

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: Cypress Trace Associates, Ltd.
Cross Keys Associates, Ltd.
Bridgewater Place Associates, Ltd.
Villa Esperanza Associates, Ltd.
Captiva Club Associates, Ltd.
San Marco Associates, Ltd.
Bernwood Trace Associates, Ltd.
Crossings at University Associates, Ltd.

FHFC Case No.: 2016-038VW

**ORDER GRANTING WAIVER OF RULES 67-21.027(1)
AND 67-21.031(2), FLORIDA ADMINISTRATIVE CODE**

THIS CAUSE came for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on September 16, 2016, pursuant to a “Petition for Waiver of Rule 67-21.027(1) and Rule 67-21.031(2) to Permit Petitioners to Submit Qualified Contract Packages or, in the Alternative, to Modify Unit Affordability Set-Asides upon the Expiration of the Extended Use Period” (the “Petition”). Florida Housing Finance Corporation (“Florida Housing”) received the Petition on August 30, 2016, from the entities set forth above (“Petitioners”). Notice of the Petition was published in Volume 42, Number 171, of the Florida Administrative Register. Florida Housing received no comments regarding the Petition. After careful review of the record and being otherwise fully advised in the premises, the Board of Directors (the “Board”) of Florida Housing hereby finds:

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

 /DATE: 9-19-16

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.

2. This Order pertains to the following Developments, each operated by the corresponding entities listed above with the Extended Use Periods as set forth below, respectively:

Cypress Trace 1998-529C	31 years
Cross Keys Phase II 1998-513C	45 years
Bridgewater Place 1999-509C	40 years
Villa Esperanza 1999-511C	50 years
Captiva Club 2002-532C	50 years
San Marco 2001-532C	50 years
Bernwood Trace 1999-520C	50 years
Crossings at University 1999-517C	50 years

3. Rule 67-21.027(2), Fla. Admin. Code, provides, in pertinent part:

(1) [E]ach Housing Credit Development shall comply with any additional Housing Credit Set-Aside chosen by the Applicant in the Application.

4. Rule 67.21.031(2), Fla. Admin. Code further provides, in pertinent part:

(2) After the fourteenth year of the Compliance Period, unless otherwise obligated under the Extended Use Agreement, or a Land Use Restriction Agreement under another Corporation program, and provided the right to request a qualified contract for the Development was not waived in exchange for or connection with the award of Housing Credits, the owner of a Development may submit a qualified contract request to the Corporation.

5. Petitioners originally committed in their Applications and subsequent Extended Use Agreements to set-aside units for a minimum of 30 years, which under the above Rules, prevents Petitioners from requesting a Qualified Contract at this

time. These commitments also mandate an affordability period beyond that which would have been necessary to submit a legally sufficient, non-competitive Application for 4% tax credits, ranging from 31 to 50 years as set forth above.

6. Under Section 120.542(2), Fla. Stat., and Chapter 28-104, Fla. Admin. Code, Florida Housing has the authority to grant waivers to its rule requirements when strict application of these rules would lead to unreasonable, unfair, and unintended consequences in particular instances. Section 120.542(2) provides in pertinent part:

Variations and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness.

The principles of fairness are violated when literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

7. Petitioners now seek a waiver of these Rules, as they existed for each of the eight Developments at the time of Application, to allow them to begin the Qualified Contract process via submission of Qualified Contract Packages (QCPs) to Florida Housing, or in the alternative, to curtail the Extended Use Period for each Development to 30 years, which is more typical for non-competitive tax credit allocations.

8. Petitioners have also proposed to retain the affordable status of all eight Developments whether the individual Developments enter into the QCP process (and are not then sold) or whether they do not enter the process, but are held for the duration of the 30 year amended Extended Use Period. Specifically, for six of the Developments, Petitioners propose to retain 10% of the units not disposed of in the QCP process for tenants earning at or below 40% Area Median Income (AMI), and 90% of said units for tenants earning at or below 80% of AMI. The Board finds this proposal acceptable, as amended by and subject to the conditions expressed below.

9. The remaining two Developments, Bernwood Trace and San Marco, include Extremely Low Income (ELI) set-aside units. For these Developments Petitioners propose the following set-asides:

Bernwood Trace:

- a) 65 ELI units retained until ELI restrictions expire, 80% AMI thereafter;
- b) 34 units (10%) at 40% AMI; and,
- c) 241 units (80%) at 80% AMI.

San Marco:

- a) 28 ELI units retained until ELI restrictions expire, 80% AMI thereafter;
- b) 26 market-rate units, which will remain so;
- c) 26 units at 40% AMI; and,
- d) 180 units at 80% AMI.

The Board also finds this proposal acceptable, as amended by and subject to the conditions below.

10. The Board recognizes that while these Developments were funded under various processes between 14 and 18 years ago, Florida Housing's current bond funding Application process is non-competitive.

11. Given the above and age of these Developments, the Board finds that granting the requested waiver would not have any impact on other participants in funding programs administered by Florida Housing, nor would it have a detrimental impact on Florida Housing, its operations or its statutory mission.

12. The Board also finds that not granting the waiver would violate the fundamental principles of fairness, and subject Petitioners to unnecessary and substantial financial hardship resulting in deferred or delayed maintenance, renovations and repairs. Petitioner has also demonstrated that the purpose of the underlying statute, which is to "encourage development of low-income housing in the state" (§420.5099, Fla. Stat.), would still be achieved if the waiver is granted.

IT IS THEREFORE ORDERED:

Petitioners' request for waiver of Rules 67-21.027(1) and Rule 67-21.031(2), Fla. Admin. Code, is hereby **GRANTED** to permit them to begin the Qualified Contract process via submission of Qualified Contract Packages (QCPs) to Florida Housing, or in the alternative, to curtail the Extended Use Period for each Development to 30

years, under the conditions set forth in paragraphs 8 and 9 above, as amended by the following conditions:

- a) Petitioners shall establish a set-aside of 15% of the units of each of the eight Developments described above for ELI tenants per the Area Median Incomes set forth in RFA 2016-109, pp. 112-113 (attached hereto as Exhibit A) for the extent of the amended 30-year Extended Use Periods; and,
- b) Petitioners shall enter into Amended Extended Use Agreements, or other amended documents as necessary, with Florida Housing to continue to maintain the Developments as affordable as described above for the extent of the amended, 30-year Extended Use Periods.

DONE and ORDERED this 16th day of September, 2016.

Florida Housing Finance Corporation

By: _____


Chairperson

Copies furnished to:

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Joint Administrative Procedures Committee
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120 Holland Building
Tallahassee, Florida 32399-1300

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTIONS 120.542(8), 120.569, AND 120.57, FLORIDA STATUTES. SUCH PROCEEDINGS ARE COMMENCED PURSUANT TO CHAPTER 67-52, FLORIDA ADMINISTRATIVE CODE, BY FILING AN ORIGINAL AND ONE (1) COPY OF A PETITION WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329.

6. Extremely Low Income (ELI):

The following chart sets out the ELI Area Median Income (AMI) for each County and the maximum SAIL ELI Loan gap funding amounts per eligible ELI Set-Aside unit. If the Unit Mix stated by the Applicant at question 5.h. of Exhibit A is adjusted during the credit underwriting process, the SAIL ELI Loan gap funding amount may be decreased, but under no circumstances shall it be increased.

ELI Loan Amounts Per Bedroom Count for each County.

County	2016 ELI AMI	0 & 1 Bedroom Units	2 Bedroom Units	3 & Higher Bedroom Units
Alachua	35%	\$54,500	\$63,900	\$72,000
Baker	35%	\$54,300	\$63,500	\$71,600
Bay	40%	\$39,600	\$46,300	\$52,300
Bradford	45%	\$27,300	\$32,100	\$36,300
Brevard	40%	\$42,300	\$49,500	\$55,800
Broward	30%	\$78,000	\$91,500	\$103,200
Calhoun	50%	\$26,200	\$30,600	\$34,500
Charlotte	40%	\$39,800	\$46,700	\$52,700
Citrus	45%	\$27,300	\$32,100	\$36,100
Clay	33%	\$62,900	\$73,800	\$83,100
Collier	33%	\$63,700	\$74,700	\$84,200
Columbia	45%	\$27,000	\$31,600	\$35,500
DeSoto	50%	\$16,300	\$19,000	\$21,500
Dixie	50%	\$16,300	\$19,000	\$21,500
Duval	33%	\$62,900	\$73,800	\$83,100
Escambia	40%	\$42,800	\$50,000	\$56,500
Flagler	40%	\$38,600	\$45,400	\$51,200
Franklin	45%	\$27,000	\$31,600	\$35,500
Gadsden	33%	\$62,900	\$73,900	\$83,500
Gilchrist	35%	\$54,500	\$63,900	\$72,000
Glades	50%	\$16,300	\$19,000	\$21,500
Gulf	50%	\$16,400	\$19,200	\$21,700
Hamilton	45%	\$26,200	\$30,600	\$34,500
Hardee	50%	\$16,300	\$19,000	\$21,500
Hendry	50%	\$16,300	\$19,000	\$21,500
Hernando	40%	\$42,400	\$49,700	\$56,100
Highlands	50%	\$16,300	\$19,000	\$21,500
Hillsborough	40%	\$42,400	\$49,700	\$56,100
Holmes	45%	\$25,200	\$29,700	\$33,400
Indian River	40%	\$39,600	\$46,300	\$52,300
Jackson	45%	\$28,100	\$32,900	\$37,000
Jefferson	33%	\$62,900	\$73,900	\$83,500
Lafayette	40%	\$38,600	\$45,400	\$51,200
Lake	40%	\$41,900	\$49,100	\$55,400
Lee	40%	\$40,500	\$47,400	\$53,400
Leon	33%	\$62,900	\$73,900	\$83,500



ELI Loan Amounts Per Bedroom Count for each County.

County	2016 ELI AMI	0 & 1 Bedroom Units	2 Bedroom Units	3 & Higher Bedroom Units
Levy	50%	\$16,300	\$19,000	\$21,500
Liberty	40%	\$38,600	\$45,400	\$51,000
Madison	50%	\$16,300	\$19,000	\$21,500
Manatee	35%	\$55,600	\$65,200	\$73,500
Marion	45%	\$25,400	\$30,100	\$33,900
Martin	40%	\$40,300	\$47,200	\$53,400
Miami-Dade	30%	\$76,300	\$89,400	\$101,000
Monroe	25%	\$107,800	\$126,600	\$142,500
Nassau	33%	\$62,900	\$73,800	\$83,100
Okaloosa	33%	\$61,800	\$72,500	\$81,500
Okeechobee	50%	\$16,300	\$19,000	\$21,500
Orange	40%	\$41,900	\$49,100	\$55,400
Osceola	40%	\$41,900	\$49,100	\$55,400
Palm Beach	33%	\$65,000	\$76,200	\$86,000
Pasco	40%	\$42,400	\$49,700	\$56,100
Pinellas	40%	\$42,400	\$49,700	\$56,100
Polk	40%	\$37,700	\$44,100	\$49,800
Putnam	50%	\$16,300	\$19,000	\$21,500
Saint Johns	33%	\$62,900	\$73,800	\$83,100
Saint Lucie	40%	\$40,300	\$47,200	\$53,400
Santa Rosa	40%	\$42,800	\$50,000	\$56,500
Sarasota	35%	\$55,600	\$65,200	\$73,500
Seminole	40%	\$41,900	\$49,100	\$55,400
Sumter	40%	\$42,600	\$50,000	\$56,300
Suwannee	50%	\$16,300	\$19,000	\$21,500
Taylor	50%	\$16,300	\$19,000	\$21,500
Union	40%	\$37,900	\$44,400	\$50,100
Volusia	45%	\$28,100	\$33,100	\$37,200
Wakulla	35%	\$55,800	\$65,200	\$73,600
Walton	40%	\$41,500	\$48,700	\$55,100
Washington	50%	\$16,600	\$19,400	\$22,100