD

Vice Chair Biondi – Informed the Memorial Monument rededication was rescheduled to November 14 and a veteran’s drive thru event would be held on Veterans Day at Sun Splash.

Chair Lomonaco – Informed the City Auditor would possibly start the CRA audit in December. The live work presentation was excellent.

Commissioner Gebhard – Asked if the City would consider a ‘wet zone for the CRA entertainment district.

Executive Hernandez replied the ‘wet zone’ on the list of items to explore and he would discuss with the new Police Chief.

TIME AND PLACE OF NEXT MEETING

The next regular meeting was scheduled for Tuesday, February 2, 2021 at 3:00 p.m. in Council Chambers.

MOTION TO ADJOURN

There being no further business, the meeting adjourned at 4:12 p.m.

Submitted by,

Roberto Hernandez
CRA Executive Director

Item Number:	B.1.
Meeting Date:	2/2/2021
Item Type:	CONSENT AGENDA

AGENDA REQUEST FORM



TITLE:

Continuance of Waiver of Installation Fees South Cape Street Banner Program

SUMMARY:

Resolution 33-21 would approve the waiver of the \$40 fee for the installation and removal of the banners based on the fiscal year calendar, up to a maximum of \$5,000 annually.

On April 27, 2015, City Council approved the “South Cape Street Banner Program” which allowed banners to be placed on available decorative streetlight poles. The banner program was created by the Community Redevelopment Agency to identify the area known as “South Cape”, to add color and vitality to streetscapes, and to publicize events and promote programs; and

A fee was established to cover expenses directly related to the program such as installation of banners, removal of banners, repairs, or purchase of replacement parts.

On October 15, 2018, City Council adopted Resolution 222-18 which reduced the fee from \$80 for installation and removal of a banner to \$40.

On May 13, 2019, City Council adopted Resolution 107-19 which approved a waiver of the fee for a period of one year, up to \$5,000.

On April 6, 2020, City Council adopted Resolution 69-20 which extended the waiver of the fee until March 31, 2021.



The City Manager is now requesting that the banner fee waiver be renewed based on the fiscal year calendar, up to a maximum of \$5,000 annually.

ADDITIONAL INFORMATION:

Action requested

Motion to recommend Council approval of Resolution 33-21 retaining the waiver of fees for the installation and removal of the South Cape banners on a continual basis in an amount not to exceed \$5,000.00 per year.

ATTACHMENTS:

Description	Type
<div data-bbox="152 153 185 189">  </div> <div data-bbox="224 153 440 189">Resolution 33-21</div>	Backup Material
<div data-bbox="152 195 185 231">  </div> <div data-bbox="224 195 781 235">South Cape Banner Program Revised 2021</div>	Backup Material

RESOLUTION 33-21

A RESOLUTION OF THE CITY OF CAPE CORAL APPROVING THE WAIVER OF THE \$40 FEE FOR THE INSTALLATION AND REMOVAL OF BANNERS BASED ON THE FISCAL YEAR CALENDAR, UP TO A MAXIMUM OF \$5,000 ANNUALLY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on April 27, 2015, City Council approved the “South Cape Street Banner Program” which allowed banners to be placed on available decorative streetlight poles; and

WHEREAS, the banner program was created by the Community Redevelopment Agency to identify the area known as “South Cape”, to add color and vitality to streetscapes, and to publicize events and promote programs; and

WHEREAS, a fee was established to cover expenses directly related to the program such as installation of banners, removal of banners, repairs, or purchase of replacement parts; and

WHEREAS, on October 15, 2018, City Council adopted Resolution 222-18 which reduced the fee from \$80 for installation and removal of a banner to \$40; and

WHEREAS, on May 13, 2019, City Council adopted Resolution 107-19 which approved a waiver of the fee for a period of one year, up to \$5,000; and

WHEREAS, on April 6, 2020, City Council adopted Resolution 69-20 which extended the waiver of the fee until March 31, 2021; and

WHEREAS, the City Manager is now requesting that the banner fee waiver be renewed based on the fiscal year calendar, up to a maximum of \$5,000 annually.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AS FOLLOWS:

Section 1. The City Council of the City of Cape Coral hereby approves the waiver of the \$40 fee as set forth in the “South Cape Street Banner Program” based on the fiscal year calendar, up to a maximum of \$5,000 annually.

Section 2. The revised “South Cape Street Banner Program” is attached hereto as Exhibit A.

Section 3. This Resolution shall take effect immediately upon its adoption.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR COUNCIL SESSION THIS _____ DAY OF _____, 2021.

JOHN GUNTER, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

GUNTER	_____	NELSON	_____
DISTRICT #1	_____	WELSH	_____
SHEPPARD	_____	WILLIAMS	_____
HAYDEN	_____	COSDEN	_____

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____, 2021.

KIMBERLY BRUNS
CITY CLERK

APPROVED AS TO FORM

BRIAN R. BARTOS
ASSISTANT CITY ATTORNEY
Res/ CRA Banner Program

EXHIBIT A

South Cape Street Banner Program



Cape Coral Community Redevelopment Agency
South Cape CRA
4816 Chester Street
Cape Coral, FL 33904

Phone: 239-242-3737

Street Banner Program Overview

The South Cape CRA Banner Program was created by Cape Coral Community Redevelopment Agency [CRA] and City of Cape Coral to:

- Identify the South Cape Community Redevelopment Area known as South Cape; (hereinafter South Cape)
- Activate the public space;
- Add color and vitality to streetscapes;
- Publicize events or promote programs promulgated by non-profit or not-for-profit organizations.

The intent of the banner program is to place banners on available decorative street light poles year round to foster interest in the South Cape Community Redevelopment Area. The decorative street light poles are located on the north and south sides of Cape Coral Parkway between Del Prado Boulevard and Palm Tree Boulevard, and the north and south sides of S.E. 47th Terrace between Del Prado Boulevard and Coronado Parkway.

The decorative street light poles are available for non-profit and not-for-profit organizations. The City of Cape Coral and Community Redevelopment Agency are exempt from this program and reserve the option to display banners at will, provided that the banners are promoting events or activities taking place in the South Cape Community Redevelopment Area or otherwise enhancing the South Cape Community Redevelopment Area public space, such as banners promoting the South Cape Redevelopment Area as an attractive place to “live, work and play.”

Responsibilities

In an effort to fully utilize the program to promote activities, special events, attractions or to promote programs, the South Cape CRA wants to encourage non-profit and not-for-profit organizations to use the South Cape Street Banner Program.

Banner applicants are responsible for requesting banner space, developing a design proposal, producing banners according to specifications, delivering banners, collecting banners and paying all required costs and fees. Applicants must submit a written application each year for the Community Redevelopment Agency to review.

The Community Redevelopment Agency is responsible for reviewing and approving banner designs, coordinating the installation and removal of banners and quality control checks. The Agency will contact the individual(s) listed on the application to notify them the banners have been removed and are ready to be picked up. Street banners not collected within ten (10) working days from the time of removal will be disposed of without further notice to the applicant.

The Community Redevelopment Agency and the City of Cape Coral shall not be responsible for storing banners, theft, vandalism or weather damage that occurs to South Cape street banners.

Eligibility

Because the demand for banner space occasionally exceeds the supply, the Community Redevelopment Agency has developed criteria for approving street banner applications:

- Applicants must be non-profit or not-for-profit organization.
- Banners must either promote activities or special events occurring in the South Cape Redevelopment area only or promote programs promulgated by eligible applicants.

Length of Programs

If the decorative light pole space is available, banners may be reserved for as little as 4 weeks or for as long as 13 weeks.

Banner Construction Specifications

Banners must meet the following requirements or they will not be placed on the poles. Banners that do not withstand the physical elements (so as to appear faded, tattered, or otherwise in a deteriorated condition) will be removed without refund.

Dimensions: 60 inches high and 30 inches wide and have 2-inch loop holes

Material: 18 oz., smooth, double sided, reinforced laminated vinyl with strong blockout polyester scrim and reinforced grommets.

Banner Design Guidelines

Street banners are different from most graphic designs. They are generally viewed quickly or from a distance. Therefore, the message needs to be conveyed rapidly. A small number of design elements, bright, contrasting colors, and large, clear typography are common elements of successful banner designs.

Although banners may identify the individual, business, or organization sponsoring the banner or the event, they are not to be used as a means of providing commercial advertising. Thus, a banner may state “sponsored by ABC Widgets” with or without logo or “John Q. Citizen”, but it could not state “Eat at Joe’s Restaurant, home of the best BBQ ribs”. No more than 1/8 of the total banner area shall be used to identify the sponsor or sponsors of a banner, activity, event or program, including but not limited to the words “sponsored by” or their equivalent and the name(s) or logos of the sponsor(s).

Banners that are deemed by the Community Redevelopment Agency (CRA) to be obscene banners because their contents meet the judicially established definition of obscenity or that are otherwise considered obscene under Florida Statutes are not eligible for participation in the banner program and any application to install such banners shall be denied by the CRA Executive Director or the Director's designee.

Reservations and Program Costs

All applicants must submit a completed application to the Community Redevelopment Agency. Reservations will be accepted up to one (1) year in advance on a first-come, first-served basis, but not less than eight (8) weeks prior to requested reservation date. Although an applicant may request a preferred location, the decision concerning the specific poles on which banners will be installed will be made by the CRA, in its sole discretion, after consideration of factors including, but not limited to, number of applications received for the same period of time, number of banner locations requested by each applicant, banner installation history and proximity of banners to event site or venue. The overall goal is to make reasonable accommodations that consider the interests of all applicants as well as the community interest in showcasing special events and activities available for public participation as well as enhancing the "sense of place" in the South Cape Community Redevelopment Area.

At any time, banner sites may not be available because of construction, missing hardware, accidents, maintenance or other reasons.

Fees for the use of the poles are intended to cover expenses directly related to the program. Such expenses may include, but are not limited to, installation of banners, removal of banners, repairs, the purchase of additional or replacement of brackets. Applicants are responsible for all costs related to the design, production, delivery, and storage of banners.

All fees must be paid in full to the City of Cape Coral prior to installation. The fee to install and remove each banner is \$40 per pole. Notwithstanding the foregoing, the Cape Coral City Council, in Resolution ____ - 21 waived, up to a maximum of, \$5,000 in fees per fiscal year. All fees charged after the first \$5,000 are due and payable as provided hereinabove.

Quantity of Banners Allowed

- Minimum number of poles allowed per organization is 10.
- Maximum number of poles allowed per organization is 50.

Approval Process

The banner design must be approved by the Community Redevelopment Agency (CRA) prior to placement. The Executive Director or the Executive Director's designee will review and approve the banner design. If an application is denied, the applicant may

request the CRA to review the denial. The CRA shall then have the option to uphold the denial or to approve the application, with or without modifications. An applicant can expect notification of the initial decision on the application within three (3) to five (5) business days of submittal. Applicants are strongly encouraged **not** to have banners produced prior to approval.

Please mail the attached application, and proof of non-profit or not-for-profit status to:

Cape Coral Community Redevelopment Agency
4816 Chester Street
Cape Coral, FL 33904
Phone: (239) 242-3737

APPLICATION FOR SOUTH CAPE BANNER INSTALLATION

Applicant / Organization: _____

Address: _____

Contact Person: _____ Phone: _____

Email Address: _____

Purpose of Banners:

Number of Banners: _____

Dates Requested: _____

Date of Removal: _____

*Please note: banner installation is contingent on the schedules of City facilities staff. It is reasonable to expect banners installed within a 5-day period surrounding the target installation date.

Total Cost: _____

Balance Due before Installation: _____

All banner designs must be approved by the Community Redevelopment Agency prior to final application approval. Approved banners must be dropped off at the CRA office located at 4816 Chester Street, no less than five days prior to the scheduled date of installation. **The installation fee shall be due when banners are dropped off. Payment should be made to the City of Cape Coral.**

***Note. Certain fees may be waived through March 31, 2021 as specified in Resolution - 21 approved by the Cape Coral City Council .**

The Cape Coral Community Redevelopment Agency and the City of Cape Coral will not be responsible for lost, stolen, or damaged banners and reserve the right to refuse any banner deemed unfit for installation.

The Cape Coral Community Redevelopment Agency and the City of Cape Coral will not be responsible for storing banners. Applicants are to retrieve their banners within 3 business days of take down.

I have read and understand the South Cape CRA Street Banner Program policy.

Authorized Representative

Date

Cape Coral Community Redevelopment Agency
4816 Chester Street
Cape Coral, FL 33904
Phone: (239) 242-3737

Item Number:	8.A.
Meeting Date:	2/2/2021
Item Type:	UNFINISHED BUSINESS

AGENDA REQUEST FORM



TITLE:

Approval of Resolution 01-21, Madison Square Project

SUMMARY:

At the September 3, 2019 the CRA Board directed the Executive Director to ask City Council to endorse the CRA's recommendation to approve the commitment for a loan request in the amount of a \$560,250

CRA Resolution 01-21 is the promissory note and mortgage and security agreement in the amount of \$560,250 between the City of Cape Coral Community Redevelopment Agency and Madison Square, LLC for the affordable senior citizen living project located at 817 Miramar Street.

ADDITIONAL INFORMATION:

Requested Action

Motion to approve CRA Resolution 01-21, the promissory note and mortgage and security agreement in the amount of \$560,250 between the City of Cape Coral Community Redevelopment Agency and Madison Square, LLC for the affordable senior citizen living project located at 817 Miramar Street.

ATTACHMENTS:

Description	Type
▣ Madison Square PowerPoint	Backup Material
▣ CRA Resolution 1-21 with exhibits	Backup Material



MADISON SQUARE

SENIOR AFFORDABLE HOUSING DEVELOPMENT

(this is a sample rendering)



RECOMMENDATION

- Staff recommends the Cape Coral Community Redevelopment Agency (CRA) approve the CRA Resolution 1-21 Approving the Promissory Note and Mortgage and Security Agreement in the amount of \$560,250 Between the City of Cape Coral Community Redevelopment Agency and Madison Square LLC, for the Affordable Senior Citizen Living Project located at 817 Miramar Street; Approving the Soubordination and Standstill Agreement between Wells Fargo Bank, N.A., the City of Cape Coral, CRA, and Madison Square, LLC, authorizing the CRA Executive Director to Execute the Subordination and Standstill Agreement; providing an effective date.

TYPICAL UNIT AND RECREATIONAL AMENITIES



PROJECT DETAILS

Developer Name: ARD Madison Square, LLC

Entity/Loan Name: Madison Square, LLC

Number of Units: 82

Building Height: 74 feet

Unit Mix: 41 1 br/ba; 41 2 br/ba

Development Schedule: Groundbreaking (March 2021) and
projected completion date (May 2022)

Total Development Cost: \$19 million

LOAN DETAILS WITH CAPE CORAL CRA

- Loan Amount: \$560,250
- Term: 22.5 years
- Rate: 3% fixed; interest only through construction; principal and interest for remainder of loan
- Developer requesting Cape Coral to serve in Subordinate Role; 2nd position. The primary lender is Wells Fargo Affordable Housing Community Development Corporation

PROPOSED CHANGES TO LOAN AGREEMENT

1. Owner of Project will be Madison Square, LLC not American Residential Communities, LLC
2. Loan Term will be 22.5 years not 18 as previously approved
3. Wells Fargo Affordable Housing Community Development Corporation has requested the Cape Coral CRA to subordinate the loan which is typical under such loan agreements (Wells Fargo is the primary lender).

LOAN DETAILS WITH CAPE CORAL CRA

- Loan Amount: \$560,000
- Term: 22 years
- Rate: 3% fixed; interest only through construction; principal and interest for remainder of loan
- Developer requesting Cape Coral to serve in Subordinate Role; 2nd position. The primary lender is Wells Fargo Bank (confirm)

RECOMMENDATION

- Staff recommends the Cape Coral Community Redevelopment Agency (CRA) approve the CRA Resolution 1-21 Approving the Promissory Note and Mortgage and Security Agreement in the amount of \$560,250 Between the City of Cape Coral Community Redevelopment Agency and Madison Square LLC, for the Affordable Senior Citizen Living Project located at 817 Miramar Street; Approving the Subordination and Standstill Agreement between Wells Fargo Bank, N.A., the City of Cape Coral, CRA, and Madison Square, LLC, authorizing the CRA Executive Director to Execute the Subordination and Standstill Agreement; providing an effective date.

Thank you!

Questions and Discussion



CRA RESOLUTION 1-21

A RESOLUTION OF THE CAPE CORAL COMMUNITY REDEVELOPMENT AGENCY APPROVING THE PROMISSORY NOTE AND MORTGAGE AND SECURITY AGREEMENT IN THE AMOUNT OF \$560,250 BETWEEN THE CITY OF CAPE CORAL COMMUNITY REDEVELOPMENT AGENCY AND MADISON SQUARE, LLC, FOR THE AFFORDABLE SENIOR CITIZEN LIVING PROJECT LOCATED AT 817 MIRAMAR STREET; APPROVING THE SUBORDINATION AND STANDSTILL AGREEMENT BETWEEN WELLS FARGO BANK, N.A., THE CITY OF CAPE CORAL COMMUNITY REDEVELOPMENT AGENCY, AND MADISON SQUARE, LLC; AUTHORIZING THE COMMUNITY REDEVELOPMENT AGENCY EXECUTIVE DIRECTOR TO EXECUTE THE SUBORDINATION AND STANDSTILL AGREEMENT; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the development of affordable housing is an allowable Community Redevelopment activity under Florida Statute and the City of Cape Coral Community Redevelopment Plan; and

WHEREAS, the City's Multi-Family Rental Study (updated June 2019) indicates the need for an additional 980 units of multi-family rental units annually (2019-2022) for persons making less than 80% of the area median income; and

WHEREAS, at the September 3, 2019 meeting of the Community Redevelopment Agency (CRA), the CRA passed a motion to direct the Executive Director to ask City Council to endorse the CRA recommendation to approve the commitment for a loan request in the amount of a \$560,250 loan to be repaid at a rate of 3 percent, contingent on financial review and an acceptable loan agreement by the CRA; and

WHEREAS, the CRA acknowledges some dates and amounts within the attached documents are approximations. However, the loan amount of \$560,250 as well as the term of the loan and interest rate will remain as stated within the documents; and

WHEREAS, the CRA desires to approve the Promissory Note and Mortgage and Security Agreement between the City of Cape Coral Redevelopment Agency and Madison Square, LLC, and desires to approve the Subordination and Standstill Agreement and authorize and direct the CRA Executive Director to execute the Subordination Standstill Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CAPE CORAL COMMUNITY REDEVELOPMENT AGENCY BOARD OF COMMISSIONERS:

Section 1. The Cape Coral Community Redevelopment Agency hereby approves the Promissory Note and Mortgage and Security Agreement between the City of Cape Coral Redevelopment Agency and Madison Square, LLC, for the affordable senior citizen living project, in the loan amount of \$560,250. Copies of the Promissory Note and Mortgage and Security Agreement, which are in substantially final form, are attached hereto as Exhibit 1 and 2. CRA staff is hereby authorized to approve the remaining open terms and/or items necessary to finalize these documents.

Section 2. The Cape Coral Community Redevelopment Agency hereby approves the Subordination and Standstill Agreement, which is in substantially final form, and authorizes and directs the CRA Executive Director to execute the Agreement. A copy of the Subordination and Standstill Agreement is attached hereto as Exhibit 3. CRA staff is hereby authorized to approve the remaining open terms and/or items necessary to finalize the same.

Section 3. Effective Date. This resolution shall take effect immediately upon its adoption by the governing board of the CRA.

ADOPTED at a regular meeting of and by the Cape Coral Community Redevelopment Agency this _____ day of _____, 2021.

CAPE CORAL COMMUNITY
REDEVELOPMENT AGENCY

By: _____

LINDA BIONDI
CRA Vice Chairperson

VOTE OF BOARD OF COMMISSIONERS:

BIONDI	_____
ST. PETER	_____
KEIM	_____
GEBHARD	_____
BRANTLEY	_____

ATTEST:

By: _____
ROBERTO HERNANDEZ
CRA Executive Director

APPROVED AS TO FORM



BRIAN R. BARTOS
ASSISTANT CITY ATTORNEY
CRA/Madison Square Loan

EXHIBIT 1

PROMISSORY NOTE

\$560,250

Lee County, Florida
As of _____, 2021

FOR VALUE RECEIVED, the undersigned ("Borrower" or "Maker"), promises to pay to the order of **CITY OF CAPE CORAL COMMUNITY REDEVELOPMENT AGENCY**, a dependent special district established by the City of Cape Coral, Florida pursuant to the laws of the State of Florida, with a mailing address of 1015 Cultural Park Boulevard, Cape Coral, Florida ("Holder"), or at such other place as Holder may designate to Maker in writing from time to time, the principal amount of **Five Hundred Sixty Thousand Two Hundred Fifty and No/100 Dollars (U.S. \$560,250.00)** (the "Loan"), together with interest on amounts advanced to the Maker hereunder accrued at a rate of 3% per annum (computed on the basis of a 365 or 366 day year, as applicable), in lawful money of the United States of America, which shall at the time of payment be legal tender in payment of all debts and dues, public and private.

Capitalized terms not defined in this Note shall have the meanings given such terms by that certain Subordination Agreement, as defined below in this Note.

Commencing on the date hereof until interest begins accruing on the Permanent Loan Note, interest- only payments on amounts advanced hereunder shall be due and payable in arrears on the fifth (5th) day of each month. Thereafter, commencing on the same day the first monthly payment is due and payable under the Permanent Loan Note, monthly payments of principal and interest, based on a thirty (30)-year amortization, shall be paid to Holder in arrears in the amount of [\$] on the fifth day of each month, with the entire outstanding principal balance, together with all accrued interest thereon, shall be due and payable in full on the Maturity Date, as defined below.

Regardless of any other provision of this Note, if for any reason the effective interest should exceed the maximum lawful interest, the effective interest shall be deemed reduced to, and shall be, such maximum lawful interest, and (i) the amount which would be excessive interest shall be deemed applied to the reduction of the principal balance of this Note and not to the payment of interest, and (ii) if the loan evidenced by this Note has been or is thereby paid in full, the excess shall be returned to the party paying same, such application to the principal balance of this Note or the refunding of excess to be a complete settlement and acquittance thereof.

To the extent not previously paid, the remaining outstanding principal balance of this Note, together with accrued and unpaid interest thereon, shall be due and payable in full no later than 270 [TBC] months after the funding of the Loan (as defined herein) (the "Maturity Date").

Time is of the essence of Maker's payment and performance of this Note.

This Note may be prepaid in whole or in part at any time, without premium or penalty. Payments received under this Note shall be applied first to accrued but unpaid interest, and the balance shall be applied on account of principal.

This Note is secured by that certain Mortgage and Security Agreement, dated of even date herewith (the "Mortgage"), to be recorded in the public records of Lee County, Florida, encumbering the fee simple interest of Maker in that certain improved real property that is more fully described within the Mortgage (the "Project"). This Note and the Mortgage may be collectively referred to as the "Loan Documents."

If Maker should fail to make any payment due under this Note and such amount remains unpaid more than thirty (30) days after written notice of such failure, or if this Note is not paid in full on or before the Maturity Date, or if Maker should default in any other covenant under this Note and such default is not cured within sixty (60) days after written notice, or if an Event of Default should occur under the Mortgage, then this Note shall be deemed in default (a "Default"), and at the option of Holder, the entire principal amount of this Note, together with all other amounts then owing to Holder hereunder or under the Mortgage, shall at once become due and payable without notice or demand and may be collected forthwith, regardless of the stipulated date of maturity. Interest shall accrue on the outstanding principal balance of this Note from the date of any Default hereunder as long as such Default continues (regardless of whether or not there has been an acceleration of the payment of principal as set forth herein), or after maturity, at the rate of four percent (4%) per annum (the "Default Interest"). All such interest shall be paid at the time of, and as a condition precedent to, the curing of any Default. In the event this Note is turned over for collection through an attorney-at-law, Maker agrees to pay all reasonable costs of collection including, but not limited to, reasonable attorney's fees and costs actually incurred and paid by Holder in connection therewith.

Presentment for payment, demand, protest and notice of demand, protest and nonpayment and all other notices are hereby waived by Maker. Failure to accelerate the debt evidenced hereby by reason of Default, or the acceptance of a past due installment or of less than the full amount due, shall not be construed as a waiver of any Default, a novation of this Note, or a waiver of the right of Holder thereafter to insist upon strict compliance with the terms of this Note without previous written notice of such intention being given to Maker.

The indebtedness evidenced by this Note is and shall be subordinate in right of payment to the prior payment in full of the indebtedness evidenced by a (i) that certain Promissory Note Secured By Mortgage, dated_____, 2021 in the original principal amount of \$_____, made payable to the order of Wells Fargo Bank, National Association, its successors and/or assigns (the "Bank"), executed and delivered by Borrower to Bank, as the same may be modified, amended or restated from time to time (herein referred to as the "Construction Loan Note"), and (ii) that certain Consolidated, Amended and Restated Promissory Note, in the original principal amount of \$_____, to be executed and delivered by Borrower to Bank (herein referred to as the "Permanent Loan Note"), to the extent and in the manner provided in that certain Subordination and Standstill Agreement, dated_____, 2021, entered into by and among the City of Cape Coral Community Redevelopment Agency, Bank and the Borrower (herein referred to as the "Subordination Agreement"). The Subordinate Mortgage securing this Note is and shall be expressly subject and subordinate at all times and in all respects to the liens, terms, covenants and conditions of that certain Mortgage, Assignment of Rents, Security Agreement and Fixture Filing, dated_____, 2021 (the "First Priority Mortgage"), given by Borrower (as Mortgagor) in favor of Bank (as Mortgagee), securing the Construction Loan Note and the Permanent Loan Note, together with all

other mortgages given to secure either the Construction Loan Note or the Permanent Loan Note (herein an "Additional Mortgage"), all as more fully set forth in the Subordination Agreement. The rights and remedies of the City of Cape Coral Community Redevelopment Agency and each subsequent holder of this Note under the Subordinate Mortgage securing this Note are expressly subject to the restrictions and limitations set forth in this Note, in the Subordination Agreement, in the First Priority Mortgage and in any Additional Mortgage. Each subsequent holder of this Note shall be deemed, by virtue of such holder's acquisition of the Note, to have agreed to perform and observe all of the terms, covenants and conditions to be performed or observed by Maker under this Note and under the Subordination Agreement.

Notwithstanding anything to the contrary contained in any Loan Documents, following a Default, in addition to any other notice requirements, Holder agrees to provide written notice of such default to (i) the Senior Lender, and any other parties, as required under the Subordination Agreement, (ii) the Maker's investor member (including any designee thereof, the "Investor Member"), and the Maker. Upon receipt of such notice, the Investor Member shall have the right, but not the obligation, to cure such default pursuant to applicable cure periods and conditions set forth in this Note and/or the Mortgage, but in no event less than thirty (30) business days following Investor Member's receipt of such notice, and Senior Lender shall have rights as described in the Subordination Agreement. Notices to the Maker and Investor Member sent pursuant to this provision shall be sent to the following:

To the Maker:

Madison Square, LLC
558 W. New England Avenue
Suite 250
Winter Park, Florida 32789

To the Investor Member:

Wells Fargo Affordable Housing Community Development Corporation
MAC D1053-170
301 South College Street, 17th Floor
Charlotte, NC 28288
Attention: Director of Asset Management

With copies to:

Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102
Attention: Robert Coon, Esq.

This Note is a "non-recourse" obligation. Accordingly, upon the occurrence of a Default under the Loan Documents, Holder may look only to the security under the Mortgage for the repayment of

this Note and may not enforce a deficiency judgment against Maker, subject hereunder, to the restrictions set forth in the Subordination Agreement.

This Note may not be changed orally or by any course of conduct or departure from the terms hereof, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought. Maker waives application of the legal principle that a document is construed against the person drafting it.

This Note, the obligations of Maker, and the rights and remedies of Holder, shall be construed in accordance with and be governed by the laws of the State of Florida (without giving effect to the conflict of law principles thereof).

As used herein, the terms "Maker" and "Holder" shall be deemed to include their respective successors and assigns, whether voluntary by action of the parties or involuntary by operation of law. Holder shall be permitted to assign this Note, in part or in full, together with all rights under the Mortgage, without any consent or approval of the Maker.

Senior Lender and Investor Member are intended third party beneficiaries hereof with the rights expressed herein.

MAKER, AND HOLDER BY ITS ACCEPTANCE HEREOF, EACH DO HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS NOTE OR THE INDEBTEDNESS EVIDENCED HEREUNDER. THIS WAIVER IS MADE KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Maker has executed and delivered this Note under seal as of the date first above written.

MADISON SQUARE, LLC,
a Florida limited liability company

By: _____
Patrick Law, Manager

This instrument is exempt from Documentary Stamp Tax pursuant to Section 420.513, Florida Statutes, as indebtedness for the purpose of financing housing under Part V of Chapter 420 of the Florida Statutes.

EXHIBIT 2

THIS INSTRUMENT PREPARED BY AND
AFTER RECORDING RETURN TO:

John P. Grygiel, Esq.
Zimmerman, Kiser & Sutcliffe, P.A.
315 E. Robinson Street, Suite 600
Orlando, Florida 32801

[space reserved for official use]

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT (this “Mortgage”) is made as of _____, 2021, by:

MADISON SQUARE, LLC, a Florida limited liability company, whose address is 558 W. New England Avenue, Suite 250, Winter Park, Florida 32789 (“Mortgagor”), which term will include the successors and assigns of Mortgagor wherever the context so requires or admits, to and in favor of:

CITY OF CAPE CORAL COMMUNITY REDEVELOPMENT AGENCY, a dependent special district established by the City of Cape Coral, Florida pursuant to the laws of the State of Florida, with a mailing address of 1015 Cultural Park Boulevard, Cape Coral, Florida (“Mortgagee”), which term will include the its heirs, legal representatives, successors, and assigns of Mortgagee wherever the context so requires or admits;

WITNESSETH, THAT for good and valuable consideration, and also in consideration of the aggregate sum named in the promissory note hereinafter described, the receipt whereof is hereby acknowledged, Mortgagor does hereby grant a security interest in, and grants, conveys, mortgages, transfers and assigns unto Mortgagee, its successors and assigns, all of Mortgagor's right, title and interest in and to the following described real and personal property, whether now owned or existing, or hereafter acquired or arising, whether located in, on, pertaining to, used or intended to be used in connection with, or resulting or created from the ownership, development, management, or operation of the Land described below (collectively, the “Mortgaged Property”):

1. All that certain piece, parcel, or tract of land located in Lee County, State of Florida, as more particularly described on attached Exhibit A (the “Land”);

NOTE TO CLERK: THIS MORTGAGE IS GIVEN TO SECURE THE FINANCING OF HOUSING UNDER PART V OF CHAPTER 420, F.S. AND IS EXEMPT FROM TAXATION PURSUANT TO SECTION 420.513 F.S.

2. All property and equipment now owned or hereafter acquired by Mortgagor and now or hereafter located on the Land, whether or not permanently affixed, that are deemed fixtures under applicable law in effect from time to time ("Fixtures");
3. All buildings, structures, appurtenances, and improvements, including all additions thereto and replacements, and extensions thereof, now constructed or hereafter to be constructed under or on the Land ("Improvements");
4. All goods, including, without limitation, all machinery, equipment, furniture, furnishings, building supplies and materials, appliances, business machines, and tools of every kind and description and now or hereafter located on the Land ("Equipment");
5. All general intangibles, including, without limitation, rent rolls and business books and records associated with the Mortgaged Property, computer records whether on tape, disc, or otherwise stored (including software embedded therein), and all recorded data of any kind or nature, regardless of the medium of recording including, without limitation, all software, writings schematics, blueprints, surveys, architectural or engineering drawings, plans and specifications, warranties and guaranties relating to the Improvements, Fixtures or Equipment, trademarks, trade names, goodwill, telephone numbers, licenses, governmental approvals, franchises, permits, payment and performance bonds, tax refund claims, and agreements with utility companies, together with any deposits and deposit accounts, prepaid fees and charges paid thereon;
6. All leases, subleases, licenses, concessions, or grants of other possessory interests, together with the security therefor, now or hereafter in force, oral or written, covering or affecting the Mortgaged Property ("Leases");
7. All of the rents, royalties, issues, revenues, income, profits, security deposits and deposit accounts, and other benefits whether past due, or now or hereafter arising from the Mortgaged Property and the occupancy, use and enjoyment thereof ("Rents");
8. All judgments, awards of damages and settlements from any condemnation or eminent domain proceedings regarding the Mortgaged Property;
9. All insurance policies and proceeds thereof from any casualty or other insured event affecting the Mortgaged Property;
10. All other personal property, including, without limitation, management contracts, construction contracts, architectural contracts, service contracts, engineering contracts, advertising contracts, purchase orders, equipment leases, monies in escrow accounts, reservation agreements, prepaid expenses, deposits, deposit accounts and down payments, options and agreements for use or development of the Mortgaged Property, end-loan commitments, abstracts of title, all brochures, advertising materials, condominium documents and prospectuses; and

11. All accounts and proceeds (cash or non-cash and including payment intangibles), products, replacements, additions, betterments, extensions, improvements, substitutions, renewals, and accessions of any and all of the foregoing.

TOGETHER WITH all easements, rights-of-way, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, now or hereafter owned by the Mortgagor that are now or hereafter located by, over, and/or upon the Land, or any part and parcel thereof, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, and appurtenances whatsoever, in any way belonging, relating or appertaining to the Mortgaged Property, or which hereafter will in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof;

MORTGAGOR FURTHERMORE hereby grants to Mortgagee a security interest in all Fixtures, Equipment, rights-in-action and personal property described herein. This Mortgage is a self-operative security agreement with respect to all personal property, even though Mortgagor agrees to enter into any other security agreements to secure the interests set forth herein and as reasonably required by Mortgagee and agrees not to have any liens against property or machinery without Mortgagee's knowledge other than the First Mortgage and those encumbrances set forth on the attached Exhibit B. Mortgagor additionally hereby authorizes Mortgagee to record and file from time to time such financing statements and amendment statements as Mortgagee will require, in its sole discretion, in order to perfect its security interest provided hereunder. Mortgagee will have all the rights and remedies in addition to those specified herein of a secured party under the Uniform Commercial Code as adopted from time to time in the State of Florida (the "UCC"). Furthermore, in the Event of Default (as hereinafter defined) hereunder, the parties agree that, in the event the Mortgagee should elect to proceed with respect to the collateral under the UCC, thirty (30) days' notice of the sale thereof will be reasonable notice.

Without the necessity of any further act of Mortgagor or Mortgagee, the lien of, and security interest created by, this Mortgage, automatically, will extend to and include any and all renewals, replacements, substitutions, accessions, proceeds, products, additions, and after-acquired property, of any nature whatsoever, attached to, located in or on, or used in the operation of the Mortgaged Property, or any part thereof, and Mortgagor covenants and warrants that it will have good and marketable title to all after-acquired property free of any lien or encumbrance other than the First Mortgage and those encumbrances set forth on the attached Exhibit B.

TO HAVE AND TO HOLD the same unto Mortgagee in fee simple.

AND Mortgagor hereby covenants with Mortgagee: that Mortgagor is indefeasibly seized of the Mortgaged Property in fee simple; that Mortgagor has full power and lawful right to convey the same in fee simple as aforesaid; that it will be lawful for Mortgagee at all times peaceably and quietly during normal business hours to enter upon Property for inspection upon prior twenty-four (24) hour verbal or written notification to Mortgagor and its property manager; that the Mortgaged Property is free from all encumbrances, other than the First Mortgage and those encumbrances set forth on the attached Exhibit B; that Mortgagors will make such further

assurances to perfect the fee simple title to the Mortgaged Property in Mortgagee as may reasonably be required; and that Mortgagor does hereby fully warrant the title to the Mortgaged Property and will defend the same against the lawful claims of all persons by, through or under Mortgagor on or after the date hereof.

PROVIDED ALWAYS, that if Mortgagor pays unto Mortgagee that certain Promissory Note, dated of even date herewith, in the principal sum of **\$560,250** (“Loan”), made and executed by Mortgagor payable to the order of Mortgagee (the “Note”, which term includes any modification, renewal, extension or alteration thereof), having a maturity date no earlier than 270 months from the date of the Note, which Note by reference is made a part hereof to the same extent as though set out in full herein; and duly, promptly and fully perform, discharge, execute, effect, complete, comply with, and abide by each and every one of the stipulations, agreements, conditions, and covenants of the Note and of this Mortgage, then this Mortgage and the estate hereby created will cease and be null and void.

AND Mortgagor hereby covenants to and with Mortgagee as follows:

1. Mortgagor will pay the principal and interest and the various and sundry sums of money payable by virtue of the Note, and Mortgagor will pay all the various and sundry sums of money payable by virtue of this Mortgage, promptly on the days the same severally become due. Mortgagor will duly, promptly and fully perform, discharge, execute, effect, complete, comply with, and abide by each and every one of the stipulations, agreements, conditions, and covenants in this Mortgage set forth herein and in the Note.
2. Mortgagor will pay all the taxes, assessments, liabilities, obligations, and encumbrances that now or hereafter may be imposed or assessed against the Mortgaged Property or on this Mortgage and/or the indebtedness secured hereby, as and when due and payable, before they become delinquent.
3. Mortgagor hereby absolutely and unconditionally assigns to Mortgagee all of Mortgagor’s right, title, and interest in and to all current and future Leases and Rents; it being intended by Mortgagor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only, subject, however to the superior rights of the holder of the First Mortgage. Nevertheless, subject to the terms of this Mortgage, Mortgagee grants to Mortgagor a revocable license to collect, receive, retain, use and enjoy the Rents. Upon the occurrence of an Event of Default under this Mortgage such license may be revoked by Mortgagee, with notice to Mortgagor, and Mortgagee immediately will be entitled to receive and apply all Rents, whether or not Mortgagee enters upon and takes control of the Mortgaged Property.
4. Mortgagor will keep the improvements now existing, or hereafter erected, on the Mortgaged Property insured against loss by fire, hazards included within the term “extended coverage”, and such other hazards as required under the First Mortgage and will include a standard mortgage clause in favor of and in form acceptable to Mortgagee. All premiums on insurance policies will be paid in the manner provided by the First Mortgage or, if not paid in such manner, by Mortgagor making payment, when due,

directly to the insurance carrier. All insurance policies and renewals thereof will be in form acceptable to Mortgagee. Mortgagee will have the right to hold copies of the policies and renewals thereof, and Mortgagor will promptly furnish to Mortgagee all renewal notices and all receipts of paid premiums. In the event of loss, Mortgagor will give prompt notice to the insurance carrier and Mortgagee. Mortgagee may make proof of loss if not made promptly by Mortgagor. Insurance proceeds will be applied to restoration or repair of the Mortgaged Property damaged, provided such restoration or repair is economically feasible and the security of this Mortgage is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this Mortgage would be impaired, the insurance proceeds will be applied to the sums secured by this Mortgage with the excess, if any, paid to Mortgagor. If, but only if, the Mortgaged Property is abandoned by Mortgagor, or if Mortgagor fails to respond to Mortgagee within thirty (30) days from the date notice is mailed by Mortgagee to Mortgagor that the insurance carrier offers to settle a claim for insurance benefits, Mortgagee is authorized to collect and apply the insurance proceeds at Mortgagee's option either to restoration or repair of the Mortgaged Property or to the sums secured by this Mortgage. Unless Mortgagee and Mortgagor otherwise agree in writing, any such application of proceeds to principal will not extend or postpone the due date of the monthly installments referred to herein or change the amount of such installments. If under Section 9 below the Mortgaged Property is acquired by Mortgagee or its successors or assigns, all right, title and interest of Mortgagor in and to any insurance policies and in and to the proceeds thereof resulting from damage to the Mortgaged Property prior to the sale or acquisition will pass to Mortgagee to the extent of the sums secured by this Mortgage immediately prior to such sale or acquisition. For the purposes of this Section, "economically feasible" will mean that the insurance proceeds received with respect to a loss plus any other sum contributed by the Mortgagor is sufficient to adequately repair or restore the Mortgaged Property to a condition substantially similar to that existing prior to such loss. All provisions of this Section are subject to the superior rights of the holder of the First Mortgage.

5. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Mortgaged Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and will be paid to Mortgagee. In the event of a total taking of the Mortgaged Property, the proceeds will be applied to the sums secured by this Mortgage, with the excess, if any, paid to Mortgagor. In the event of a partial taking of the Mortgaged Property, unless Mortgagor and Mortgagee otherwise agree in writing, there will be applied to the sums secured by this Mortgage such proportion of the proceeds as is equal to that proportion which the amount of the sums secured by this Mortgage immediately prior to the date of taking bears to the fair market value of the Mortgaged Property immediately prior to the date of taking, with the balance of the proceeds paid to Mortgagor. If, but only if, the Mortgaged Property is abandoned by Mortgagor, or if, after notice by Mortgagee to Mortgagor that the condemnor offers to make an award or settle a claim for damages, Mortgagor fails to respond to Mortgagee within 30 days after the date such notice is mailed, Mortgagee is authorized to collect and apply the proceeds, at Mortgagee's option, either to restoration or repair of the Mortgaged Property or to the sums secured by this Mortgage. Unless Mortgagee and Mortgagor otherwise agree in writing, any such application of proceeds to

principal will not extend or postpone the due date of the monthly installments referred to herein or change the amount of such installments. All provisions of this Section are subject to the superior rights of the holder of the First Mortgage.

6. Mortgagor will not remove or demolish any building on the Mortgaged Property without the written consent of Mortgagee; will not permit, commit or suffer any physical waste, impairment or deterioration of the Mortgaged Property or any part thereof, wear and tear in the ordinary course business excepted, and will keep the same and improvements thereon in good condition and repair. Mortgagor will not use the Mortgaged Property or allow the same to be used or occupied for any unlawful purpose or violate any applicable law or restrictive covenant covering, affecting or applying to the ownership, use or occupancy thereof, commit or permit or suffer any act to be done or any condition to exist on the Mortgaged Property or any article to be brought thereon that may materially increase any ordinary fire or other hazard, unless safeguarded as required by law, or that may, in law, constitute a nuisance, public or private.
7. Mortgagor will immediately notify Mortgagee orally and in writing if (i) Mortgagor has knowledge of the presence of any Hazardous Material on, in, under, released from or associated with the Mortgaged Property, in violation of applicable environmental law, or (ii) an Environmental Claim exists with respect to the Mortgaged Property. Mortgagor will forthwith transmit to Mortgagee all information it has received with respect to the Environmental Claim. For purposes of the foregoing, "Hazardous Material" will mean any substance, whether solid, liquid or gaseous which is listed, defined or regulated under applicable law as a "hazardous substance," "hazardous waste," or "solid waste," or pesticide or otherwise classified as hazardous or toxic, under applicable environmental laws; or which is or contains asbestos, radon, any polychlorinated biphenyl, explosive or radioactive material, or motor fuel or other petroleum hydrocarbons; which causes or poses a threat to cause a contamination or nuisance on the Mortgaged Property or a hazard to the environment or to the health or safety of persons on the Mortgaged Property. "Environmental Claim" will mean any material investigative, enforcement, cleanup, removal, containment, remedial or other private or governmental or regulatory action at any time threatened in writing, instituted or completed pursuant to any applicable environmental law, against Mortgagor or against or with respect to the Mortgaged Property or any condition, use or activity on the Mortgaged Property, and any material claim at any time threatened in writing or made by any person against Mortgagor or against or with respect to the Mortgaged Property or any condition, use or activity on the Mortgaged Property, relating to damage, contribution, cost recovery, compensation, loss or injury resulting from or in any way arising in connection with the violation of applicable environmental law.

Mortgagor will, at its own cost and expense, take any action as may be required under the First Mortgage, or as otherwise may be required under applicable environmental law, for the cleanup of any Hazardous Material on, in, under or released from the Mortgaged Property, and will pay or cause to be paid all cleanup, administrative, enforcement and other costs, expenses or fines, in connection therewith, that are levied against Mortgagor or the Mortgaged Property. Mortgagor shall indemnify and hold harmless the Mortgagee,

its officers, directors, owners, members, agents, partners, employees, and stockholders, as the case may be (collectively, "Indemnitees") for any loss, claim, damages, costs and expenses (including reasonable attorneys' fees) caused by or arising from any Environmental Claim; provided, however, the Mortgagor shall have no obligation to indemnify or hold harmless any Indemnatee with respect to any Environmental Claim that (i) is caused solely by the acts or omissions of any Indemnatee, and/or (ii) relates to Hazardous Material first deposited after the Mortgagor no longer has possession of the Mortgaged Property following a foreclosure or deed in lieu of foreclosure.

8. If Mortgagor fails to pay and/or discharge all taxes, assessments, levies, prior mortgages, liabilities, obligations, and other encumbrances which are secured by the Mortgaged Property, prior to delinquency, or fails to keep the Mortgaged Property insured or to deliver the policies, premiums paid, or fails to repair the same premises, as herein agreed, then Mortgagee is hereby authorized at its election to pay and/or discharge such taxes, assessments, levies, prior mortgages, liabilities, obligations, and encumbrances or any part thereof, to procure and pay for such insurance or to make and pay for such repairs, without any obligation on its part to determine the validity and/or necessity of any thereof and without Mortgagee waiving or affecting any option, lien, equity, or right under or by virtue of this Mortgage; and the full amount of each and every such payments will be immediately due and payable and will bear interest from the date thereof until paid at the highest rate allowed by law, and, together with such interest, will be secured by the lien of this Mortgage; but nothing herein contained will be construed as requiring Mortgagee to advance or expend moneys for any of the purposes in this Section mentioned.
9. If any of the following events occurs (each, an "Event of Default"): (a) any breach of this Mortgage or default on the part of Mortgagor hereunder; or (b) any breach of the First Mortgage or default on the part of Mortgagor thereunder; or (c) any of said sums of money herein referred to be not promptly and fully paid when the same severally become due and payable, without demand or notice; or (d) all or any part of the Mortgaged Property or an interest therein is sold or transferred by Mortgagor; or (e) each and every stipulation, agreement, condition and covenant of the Note or this Mortgage is not duly, promptly and fully performed, discharged, executed, effected completed, complied with and abided by; or (f) any court of last resort renders a decision that an undertaking by Mortgagor as herein provided to pay taxes, assessments, levies, liabilities, obligations and encumbrances is legally inoperative or cannot be enforced; or (g) any law is passed that changes in any way or respect the laws now in force for the taxation of mortgages or debts secured thereby for any purpose, or the manner of collection of any such taxes, so as to adversely affect the lien of this Mortgage or the debt secured hereby; or (h) the filing by or against Mortgagor of a petition in bankruptcy or for reorganization under the Bankruptcy Act or for an arrangement under the Bankruptcy Act which is not set aside or dismissed within forty-five (45) days after the filing thereof; or (i) the making of a general assignment by Mortgagor for the benefit of creditors or appointment of a receiver or trustee for Mortgagor or for any of Mortgagor's assets; or (j) institution by or against Mortgagor of any kind of insolvency proceedings or any proceeding for the dissolution or liquidation of Mortgagor; which, in any of the foregoing circumstances is not terminated, stayed, voided or otherwise rendered ineffective within forty-five (45) days after the

occurrence thereof; or (k) any attachment or levy against any material portion of the Mortgaged Property which is not terminated, stayed, voided, bonded off or otherwise rendered ineffective within forty-five (45) days after the occurrence thereof; then, in any such Event of Default (provided, if no cure period is provided, Mortgagor and its Investor Member (or any Special Member it designates in writing) shall be entitled to notice and at least sixty (60) days to cure any default before it becomes an Event of Default), the said aggregate principal amount of the Note then remaining unpaid, together with accrued and unpaid interest and all other amounts due thereunder or hereunder and secured hereby will become due and payable forthwith, at the option of Mortgagee, as fully and completely as if all of the said sums of money were originally stipulated to be paid on such day, anything in the Note and/or in this Mortgage to the contrary notwithstanding; and thereupon or thereafter, at the option of Mortgagee, Mortgagee may exercise the right of foreclosure and any and all other remedies available at law or in equity, subject to Section 11 below and the terms of the Subordination Agreement (as defined below).

10. At the beginning of or at any time pending any suit upon this Mortgage, or to foreclose it, or to reform it, and/or to enforce payment of any claims hereunder, Mortgagee may apply to the court having jurisdiction thereof for the appointment of a receiver, and such court forthwith will appoint a receiver for the Mortgaged Property, including the income, profits, issues and revenues from whatever source derived, and such receiver will have all the broad and effective functions and powers in any wise entrusted by a court to a receiver, and such appointment will be made by such court as an admitted equity and a matter of absolute right to Mortgagee, and without reference to the adequacy or inadequacy of the value of the Mortgaged Property or to the solvency or insolvency of Mortgagor and/or of the defendants, and that such rents, profits, income, issues and revenues will be applied by such receiver according to the lien and/or equity of Mortgagee and the practice of such court.
11. The Note is a “non-recourse” obligation; accordingly, upon the occurrence of an Event of Default under this Mortgage, Mortgagee may look only to the Mortgaged Property for the repayment of the Note and may not enforce a deficiency judgment against Mortgagor, as the maker of the Note.
12. Except with respect to Mortgagee’s gross negligence and willful misconduct, Mortgagor does hereby agree to, protect, indemnify, reimburse, defend, and hold harmless Mortgagee and its directors, officers, agents, employees, attorneys, successors, and assigns from and against any and all liabilities (including strict liability), losses, suits, proceedings, settlements, judgments, orders, penalties, fines, liens, assessments, claims, demands, damages, injuries, obligations, costs, disbursements, expenses or fees, of any kind or nature (including attorneys’ fees and expenses paid or incurred in connection therewith) arising out of, or by reason of, (i) an incorrect legal description of the Land; (ii) the construction of any Improvements; and (iii) the use and operation of the Mortgaged Property prior to foreclosure. The indemnifications herein will not terminate upon the release, foreclosure or other termination of this Mortgage, but will survive the release, foreclosure, or other termination of this Mortgage, including any bankruptcy or other debtor relief proceeding, and any other event whatsoever.

This Mortgage is subject to and subordinate to those certain mortgage loans (singly and collectively, the “Senior Loan”) (and any schedules) made by Wells Fargo Bank, N.A. (“Senior Lender”), as more particularly described in that certain Subordination and Standstill Agreement dated the same date hereof, entered into by and among (i) Senior Lender, (ii) Mortgagee (the “Subordinate Lender”), and (iii) Mortgagor dated as of , 2021 This Mortgage and Loan secured hereby are subordinate to the Senior Loan to the extent and in the manner provided in the Subordination Agreement.

The rights and remedies of Mortgagee and any subsequent holder of the Note under this Mortgage (and any exhibits) are subject to the restrictions and limitations set forth in the Subordination Agreement. Each subsequent assignee of Mortgagee’s interest in the Note and this Mortgage will be deemed, by virtue of such assignee’s acquisition of the Note and the rights of Mortgagee under this Mortgage to have agreed to perform and observe all of the terms, covenants, and conditions to be performed or observed by Mortgagee under the Subordination Agreement. Mortgagor covenants and agrees to fully and timely perform each and every obligation of Mortgagor under the First Mortgage, and to give immediate written notice to Mortgagee of any notice of default or notice of an event, action or inaction which with the passage of time or the giving of further notice would become a default under the First Mortgage. Mortgagee will have the right to cure any such default under the First Mortgage, and the cost of any such cure, together with interest at the rate provided in the Note following an Event of Default, will become part of the indebtedness secured by this Mortgage.

Following an Event of Default or an event which with notice and/or passage of time would become an Event of Default, in addition to any other notice requirements, Mortgagee agrees to provide written notice of such default as required under the Subordination Agreement, and to the Mortgagor’s Investor Member (including any Special Member designated in writing by the Investor Member, the “Investor Member”). Upon receipt of such notice, the Investor Member will have the right, but not the obligation, to cure such default pursuant to applicable cure periods and conditions set forth in the Note and/or this Mortgage, but in no event less than thirty (30) business days following Investor Member’s receipt of such notice, and Senior Lender will have rights as described in the Subordination Agreement. Notices to the Investor Member pursuant to this provision, shall be sent to the following:

To the Investor Member:

Wells Fargo Affordable Housing Community Development Corporation, a North Carolina corporation
MAC D1053-170
301 South College Street, 17th Floor
Charlotte, NC 28288
Attention: Director of Asset Management

With copies to:

Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102
Attention: Robert Coon, Esq.

13. This Mortgage is given to secure not only existing indebtedness, but also such future advances, whether such advances are obligatory or are to be made at the option of the Mortgagee.
14. MORTGAGOR AND MORTGAGEE (BY ITS ACCEPTANCE HEREOF), JOINTLY AND SEVERALLY, HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE AS PERMITTED BY LAW THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS MORTGAGE, AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS, WHETHER VERBAL OR WRITTEN, OR ACTIONS OF EITHER PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR MORTGAGEE TO ACCEPT THIS MORTGAGE FROM MORTGAGOR.
15. This Mortgage constitutes a Florida contract, and will be construed according to the laws of the State of Florida.
16. Senior Lender and Investor Member are intended third party beneficiaries hereof with the rights expressed herein.
17. Capitalized terms not defined in this Mortgage shall have the meanings given such terms by the Subordination Agreement.
18. Mortgagor is entering into an Extended Use Agreement (also known as an Extended Low-Income Housing Agreement) with Florida Housing Finance Corporation which will also be recorded in the Public Records of Lee County, Florida (the "Extended Use Agreement"). Mortgagor agrees that it will comply with all terms and conditions of the Extended Use Agreement, including but not limited to, the restrictions concerning affordability requirements of the various tenants of the Premises. Mortgagor agrees that it will comply with all terms and conditions of the Extended Use Agreement until the Note is paid in full or otherwise satisfied and will comply with terms of the Extended Use Agreement until the Note is paid in full or otherwise satisfied even if the Extended Use Agreement is terminated by Florida Housing Finance Corporation and Mortgagor for any reason whatsoever.
19. INTENTIONALLY DELETED.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage under seal the day and year first above written.

Witnesses:

MORTGAGOR:

MADISON SQUARE, LLC, a Florida limited liability company

Name: _____

By: _____
Patrick Law, Manager

Name: _____

STATE OF FLORIDA)
COUNTY OF LEE)

The foregoing instrument was acknowledged before me, by means of ☐ physical presence or ☐ online notarization this ____ day of _____ 2021, by Patrick Law, as Manager of MADISON SQUARE, LLC, a Florida limited liability company. He either [] is personally known to me or [] has produced _____ as identification.

Notary Public, State of Florida
Printed Name: _____
Commission No.: _____
My Commission expires: _____

[NOTARIAL SEAL]

Attachments:

Exhibit A – Legal Description of Land
Exhibit B – Schedule of Permitted Encumbrances

EXHIBIT A – LEGAL DESCRIPTION OF LAND

Legal Description

Lots 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22, Block 52, Cape Coral Unit 6, Part Three, according to the plat thereof, as recorded in Plat Book 11, Pages 70 through 79, inclusive, of the Public Records of Lee County, Florida.

EXHIBIT B

Permitted Encumbrances

1. Taxes and assessments for the year 2021 and subsequent years, which are not yet due and payable.
2. Any lien provided by County Ordinance or by Chapter 159, Florida Statutes, in favor of any city, town, village or port authority for unpaid service charges for service by any water, sewer or gas system supplying the insured land, none now due and payable.
3. Subject land lies within the boundaries of Cape Coral Dual Water/Sewer Assessment District(s) and is subject to any acts and/or assessments thereof. Liability under this Commitment/Policy as to all City of Cape Coral Assessments and Fees is hereby limited to only that which the City of Cape Coral has filed in the Public Records of Lee County, Florida, which contains the property description, name of owners and amount of lien, none now due and payable.
4. Lee County Ordinance No. 86-14 providing for mandatory solid waste collection and the imposition of special assessments for said collection services recorded November 30, 1990 in Official Records Book 2189, Page 3281 and amended by Ordinances No. 86-38 recorded in Official Records Book 2189, Page 3334, Ordinance 08-10, Ordinance 11-03 and Ordinance 11-27. The special assessments for the current tax year are payable with the Ad Valorem taxes, none now due and payable.
5. Matters as shown on the Plat of Cape Coral Unit Six Part Three recorded in Plat Book 11, Pages 70 through 79; as affected by Resolution recorded in Miscellaneous Book 60, Page 552.
6. Any Extended Low-Income Housing Agreement between Madison Square, LLC and the Florida Housing Finance Corporation required under section 42 of the United States Internal Revenue Code, provided that the income and rent restrictions therein terminate (subject to the requirements of sec. 42(h)(6)(E)) upon a foreclosure or deed-in-lieu of any mortgage described in the Subordination Agreement.
7. The First Mortgage and Permanent Mortgage, and any collateral assignments of rents, and any UCC fixture filings, delivered by Madison Square, LLC as borrower to Wells Fargo Bank, N.A., as lender, as more fully described in that Subordination and Standstill Agreement dated February____, 2021, by and among Wells Fargo Bank, N.A., Madison Square, LLC, and City of Cape Coral Redevelopment Agency, which agreement is to be recorded in the Official Records of Lee County, Florida.

EXHIBIT 3

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

Patrick J. Clarke
Burr & Forman, LLP
RSA Tower, 11 North Water Street, Suite 22200
Mobile, AL 36602
Loan No.: _____

SUBORDINATION AND STANDSTILL AGREEMENT

THIS SUBORDINATION AND STANDSTILL AGREEMENT (this "Agreement") is entered into this ____ day of _____, 202_ by and among (i) WELLS FARGO BANK, N.A. (together with its successors and/or assigns, the "Senior Lender"), (ii) CITY OF CAPE CORAL COMMUNITY REDEVELOPMENT AGENCY, a dependent special district established by the City of Cape Coral, Florida pursuant to the laws of the State of Florida (sometimes referred to herein as the "City of Cape Coral and sometimes referred to herein as the "Subordinate Lender"), and (iii) MADISON SQUARE, LLC, a Florida limited liability company (the "Borrower").

Recitals

A. The Senior Lender has made or is making a loan (the "First Mortgage Loan") to the Borrower, which loan will be in the original principal amount of _____ AND NO/100THS DOLLARS (\$_____). The First Mortgage Loan is or will be secured by a first mortgage lien (the "First Mortgage") on a multifamily housing project located in Cape Coral, Lee County, Florida (the "Property"). The Property is more fully described in Exhibit A attached hereto. The Borrower's obligation to repay the First Mortgage Loan is evidenced by a Promissory Note Secured by Mortgage, dated _____, 202_ (the "First Mortgage Note"), and is due in full on _____, 202_ (the "Maturity Date"), with a possible extension of the Maturity Date to _____, 202_.

B. An Affiliate of the Senior Lender will fund equity to the Borrower in the amount of \$_____ ("Equity Funding") as and when due under that certain Amended and Restated Operating Agreement of Borrower ("Operating Agreement").

C. The Borrower has requested the Senior Lender to permit the Subordinate Lender to make a subordinate loan to Borrower in the amount of FIVE HUNDRED SIXTY THOUSAND TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$560,250.00) (the "Subordinate Loan") and to secure the Subordinate Loan by, among other things, placing a mortgage lien against the Property.

D. The Senior Lender has agreed to permit the Subordinate Lender to make the Subordinate Loan and to place a subordinate mortgage lien against the Property subject to all of the conditions contained in this Agreement.

E. Upon satisfaction of all conditions set forth in the Building Loan Agreement between Borrower and Senior Lender dated of even date herewith, the First Mortgage Loan will be satisfied in connection with the origination of the Permanent Loan, as defined in the Building Loan Agreement (“Stabilization”).

NOW, THEREFORE, in order to induce the Senior Lender to permit the Subordinate Lender to make the Subordinate Loan to the Borrower and to place a subordinate mortgage lien against the Property, and in consideration thereof, the Senior Lender, the Subordinate Lender and the Borrower agree as follows:

1. Definitions.

In addition to the terms defined in the Recitals to this Agreement, for purposes of this Agreement the following terms have the respective meanings set forth below:

“Affiliate” means, when used with respect to a Person, any corporation, partnership, joint venture, limited liability company, limited liability partnership, trust or individual controlled by, under common control with, or which controls such Person (the term “control” for these purposes shall mean the ability, whether by the ownership of shares or other equity interests, by contract or otherwise, to elect a majority of the directors of a corporation, to make management decisions on behalf of, or independently to select the managing partner of, a partnership, or otherwise to have the power independently to remove and then select a majority of those individuals exercising managerial authority over an entity, and control shall be conclusively presumed in the case of the ownership of 50% or more of the equity interests).

“Borrower” means the Person named as such in the first paragraph of this Agreement and any other Person (other than the Senior Lender) who acquires title to the Property after the date of this Agreement.

“Business Day” means any day other than Saturday, Sunday or a day on which the Senior Lender is not open for business.

“Default Notice” means: (a) a copy of the written notice from the Senior Lender to the Borrower stating that a First Mortgage Loan Default has occurred under the First Mortgage Loan; or (b) a copy of the written notice from the Subordinate Lender to the Borrower stating that a Subordinate Loan Default has occurred under the Subordinate Loan. Each Default Notice shall specify the default upon which such Default Notice is based.

“First Mortgage Loan Default” means the occurrence of an “Event of Default” as that term is defined in the First Mortgage Loan Documents.

“First Mortgage Loan Documents” means (i) the First Mortgage Note and all other documents evidencing, securing or otherwise executed and delivered in connection with the First Mortgage Loan; and (ii) following Stabilization, the Permanent Loan Documents.

“Permanent Loan” means a permanent loan to be made to Borrower in the amount of \$_____, evidenced and secured by the Permanent Loan Documents.

“Permanent Loan Documents” means the Permanent Note, the Permanent Mortgage and all other documents evidencing, security or otherwise executed and delivered in connection with the Permanent Loan.

“Permanent Mortgage” means that certain Consolidated, Amended and Restated Multifamily Mortgage, Assignment of Rents and Security Agreement (Florida) delivered by Borrower to Senior Lender and encumbering the Property to secure the obligations of Borrower under the Permanent Note.

“Permanent Note” means that certain Consolidated, Amended and Restated Promissory Note (Term Only) delivered by Borrower to Senior Lender to evidence the Permanent Loan.

“Person” means an individual, estate, trust, partnership, corporation, limited liability company, limited liability partnership, governmental department or agency or any other entity which has the legal capacity to own property.

“Senior Lender” means the Person named as such in the first paragraph on page 1 of this Agreement and any Affiliate thereof. When any other Person becomes the legal holder of the First Mortgage Note or of the Permanent Loan Documents, such other Person shall automatically become the Senior Lender.

“Subordinate Lender” means the Person named as such in the first paragraph on page 1 of this Agreement and any other Person who becomes the legal holder of the Subordinate Note after the date of this Agreement.

“Subordinate Loan Default” means a default by the Borrower in performing or observing any of the terms, covenants or conditions in the Subordinate Loan Documents to be performed or observed by it, which continues beyond any applicable period provided in the Subordinate Loan Documents for curing the default.

“Subordinate Loan Documents” means the Subordinate Note, the Subordinate Mortgage, and all other documents evidencing, securing or otherwise executed and delivered in connection with the Subordinate Loan.

“Subordinate Mortgage” means the mortgage or deed of trust encumbering the Property as security for the Subordinate Loan, which the Subordinate Lender will cause to be recorded among the applicable land records immediately before this Agreement.

“Subordinate Note” means the promissory note of even date herewith issued by the Borrower to the Subordinate Lender, or order, to evidence the Subordinate Loan.

2. Permission to Place Mortgage Lien Against Property.

The Senior Lender agrees, notwithstanding the prohibition against inferior liens on the Property contained in the First Mortgage Loan Documents or the Permanent Loan Documents and subject to the provisions of this Agreement, to permit the Subordinate Lender to record the Subordinate Mortgage and other recordable Subordinate Loan Documents against the Property (which are subordinate in all respects to the lien of the First Mortgage and the Permanent Loan to secure the Borrower’s obligation to repay the Subordinate Note and all other obligations, indebtedness and liabilities of the Borrower to the Subordinate Lender under and in connection with the Subordinate Loan. Such permission is subject to the condition that each of the representations and warranties made by the Borrower and the Subordinate Lender in Section 3 is true and correct on the date of this Agreement and on the date on which the proceeds of the Subordinate Loan are disbursed to the Borrower. If any of the representations and warranties made by the Borrower and the Subordinate Lender in Section 3 is not true and correct on both of those dates, the provisions of the First Mortgage Loan Documents and the Permanent Loan Documents applicable to unpermitted liens on the Property shall apply.

3. Borrower’s and Subordinate Lender’s Representations and Warranties.

The Borrower and the Subordinate Lender each makes the following representations and warranties to the Senior Lender:

(a) Subordinate Note. The Subordinate Note contains the following provision:

The indebtedness evidenced by this Note is and shall be subordinate in right of payment to the prior payment in full of the indebtedness evidenced by a (i) that certain Promissory Note Secured By Mortgage, dated_____, 202_, in the original principal amount of \$_____, made payable to the order of Wells Fargo Bank, National Association, its successors and/or assigns (the “Bank”), executed and delivered by Borrower to Bank, as the same may be modified, amended or restated from time to time (herein referred to as the “Construction Loan Note”), and (ii) that certain Consolidated, Amended and Restated Promissory Note, in the original principal amount of \$_____, to be executed and delivered by Borrower to Bank (herein referred to as the “Permanent Loan Note”), to the extent and in the manner provided in that certain Subordination and Standstill Agreement, dated_____, 202_, entered into by and among the City of Cape Coral”), Bank and the Borrower (herein referred to as the "Subordination Agreement"), and (iii) the Equity Funding. The Subordinate Mortgage securing this Note is and shall be expressly subject and subordinate at all times and in all respects to the liens, terms, covenants and

conditions of that certain Mortgage, Assignment of Rents, Security Agreement and Fixture Filing, dated _____, 202_ (the "First Priority Mortgage"), given by Borrower (as Mortgagor) in favor of Bank (as Mortgagee), securing the Construction Loan Note and the Permanent Loan Note, together with all other mortgages given to secure either the Construction Loan Note or the Permanent Loan Note (herein an "Additional Mortgage"), and any Equity Funding provided by an Affiliate of Bank under the Operating Agreement, all as more fully set forth in the Subordination Agreement. The rights and remedies of the City of Cape Coral and each subsequent holder of this Note under the Subordinate Mortgage securing this Note are expressly subject to the restrictions and limitations set forth in this Note, in the Subordination Agreement, in the First Priority Mortgage, the Operating Agreement and in any Additional Mortgage. Each subsequent holder of this Note shall be deemed, by virtue of such holder's acquisition of the Note, to have agreed to perform and observe all of the terms, covenants and conditions to be performed or observed by Neighborhood under this Note and under the Subordination Agreement.

(b) Relationship of Borrower to Subordinate Lender and Senior Lender.

The Subordinate Lender is not an Affiliate of the Borrower and is not in possession of any facts which would lead it to believe that the Senior Lender is an Affiliate of the Borrower.

(c) Term. The term of the Subordinate Note does not end before the term of the

(i) First Mortgage Note, or (ii) Permanent Note.

(d) Subordinate Loan Documents. The executed Subordinate Loan

Documents are substantially in the same forms as those submitted to, and approved by, Senior Lender prior to the date of this Agreement. Upon execution and delivery of the Subordinate Loan Documents, Borrower shall deliver to Senior Lender an executed copy of each of the Subordinate Loan Documents, certified to be true, correct and complete.

(e) Senior Loan Documents. The executed Senior Loan Documents and

Operating Agreement are substantially in the same forms as, when applicable, those submitted to, and approved by, Subordinate Lender prior to the date of this Agreement. Upon execution and delivery of the Senior Loan Documents, Borrower shall deliver to Subordinate Lender an executed copy of each of the Senior Loan Documents, certified to be true, correct and complete.

4. Terms of Subordination.

(a) Agreement to Subordinate. The Senior Lender and the Subordinate

Lender agree that: (i) the indebtedness evidenced by the Subordinate Loan Documents is and shall be subordinated in right of payment, to the extent and in the manner provided in this Agreement to the prior payment in full of the indebtedness evidenced by the First Mortgage Loan Documents, and (ii) the Subordinate Mortgage and the other Subordinate

Loan Documents are and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the First Mortgage and the other First Mortgage Loan Documents, and to all advances of equity or loan proceeds heretofore made or which may hereafter be made pursuant to the First Mortgage, and the other First Mortgage Loan Documents (including but not limited to, all sums advanced for the purposes of (1) protecting or further securing the lien of the First Mortgage, curing defaults by the Borrower under the First Mortgage Loan Documents or for any other purpose expressly permitted by the First Mortgage, or (2) constructing, renovating, repairing, furnishing, fixturing or equipping the Property) and the Operating Agreement.

(b) Subordination of Subrogation Rights. The Subordinate Lender agrees that if, by reason of its payment of real estate taxes or other monetary obligations of the Borrower, or by reason of its exercise of any other right or remedy under the Subordinate Loan Documents, it acquires by right of subrogation or otherwise a lien on the Property which (but for this subsection) would be senior to the lien of the First Mortgage, then, in that event, such lien shall be subject and subordinate to the lien of the First Mortgage.

(c) Payments Before First Mortgage Loan Default. Until the Subordinate Lender receives a Default Notice of a First Mortgage Loan Default from the Senior Lender, the Subordinate Lender shall be entitled to retain for its own account all payments made under or pursuant to the Subordinate Loan Documents.

(d) Payments After First Mortgage Loan Default. The Borrower agrees that, after it receives notice (or otherwise acquires knowledge) of a First Mortgage Loan Default, it will not make any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorney's fees, or any other sums secured by the Subordinate Mortgage) without the Senior Lender's prior written consent. The Subordinate Lender agrees that, after it receives a Default Notice from the Senior Lender with written instructions directing the Subordinate Lender not to accept payments from the Borrower on account of the Subordinate Loan, it will not accept any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorney's fees, or any other sums secured by the Subordinate Mortgage) without the Senior Lender's prior written consent. If the Subordinate Lender receives written notice from the Senior Lender that the First Mortgage Loan Default which gave rise to the Subordinate Lender's obligation not to accept payments has been cured, waived, or otherwise suspended by the Senior Lender, the restrictions on payment to the Subordinate Lender in this Section 4 shall terminate, and the Senior Lender shall have no right to any subsequent payments made to the Subordinate Lender by the Borrower prior to the Subordinate Lender's receipt of a new Default Notice from the Senior Lender in accordance with the provisions of this Section 4(d).

(e) Remitting Subordinate Loan Payments to Senior Lender. If, after the Subordinate Lender receives a Default Notice from the Senior Lender in accordance with subsection (d) above, the Subordinate Lender receives any payments under the Subordinate

Loan Documents, the Subordinate Lender agrees that such payment or other distribution will be received and held in trust for the Senior Lender and unless the Senior Lender otherwise notifies the Subordinate Lender in writing, will be promptly remitted, in kind to the Senior Lender, properly endorsed to the Senior Lender, to be applied to the principal of, interest on and other amounts due under the First Mortgage Loan Documents in accordance with the provisions of the First Mortgage Loan Documents. By executing this Agreement, the Borrower specifically authorizes the Subordinate Lender to endorse and remit any such payments to the Senior Lender, and specifically waives any and all rights to have such payments returned to the Borrower or credited against the Subordinate Loan. Borrower and Senior Lender acknowledge and agree that payments received by the Subordinate Lender, and remitted to the Senior Lender under this Section 4, shall not be applied or otherwise credited against the Subordinate Loan, nor shall the tender of such payment to the Senior Lender waive any Subordinate Loan Default which may arise from the inability of the Subordinate Lender to retain such payment or apply such payment to the Subordinate Loan.

(f) Agreement Not to Commence Bankruptcy Proceeding. The Subordinate Lender agrees that during the term of this Agreement it will not commence, or join with any other creditor in commencing any bankruptcy reorganization, arrangement, insolvency or liquidation proceedings with respect to the Borrower, without the Senior Lender's prior written consent, which consent may be withheld by Senior Lender in Senior Lender's sole discretion.

5. Default Under Subordinate Loan Documents.

(a) Notice of Default and Cure Rights. The Subordinate Lender shall deliver to the Senior Lender a Default Notice within five Business Days in each case where the Subordinate Lender has given a Default Notice to the Borrower. Failure of the Subordinate Lender to send a Default Notice to the Senior Lender shall not prevent the exercise of the Subordinate Lender's rights and remedies under the Subordinate Loan Documents, subject to the provisions of this Agreement. The Senior Lender shall have the right, but not the obligation, to cure any Subordinate Loan Default within 60 days following the date of such notice; provided, however that the Subordinate Lender shall be entitled, during such 60-day period, to continue to pursue its rights and remedies under the Subordinate Loan Documents to the extent permitted under Section 5(b). All amounts paid by the Senior Lender in accordance with the First Mortgage Loan Documents to cure a Subordinate Loan Default shall be deemed to have been advanced by the Senior Lender pursuant to, and shall be secured by the lien of, the First Mortgage.

(b) Subordinate Lender's Agreement to Standstill. If a Subordinate Loan Default occurs and is continuing, the Subordinate Lender agrees that, without the Senior Lender's prior written consent, it will not accelerate the Subordinate Loan, commence foreclosure proceedings with respect to the Property, collect rents, appoint (or seek the appointment of) a receiver or institute any other collection or enforcement action.

(c) **Cross Default.** The Borrower and the Subordinate Lender agree that a Subordinate Loan Default shall constitute a First Mortgage Loan Default under the First Mortgage Loan Documents and the Senior Lender shall have the right to exercise all rights or remedies under the First Mortgage Loan Documents in the same manner as in the case of any other First Mortgage Loan Default. If the Subordinate Lender notifies the Senior Lender in writing that any Subordinate Loan Default of which the Senior Lender has received a Default Notice has been cured or waived, as determined by the Subordinate Lender in its sole discretion, then provided that Senior Lender has not conducted a sale of the Property pursuant to its rights under the First Mortgage Loan Documents, any First Mortgage Loan Default under the First Mortgage Loan Documents arising solely from such Subordinate Loan Default shall be deemed cured, and the First Mortgage Loan shall be reinstated, provided, however, that the Senior Lender shall not be required to return or otherwise credit for the benefit of the Borrower any default rate interest or other default related charges or payments received by the Senior Lender during such First Mortgage Loan Default.

6. Default Under First Mortgage Loan Documents.

(a) **Notice of Default and Cure Rights.** The Senior Lender shall deliver to the Subordinate Lender a Default Notice within five Business Days in each case where the Senior Lender has given a Default Notice to the Borrower. Failure of the Senior Lender to send a Default Notice to the Subordinate Lender shall not prevent the exercise of the Senior Lender's rights and remedies under the First Mortgage Loan Documents, subject to the provisions of this Agreement. The Subordinate Lender shall have the right, but not the obligation, to cure any such First Mortgage Loan Default as provided below. Subordinate Lender may have up to 30 days from the date of the Default Notice to cure any monetary default under the First Mortgage Loan Documents; provided, however, that the Senior Lender shall be entitled during such 30-day period to continue to pursue its remedies with respect to the Property. Subordinate Lender may have up to 60 days from the date of the Default Notice to cure a non-monetary default if during such 60-day period Subordinate Lender keeps current all payments required by the First Mortgage Loan Documents. In the event that such a non-monetary default creates an unacceptable level of risk relative to the Property, or Senior Lender's secured position relative to the Property, as determined by Senior Lender in its sole discretion, then Senior Lender may exercise during such 60-day period all available rights and remedies to protect and preserve the Property and the rents, revenues and other proceeds from the Property. All amounts paid by the Subordinate Lender to the Senior Lender to cure a First Mortgage Loan Default shall be deemed to have been advanced by the Subordinate Lender pursuant to, and shall be secured by the lien of, the Subordinate Mortgage.

(b) **Cross Default.** The Subordinate Lender agrees that, notwithstanding any contrary provision contained in the Subordinate Loan Documents, a First Mortgage Loan Default shall not constitute a default under the Subordinate Loan Documents if no other default occurred under the Subordinate Loan Documents until either (i) the Senior Lender has accelerated the maturity of the First Mortgage Loan, or (ii) the Senior Lender has taken

affirmative action to exercise its rights under the First Mortgage to collect rent, to appoint (or seek the appointment of) a receiver or to foreclose on (or to exercise a power of sale contained in) the First Mortgage. At any time after a First Mortgage Loan Default is determined to constitute a default under the Subordinate Loan Documents, the Subordinate Lender shall be permitted to pursue its remedies for default under the Subordinate Loan Documents, subject to the restrictions and limitations of this Agreement. If at any time the Borrower cures any First Mortgage Loan Default to the satisfaction of the Senior Lender, as evidenced by written notice from the Senior lender to the Subordinate Lender, any default under the Subordinate Loan Documents arising from such First Mortgage Loan Default shall be deemed cured and the Subordinate Loan shall be retroactively reinstated as if such First Mortgage Loan Default had never occurred.

7. Conflict.

The Borrower, the Senior Lender and the Subordinate Lender each agrees that, in the event of any conflict or inconsistency between the terms of the First Mortgage Loan Documents, the Subordinate Loan Documents and the terms of this Agreement, the terms of this Agreement shall govern and control solely as to the following: (a) the relative priority of the security interests of the Senior Lender and the Subordinate Lender in the Property; (b) the timing of the exercise of remedies by the Senior Lender and the Subordinate Lender under the First Mortgage and the Subordinate Mortgage, respectively; and (c) solely as between the Senior Lender and the Subordinate Lender, the notice requirements, cure rights, and the other rights and obligations which the Senior Lender and the Subordinate Lender have agreed to as expressly provided in this Agreement. Borrower acknowledges that the terms and provisions of this Agreement shall not, and shall not be deemed to: extend Borrower's time to cure any First Mortgage Loan Default or Subordinate Loan Default, as the case may be; give the Borrower the right to notice of any First Mortgage Loan Default or Subordinate Loan Default, as the case may be other than that, if any, provided, respectively under the First Mortgage Loan Documents or the Subordinate Loan Documents; or create any other right or benefit for Borrower as against Senior Lender or Subordinate Lender.

8. Rights and Obligations of the Subordinate Lender Under the Subordinate Loan Documents and of the Senior Lender under the First Mortgage Loan Documents.

Subject to each of the other terms of this Agreement, all of the following provisions shall supersede any provisions of the Subordinate Loan Documents covering the same subject matter:

(a) **Protection of Security Interest.** The Subordinate Lender shall not, without the prior written consent of the Senior Lender in each instance, take any action which has the effect of increasing the indebtedness outstanding under, or secured by, the Subordinate Loan Documents, except that the Subordinate Lender shall have the right to advance funds to cure First Mortgage Loan Defaults pursuant to Section 6(a) above and advance funds pursuant to the Subordinate Mortgage for the purpose of paying real estate taxes and insurance premiums, making necessary repairs to the Property and curing other defaults by the Borrower under the Subordinate Loan Documents.

(b) Condemnation or Casualty. In the event of: a taking or threatened taking by condemnation or other exercise of eminent domain of all or a portion of the Property (collectively, a "Taking"); or the occurrence of a fire or other casualty resulting in damage to all or a portion of the Property (collectively, a "Casualty"), at any time or times when the First Mortgage remains a lien on the Property the following provisions shall apply:

(1) The Subordinate Lender hereby agrees that its rights (under the Subordinate Loan Documents or otherwise) to participate in any proceeding or action relating to a Taking and/or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Taking or a Casualty shall be and remain subordinate in all respects to the Senior Lender's rights under the First Mortgage Loan Documents with respect thereto, and the Subordinate Lender shall be bound by any settlement or adjustment of a claim resulting from a Taking or a Casualty made by the Senior Lender; provided, however, this subsection and/or anything contained in this Agreement shall not limit the rights of the Subordinate Lender to file any pleadings, documents, claims or notices with the appropriate court with jurisdiction over the proposed Taking and/or Casualty; and

(2) all proceeds received or to be received on account of a Taking or a Casualty, or both, shall be applied (either to payment of the costs and expenses of repair and restoration or to payment of the First Mortgage Loan) in the manner determined by the Senior Lender in its sole discretion; provided, however, that if the Senior Lender elects to apply such proceeds to payment of the principal of, interest on and other amounts payable under the First Mortgage Loan, any proceeds remaining after the satisfaction in full of the principal of, interest on and other amounts payable under the First Mortgage Loan shall be paid to, and may be applied by, the Subordinate Lender in accordance with the applicable provisions of the Subordinate Loan Documents, provided however, the Senior Lender agrees to consult with the Subordinate Lender in determining the application of Casualty proceeds, provided further however that in the event of any disagreement between the Senior Lender and the Subordinate Lender over the application of Casualty proceeds, the decision of the Senior Lender, in its sole discretion, shall prevail.

(c) No Modification of Subordinate Loan Documents. The Borrower and the Subordinate Lender each agrees that, until the principal of, interest on and all other amounts payable under the First Mortgage Loan Documents have been paid in full, it will not, without the prior written consent of the Senior Lender in each instance, increase the amount of the Subordinate Loan, increase the required payments due under the Subordinate Loan, decrease the term of the Subordinate Loan, increase the interest rate on the Subordinate Loan, or otherwise amend the Subordinate Loan terms in a manner that creates an adverse effect upon the Senior Lender under the First Mortgage Loan Documents. Any unauthorized amendment of the Subordinate Loan Documents or assignment of the Subordinate Lender's interest in the Subordinate Loan without the Senior Lender's consent shall be void ab initio and of no effect whatsoever and Subordinate Lender agrees that it shall not transfer or assign

the Subordinate Loan or the Subordinate Loan Documents without the prior written consent of the Senior Lender.

9. Stabilization, Modification or Refinancing of First Mortgage Loan.

The Subordinate Lender consents to any agreement or arrangement in which the Senior Lender waives, postpones, extends, reduces or modifies any provisions of the First Mortgage Loan Documents, including any provision requiring the payment of money. Subordinate Lender further agrees that its agreement to subordinate hereunder shall extend to the Permanent Loan Documents, as well as to any new mortgage debt which is for the purpose of refinancing all or any part of the First Mortgage Loan (including reasonable and necessary costs associated with the closing and/or the refinancing) and, in the event of new mortgage debt, Subordinate Lender shall execute and deliver to Senior Lender a new subordination agreement on the same terms and conditions as this Subordination Agreement. Following Stabilization, all the terms and covenants of this Agreement shall inure to the benefit of any holder of the Permanent Loan; and all references to the First Mortgage Loan, the First Mortgage Note, the First Mortgage and the First Mortgage Loan Documents shall mean, respectively, the Permanent Loan, the Permanent Note, the Permanent Mortgage and the Permanent Loan Documents.

10. Default by the Subordinate Lender or Senior Lender.

If the Subordinate Lender or Senior Lender defaults in performing or observing any of the terms, covenants or conditions to be performed or observed by it under this Agreement, the other, non-defaulting lender shall have the right to all available legal and equitable relief.

11. Notices.

Each notice, request, demand, consent, approval or other communication (hereinafter in this Section referred to collectively as “notices” and referred to singly as a “notice”) which the Senior Lender or the Subordinate Lender is required or permitted to give to the other party pursuant to this Agreement shall be in writing and shall be deemed to have been duly and sufficiently given if: (a) personally delivered with proof of delivery thereof (any notice so delivered shall be deemed to have been received at the time so delivered); or (b) sent by Federal Express (or other similar national overnight courier) designating early morning delivery (any notice so delivered shall be deemed to have been received on the next Business Day following receipt by the courier); or (c) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any notice so sent shall be deemed to have been received two days after mailing in the United States), addressed to the respective parties as follows:

SENIOR LENDER:

Wells Fargo Affordable Housing
Community Development Corporation
MAC D0153-170

301 South College Street, 17th Floor
Charlotte, NC 28202-6000
Attention: Director of Asset Management
Loan #: _____

With copy to:

Joel Hjelmaas, Counsel
Wells Fargo Bank, N.A.
MAC X2401-06T
1 Home Campus, 6th Floor
Des Moines, IA 50328-0001
Loan #: _____

SUBORDINATE LENDER:

City of Cape Coral
1015 Cultural Park Boulevard
Cape Coral, Florida _____

Either party may, by notice given pursuant to this Section, change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses for its notices, but notice of a change of address shall only be effective upon receipt.

13. General.

(a) **Assignment/Successors.** This Agreement shall be binding upon the Borrower, the Senior Lender and the Subordinate Lender and shall inure to the benefit of the respective legal successors and assigns of the Senior Lender and the Subordinate Lender.

(b) **No Partnership or Joint Venture.** The Senior Lender's permission for the placement of the Subordinate Loan Documents does not constitute the Senior Lender as a joint venturer or partner of the Subordinate Lender. Neither party hereto shall hold itself out as a partner, agent or Affiliate of the other party hereto.

(c) **Senior Lender's and Subordinate Lender's Consent.** Wherever the Senior Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by the Senior Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement. Wherever the Subordinate Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by the Subordinate Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement.

(d) **Further Assurances.** The Subordinate Lender, the Senior Lender and the Borrower each agree, at the Borrower's expense, to execute and deliver all additional instruments and/or documents reasonably required by any other party to this Agreement in order to evidence that the Subordinate Mortgage is subordinate to the lien, covenants and conditions of the First Mortgage, or to further evidence the intent of this Agreement.

(e) **Amendment.** This Agreement shall not be amended except by written instrument signed by all parties hereto.

(f) **Governing Law.** This Agreement shall be governed by the laws of the State in which the Property is located.

(g) **Severable Provisions.** If any provision of this Agreement shall be invalid or unenforceable to any extent, then the other provisions of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

(h) **Term.** The term of this Agreement shall commence on the date hereof and shall continue until the earliest to occur of the following events: (i) the payment of all of the principal of, interest on and other amounts payable under the First Mortgage Loan Documents; (ii) the payment of all of the principal of, interest on and other amounts payable under the Subordinate Loan Documents, other than by reason of payments which the Subordinate Lender is obligated to remit to the Senior Lender pursuant to Section 4 hereof; (iii) the acquisition by the Senior Lender of title to the Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in, the First Mortgage; or (iv) the acquisition by the Subordinate Lender of title to the Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in, the Subordinate Mortgage, but only if such acquisition of title does not violate any of the terms of this Agreement.

(i) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

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

WITNESSES:

Print: _____

Print: _____

SENIOR LENDER:

**WELLS FARGO BANK, NATIONAL
ASSOCIATION**

By: _____

Name: Michael J. Marra

Title: Vice-President

**(ALL SIGNATURES MUST BE
ACKNOWLEDGED)**

STATE OF FLORIDA

COUNTY OF _____ ss.

The foregoing instrument was acknowledged before me on _____, 202_, by Michael J. Marra, as Vice-President of Wells Fargo Bank, National Association on behalf of Wells Fargo Bank, National Association. He _____ is personally known to me or _____ presented his _____ driver's license as identification.

(Notarial Seal)

Notary Public

Print Name: _____

State of Florida

My commission expires: _____

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

SUBORDINATE LENDER:

CITY OF CAPE CORAL COMMUNITY
REDEVELOPMENT AGENCY, a dependent
special district established by the City of Cape
Coral, Florida pursuant to the laws of the State
of Florida

BY: _____

Name: _____

Title: _____

WITNESSES:

Print: _____

Print: _____

STATE OF FLORIDA
COUNTY OF _____ SS.

The foregoing instrument was acknowledged before me on _____, 202_, by _____ of The CITY OF CAPE CORAL COMMUNITY REDEVELOPMENT AGENCY, a dependent special district established by the City of Cape Coral, Florida pursuant to the laws of the State of Florida. H/she either _____ is personally known to me or _____ presented his/her _____ driver's license as identification.

(Notarial Seal)

Notary Public

Print Name: _____

State of Florida

My commission expires: _____

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

WITNESSES:

Print: _____

Print: _____

BORROWER:

MADISON SQUARE, LLC,
a Florida limited liability company

By: _____

Name: Lindsey Sultan

Title: Vice President

STATE OF FLORIDA
COUNTY OF

Sworn to and subscribed before me by means of _____ physical presence or _____ online notarization, this ____ day of _____, 202_ by Lindsey Sultan, Vice President of Madison Square, LLC, a Florida limited liability company. She/He is [] personally known to me or [] has produced _____ as identification.

(NOTARY STAMP)

Notary Public, State of Florida
Commission No.
My Commission Expires:

[END SIGNATURES]

EXHIBIT A – LEGAL DESCRIPTION OF LAND

Legal Description

Lots 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22, Block 52, Cape Coral Unit 6, Part Three, according to the plat thereof, as recorded in Plat Book 11, Pages 70 through 79, inclusive, of the Public Records of Lee County, Florida.

Item Number:	8.B.
Meeting Date:	2/2/2021
Item Type:	UNFINISHED BUSINESS

AGENDA REQUEST FORM



TITLE:

Update - Roundabout Public Art Display

SUMMARY:

Julie Gerhard, Recreation Program Supervisor with the City of Cape Coral Parks & Recreation Department will give an update on the South Cape Roundabout Public Art Display,

ADDITIONAL INFORMATION:

Item Number:	8.C.
Meeting Date:	2/2/2021
Item Type:	UNFINISHED BUSINESS

AGENDA REQUEST FORM



TITLE:

Draft Land Development Code Regulations for Mobile Food Dispensing Vehicles

SUMMARY:

The City is drafting regulations to regulate food trucks in the City to be consistent with recent changes in state law for Mobile Food Dispensing Vehicles. DCD staff will discuss the draft regulations to seek input from the CRA

ADDITIONAL INFORMATION:

Informational only


ATTACHMENTS:

Description	Type
▣ CRA Food Truck Information	Backup Material

MEMORANDUM

CITY OF CAPE CORAL DEPARTMENT OF COMMUNITY DEVELOPMENT

TO: Cape Coral Community Redevelopment Agency Board of Commissioners

FROM: Robert H. Pederson, Planning Manager 

DATE: January 27, 2021

SUBJECT: Draft Regulations for Food Trucks in Cape Coral – House Bill 1193 and Amendments to the Land Development Code

Executive Summary

This memo is to continue the discussion item from the November 4, 2020 CRA meeting regarding food truck regulations in the City. Draft changes to the City Land Development Code (LDC) are attached for your review and comment.

Background

The current Land Development Code and the former Land Use and Development Regulations are silent on regulations for food trucks. At least three attempts to address food truck regulations (most recently in 2018) did not result in an ordinance being adopted.

Currently, food trucks operating in the City do so under a Business Tax Receipt. These food trucks are not issued a Certificate of Use or a Certificate of Zoning Compliance.

On July 30, 2020 the Governor signed House Bill 1193. Amongst other changes, HB1193 included provisions that preempt most local regulation of "Mobile Food Dispensing Vehicles" (i.e., food trucks). Specifically, the approved Bill included regulations that:

- Define a Mobile Food Dispensing Vehicle as "any vehicle that is a public food service establishment and that is self-propelled or otherwise movable from place to place and includes self-contained utilities, including, but not limited to, gas, water, electricity, or liquid waste disposal;"
- Declared that the "Regulation of mobile food dispensing vehicles involving licenses, registrations, permits, and fees is preempted to the state;"
- Declared that municipalities may not require a separate license, registration, permit, or permit fee other than the permit and fee required by the State under Statutes 509.241 and 509.251 (which are permits and fees regulated by the State's Department of Business and Professional Regulation); and

- Prohibited municipalities from imposing a blanket prohibition on Mobile Food Dispensing Vehicles within the entirety of their jurisdiction.

The CRA discussed this issue at their November 4, 2020 meeting and provided information and feedback to staff. Staff has now drafted the attached changes to the LDC to be consistent with HB 1193 and adopt regulations for MFDVs in the City.

Draft LDC Changes – what is included

1. Definitions. The LDC definitions will be amended to be consistent with the new definition for Mobile Food Dispensing Vehicles. Current definitions related to mobile food vendors and vehicles will be deleted.
2. Permitted Locations. MFDVs will be permitted as a Conditional Use in the Professional, Commercial, Industrial, Institutional, Commercial Corridor, Neighborhood Commercial, South Cape, Mixed Use Bimini, and Mixed Use Seven Islands zoning districts. The conditional use standards for MFDVs are discussed below.
3. Prohibited Locations. MFDVs will not be permitted in residential zoning districts (R-1, R-E, RML, RMM, PV, and A).
4. City Property. MFDVs may be allowed at public parks, City-owned parking lots, and City-owned facilities with City approval.
5. Standards for MFDV locations:
 - Must be parked on an approved impervious surface;
 - May be parked within one or more designated off-street parking spaces
 - Must be parked so that pedestrian or vehicle access is not impeded;
 - Must possess and display written permission from the property owner;
 - Must possess and display a valid Business Tax Receipt from the City;
 - Must be fully self-contained (consistent with the definition of a MFDV) with no connections to external sources of water, waste-water, electrical, or gas for operation;

- Must comply with Fire Code regulations; and
- May not be parked overnight at City parking lots unless authorized by the City in writing

Draft LDC Changes – what is not included

1. Food trucks at Special Events. The draft regulations do not change the permit procedures for Special Events. Special Event permits are administered by the Parks and Recreation Department and often include food trucks or MFDVs.
2. Food trucks at private parties or events. Food trucks at private parties, including those in residentially zoned areas are not regulated by the ordinance, provided the event does not exceed 1 day.

Next Steps

Following input from the CRA, staff will finalize the draft regulations and work with the City Attorney's office to prepare the ordinance for public hearings. The first public hearing will be held by the Planning and Zoning Commission. P&Z will make a recommendation to City Council. Two public hearings will be held by the City Council.

C: Dolores Menendez

ARTICLE 4: - ZONING DISTRICTS

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Table 4.1.6 Use Table

The following table of permitted uses, when read together with the definitions set forth in Article 11 shall be used to determine the zoning district in which a given use may be established.

Use Table																		
P= Permitted P*= Permitted with Standards CU= Conditional Use SE= Special Exception Empty= Not Permitted																		
PUD zoning allows all uses consistent with the Future Land Use Classification																		
	Use Type	Residential Districts					Non-Residential Districts					Mixed Use Districts						
		R 1	RML	RMM	RE	A	P	C	I	INST	PV	CC	NC	MX7	MXB	SC		
																PRI	SEC	LOC
Food and Beverage	Mobile Food Vendor Mobile Food Dispensing Vehicle						CU	CU	CU	CU		CU	CU	CU	CU	CU	CU	CU

(Ord. 29-20, § 1, 5-11-2020)

CHAPTER 2. - SPECIFIC REGULATIONS BY DISTRICT

This chapter establishes specific regulations for uses, activities, or structures within a zoning district.

...

Section 4.2.6. - Commercial (C).

- A. Specific regulations for: commercial parking lots and parking garages as a standalone use; craft brewery, distillery, and wineries; building and construction with outdoor display or storage; ~~mobile food vendors~~; and wireless communication facilities are found in Article 5, Chapter 10.
- B. Specific conditions for vehicle repair, minor, vehicle fueling stations, ~~and self-storage facilities~~, and mobile food dispensing vehicles are established in Article 5, Chapter 11.

Section 4.2.7. - Professional office (P).

A. ~~Specific regulations for mobile food vendors and wireless communication facilities are found in Article 5, Chapter 10.~~

B. ~~Specific conditions for mobile food dispensing vehicles are established in Article 5, Chapter 11.~~

Section 4.2.8. - Industrial (I).

A. ~~Specific regulations for mobile food vendors and wireless communication facilities are found in Article 5, Chapter 10.~~

B. ~~Specific conditions for mobile food dispensing vehicles are established in Article 5, Chapter 11.~~

Section 4.2.9. - Institutional (INST).

A. ~~A.—Specific regulations for mobile food vendors and wireless communication facilities are found in Article 5, Chapter 10.~~

B. ~~Specific conditions for mobile food dispensing vehicles are established in Article 5, Chapter 11.~~

C. ~~B.—Outdoor storage that is accessory to a principal use shall be screened from view from all rights-of-way by an opaque fence or wall.~~

Section 4.2.10. - Preservation (PV).

Reserved.

Section 4.2.11. - Commercial corridor (CC).

...

Table 4.2.11.

Commercial Corridor Development Parameters		
	Development Area	
	0—3.99 acres	4 acres or greater
Free-standing Commercial Development Area Maximum FAR	Up to 100% 1.0	
Free-standing Residential Minimum Density Maximum Density	Not allowed Not allowed	10 du/acre or 50 units 25 du/acre
Mixed-Use Minimum Density Maximum Density Maximum FAR	3 du/acre 12 du/acre 1.0	10 du/acre or 50 units 25 du/acre 2.0

Minimum Front Setback	20 ft.	20 ft.
Minimum Side Setback	6 ft.	6 ft.
Min. Rear Setback	10 ft.	10 ft.

A. ~~A.~~—Specific regulations for: craft brewery, distilleries, and wineries; ~~mobile food vendors~~; building and construction with outdoor display or storage; and wireless antennas are found in Article 5, Chapter 10.

B. ~~B.~~—Specific conditions for multi-family residential, single-family attached with 3 units or greater, outdoor screened storage, ~~and self-storage facilities~~, and mobile food dispensing vehicles ~~are established~~ in Article 5, Chapter 11.

Section 4.2.12. - Neighborhood commercial (NC).

A. ~~A.~~—Specific regulations for multi-family residences; single family attached 3 units or greater; commercial parking lots and parking garages as a standalone use; vehicle fueling stations; craft brewery, distilleries, and wineries; wireless antennas; ~~and home occupations~~; and mobile food dispensing vehicles are found in Article 5, Chapters 10 and 11.

...

Section 4.2.13. - Mixed-use bimini (MXB).

...

F. ~~F.~~—Specific regulations for multi-family residences; single family attached 3 units or greater; commercial parking lots and parking garages as a standalone use; bars; craft brewery, distilleries, and wineries; arenas and amphitheaters; ~~and home occupations~~; and mobile food dispensing vehicles ~~are found in Article 5, Chapters 12-10 and 1311.~~

Section 4.2.14. - Mixed-use seven islands district (MX7).

...

J. ~~J.~~—Specific regulations for multi-family residences; single family attached 3 units or greater; commercial parking lots and parking garages as a standalone use; movie theaters; craft brewery, distilleries, and wineries; ~~mobile food trucks~~; ~~and home occupations~~; and mobile food dispensing vehicles are found in Article 5, Chapters ~~12-10~~ and ~~1311~~.

Section 4.2.15. - South cape district.

A. Intent and purpose. The South Cape District special regulations are intended to act as a stimulus to development through provisions that permit a flexible approach to infill development within the City's Community Redevelopment Area.

B. Specific conditions for multi-family residential; and vehicle fueling stations; and mobile food dispensing vehicles are in Article 5, Chapter ~~4211~~.

CHAPTER 11. – CONDITIONAL USES

...

Section 5.11.12. - Religious institutions.

Religious Institutions in the R1, RML, RMM, RE, and A districts shall have a minimum size of three acres.

Section 5.11.13. – Mobile Food Dispensing Vehicles.

- A. Purpose and Intent. The purpose of this section is to establish general regulations for Mobile Food Dispensing Vehicles (MFDVs), as defined by F.S. § 509.102, in the City within select zoning districts and to provide for the safety of customers of these mobile food dispensing vehicles.
- B. Exemptions. The following MFDVs are exempt from this ordinance:
 - 1. Those operating as part of a permitted Special Event in accordance with LDC Section 3.3.10;
 - 2. Those operating within the boundaries of a residential subdivision for a duration of less than one day a week;
 - 3. Those operating at private parties or at an event that is not open to the general public for a duration of less than one day; and
 - 4. Those operating during a declared emergency by the Cape Coral City Council.
- C. General requirements. All MFDVs must meet the following conditions:
 - 1. MFDVs must possess and display a valid Business Tax Receipt from the City of Cape Coral;
 - 2. During hours of operation, the operator of a MFDV must possess and display the written and notarized permission from the property owner of the property on which they are located;
 - 3. MFDVs shall not block pedestrian or vehicular traffic entering, exiting, or maneuvering on a property;
 - 4. MFDVs must be self-contained and shall not require the connection to an external source of electricity, gas, water, or waste-water for operation;
 - 5. MFDVs must provide a trash receptacle and keep areas of consumption free of litter;
 - 6. MFDVs must be located on an impervious surface; and
 - 7. MFDVs must meet all fire safety requirements of the Cape Coral Fire Department.
- D. Prohibited locations:

1. MFDVs are prohibited from serving customers while parked in a public right-of-way or a designated on-street parking space unless written permission has been provided by the City per 5.11.13.E;
2. MFDVs, whether serving customers or out of operation, are prohibited from being parked overnight at City parking lots, unless written permission has been provided per City Code of Ordinances Chapter 12.VII-82; and
3. Unless otherwise permitted or excepted by this Section, MFDVs are prohibited in the R-1, RE, RML, RMM, PV, and A zoning districts.

E. Permitted locations:

1. Subject to the requirements of this Section, MFDVs are allowed on private property in the C, I, INST, NC, CC, MXB, MX7, and SC zoning districts.
2. Subject to the requirements of this Section, MFDVs may be allowed on public parks, city-owned parking lots, and city-owned facilities with the following conditions:
 - a. The location, duration, and hours of operation must be approved in writing by the City. When considering whether to allow a MFDV in accordance with this Section the City shall consider:
 - i. The physical location of the MFDV;
 - ii. The physical location for users of the MFDV, including queueing and consumption;
 - iii. The length of time that the MFDV will be located at the designated physical location;
 - iv. The hours of operation that the MFDV will serve customers; and
 - v. The recommendations of the City Parks & Recreation, Public Works, Planning, Fire, and Police Departments.
3. Subject to the requirements of this Section, MFDVs may be allowed within one or more designated on-street parking spaces with the following conditions:
 - a. The location, duration, and hours of operation must be approved in writing by the City. When considering whether to allow a MFDV in accordance with this Section the City shall consider:
 - i. The physical location of the MFDV;
 - ii. The physical location for users of the MFDV, including queueing and consumption;
 - iii. The length of time that the MFDV will be located at the designated physical location, not to exceed one day per week;

- iv. The hours of operation that the MFDV will serve customers; and
- v. The recommendations of the City Parks & Recreation, Public Works, Planning, Fire, and Police Departments.

ARTICLE 11: - DEFINITIONS

Section 11.2. - Definitions.

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Florida Native, is any plant recognized as occurring naturally in the State of Florida prior to the 1500s, as identified in Atlas of Florida Vascular Plants by Wunderlin , R.P., and B. F. Hansen. 2008. (<http://www.plantatlas.usf.edu/>). Institute for Systematic Botany, University of South Florida,

Food Truck, see "Mobile Food Unit".

...

Hot Dog Cart, is a non-motorized food unit which serves hot dogs, sausages, or other similar type foods or beverage, or both, limited for immediate consumption and provides no seating.

...

Mobile Food Trailer, is a food service unit that is delivered to an event or a location and then transported again after a specific length of time. Mobile food trailers are commonly used at events such as carnivals or fairs.

Mobile Food Unit, is any food service unit serving food or beverage, or both, intended for immediate consumption, which is self-propelled or otherwise moveable from place to place and contains utilities, such as propane, water, electricity, and liquid waste disposal. An open bed truck is not considered a mobile food unit. Also commonly known as a "food truck" or "mobile food trailer".

Mobile Food Vendor, is any person or business selling foods or beverage, or both, other than fresh fruits or vegetables not intended for immediate consumption, from a mobile food unit, including a self-sufficient mobile food unit or hot dog cart.

Mobile Food Trailer, is a food service unit that is delivered to an event or a location and then transported again after a specific length of time. Mobile food trailers are commonly used at events such as carnivals or fairs.

Mobile Food Unit, is any food service unit serving food or beverage, or both, intended for immediate consumption, which is self-propelled or otherwise moveable from place to place and contains utilities, such as propane, water, electricity, and liquid waste disposal. An open bed truck is not considered a mobile food unit. Also commonly known as a "food truck" or "mobile food trailer".

Mobile Food Vendor, is any person or business selling foods or beverage, or both, other than fresh fruits or vegetables not intended for immediate consumption, from a mobile food unit, including a self-sufficient mobile food unit or hot dog cart.

Mobile Food Dispensing Vehicle, means any vehicle that is a public food service establishment and that is self-propelled or otherwise movable from place to place and includes self-contained utilities, including, but not limited to, gas, water, electricity, or liquid waste disposal.

...

Public Food Service Establishment, is a building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption.

...

~~Self-Sufficient Mobile Food Unit~~, is a mobile food unit containing, as part of the vehicle, a three-compartment sink for washing, rinsing, and sanitizing equipment and utensils; a separate hand wash sink; adequate refrigeration and storage capacity; full provision for of power utilities including electrical, LP gas, or a portable power generation unit; a potable water holding tank; and a liquid waste disposal system.

Self-Service Storage Facility, is a building used for the storage of personal property where individual owners control individual storage spaces.

~~Self-Sufficient Mobile Food Unit~~, is a mobile food unit containing, as part of the vehicle, a three-compartment sink for washing, rinsing, and sanitizing equipment and utensils; a separate hand wash sink; adequate refrigeration and storage capacity; full provision for of power utilities including electrical, LP gas, or a portable power generation unit; a potable water holding tank; and a liquid waste disposal system.

Item Number:	9.A.
Meeting Date:	2/2/2021
Item Type:	NEW BUSINESS

AGENDA REQUEST FORM



TITLE:

Board Appointments for Cape Coral Community Redevelopment Agency's 2021 Chair and Vice Chair.

SUMMARY:

1. Because of the resignation of Chair Lomonaco, the CRA Board of Commissioners shall recommend to City Council a Chair and Vice Chair to be appointed by the City Council.
2. The appointment will be considered during City Council's Regular Meeting on February 17, 2021. Your recommendation will be sent to Council and included in their Council packet.
3. Provided for your information is a copy of the Agency's By-Laws.

ADDITIONAL INFORMATION:

Requested Action(s):






A motion recommending a Chair and Vice Chair for City Council's appointment.

ATTACHMENTS:

Description	Type
▣ CRA Board Term Sheet 01.20.2021	Backup Material
▣ CRA By-Laws	Backup Material

CITY OF CAPE CORAL - BOARDS AND COMMISSIONS

COMMUNITY REDEVELOPMENT AGENCY BOARD OF COMMISSIONERS

	MEMBERS	INITIAL APPOINT	LAST REAPPOINT	TERM EXPIRES
	Linda Biondi VICE CHAIR 728 SE 44th Street Cape Coral, FL 33904 239-542-2254 (o); 239-246-1157 (m) Linda@rasorealty.com	1/22/2018 2 yrs	1/13/2020	1/22/2024
	Janis Tobin Keim 3820 SE 7th Avenue Cape Coral, FL 33904 239-691-3567 (m) 239-549-2966 (H) JEKeim2966@aol.com	1/22/2018 2 yrs	1/13/2020	1/22/2024
	Ragen St. Peter 2212 SW 3rd Terrace Cape Coral, FL 33991 239-699-0913 (m) Ragen@inklifetour.com	1/22/2018 4 yrs		1/22/2022
	Gregory Charles Gebhard 1106 SW 46th Terrace Cape Coral, FL 33914 (716) 479-1295 (m) Gebhard.Gregory@gmail.com	1/22/2018 4 yrs		1/22/2022
	James (Jim) F. Brantley 203 SE 45th Street Cape Coral, FL 33914 (239) 340-5738 (m) JBFlorida59@gmail.com	1/20/2021 Remaining term		1/22/2022
	Council Liaison - Mayor John Gunter	1/22/2018		
	Alt. Council Liaison - Robert Welsh, District 5	12/7/2020		

Community Redevelopment Executive Director: City Manager Rob Hernandez (239) 574-0450 robhernandez@capecoral.net

Community Redevelopment Coordinator: Terri Hall (239) 574-0446 thall@capecoral.net

Community Redevelopment Specialist: Helen S. Ramey (239) 242-3737 hramey@capecoral.net

COMMUNITY REDEVELOPMENT AGENCY BY-LAWS

ARTICLE I

General Provisions

1. The Community Redevelopment Agency of the City of Cape Coral, Florida (hereafter "CRA") may, as deemed necessary, adopt and operate under rules of procedure, provided that such rules are not contrary to the spirit and intent of Part III of Chapter 163 of the Florida Statutes, the Community Redevelopment Act of 1969.
2. The provisions of these By-Laws shall prevail in all geographical areas of the City of Cape Coral that have been placed under the jurisdiction of the CRA pursuant to Part III of Chapter 163 of the Florida Statutes.
3. The principal office of the CRA shall be the Office of the City Clerk of the City of Cape Coral, Florida. All books and records of the CRA shall be open to the public for inspection in accordance with the laws of the State of Florida.
4. In accordance with Section 163.356, Florida Statutes, the City Council has appointed a board of commissioners as the governing board of the CRA. Reference to the members of the CRA as a whole shall be "Board of Commissioners", "Commissioners", or "CRA". An individual member of the CRA shall be referred to as a "Commissioner".
5. The Board of Commissioners may create necessary committees, from time to time, as shall be necessary to carry out the functions, purposes and objectives of the Community Redevelopment Agency.

ARTICLE II

Meetings

1. Regular Meeting. The CRA shall hold a minimum of six (6) regular meetings per calendar year on a day and time to be designated by the CRA, such meetings to be held in the Chester Street Resource Center, located at 4816 Chester Street, unless a different place is specified by the CRA at least ten (10) days prior to a meeting.
2. Special Meetings. In addition to regularly scheduled meetings, special meetings of the CRA may be called for by call of the Chair of the CRA, or by call of any four (4) members. Notice of special meetings shall be sent to CRA members no less than twenty-four (24) hours prior to such meeting unless a waiver is signed by a majority of the CRA. The notice of such meeting shall specify its purpose.
3. Open Meetings. In accordance with the laws of the State of Florida, all business of the CRA shall be conducted at public meetings. No member of the CRA shall conduct or discuss

business of the CRA with another member at any formal or informal meeting except upon reasonable notice, considering the circumstances, to the public of such meeting.

4. Quorum. A majority of the members of the CRA shall constitute a quorum. When a quorum is present, the CRA may act by a vote of a majority of the Commissioners present, unless otherwise provided by law, or these By-Laws.
5. Adjourned Meetings. If any meeting cannot be organized because a quorum is not present, the members who are present may adjourn the meeting to a time certain, and notice of the new meeting time shall be given to each CRA member, unless waived.
6. Annual Organizational Meetings. The first regularly scheduled meeting in November of each year shall be the annual organizational meeting of the CRA. Pursuant to the provisions of Part III of Chapter 163 Florida Statutes, the Board shall recommend to City Council a Chair and Vice Chair to be appointed by the City Council of the City of Cape Coral.

ARTICLE III

Members

1. The Board of Commissioners of the Community Redevelopment Agency shall consist of not fewer than five nor more than nine commissioners appointed by the City Council of the City of Cape Coral.
2. The members of the Board of Commissioners of the CRA shall serve without compensation but shall be entitled to the actual and necessary expenses, including traveling expenses incurred in the discharge of their duties.

ARTICLE IV

Officer's Terms and Duties

1. Term. In accordance with Section 163.356(3)(c), the City Council of the City of Cape Coral shall designate a Chair and Vice Chair from among the Commissioners. The CRA may recommend to City Council a Chair and Vice Chair from among the Commissioners. The term of the Chair and Vice-Chair shall be one year.
2. Chair. The Chair shall preside at all meetings, shall execute all instruments in the name of the CRA, and shall perform all other duties as may be required by the CRA.
3. Vice-Chair. The Vice-Chair shall, in the absence, disqualification, or disability of the Chair, or at the Chair's discretion, exercise all of the functions of the Chair.
4. Secretary. The Secretary shall be the City Clerk of the City of Cape Coral, or a secretary in the City Clerk's office designated by the City Clerk. The Secretary shall be the custodian of all books and records of the CRA and shall keep the minutes of all meetings, shall send out all notices of meetings, and shall perform such other duties as may be designated by the CRA.

5. Treasurer. The Treasurer shall be the Director of Financial Services of the City of Cape Coral or the Director's designee. The Treasurer shall keep the financial records of the CRA's operating budget, shall keep full and accurate accounts of receipts and disbursements of the CRA, shall have custody of all operating funds of the CRA, shall render quarterly budget reports to the CRA, or more often if requested, shall assist the CRA in the preparation of a proposed budget, shall make and file all financial reports and statements necessary to be made and filed by the CRA and file such reports and statements with the Secretary of the CRA, and shall perform such other duties as may be required by the Board from time to time.

ARTICLE V

Employees

1. Executive Director. Subject to the prior approval of the City Council, the CRA may employ an Executive Director to administer its business and operations. With the consent of City Council, the City Manager may serve as the Executive Director should the CRA so desire. The Executive Director shall be the chief executive officer of the CRA. The Executive Director shall be responsible for carrying out the policies established by the CRA and shall have general supervision over, and be responsible for, the performance of the day-to-day operations of the CRA.
2. Employees. The staff support of the CRA may be provided, as needed, by the departments of the City of Cape Coral, and with the consent of City Council, boards, and agencies of the City of Cape Coral. The Executive Director may hire and set compensation for, necessary employees of the CRA, including contract employees, except as otherwise provided herein.
3. Other Personnel. The CRA may hire, retain, and engage such other consultants, professionals, experts, attorneys, and specialists as it deems necessary.

ARTICLE VI

Fiscal Management

1. Fiscal Year. The fiscal year of the CRA shall begin on October 1 of each year and shall end on September 30 of each year.
2. Budget. Prior to July 30 of each year, the CRA shall approve a recommended budget for the succeeding fiscal year and forward it to the City Council for adoption. City Council has the power to add, delete, amend, or modify the recommended budget so long as such action does not prevent the CRA from timely payment of any bonded indebtedness or contractual obligations lawfully incurred by the CRA.
3. Accounting Practices. In accordance with the laws of the State of Florida, the CRA shall comply with all regulations of the State Department of Banking and Finance regarding uniform accounting practices and procedures for units of local government.

4. Annual Report. The CRA shall file with the City Council and with the Auditor General on or before March 31 of each year, a report of its activities for the preceding calendar year, which report shall include a complete financial statement setting forth its assets, liabilities, income and operating expenses as of the end of such calendar year. At the time of filing the report, the CRA shall publish in a newspaper of general circulation in the community a notice to the effect that such report has been filed with the City Council and that the report is available for inspection during business hours in the Office of the City Clerk of the City of Cape Coral.
5. Audit. Within six months after the end of each fiscal year, the CRA shall cause to be prepared an audit of the accounts and records of the CRA in accordance with the rules of the State Department of Banking and Finance. Such audit shall be completed by an independent certified public accountant. Such audit may be accomplished in conjunction with the City of Cape Coral's annual audit, by the same certified public accountant. The audit report shall describe the amount and source of deposits into, and the amount and purpose of withdrawals from, the trust fund during such fiscal year and the amount of principal and interest paid during such year on any indebtedness to which increment revenues are pledged and the remaining amount of such indebtedness. The CRA shall provide, by registered mail, a copy of the audit report to each taxing authority contributing to the trust fund.
6. Cash Balance. Any cash balance in the trust fund shall be invested in accordance with the requirement of Florida Statutes.
7. Expenditures.
 - (a) No funds of the CRA shall be expended other than in accordance with the adopted CRA budget, any agreements for services that have been entered into between the City of Cape Coral, Florida, and the CRA, and the Community Redevelopment Act of 1969 as amended.
 - (b) All such expenditures shall be made only upon authorization by the Board or the Executive Director, when within the Executive Director's authority. An itemized expense set forth in the annual budget of the Agency shall be deemed to have been authorized by the Board.
 - (c) The Executive Director or the Executive Director's Designee shall have the authority to approve and execute all procurement-related purchase orders, contracts, contract amendments, contract renewals, and emergency purchases in the amount of \$5,000 or less. The Executive Director shall have the authority to execute all procurement-related purchase orders, contracts, contract amendments, contract renewals, and emergency purchases in excess of \$5,000 after approval by the CRA Board.
 - (d) The City of Cape Coral's purchasing and finance procedures may be utilized by the CRA as guidelines. The CRA Board shall be substituted in all respects for the City Council and the Executive Director of the CRA shall be substituted in all respects for the City Manager when said procedures are used by the CRA.

ARTICLE VII

Amendments


These By-Laws may be amended at any regular or special meeting by an affirmative vote of three members of the CRA Commissioners present at such meeting.

ARTICLE VIII

Execution of Documents

All documents executed by the CRA shall be executed by the Chair or Vice-Chair, with an attestation by the Secretary of the CRA.


Stacy Lomonaco, CRA Chair


Rebecca VanDeutekom, City Clerk
Secretary to the CRA

6/11/2018
Dated _____