

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

HOUSING AND EDUCATION ALLIANCE,

Petitioner,

vs.

Application No. 2005-078 PLP

FLORIDA HOUSING FINANCE CORP.,

*FHFC Case No.
2007-063VW*

Respondent.

RECEIVED
ADMINISTRATIVE
FINANCE CORPORATION

PETITION FOR VARIANCE AND WAIVER

HOUSING AND EDUCATION ALLIANCE ("HEA"), by and through its undersigned counsel, pursuant to Section 120.542, Florida Statutes, hereby petitions the FLORIDA HOUSING FINANCE CORPORATION ("Florida Housing") for a waiver or variance from Rule 67-38.0026(4)(a), Florida Administrative Code (2005) and the Predevelopment Loan Program ("PLP") Application, Section III(B), (2005), and in support of this request provides as follows:

1. HEA is a not-for-profit Florida community based organization in the business of developing much needed affordable housing units in Hillsborough County. HEA's principal place of business is 550 North Reo Street, Suite 300, Tampa, Florida 33609.

2. On or about July 27, 2005, HEA applied for financing from the PLP program through the 2005 PLP application process that Florida Housing administers pursuant to Chapter 67-38, Florida Administrative Code (see Attachment A). HEA's

application number is 2005-078 PLP (the "Application"). HEA applied for PLP funds to finance a portion of the costs to build a 36-unit home ownership development in Hillsborough County, Florida, known as El Capitan Crossing (the "Development").

3. On or about February 26, 2006, Florida Housing issued a PLP loan in the amount of \$500,000 to HEA, the first \$100,000 for pre-development activities, the remaining \$400,000 for land acquisition cost. The utilization of PLP funds for land acquisition required credit underwriting and FHFC Board approval. The credit underwriting analysis recommended that Florida Housing proceed with funding the \$400,000 acquisition cost with PLP funds.

4. Pursuant to Board approval a Land Use Restriction Agreement ("LURA") was executed on November 17, 2006 (see Attachment B). The LURA provided in Article III, under subheading, Compliance with Program Requirements, that "at least thirty-six (36), one hundred percent (100 %) of the completed homeownership units must be sold to persons or households with incomes that do not exceed eighty percent (80%) of the Area Median Income, as determined by HUD or its successor, with adjustments for family size as established by Florida Housing."

The Rules From which Waiver and Variance is Sought

5. Due to circumstances explained more fully in this Petition, HEA seeks to amend the percentage of units it must sell at 80 percent of the Area Median Income. In order to obtain this relief, HEA seeks a waiver or variance from provisions of Florida Housing's Rule and the 2005 PLP Application.

6. HEA seeks a variance from Rule 67-38.0026(4)(a), F.A.C., which provides as follows:

- (4) For Home Ownership Developments
 - (a) The Applicant must commit to sell 100 percent of the completed housing units to persons or households whose incomes do not exceed 80 percent of the area median income, as determined by HUD and adjusted by household size, for the metropolitan statistical area or county in which the individual homes are located.

7. HEA also seeks a waiver from Section III B of the 2005 PLP Application which requires that 100 percent of the units will be sold at 80 percent or less of Area Median Income.

8. HEA, for consistency purposes, must also be allowed to amend the current LURA to be consistent with this variance and waiver request.

Statutes Implemented by the Rules

9. Rule 67-38, F.A.C., implements, among other sections of the Florida Housing Finance Corporation Act (the "Act"), the statute that created the PLP. See §420.521-420.529, Florida Statutes. The Act is set forth in Sections 420.501 through 420.55 of the Florida Statutes and designates Florida Housing as the Administrator of the PLP program. As the Administrator, Florida Housing is responsible for making loans to eligible sponsors when it determines (a) a need for housing for the target population exists in the area within the application; and (b) federal, state or local public funds or

private funds are likely to be available to aid in site acquisition or support of the housing proposed in the application.

Petitioner Requests a Variance for the Following Reasons

10. HEA is seeking relief to reduce the minimum set-aside requirements that require 100 percent of the completed homeownership units to be sold to persons or households with incomes that do not exceed 80 percent of the Area Median Income. HEA is seeking to reduce the minimum set-aside to require that 50 percent of the completed homeownership units to be sold to households whose income does not exceed 80 percent of the Area Median Income and sell the remaining units to persons or households whose income does not exceed 120 percent of the Area Median Income. As indicated earlier, this request also requires an amendment to the LURA demonstrating this reduction. This request is consistent with Florida Housing's current policy on this subject. Indeed, the most recent draft PLP Rule (67-38.0026(7)) for 2007, consistent with the request, reduces the set-aside requirement to 50 percent. As stated in the most recent draft:

- (7) for home ownership in Developments:
 - (a) The Applicant must commit to sell a minimum of 50 percent of completed housing units to persons or households whose income does not exceed 80 percent of the area median income.

11. The El Capitan Development will offer an alternative to urban sprawl by providing a newly renovated residential neighborhood which is much needed in this area of Hillsborough County. The Development is designed to offer both immediate, mid-

range, and long-term benefits to the community. For example, there will be an immediate improvement of razed blight, immediate job opportunity, mid-term alleviation of housing demands, and long-term protection of property values by continued rehabilitation of neighboring existing homes. El Capitan Crossings is centrally located in the Town N Country area of Tampa. It is close to bus routes, schools, shopping centers, hospitals and commercial corridors. El Capitan is located within 4 miles of two inner city hospitals. Several large companies have their Florida headquarters in this area. This target area has experienced an increase of commercial real estate development thus minimizing the availability of land for housing development, pushing working families further and further out of the central commercial work centers to areas where housing is more affordable up to 20 miles outside Hillsborough County.

12. The initial financial projections for the Development were made in 2004. Since that time, the estimated budget has to be modified because of challenges that changed the site work estimated budget. Initially El Capitan was to consist of 36 two-story townhomes. However, to keep the costs down and to insure affordability, HEA has restructured the project making it 44 three-story townhomes. Present zoning already allows this increase and HEA is working with engineers and Hillsborough County to modify the site plan. Additionally, costs associated with site built construction and development have increased industry-wide. The increase in the number of units, together with changing the construction method from site built to modular construction has allowed us to sell to families under 80 percent of Area Median Income with little to no subsidy.

HEA cannot move forward with this Development pursuant to the 100 percent affordable housing constraints. HEA believes it can move forward with the current financing and still provide 50 percent of the low income housing under 80 percent of Area Median Income and the remaining 50 percent at 120 percent of AMI.

13. Section 120.542(2) provides: Variances shall be granted when the applicant demonstrates that application of the rule would create a substantial hardship or would violate principles of fairness. Substantial Hardship” is defined as a demonstrated economic, technological, legal or other type of hardship “to the applicant.” Subsequent to the initial budgeting, the project design faced significant alterations through no fault of HEA. With this increase in development costs, HEA was required to readjust its budget and was left with no alternative than to reconsider the number of available low-income units. Unless there is a modification to the number of units, HEA will not have the financial ability to meet the technical aspects of the site plan requirements.

Variance Will Serve the Underlying Purpose of the Statute

14. HEA believes that a variance will serve the purposes of the Statute which is implemented by the Rule. The Act (Section 420.501, et seq.) was passed in order to encourage private and public investment in persons of low income. The purpose of the PLP program is to provide for financial and technical assistant to local governments, housing authorities, and not-for-profit organizations who will provide for the sponsorship of housing for the target population. By granting this variance and permitting HEA to make the aforementioned changes, Florida Housing would recognize the goal of

increasing the supply of affordable housing through private investment in persons of low income.

15. The requested variance will not adversely impact the Development or Florida Housing, in fact it will insure payment in full of the PLP loan. Additionally, it will guarantee the delivery of affordable units in a location in which the need for affordable housing is great.

Type of Variance

16. The variance being sought is permanent in nature.

17. Should Florida Housing have questions or require any additional information, HEA will provide any additional information necessary for full consideration of the Petition.

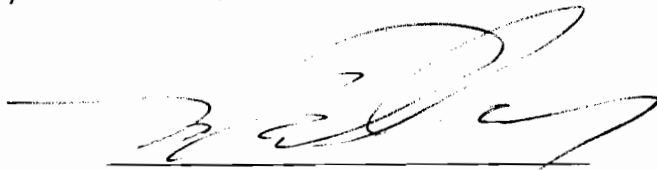
Action Requested

18. HEA requests the following:

(a) Grant the Petition and all the relief requested herein.

19. A copy of the Petition has been provided to the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, FL 32399-1300.

Respectfully submitted this 5th day of November, 2007.

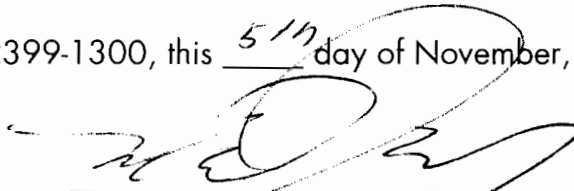


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Counsel for Petitioner, HEA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was served via U.S. Mail to the Joint Administrative Procedures Committee, The Holland Building, Room 120, Tallahassee, FL 32399-1300, this 5th day of November, 2007.



MICHAEL P. DONALDSON

PLP Application

I. Applicant Information:

A. Applicant Name¹: Housing and Education Alliance

Address²: 550 North Reo Street., Suite 300

City, County, State, Zip: Tampa, Florida 33609

Phone Number: (813) 261-5151 Fax: (813) 261-5153

E-mail: jgarcia@myhomemamerica.org Website: www.heacc.org or
www.myhomeamerica.org

Applicant type (Please check one):

Not-for-Profit or Community-Based Organization

A unit of Local Government

A Housing Authority, established by Chapter 421.04, F. S.

A Limited Partnership³

B. Limited Partnership: Name of **each** general partner: N/A

C. Corporation: Name of executive director: Sylvia A. Alvarez

D. Local Government or Housing Authority: Name of official, executive or board:

N/A

¹ If applying as Limited Partnership, Applicant Name must be that of the Limited Partnership.

² Due to express mailing limitations, please do not supply P.O. Box.

³ The general partner must be a community based or not for profit organization and own at least 51% of the interest in the Development.



E. Contact person for Applicant⁴: Jose M. Garcia

Address: 550 North Reo Street., Suite 300

City, County, State, Zip: Tampa, Florida

Phone Number: (813) 261-5151 Fax: (813) 261-5153

E-mail Address: jpgarcia@myhomeamerica.org

F. Federal Taxpayer Identification Number: 43-1963410

G. Year Not-For-Profit Organization was incorporated: February 2002

II. Certifications

A. Is the Applicant or general partner incorporated as a Not-For-Profit Organization pursuant to Chapter 617, Florida Statutes?

Yes

No

B. Is the Applicant or general partner a 501(c) (3) or 501(c) (4) Not-for-Profit organization?⁵

Yes

No

C. Do the Articles of Incorporation state that a purpose of the Not-For-Profit Organization is, in part, to foster affordable housing?

Yes

No

D. Is the not-for-profit an Affiliate of a for-profit corporation?

Yes

No

E. Does the not-for-profit organization have an ownership interest, directly or indirectly, in the Development?

Yes

No

If Yes, State interest in terms of percentage: 100%

⁴ List an official from the organization. Do not list a third party consultant's name.

⁵ As determined by the Internal Revenue Service which grants exemption from Federal Income Tax.

III. Development Information

A. Name of Development: El Capitan Crossings

Address: El Capitan Dr. Tampa Florida 33634
W/O EL Capistrano Dr. & S/O Hillsborough Ave.

Name of the city, town or village and county where development is located:
Town and Country

B. Development will provide: XX Homeownership Rental

Check below to indicate the proposed **MINIMUM** set-aside for the Development.

Rental: 60% of the units are set-aside for persons at 60% or less of area median income, as determined by HUD, with adjustments for family size.

Please provide the proposed number of units to be set-aside: N/A

Please provide the proposed percentage of units to be set-aside: N/A

OR

Home Ownership: XX 100% of the units will be sold to households at 80% or less of area median income, as determined by HUD, with adjustments for family size.

Please provide the proposed number of units to be set-aside: 36

Please provide the proposed percentage of units to be set-aside: 100%

C. Will the Development set-aside 40 % units for Farmworkers as defined in Chapter 420.503(18), F. S. Yes XX No

D. Estimated Total Number of Units: 36

E. Estimated Total Development Cost: \$5,262,146.00

F. Estimated PLP Request⁶: \$500,000.00

⁶ Amount should match total on PLP budget worksheet included as an attachment to this application.

VI. Applicant Certification and Loan Request

The Applicant certifies that the Application to the **Florida Housing Finance Corporation** (the "Corporation") for the Predevelopment Loan Program (PLP) loan in the amount of approximately \$500,000 is for the purpose of providing affordable housing units.

The Applicant certifies that the information in the Exhibits, Application, and Attachments, is true and complete to the best of my knowledge, information and belief.

The Applicant certifies that the proposed Development can be completed and operating within the development schedule and budget submitted to the Corporation.

The Applicant represents that if a PLP Loan is approved, as a result of this Application, the Applicant shall furnish promptly such other supporting information, documents, and fees as may be requested or required. In carrying out the predevelopment activities of the Development, the Applicant agree to comply with all applicable Federal and state laws regarding unlawful discrimination, and abide by all PLP Program rules and regulations.

The Applicant and all Financial Beneficiaries have read all applicable Corporation rules governing this Application and have read the Instructions for completing this Application and will abide by the applicable Florida Statutes and administrative rules, including, but not limited to, Rule Chapters 67-38, Florida Administrative Code.

By execution of this Application, the Applicant understands and agrees that the Corporation may conduct its own independent review and analysis of the documentation provided, and that any such review and analysis shall be made for the protection of the public and the Corporation. The Applicant further understand and agree that, for the purpose of determining and establishing the terms and conditions under which the PLP Application may be accepted or the PLP Loan may be made, the Corporation may request or require adjustment, changes or additions to the information provided (including Exhibits and Attachments) or in any documentation or materials now or later hereafter requested, or submitted, in connection with this Application or the Applicant.

The undersigned is authorized to bind all Financial Beneficiaries to this certification and warranty of truthfulness and completeness of the Application.

PLP Expenses

Developer Name: Housing and Education Alliance

Development Name: El Capitan Crossings

Activity	Vendor (if known)	Cost
Market and Feasibility Analysis	TBD	\$ 6,500.00
Rezoning	N/A	\$ -
Title Search	To be include in Prurchase	\$ -
Legal Fees	Roig & Associates	\$ 3,500.00
Boundary Survey	To be include in Purchase	\$ -
Administrative Expenses	Office Expenses	\$ 5,000.00
Consultant Fees	RCL Consulting	\$ 25,000.00
Credit Underwriting Fees	PLP	\$ 3,850.00
Good Faith Deposit	Bob O'Shaughnessy	\$ 5,000.00
Commitment Fees to Secure Financing	PLP	\$ 1,200.00
Biological and Environmental Assessments	H.T.Mai	\$ 2,500.00
Soil Tests	N/A	\$ -
Appraisal	TBD	\$ 1,500.00
Architectural/Engineering Fees	H.T.Mai	\$ 35,000.00
Other Fees (List Below):		
Cost of Land		\$ 400,000.00
Permitting		\$ 10,950.00
Total		\$ 500,000.00

General Notes:

- ▶ The total cost on this worksheet should match the total on your loan request statement
- ▶ This list may not include all eligible PLP costs for your development. Some common costs incurred are listed, but you may not have eligible costs for each item on this list. Please leave those activities for which you will not incur expenses blank.
- ▶ Please list other anticipated eligible PLP expenses on blank lines below "Other Fees"
- ▶ If you have contracted or received a quote from a vendor for an activity, please enter that in the proper location

Notes Pertaining to specific Activities listed above:

Legal Fees: Must be reasonable and incurred in conjunction with acquiring or permitting of property or amendment of PLP documents. Application preparation or legal research should not be included.

Administrative Expenses: Please see rule 67-38 for eligible costs to be included under administrative expenses. Staff salaries will not be allowed.

Consultant Fees: Only third party consultant expenses will be allowed.

Under the penalties of perjury, I declare and certify that I have read the foregoing and that the information is true correct and complete.

BY: Sylvia A. Alvarez
Signature

EXECUTIVE DIRECTOR
Title

SYLVIA A. ALVAREZ
Name (type or print)

HOUSING & EDUCATION ALLIANCE, INC.
Applicant (type or print)

7-27-05
Date

✓ Benchmark

**THIS INSTRUMENT PREPARED BY
AND AFTER RECORDING TO BE
RETURNED TO:**

Robert J. Pierce, Assistant General Counsel
Florida Housing Finance Corporation
City Centre Building
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

INSTRUMENT#: 2006548461, O BK 17180
PG 1744-1756 11/20/2006 at 01:09:36 PM,
DEPUTY CLERK: BKING Pat Frank, Clerk of
the Circuit Court Hillsborough County

**LAND USE RESTRICTION AGREEMENT
(HOMEOWNERSHIP)
(EL CAPITAN CROSSINGS/PLP LOAN 05-078)**

This **LAND USE RESTRICTION AGREEMENT** (this "Agreement") is made and entered as of November 17, 2006, between **HOUSING AND EDUCATION ALLIANCE REDEVELOPMENT TEAM II, LLC**, a Florida limited liability company, (the "Borrower"), and its successors and assigns, and the **FLORIDA HOUSING FINANCE CORPORATION**, a public corporation and a public body corporate and politic duly created and existing under the laws of the State of Florida ("Florida Housing").

RECITALS

A. All capitalized terms used but not defined in this Agreement shall have the respective meanings set forth in Article I hereof for all purposes of this Agreement;

B. Florida Housing has been created and organized pursuant to and in accordance with the provisions of the Florida Housing Finance Corporation Act, Chapter 420, Part V, Florida Statutes, as amended (the "Act"), for the purpose, among others, of financing the costs of residential developments that will provide decent, safe and sanitary housing for persons or families of very low, low, moderate or middle income in the State of Florida (the "State").

C. The Borrower has applied to Florida Housing for a Loan under the Predevelopment Loan Program ("PLP") governed by the Act, including specifically the Predevelopment Loan Program Act, Sections 420.521 - 420.529, Florida Statutes, as amended, and the rules of Florida

Housing codified at Florida Administrative Code, Rule Chapter 67-38, in effect as of February 3, 2005, (the "Rule"), in an amount not to exceed FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00), to be used by the Borrower for the purpose of providing predevelopment loan funds to finance certain predevelopment expenses in connection with the construction of a thirty-six (36) unit home ownership development on the real property located in Hillsborough County, Florida (the "County") and more particularly described on Exhibit "A" attached hereto (the "Land") to be known as **EL CAPITAN CROSSINGS** (collectively, the "Development").

D. The Development shall be occupied by Qualifying Persons and Households all as more particularly described herein.

E. The Borrower covenants and agrees that in connection with the sale of the home ownership units within the Development, it will comply, and will require any subsequent purchaser of the housing units within the Development to comply, with the terms of this Agreement, the Act and the Rule.

NOW, THEREFORE, in consideration of the mutual representations, covenants and agreements and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Florida Housing and the Borrower each in consideration of the other mutually represent, covenant and agree as follows:

ARTICLE I

Definitions and Interpretation

Section 1.1. Unless otherwise expressly provided herein or unless the context clearly requires otherwise, the following terms shall have the respective meanings set forth below for all purposes of this Agreement. In addition, the capitalized words and terms used herein which are not otherwise defined herein shall have the same meanings ascribed to them in the Act and the Rule.

"Act" means the Florida Housing Finance Corporation Act, Chapter 420, Part V, Florida Statutes, as amended, and more specifically referenced in the Predevelopment Loan Program Act, Sections 420.521-420.529, Florida Statutes.

"Borrower" means **HOUSING AND EDUCATION ALLIANCE REDEVELOPMENT TEAM II, LLC**, a Florida limited liability company.

"Environmental Indemnity" means that certain Environmental Indemnity of even date herewith, from the Borrower to Florida Housing, as the same may be amended from time to time.

"Loan" means the loan from Florida Housing as lender to the Borrower as borrower with respect to the Development to be made in accordance with the Notes and the Loan Agreement for the purpose of financing certain Predevelopment Expenses in connection with the Development.

"Loan Agreement" means that certain Loan Agreement dated February 28, 2006, originally executed by Housing and Education Alliance, Inc., a Florida not-for-profit corporation, ("HEA") as borrower, the obligations of which have been assumed by the Borrower by separate agreement of even date herewith, and Florida Housing relating to the Loan, as amended or supplemented from time to time.

"Loan Documents" means this Agreement, the Loan Agreement, the Notes, the Mortgage, the Environmental Indemnity, and all other documents executed by the Borrower or Florida Housing relating to the Loan.

"Minimum Set-Aside Requirement" means with respect to the Development, a minimum of thirty-six (36), one hundred percent (100%), of the completed homeownership units must be sold to persons whose income does not exceed eighty percent (80%) of the median income for the area, as determined by the United States Department of Housing and Urban Development ("HUD"), with adjustments for family size as established by Florida Housing.

"Notes" mean collectively, that certain Non-Site Acquisition Promissory Note in the amount of \$100,000.00 originally executed by HEA, the obligations of which have been assumed by the Borrower by separate agreement of even date herewith, at Loan closing in favor of Florida Housing, evidencing the amount of Non-Site Acquisition Funds available to be disbursed to the Borrower pursuant to the Loan Agreement, that certain Site Acquisition Promissory Note in the amount of \$400,000.00 to be executed by the Borrower in favor of Florida Housing upon the disbursement of Site Acquisition Funds for the purchase of the Land pursuant to the Loan Agreement, and that certain Consolidated and Restated Promissory Note in the amount of \$500,000.00 representing the consolidation of the indebtedness evidenced by the Non-Site Acquisition Promissory Note and the Site Acquisition Promissory Note, which notes shall be secured by the Mortgage, as each may be, from time to time, amended, restated, or modified. The aggregate principal amount of the Notes shall not exceed \$500,000.00.

"Qualifying Persons or Households" means one or more natural persons or a family, whose total annual anticipated gross income for all adult persons, excluding students, satisfies the income limitations of the Minimum Set-Aside Requirements with respect to the Homeownership Units.

"Rule" means Rule Chapter 67-38, Florida Administrative Code in effect as of February 3, 2005.

"State" means the State of Florida.

"Student" means any person not living with that person's parent or guardian who is eligible to be claimed by that person's parent or guardian as a dependent under the federal income tax code and who is enrolled on at least a half-time basis in a secondary school, vocational-technical center, community college, college or university. The term does not include a person participating in an educational or training program approved by Florida Housing.

"Term of this Agreement" means the term determined pursuant to Article VII hereof.

ARTICLE II

Covenants and Restrictions on Use of the Development

Section 2.1. Florida Housing and the Borrower hereby declare their understanding and intent that, during the Term of this Agreement, the Development shall meet or exceed the Minimum Set-Aside Requirement and the other limitations set forth herein. To that end, the Borrower hereby represents, covenants and agrees as follows:

(a) that the Borrower shall not discriminate on the basis of race, religion, color, age, sex, marital status, familial status, disability or national origin in the sale of homeownership units within the Development;

(b) that during the Term of this Agreement (i) the Development shall be occupied on a continuous basis by members of the general public and (ii) the Borrower shall not give preference in selling homeownership units in the Development to any particular class or group of persons, other than Qualifying Persons or Households as provided herein;

(c) that it will immediately withdraw from circulation any advertisement determined by Florida Housing to violate or be inconsistent with its policies, with respect to promoting housing for persons and families of low income, and consents to the remedy of specific performance;

Section 2.2. That the Development is being constructed for the purpose of providing affordable housing, and the Borrower, its successors or assigns, shall own, and operate the Development as single family homeownership housing pursuant to the terms set forth herein.

Section 2.3. That under this Agreement, the homeownership units within the Development shall be sold to Qualifying Persons or Households so as to meet or exceed the Minimum Set-Aside Requirement.

Section 2.4. In order to satisfy the requirements of the Act and the Rule, the Borrower hereby represents, covenants and agrees that, during the Term of this Agreement:

(a) The Borrower will, at all times, assure compliance of the Development with the provisions of this Agreement and the Rule.

(b) The Borrower shall obtain and maintain on file executed Income Certifications from each person or household prior to the sale of any homeownership unit within the Development in the form and containing such information as may be required by Florida Housing. Photocopies of each such Income Certification and such program report forms as may be required by Florida Housing, shall be submitted to Florida Housing or its Compliance Monitor (as defined in the Loan Agreement) as often as necessary, in the opinion of Florida Housing, to confirm the Borrower's compliance with the provisions of this Agreement, the Act and the Rule; and

(c) The Borrower shall maintain complete and accurate records pertaining to the homeownership units sold to Qualifying Persons or Households, and permit any duly authorized representative of Florida Housing or its Compliance Monitor to inspect the books and records of the Borrower pertaining to the income and the Income Certifications of those Qualifying Persons purchasing homeownership units in the Development upon reasonable notice and at reasonable times.

(d) The Borrower shall notify Florida Housing prior to the initial sale of any homeownership unit within the Development.

ARTICLE III

Compliance with Program Requirements

In order to comply with the Act and Florida Housing's rules and regulations thereunder, the Borrower hereby covenants and agrees that, during the Term of this Agreement:

Section 3.1. The Development shall include thirty-six (36) single-family homeownership units.

Section 3.2. The homeownership units in the Development shall be set aside for Qualifying Persons and Households who satisfy the following limitations:

(a) At least thirty-six (36), one hundred percent (100%), of the completed homeownership units must be sold to persons or households with incomes that do not exceed eighty percent (80%) of the area median income, as determined by HUD or its successor, with adjustments for family size as established by Florida Housing.

Section 3.3. The Borrower must keep Florida Housing's compliance staff apprised of the progress of completion of construction of the Development and advised as to the expected opening date of the Development.

Section 3.4. The Borrower and its successors in interest shall at all times operate the Development in conformity with all statutes, rules and regulations of the State and the United States which may be applicable to the Development.

ARTICLE IV

Indemnification

The Borrower hereby covenants and agrees that it shall indemnify and hold harmless Florida Housing and its directors, officials, employees and agents from and against (i) any and all claims arising from any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Loan Documents or the Development and (ii) all reasonable costs, counsel fees, expenses or liabilities incurred in connection with any such claim or proceeding brought thereon. In the event that any action or proceeding is brought against Florida Housing, or any of its directors, officials, employees, or agents with respect to which indemnity may be sought hereunder, the Borrower, upon written notice from the indemnified party, shall assume the investigation and defense thereof, including the employment of counsel and the payment of all expenses. The indemnified party shall have the right to participate in the investigation and defense thereof and may employ separate counsel either with the approval and consent of the Borrower, which consent shall not be unreasonably withheld, or in the event the indemnified party reasonably determines that a conflict of interest exists between such party and the Borrower in connection therewith. In either of such events the Borrower shall pay the reasonable fees and expenses of such separate counsel.

ARTICLE V

Reliance

In performing its duties hereunder, Florida Housing may rely upon statements and certificates of the Borrower, and persons believed to be genuine and to have been executed by the proper person or persons, and upon audits of the books and records of the Borrower pertaining to the Development. In addition, Florida Housing may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection with respect to any action taken or suffered by Florida Housing in good faith and in conformity with the opinion of such counsel. The Borrower may rely upon certificates of Qualifying Persons or Households reasonably believed to be genuine and to have been executed by the proper person or persons.

ARTICLE VI

Sale, Transfer or Refinancing of Development

Except with the approval of Florida Housing and satisfaction of the conditions in the Rule, the Loan as to both principal and interest shall not be assumable upon sale, transfer or refinancing of the Development.

ARTICLE VII

Term/Effective Date

This Agreement shall become effective on the date of completion of the construction of the Development and shall remain in effect until the initial sale of each homeownership unit within the Development to a Qualifying Person or Household pursuant to the Rule. If the Development obtains construction or permanent financing from other Florida Housing programs, this Agreement shall remain in full force and effect for a period equal to the compliance period committed to by the Borrower under the particular Florida Housing program providing financing for the Development.

ARTICLE VIII

Damage, Destruction or Condemnation of the Development

Subject to the rights of any superior mortgage lienholder, in the event that the Development or any part thereof is damaged or destroyed or title to the Development, or any part thereof, is taken by any governmental body through the exercise or the threat of the exercise of the power of eminent domain, the Borrower shall deposit with Florida Housing, or with the holder of any mortgage on the Development, any insurance proceeds or any condemnation award, and shall promptly commence to rebuild, replace, repair or restore the Development in such manner as is consistent with the Loan Documents. Florida Housing shall make any such insurance proceeds or condemnation award moneys available to provide funds for such restoration work. In the event that the Borrower fails to commence or to complete the rebuilding, repair, replacement or restoration of the Development after notice from Florida Housing, Florida Housing shall have the right, in addition to any other remedies granted in the Loan Documents or at law or in equity, to repair, restore, rebuild or replace the Development so as to prevent the occurrence of a default hereunder.

ARTICLE IX

Enforcement

If the Borrower defaults in the performance of its obligations under this Agreement or breaches any covenant, agreement or warranty of the Borrower set forth in this Agreement, and if such default remains uncured for a period of thirty (30) days after notice thereof shall have been given by Florida Housing to the Borrower (or for an extended period approved by Florida Housing if such default stated in such notice can be corrected, but not within such thirty (30) day period, and if the Borrower commences such correction within such thirty (30) day period, and thereafter diligently pursues the same to completion within such extended period), then Florida Housing may

terminate all rights of the Borrower under this Agreement and may take any other action at law or in equity or otherwise, whether for specific performance of any covenant in this Agreement or such other remedy as may be deemed most effectual by Florida Housing to enforce the obligations of the Borrower with respect to the Development.

Notwithstanding any of the foregoing, Florida Housing will have the right to seek specific performance of any of the covenants and requirements of this Agreement concerning the construction and operation of the Development.

ARTICLE X

Recording and Filing; Covenants to Run with the Land

Section 10.1. Upon execution and delivery by the parties hereto, the Borrower shall cause this Agreement and all amendments and supplements hereto to be recorded and filed in the official public records of the County and in such manner and in such other places as Florida Housing may reasonably request, and shall pay all fees and charges incurred in connection therewith.

Section 10.2. This Agreement and the covenants contained herein shall run with the Land and shall bind, and the benefits shall inure to, respectively, the Borrower and Florida Housing and their respective successors and assigns during the Term of this Agreement.

ARTICLE XI

Subordination in the Event of Foreclosure

In the event of a foreclosure and sale of the Development or any part thereof or receipt of a deed in lieu of foreclosure pursuant to a default under any superior mortgage lien the use restrictions contained in this Agreement shall be null and void and of no further force and effect. If a related party to the Borrower should purchase the Development following a foreclosure or a deed in lieu of foreclosure, the use restrictions shall be reinstated as of the date of transfer to any such related party.

ARTICLE XII

Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State with respect to both substantive rights and with respect to procedures and remedies.

ARTICLE XIII

Notice and Effect

ARTICLE XIV

Miscellaneous

Section 14.1. Unless the context clearly requires otherwise, words of the masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa. This Agreement and all the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

Section 14.2. The terms and phrases used in the recitals of this Agreement have been included for convenience of reference only and the meaning, construction and interpretation of all such terms and phrases for purposes of this Agreement shall be determined by references to Article I of this Agreement. The titles and headings of the sections of this Agreement have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof and shall never be considered or give any effect in construing this Agreement or any provision hereof or in ascertaining intent, if any questions of intent shall arise.

Section 14.3. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions shall not in any way be affected or impaired.

Section 14.4. This Agreement may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument and each of which shall be deemed to be an original.

[SIGNATURE PAGE TO FOLLOW]

**SIGNATURE PAGE FOR
LAND USE RESTRICTION AGREEMENT
(HOMEOWNERSHIP)
(EL CAPITAN CROSSINGS/PLP LOAN 05-078)**

IN WITNESS WHEREOF, Florida Housing and the Borrower have caused this Agreement to be executed and delivered on their behalf by their duly authorized representatives as of the day and year first set forth above.

WITNESSES:

**HOUSING AND EDUCATION
ALLIANCE REDEVELOPMENT TEAM
II, LLC, a Florida limited liability company**

By: [Signature]
Name: Sandra Fernandez Lopez

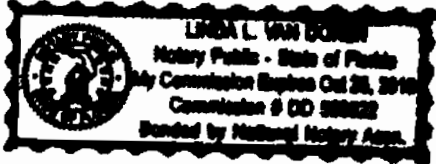
By: [Signature]
Name: Sylvia A. Alvarez
Title: Manager and President

By: [Signature]
Name: Linda L. VanDoren

STATE OF FLORIDA
COUNTY OF WALTON

The foregoing instrument was acknowledged before me this 6th day of November, 2006, by Sylvia A. Alvarez, as Manager and President of HOUSING AND EDUCATION ALLIANCE REDEVELOPMENT TEAM II, LLC, a Florida limited liability company, on behalf of said company. Such person is personally known to me or has produced a valid driver's license as identification.

[Signature]
NOTARY PUBLIC-STATE OF FLORIDA
Print Name: Linda L. VanDoren
Commission No.: DP 569322
Commission Expires: 10-26-2010



**SIGNATURE PAGE FOR
LAND USE RESTRICTION AGREEMENT
(HOMEOWNERSHIP)
(EL CAPITAN CROSSINGS/PLP LOAN 05-078)**

IN WITNESS WHEREOF, Florida Housing and the Borrower have caused this Agreement to be executed and delivered on their behalf by their duly authorized representatives as of the day and year first set forth above.

WITNESSES:

**FLORIDA HOUSING FINANCE
CORPORATION**

By: Sheila A. Freaney
Name: Sheila A. Freaney

By: [Signature]
Name: Stephen P. Auger
Title: Executive Director

By: Sherry M. Green
Name: Sherry M. Green

[CORPORATE SEAL]

STATE OF FLORIDA
COUNTY OF LEON

The foregoing instrument was acknowledged before me this 16th day of November, 2006, by Stephen P. Auger, as Executive Director of the FLORIDA HOUSING FINANCE CORPORATION, a public corporation and a public body corporate and politic duly created and existing under the laws of the State of Florida, on behalf of Florida Housing. Such person is personally known to me or has produced a valid driver's license as identification.



Sherry M. Green
Notary Public, State of Florida
Print Name: Sherry M. Green
Commission No. DD263377
Commission Expires: 12-15-07

EXHIBIT "A"

**LEGAL DESCRIPTION
(EL CAPITAN CROSSINGS/PLP LOAN 05-078)**

Lots 5 and 6, SWEETWATER FARMS, according to the plat thereof, recorded in Plat Book 3, Page 87, Public Records of Hillsborough County, Florida. Less that portion platted as Golfwood Estates Subdivision, Unit No. 12, Plat Book 43, Page 61. Public Records of Hillsborough County, Florida.