

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

BRITTANY BAY PARTNERS III, LTD.,
2002-715H,

Petitioner,

v.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

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FLORIDA HOUSING
FINANCE CORPORATION

PETITION FOR FORMAL ADMINISTRATIVE PROCEEDINGS

Pursuant to Sections 120.569 and 120.57(1), Fla. Stat., and Rules 28-106.201 and 67-48.005(1), Fla. Admin. Code, Petitioner Brittany Bay Partners III, Ltd. ("Brittany Bay") hereby requests a formal administrative proceeding on Florida Housing Finance Corporation's scoring of its application for a HOME Rental Program loan ("HOME loan"), Application No. 2002-715H, in the Year 2002 Universal Application cycle. In support of this petition, Brittany Bay states as follows:

Parties

1. The agency affected is the Florida Housing Finance Corporation ("FHFC"), 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329. FHFC has assigned Application No. 2002-715H to this matter.

2. The Petitioner is Brittany Bay Partners III, Ltd., whose address is 1551 Sandspur Road, Maitland, Florida 32751. For purposes of this proceeding, Brittany Bay's address is that of its undersigned attorney M. Christopher Bryant, Oertel, Hoffman, Fernandez & Cole, P.A., 301 S. Bronough Street, 5th Floor, Tallahassee, Florida 32301 (P. O. Box 1110, Tallahassee, Florida 32302-1110), Telephone: (850) 521-0700, Facsimile: (850) 521-0720.

Substantial Interests Affected

3. Brittany Bay has proposed the construction of an 80-unit multi-family housing development in Collier County, Florida. Brittany Bay has proposed to set aside all 80 of the units in the development for low income residents. Brittany Bay has estimated its total development costs for the development to be \$8,575,002.60. Brittany Bay applied in FHFC's 2002 Universal Application Cycle for a HOME loan in the amount of \$6.25 million.

4. If Brittany Bay does not receive the requested HOME loan, it will not be able to construct the development. As explained more fully in this Petition, its substantial interests are therefore affected by FHFC's scoring of its application in this competitive application process.

Background

5. FHFC allocates several forms of financing to assist private sector developers in the development of affordable housing. One of the programs administered by FHFC is the HOME rental program, a federal program which makes funds available to FHFC to loan to private developers for the development of affordable housing. HOME loans provide more favorable financial terms than would be available through conventional financing sources. In exchange for the receipt of such financing from FHFC, applicants enter into long-term agreements to set aside all or a portion of the residential units within such developments to low income residents, and depending on the requirements of the particular program, may also be required to limit the rents charged to amounts affordable to low income residents.

6. HOME loan applications were combined with other forms of financing offered through FHFC into a single "Universal Application Cycle" for 2002. Unlike the other forms of financing available through the Universal Application Cycle (notably, low income housing tax credits, state

apartment incentive loans, and multi-family mortgage revenue bonds), HOME applicants apply on a separate application form than applicants for other types of financing; the application form and instructions for the application form are incorporated by reference into FHFC's rules. The HOME loan program is governed by Rule Chapter 67-48, Fla. Admin. Code, portions of which rule chapter also govern the State Apartment Incentive Loan program and the Low Income Housing Tax Credit Program.

7. HOME applicants are scored on the various components of their application, such as development features and amenities, greater number of units set aside, resident programs, and "match contributions" to affordable housing by the local government within which the proposed development will be located. Generally, for applicants located in certain counties in Florida, as designated by FHFC's application form as "non-entitlement areas," the maximum score that can be obtained for a HOME applicant is 86 points. As shown on page 4 of the FHFC HOME application form (copy attached as Exhibit A), Collier County is designated as such a "non-entitlement area."

8. Generally, upon the completion of the scoring of HOME applications, the applicants are rank ordered according to score. Applications by non-profit organizations known as Community Housing Development Organizations ("CHDO's") are given preference over other applicants. Of applicants which are not CHDO's, those applicants who have not proposed, as a component of their financing, tax exempt bond financing from a local housing finance authority are next in line for preference. (Brittany Bay is such an applicant, who did not propose local bond financing.) The last group of applicants to receive priority are HOME applicants who do propose to use tax exempt bond financing from a local housing finance authority as a portion of their financing. If, for example, two applicants receive an identical numerical score, one a CHDO and the other not, after funding all

higher scoring applicants, there are insufficient funds to fully fund both requests, the CHDO applicant would be fully funded, with any remaining funding made available to the non-CHDO applicant.

9. According to “final stage” scoring and rankings, which were released by FHFC on or about July 22, 2002 (copy attached as Exhibit B), Brittany Bay is the highest ranked non-CHDO applicant without local bond financing, with a score of 81.55 points. Currently, there are four CHDO applicants with a score higher than 81.55 points, as follows:

Woodlawn Terrace, 718H	86.00 points	–	\$4,555,000 HOME request
Azalea Apartments, 720H	86.00 points	–	\$2,325,000 HOME request
Whispering Pines, 722H	86.00 points	–	\$5,996,000 HOME request
Magnolia Village, 706H	82.65 points	–	\$3,000,000 HOME request

In addition, there are two other CHDO applicants with scores higher than 81.00 (Cypress Pointe, No. 703H, at 81.50, seeking a \$4.1 million HOME loan; and Auburn Woods, No. 704H, at 81.05, seeking a \$4.3 million HOME loan); and there is one non-CHDO applicant without local bond financing with a current score of 81.00 (Pinnacle Grove, No 705H, seeking a \$3.0 million HOME loan). Further, there are three CHDO applicants whose scores surpass Brittany Bay’s but who have been determined at this time not to have passed “threshold” responsiveness requirements, and thus are currently considered to be rejected applications:

Villa Seton, #701H	86.00 points	–	\$804,934 HOME request
Magic Lake Villas, #707H	84.00 points	–	\$5.0 million HOME request
Shady Lane, #719H	83.55 points	–	\$3.65 million HOME request

10. FHFC had published in the *Florida Administrative Weekly*, on January 18, 2002, at Volume 28, Number 3, page 247 (copy attached as Exhibit C) a Notice of Funding Availability (“NOFA”) for the HOME Program stating that a total of \$21,320,100 would be available to loan to

HOME applicants. Based on the “final stage” scores released by FHFC on July 22, those applicants currently meeting threshold with higher scores and higher priority (i.e., CHDO’s) than Brittany Bay have applied for a total of \$15.876 million. If no applicant’s score was to increase, and no currently rejected applications deemed accepted, as a result of administrative hearings, Brittany Bay would be the fifth ranked applicant overall, and would receive only \$5,444,100 of its \$6.25 million HOME loan request. However, if any one or more of three applicants whose scores are only slightly below Brittany Bay’s are successful in gaining points through administrative hearings, or if any one or more of three currently rejected applicants with scores higher than Brittany Bay’s are successful in having their rejections overturned, then Brittany Bay stands to receive even less of the amount of its HOME loan request, or no HOME loan at all.

Nature of the Controversy

11. On April 15, 2002, Brittany Bay submitted its application to FHFC for a HOME loan. On a HOME Rental Application Scoring Summary released by FHFC on May 13, 2002, for the application, FHFC assigned Brittany Bay’s application a score of 81 points out of a possible 86 points. As discussed more fully below in this Petition, Brittany Bay’s initial score reflected 0 of the available 5 points for a “HOME match.” The term “Match” is defined at FHFC Rule 67-48.002(82) as follows:

“Match” means non-federal contributions to a HOME Development eligible pursuant to the HUD Regulations.

“HUD” stands for the U.S. Department of Housing and Urban Development, and “HUD Regulations” is defined by FHFC Rule 67-48.002(75) as:

... with respect to the HOME Program, the regulations of HUD in 24 CFR § 92, together with subsequent amendments thereto, as in effect on the date of this chapter.

FHFC has also addressed the Match requirement in its rules, at Rule 67-48.015, Fla. Admin. Code, entitled "Match Contribution Requirement for HOME Allocation." The relevant portion of this rule reads as follows:

(1) The Corporation is required by HUD to match non-federal funds to the HOME allocation as specified in HUD Regulations. One of the criteria for selecting HOME Developments will be its ability to obtain a non-federal local match source pursuant to HUD Regulations.

(Emphasis added.)

12. At Section F of the HOME Application, copy attached as Exhibit D, FHFC provides for applicants to demonstrate that non-federal sources, such as the local government within whose jurisdiction the project will be constructed, have contributed to a HOME match fund pursuant to federal regulations. Up to 5 points are available in FHFC's scoring process for such local government contributions to a HOME match fund. The full 5 points are available to applicants who can demonstrate that the amount the local government has contributed to a HOME match fund equals or exceeds 25% of the applicant's HOME loan request. When the local government has contributed some amount to a HOME match fund but less than 25% of the applicant's HOME loan request, the applicant achieves proportionately fewer points. For example, if an applicant were seeking a HOME loan of \$4.0 million, the non-federal match would have to total or exceed \$1.0 million to a HOME match fund for that applicant to receive 5 points in the FHFC scoring process. If the non-federal sources totaled only half of the required \$1 million, or \$500,000, then the applicant would receive only half of the available points: 2.5 out of 5 points.

13. FHFC's May 13 Scoring Summary had also stated that Brittany Bay's application did not meet all of the required threshold responsiveness requirements, for reasons not relevant here. On June 26, 2002, and pursuant to FHFC Rule 67-48.004(6), Brittany Bay submitted a "cure" to its application to correct the threshold deficiency addressed in the previous paragraph of this Petition. Brittany Bay also provided in its cure documentation to attempt to increase its score by the full 5.0 HOME Match points.

14. In Brittany Bay's case, since it was seeking a HOME loan of \$6.25 million, it had to demonstrate contributions of 25% of that amount, or \$1,562,500, to achieve the full 5 match points. With the cure to its application submitted June 26, 2002, Brittany Bay demonstrated the existence of three different contributions which together total in excess of the required \$1,562,500.

15. First, Brittany Bay provided evidence that the local government was deferring the payment of impact fees and utility connection fees for a period of six years. Using a discount rate provided by FHFC to all applicants to calculate the present value of contributions, Brittany Bay demonstrated that the present value of this deferral of fees was \$169,407.29. A copy of Brittany Bay's "cure" documentation on this Match source is attached as Exhibit E. As this amount is slightly more than 10.84% of the target local match amount for the Brittany Bay development of \$1,562,500, this contribution was worth 0.55 points.

16. The second form of contribution demonstrated by Brittany Bay was a reduction of the general contractor's fee for the project by \$125,000. A copy of Brittany Bay's cure documentation on this Match source is attached as Exhibit F. As this amount is 8% of the target local match of \$1,562,500 for the Brittany Bay project, this contribution should have received 8% of the available points, or 0.4 points.

17. Finally, Brittany Bay provided documentation from Collier County that it has issued tax exempt bonds this year for the benefit of other affordable housing developments in the amount of \$10.2 million. A copy of Brittany Bay's "cure" documentation on this Match source is attached as Exhibit G. Under HUD regulations, a local government can count up to 50% of the proceeds of a tax exempt bond issue to develop multi-family affordable housing as a HOME match. The letter requested that FHFC "consider the appropriate percentage of [its bonds] as eligible match for the HOME loan requested for Brittany Bay Apartments, Phase III." If counted as HOME match, 50% of the County's tax exempt bond issue for multi-family housing in 2002 would be more than sufficient for Brittany Bay to receive full match points for its required \$1,562,500 match.

FHFC Scoring

18. On or about July 22, 2002, FHFC released its "Final" Scoring Summary for all HOME applicants. (Although designated a "Final" Scoring Summary, applicants are afforded the opportunity to request formal or informal administrative proceedings to challenge their "Final" scores.) In its Final Scoring Summary for the Brittany Bay project, copy attached as Exhibit H, FHFC accepted as non-federal match the \$169,000 present value of the deferral of impact fees and connection fees by Collier County, and awarded the applicant 0.55 points. However, FHFC rejected the \$125,000 reduction in general contractor fees, and rejected the HOME match contribution by Collier County associated with its issuance of tax exempt bonds. FHFC's apparent reason for rejecting the local government match of tax exempt bond issuance is that tax exempt bonds were not issued for the Brittany Bay project; apparently, FHFC is of the belief that only tax exempt bonds issued for the benefit of the same development applying for HOME funds may be counted as a local government contribution to the match fund for HOME purposes.

19. FHFC's stated reason for rejecting the general contractor's \$125,000 reduction of its fees is that such reduction is "an owner's equity contribution" rather than a HOME match contribution. Apparently, FHFC erroneously perceives some identity of interest between the general contractor, CED Construction Partners, Ltd., and the applicant, Brittany Bay Partners III, Ltd.

Applicant's Response to FHFC Scoring

20. FHFC's rules and instructions repeatedly make reference to HUD regulations as governing the HOME program. However, FHFC has misconstrued HUD regulations in determining that Collier County's tax exempt bond issues to benefit other projects cannot be claimed as a HOME match for the Brittany Bay project. HUD regulations specifically recognize that the HOME match fund may be funded, at least in part, by local government "matching contributions" to affordable housing that is not HOME-assisted. See, 24 C.F.R. § 92.219(b), copy attached hereto as Exhibit I. FHFC has confused the concepts of a local government "matching contribution" to the HOME program under HUD regulations, which may be to a non-HOME assisted development, and FHFC's own requirement of "local government contributions" to developments participating in a variety of FHFC's own programs.

21. Further, FHFC, in denying HOME match points to the Brittany Bay project for the general contractor's reduction in fees, has erroneously assumed that the reduction in fees by the General Contractor in this case is an "owner's equity contribution." The general contractor has no ownership interest in the applicant. Brittany Bay believes that FHFC has counted as non-federal match similar reductions by general contractors to HOME applicants.

Notice

22. Brittany Bay received notice of FHFC's "final" scoring of its application via overnight delivery on Tuesday, July 23, 2002. This Petition, and an accompanying Election of Rights form (copy attached as Exhibit J), are being filed within twenty-one days of Brittany Bay's receipt of its final score, as required by Rule 67-48.005(1), Fla. Admin. Code.

Disputed Issues of Material Fact

23. Brittany Bay has initially identified the following disputed issues of material fact, which it reserves the right to supplement as additional facts become known to it:

(A) Whether Collier County has committed to provide in excess of \$10 million in tax exempt bond financing to affordable housing this year. Brittany Bay contends that it has.

(B) Whether a portion of Collier County's commitment of tax exempt bond financing to affordable housing that is not HOME-assisted can be counted as a local match to a federally required HOME match fund from a non-federal source under HUD regulations. Brittany Bay contends that it can, and should be so counted.

(C) Whether HUD regulations require that, to be counted as a contribution to a local HOME match fund, tax exempt bond financing must benefit the HOME applicant. Brittany Bay contends that the regulations contain no such requirement.

(D) Whether CED Construction Partners, Ltd., has an equity interest in the applicant for the Brittany Bay project. Brittany Bay contends that it does not.

(E) Whether FHFC has consistently scored other HOME applicants who claimed non-federal match sources similar to those claimed by Brittany Bay. Brittany Bay contends that it has not.

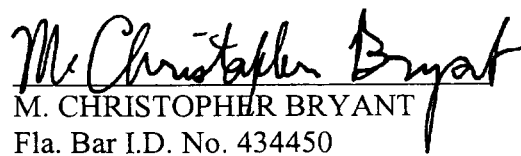
Concise Statement of Ultimate Facts

24. As its concise statement of ultimate facts, Brittany Bay contends that it correctly claimed valid non-federal sources of match in an amount exceeding 25% of its requested HOME loan, and that it should have received the full 5 points for local match in the scoring process. Brittany Bay should be awarded 4.45 additional points in its scoring process, for a final score of 86.00 points. Brittany Bay is entitled to this relief by Chapter 120, Fla. Stat., including but not limited to Sections 120.569 and 120.57(1); and Rule Chapters 28-106 and 67-48, Fla. Admin. Code; and HUD regulations found at 24 C.F.R., Part 92.

Relief Sought

25. Brittany Bay seeks entry of recommended and final orders awarding it 4.45 additional points for non-federal HOME match, bringing its final total score to 86.00 points. Brittany Bay specifically requests that this petition be promptly forwarded to the Division of Administrative Hearings within fifteen days of its filing, as required by Section 120.569(2)(a), Fla. Stat., for assignment to an administrative law judge, and the conduct of formal administrative proceedings. Brittany Bay reserves the right to enter into a stipulation with FHFC for continuance or abeyance of this proceeding pending the outcome of other hearings and the scoring and final ranking process, without waiving its right to a formal proceeding. Brittany Bay also seeks such other relief as is just and proper.

FILED and SERVED this 13th day of August, 2002.

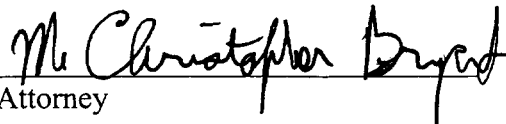

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Attorneys for Petitioner
Newport Sound Partners, Ltd.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing has been filed by HAND-DELIVERY with the Clerk, Florida Housing Finance Corporation, c/o KERRI CARPENTER, Deputy Development Officer, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, this 13th day of August, 2002.


Attorney

MCB/dg/2624-1
BrittanyBayPetition.Pld

INDEX OF EXHIBITS

Exhibit A	Page 5 of FHFC HOME Application
Exhibit B	Final Stage HOME Rental Application Spreadsheet, dated 7/22/02
Exhibit C	Notice of Funding Availability for HOME Program, published in F.A.W. on 1/18/02
Exhibit D	Section F of FHFC HOME Application Form
Exhibit E	Brittany Bay's "Cure" on Local Match – Deferral of Impact Fees and Utility Connection Fees
Exhibit F	Brittany Bay's "Cure" on Local Match – Reduction in General Contractor's Fees
Exhibit G	Brittany Bay's "Cure" on Local Match – Tax Exempt Bond Issuance
Exhibit H	FHFC's 2002 HOME Rental Application Summary for Brittany Bay
Exhibit I	24 C.F.R. § 92.219, "Recognition of Matching Contribution"
Exhibit J	Election of Rights form

b. Provide the General Contractor's Prior Experience Chart behind the tab labeled "Exhibit 13".

4. Architect or Engineer

Provide the executed Architect or Engineer Certification Form behind the tab labeled "Exhibit 14".

5. Attorney

Provide the executed Attorney Certification Form behind the tab labeled "Exhibit 15".

6. Accountant

Provide the executed Accountant Certification Form behind the tab labeled "Exhibit 16".

Part III. Development

A. General Development Information

1. Name of Development: _____

2. Location of Development Site:

a. Address of Development Site: _____

b. County:

LARGE	MEDIUM	SMALL
Entitlement Areas <input type="checkbox"/> Broward <input type="checkbox"/> Duval <input type="checkbox"/> Hillsborough <input type="checkbox"/> Miami-Dade <input type="checkbox"/> Orange <input type="checkbox"/> Palm Beach <input type="checkbox"/> Pinellas	Entitlement Areas <input type="checkbox"/> Alachua* <input type="checkbox"/> Brevard <input type="checkbox"/> Escambia <input type="checkbox"/> Lee <input type="checkbox"/> Leon** <input type="checkbox"/> Pasco Non-Entitlement Areas <input type="checkbox"/> Bay <input type="checkbox"/> Charlotte <input type="checkbox"/> Citrus <input type="checkbox"/> Clay <input type="checkbox"/> Collier <input type="checkbox"/> Hernando <input type="checkbox"/> Indian River <input type="checkbox"/> Lake	Non-Entitlement Areas <input type="checkbox"/> Polk <input type="checkbox"/> Santa Rosa <input type="checkbox"/> Sarasota <input type="checkbox"/> Seminole <input type="checkbox"/> Volusia <input type="checkbox"/> Manatee <input type="checkbox"/> Marion <input type="checkbox"/> Martin <input type="checkbox"/> Okaloosa <input type="checkbox"/> Osceola <input type="checkbox"/> St. Johns <input type="checkbox"/> St. Lucie <input type="checkbox"/> Baker <input type="checkbox"/> Bradford <input type="checkbox"/> Calhoun <input type="checkbox"/> Columbia <input type="checkbox"/> De Soto <input type="checkbox"/> Dixie <input type="checkbox"/> Flagler <input type="checkbox"/> Franklin <input type="checkbox"/> Gadsden <input type="checkbox"/> Gilchrist <input type="checkbox"/> Glades <input type="checkbox"/> Gulf <input type="checkbox"/> Hamilton <input type="checkbox"/> Hardee <input type="checkbox"/> Hendry <input type="checkbox"/> Highlands <input type="checkbox"/> Holmes <input type="checkbox"/> Jackson <input type="checkbox"/> Jefferson <input type="checkbox"/> Lafayette <input type="checkbox"/> Levy <input type="checkbox"/> Liberty <input type="checkbox"/> Madison <input type="checkbox"/> Monroe <input type="checkbox"/> Nassau <input type="checkbox"/> Okeechobee <input type="checkbox"/> Putnam <input type="checkbox"/> Sumter <input type="checkbox"/> Suwannee <input type="checkbox"/> Taylor <input type="checkbox"/> Union <input type="checkbox"/> Wakulla <input type="checkbox"/> Walton <input type="checkbox"/> Washington

*Complete c. below.

** Complete d. below.

7/22/02

Final Stage
Sorted by CHDO/NON-CHDO
Then by Score

Florida Housing Finance Corporation
HOME Rental Application Spreadsheet
Subject to further validation and verification

Application ID	Property Name	Value	Unit Count	Type	County	Score	Status	Final
2002-718H	Woodlawn Terrace	\$6,359,018.00	76	NP	St. Johns	86.00	N	86.00
2002-720H	Azalea Apartments	\$3,550,840.00	40	NP	Hardee	81.00	N	86.00
2002-722H	Whispering Pines Apartments	\$8,496,000.00	61	NP	Indian River	79.00	N	86.00
2002-706H	Magnolia Village	\$3,561,273.00	42	NP	Citrus	82.65	N	82.65
2002-703H	Cypress Pointe	\$5,536,180.00	72	NP	Bradford	81.40	N	81.50
2002-704H	Auburn Woods	\$5,900,000.00	72	NP	Baker	81.05	N	81.05
2002-721H	Normandy Apartments	\$4,395,000.00	100	NP	Duval	61.00	N	61.00

Non-CHDO Applications Meeting Threshold (without Local Bond Financing)

Application ID	Property Name	Value	Unit Count	Type	County	Score	Status	Final
2002-715H	Brittany Bay Apartments - Phase III	\$8,575,002.60	80	FP	Collier	81.00	N	81.55
2002-705H	Pinnacle Grove	\$19,517,568.00	234	FP	Indian River	84.00	N	81.00
2002-710H	Old Cutler Village Apartments	\$27,387,978.00	288	FP	Miami-Dade	61.00	Y	61.00
2002-709H	Santa Clara Apartments	\$19,331,903.00	208	FP	Miami-Dade	60.45	N	60.45
Applications with Local Bond Financing Meeting Threshold								
2002-711H	Brookside Apartments	\$12,806,682.00	176	FP	Alachua	86.00	Y	86.00
2002-714H	Regatta Bay Apartments	\$27,844,318.00	344	FP	Osceola	82.00	Y	86.00
2002-716H	Moultrie Village Apartments	\$9,743,318.11	132	FP	St. Johns	86.00	Y	86.00
2002-724H	La Mirada Gardens, Ltd.	\$12,893,673.00	144	FP	Manatee	80.00	N	85.00

Applications That Failed Threshold

Application ID	Property Name	Value	Unit Count	Type	County	Score	Status	Final
2002-701H	Villa Seton, Inc.	\$5,150,437.00	50	NP	St. Lucie	86.00	N	86.00
2002-707H	Magic Lake Villas	\$6,444,763.00	72	NP	Marion	84.00	N	84.00
2002-719H	Shady Lane	\$3,735,892.00	45	NP	Walton	78.94	N	83.55
2002-717H	Griffin Park	\$18,844,184.00	232	NP	Lake	69.00	N	69.00
2002-723H	Oakwood Apartments	\$2,667,100.00	72	NP	Lake	64.00	N	69.00

* Unable to determine based on commitments provided.

7/22/02

Final Stage
Sorted by CHDO/NON-CHDO
Then by Score

**Florida Housing Finance Corporation
HOME Rental Application Spreadsheets
Subject to further validation and verification**

													Currently	Preliminary	NOPSE	FINAL		
2002-702H	Villas De Mallorca	\$23,120,510.00	Royal Castle Builders, LLC	Broward	N	FP	N	N	250	\$1,800,000	N	N	61.00	N	61.00	N	61.00	N
2002-708H	The Villas at Lake Smart	\$18,273,991.00	The Carlisle Group, Inc.	Polk	N	NP	N	N	220	\$2,000,000	N	N	58.00	N	58.00	N	56.95	N
2002-712H	Lakeside Apartments Washington Shores Apartments	\$13,500,000.00	LCA Development II, Inc.	Orange	N	NP	Y	Y	297	\$7,000,000	*	N	52.00	N	52.00	N	52.00	N
2002-713H		\$20,813,711.00	LCA Development II, Inc.	Orange	N	NP	Y	Y	523	\$10,450,000	*	N	52.00	N	52.00	N	52.00	N

* Unable to determine based on commitments provided.

To qualify for the grant, a lead agency must develop and implement a local homeless assistance continuum of care plan for its designated catchment area.

Preference will be given to those lead agencies that build or rehabilitate the greatest number of units and who leverage additional private and public funds, particularly federal funds designated for construction and rehabilitation of transitional, or permanent housing for homeless persons. Preference will also be given to lead agencies in catchment areas with the greatest need for the provision of housing to the homeless, relative to the population of the catchment area.

Lead agencies wishing to apply for such homeless housing assistance grants should request an application package before close of business on January 31, 2002 from the Office on Homelessness, 1317 Winewood Boulevard, Tallahassee, FL 32399-0700, (850)922-4691.

FLORIDA HOUSING FINANCE CORPORATION

**ELDERLY HOUSING COMMUNITY LOAN (EHCL)
PROGRAM – CYCLE XIV (2001-2002)
NOTICE OF FUNDING AVAILABILITY (NOFA)**

The Florida Housing Finance Corporation (Florida Housing) announces a funding cycle (Cycle XIV) for the Elderly Housing Community Loan (EHCL) Program pursuant to Section 420.5087(3)(d), Florida Statutes, and Chapter 67-32, Florida Administrative Code.

Ten percent (10%) of the twenty-seven percent (27%) of SAIL Program funds for elderly persons are reserved for the EHCL Program. The maximum anticipated amount for the EHCL Program is \$1,254,234. All applications must be submitted to Florida Housing Finance Corporation, City Centre Building, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329 in accordance with the provisions of all applicable Florida Statutes, Chapter 67-32, F.A.C., and the application package.

For more information on opening and closing dates of the application period, to find out when the application package will be available, the cost, if any, of the application package, or

to obtain an application request form, please access Florida Housing’s website at www.floridahousing.org or contact Rachel Harris or Amy Harrison, (850)488-4197. If you are hearing or speech impaired, please contact Florida Housing using the Dual Party Relay System at 1(800)955-8770 and 1(800)955-8771.

**HOME INVESTMENT PARTNERSHIPS PROGRAM
(HOME) – NOTICE OF FUNDING AVAILABILITY
(NOFA) – 2002 HOME RENTAL CYCLE**

The Florida Housing Finance Corporation (“Florida Housing”) announces a funding cycle for the HOME Rental Program’s allocation of 2001 and 2002 HOME federal funds from the U.S. Department of Housing and Urban Development (HUD). It is anticipated that approximately \$10,696,050 made available by HUD in 2001 and approximately \$10,624,050 anticipated to be made available by HUD in 2002 will be available to eligible rental developments that meet application funding criteria. Funding will be awarded in accordance with Rule Chapter 67-48, F.A.C.

All applications must be submitted to Florida Housing Finance Corporation, City Centre Building, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329 in accordance with the provisions of all applicable Florida Statutes, Chapter 67-48, F.A.C., the HOME Rental application package, and Federal Regulations 24 CFR Part 92.

For more information on opening and closing dates of the application period, to find out when the application package will be available, the cost, if any, of the application package, or to obtain an application request form, please access Florida Housing’s website at www.floridahousing.org or contact Rachel Harris or Amy Harrison, (850)488-4197. If you are hearing or speech impaired, please contact Florida Housing using the Dual Party Relay System at 1(800)955-8770 and 1(800)955-8771.

- f. Computer Lab (4 points)
- g. Resident Assistance Referral Program (1 point)
- h. Swimming Lessons (2 points)
- i. Life Safety Training (2 points)
- j. Mentoring (1 point)

F. Match

1. HOME loan request \$ _____ x 25% = \$ _____ (state required match)

2. List below and provide documented evidence each source of match behind the tab labeled "Exhibit 28".

Dollar amount of match:

- \$ _____ - Source 1
- \$ _____ - Source 2
- \$ _____ - Source 3
- \$ _____ - Source 4
- \$ _____ - Source 5
- \$ _____ - Source 6
- \$ _____ - Source 7
- \$ _____ Total Match

3. Match as a % of loan request _____ %
 (HOME loan request divided by total match. Carry the percentage to two decimal places.)

G. Uniform Relocation Act

1. Does any portion of the Development involve rehabilitation work?

- Yes (Complete both 2 & 3)
- No (Complete 3 only)

2. Tenant Relocation Information for Existing Properties

a. Are there any units occupied?

- Yes
- No - Skip items c-f

b. How many total units now exist in the development? _____

2002 CURE FORM

(Submit a SEPARATE form for EACH reason relative to EACH Application Part, Section, Subsection and Exhibit)

This cure form is being submitted with regard to Application No. 2002-715H and pertains to:

Part III Section F Subsection _____ Exhibit No. 28 (if applicable)

The attached information is submitted in response to the 2002 Universal Scoring Summary or Home Rental Scoring Summary because:

- I. Preliminary Scoring and/or a NOPSE resulted in the imposition of a failure to achieve maximum points, a failure to achieve tie-breaker points selected, and/or failure to achieve threshold relative to this form. Check applicable item(s) below:

	2002 Universal or HOME Rental Scoring Summary	Created by:	
		Preliminary Scoring	NOPSE
<input checked="" type="checkbox"/> Reason Score Not Maxed	Item No. <u>9S</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Reason Threshold Failed	Item No. _____T	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Reason for Failure to Achieve Proximity Tie-Breaker Points Selected (Universal Application Only)	Item No. _____P	<input type="checkbox"/>	<input type="checkbox"/>

OR

- II. Other changes are necessary to keep the Application consistent:

This revision or additional documentation is submitted to address an issue resulting from a "cure" to Part _____ Section _____ Subsection _____ Exhibit _____, as applicable).



COLLIER COUNTY GOVERNMENT

COMMUNITY DEVELOPMENT AND ENVIRONMENTAL SERVICES DIVISION

REVISED

Housing and Urban Improvement Department
3050 North Horseshoe Drive, Suite 275
Naples, Florida 34104

June 24, 2002

Florida Housing Finance Corporation
HOME Program
2207 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

Re: HOME Match Funds – Brittany Bay Apartments – Phase III

Ladies and Gentleman:

Collier County hereby commits to provide match funds to the applicant in the form of a deferral of impact and utility connection fees by Collier County. The amount of match is equal to the impact fees for an 80-unit project, \$462,637.60, deferred for six years discounted at a 7.896% rate.

Attached hereto is a schedule of the deferral of impact fees and the amount of the match calculated as follows:

Amount of Deferral of Fees:	\$462,637.60
Deferral Period (Years)	6
Discount Rate:	7.896%
NPV:	\$293,230.31
Value of Deferral:	\$169,407.29

Very truly yours,

By: 

Name: CORMAC GIBLIN

Title: Housing Development Manager

REVISED

BRITTANY BAY III COLLIER COUNTY MATCH CALCULATION						
	Units	Fee/Unit	Gross Amount	<i>Deferral</i> Unit Savings	Total Savings	Net Fees
Water (751-1500SF)						
	80	\$ 855.00	\$ 68,400.00	(313.08)	(43,353.49)	\$ 25,046.51
Sewer (751-1500SF):						
	80	\$ 1,055.00	\$ 84,400.00	(386.32)	(53,494.65)	\$ 30,905.35
Total Water & Sewer		\$ 1,910.00	\$ 152,800.00	(699.40)	(96,848.14)	\$ 55,951.86
Community Parks:						
	80	\$ 571.02	\$ 45,681.60	(209.09)	(28,954.04)	\$ 16,727.56
Regional Parks:						
	80	\$ 249.82	\$ 19,985.60	(91.48)	(12,667.33)	\$ 7,318.27
Libraries:						
	80	\$ 214.00	\$ 17,120.00	(78.36)	(10,851.05)	\$ 6,268.95
Fire (\$0.15/SF):						
	80	\$ 0.15	\$ 12.00	(0.05)	(7.61)	\$ 4.39
Schools:						
	80	\$ 827.00	\$ 66,160.00	(302.83)	(41,933.72)	\$ 24,226.28
Road (1-2 stories):						
	80	\$ 1,800.00	\$ 144,000.00	(659.12)	(91,270.50)	\$ 52,729.50
Jail Facilities:						
	80	\$ 117.98	\$ 9,438.40	(43.20)	(5,982.27)	\$ 3,456.13
EMS:						
	80	\$ 93.00	\$ 7,440.00	(34.05)	(4,715.64)	\$ 2,724.36
Total Impact Fees		\$ 3,872.97	\$ 309,837.60	(1,418.19)	(196,382.17)	\$ 113,455.43
Utility Connection (Water & Sewer) fees			\$ 152,800.00	33.03%		\$ 55,951.86
Impact Fees			\$ 309,837.60	66.97%		\$ 113,455.43
Total Fees			\$ 462,637.60	100.00%		\$ 169,407.29
NPV Calculation of Deferral						
Amount of Deferral:			\$ 462,637.60			
Deferral Period (Years)				6		
Discount Rate				7.896%		
NPV:			\$ 293,230.31			
Value of Deferral:			\$ 169,407.29		\$ 2,117.59	Per Unit Savings

2002 CURE FORM

(Submit a SEPARATE form for EACH reason relative to EACH Application Part, Section, Subsection and Exhibit)

This cure form is being submitted with regard to Application No. 2002-715H and pertains to:

Part III Section F Subsection _____ Exhibit No. 28 (if applicable)

The attached information is submitted in response to the 2002 Universal Scoring Summary or Home Rental Scoring Summary because:

- I. Preliminary Scoring and/or a NOPSE resulted in the imposition of a failure to achieve maximum points, a failure to achieve tie-breaker points selected, and/or failure to achieve threshold relative to this form. Check applicable item(s) below:

	2002 Universal or HOME Rental Scoring Summary	Created by:	
		Preliminary Scoring	NOPSE
<input checked="" type="checkbox"/> Reason Score Not Maxed	Item No. <u>9S</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Reason Threshold Failed	Item No. _____T	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Reason for Failure to Achieve Proximity Tie-Breaker Points Selected (Universal Application Only)	Item No. _____P	<input type="checkbox"/>	<input type="checkbox"/>

OR

- II. Other changes are necessary to keep the Application consistent:

This revision or additional documentation is submitted to address an issue resulting from a "cure" to Part _____ Section _____ Subsection _____ Exhibit _____, as applicable).

June 18, 2002

Mr. Jay P. Brock
Brittany Bay Partners III, Ltd.
1551 Sandspur Road
Maitland, Florida 32751

REVISED

Re: Brittany Bay Apartments - Phase III
Eighty (80) Units

Dear Mr. Brock:

As the selected General Contractor for Brittany Bay Apartments - Phase III, we are pleased to provide a total cost reduction of \$125,000. It is our pleasure to offer this assistance for the affordable housing development proposed by Brittany Bay Partners III, Ltd.

This savings is a reduction to Brittany Bay Partners III, Ltd. from our agreed upon standard charge of \$749,938 including overhead and profit to a flat fee of \$624,938. We understand this Match contribution will be included as evidence of a HOME loan Match in your application for HOME funds to Florida Housing Finance Corporation. We hope the savings will assist your organization in providing the much-needed affordable rental housing for the community.

Sincerely,

CED CONSTRUCTION PARTNERS, LTD., a Florida limited partnership
By: CED Construction Management, L.L.C., a
Florida limited liability company, its general partner

By: 
W. Scott Culp, Manager

AGREED TO AND ACCEPTED THIS 25 DAY OF JUNE, 2002 BY

BRITTANY BAY PARTNERS III, LTD., a Florida limited partnership

By: CED CAPITAL HOLDINGS XVI, LTD., a Florida limited partnership,

By: CED CAPITAL HOLDINGS XI, INC., a Florida corporation, its
managing general partner

By: 
Jay P. Brock, Vice President

2002 CURE FORM

(Submit a SEPARATE form for EACH reason relative to EACH Application Part, Section, Subsection and Exhibit)

This cure form is being submitted with regard to Application No. 2002-715H and pertains to:

Part III Section F Subsection _____ Exhibit No. 28 (if applicable)

The attached information is submitted in response to the 2002 Universal Scoring Summary or Home Rental Scoring Summary because:

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	2002 Universal or HOME Rental Scoring Summary	Created by:	
		Preliminary Scoring	NOPSE
<input checked="" type="checkbox"/> Reason Score Not Maxed	Item No. <u>2S</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Reason Threshold Failed	Item No. _____T	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Reason for Failure to Achieve Proximity Tie-Breaker Points Selected (Universal Application Only)	Item No. _____P	<input type="checkbox"/>	<input type="checkbox"/>

OR

- II. Other changes are necessary to keep the Application consistent:

This revision or additional documentation is submitted to address an issue resulting from a "cure" to Part _____ Section _____ Subsection _____ Exhibit _____, as applicable).

Brief Statement of Explanation for Cure For Application 2002- 715H

Provide a separate brief statement for each Cure.

Applicant hereby submits match documentation stamped "REVISED" for Exhibit 28 to be placed behind the Impact Fee Deferral and General Contractor Fee match documentation in Tab 28 to maximize the application's score.

Collier county's commitment to or issuance of \$10,200,000 in Multi-Family Housing Revenue Bonds will result in \$5,100,000 in eligible HOME match. This match created by other affordable housing communities is being made available to Brittany Bay Apartments - Phase III by the Housing Finance Authority of Collier County.

REVISED**EXPLANATION OF TAX-EXEMPT BOND MATCH**

Pursuant to the HOME regulations, tax-exempt bond financing may be utilized to provide HOME match equal up to 50% of the amount of tax-exempt financing. Attached hereto is Collier County's commitment to provide up to 50% of the tax-exempt financing issued or committed to on behalf of other multi-family projects in 2002 to Brittany Bay Apartments- Phase III for purposes of a HOME match. As the match needs are only \$1,562,500 (\$6,250,000 HOME Loan request x 25%), the applicant will only use \$1,562,500 of Collier County's match of up to \$5,100,000 (\$10,200,000 x 50%).

2002 Home Rental Application Summary

As of: 07/22/2002

File # 2002-715H

Development Name: Brittany Bay Apartments - Phase III

As Of:	Total Points	Met Threshold?	HOME as Percentage of Total Development Cost
07 - 22 - 2002	81.55	Y	72.89%
Preliminary	81	N	72.89%
NOPSE	81	N	72.89%
Final	81.55	Y	72.89%
Post-Appeal	0	Y	

Scores:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Post-Appeal
1S	III	A	2.b.	Non-Entitlement Area	25	25	25	25	0
				Entitlement/Non-Entitlement Area					
				Optional Features:					
2S	III	B	2.a.	New Construction	9	9	9	9	0
2S	III	B	2.b.	Rehabilitation	9	0	0	0	0
3S	III	B	2.c.	All Development Except SRO	12	12	12	12	0
3S	III	B	2.d.	SRO Developments	12	0	0	0	0
4S	III	B	2.e.	Energy Conservation Features	9	9	9	9	0
				Set-Aside Commitments:					
5S	III	D	2.b.	Set-Aside Units Beyond the Minimum	5	5	5	5	0
6S	III	D	4.	Affordability Period Beyond Required	5	5	5	5	0
				Resident Programs:					
7S	III	E	1.	Programs for Non-SRO Developments	4	4	4	4	0
7S	III	E	2.	Programs for SRO Developments	4	0	0	0	0
8S	III	E	3.	Programs for All Developments	8	8	8	8	0
				Match					
9S	III	F	F.	Local Government Incentives	5	0	0	0.55	0
10S	IV				4	4	4	4	0

2002 Home Rental Application Summary

As of: 07/22/2002

File # 2002-715H

Development Name: Brittany Bay Apartments - Phase III

Reason(s) Scores Not Maxed:

Item #	Reason(s)	Created As Result	Rescinded as Result
9S	Applicant failed to provide evidence of eligible match funding totaling 25% of the HOME loan request amount.	Preliminary	
9S	Applicant provided cure for an additional eligible source of match of \$169,407.29 which resulted in an additional .55 points. However, applicant failed to provide evidence of match funding totaling 25% of the HOME loan request amount which is required to receive maximum points.	Final	

Threshold(s) Failed:

Item #	Part	Section	Subsection	Description	Reason(s)	Created As Result of	Rescinded as Result of
1T	V	B		CED Capital Holdings	The Applicant failed to provide the required audited financial statements for CED Capital Holdings as evidence of ability to fund. As such, the commitment was not scored firm resulting in a financial shortfall of \$1,197,417 for construction and permanent financing.	Preliminary	Final

Additional Application Comments:

Item #	Part	Section	Subsection	Description	Reason(s)	Created As Result	Rescinded as Result
1C	III	F		Match	The contribution by the GC (CED Construction Partners, Ltd.) to Brittany Bay Partners, Ltd.III (CED Capital Holdings XVI, Ltd.) is an owners' equity contribution which is not an eligible form of match.	Final	
2C	III	F		Match	Per HUD, the Bond match which applicant requests in the cure be considered as match is not eligible match. Funds from a HOME-like development which is not under control of FHFC is not eligible.	Final	

This page is located on the U.S. Department of Housing and Urban Development's Homes and Communities Web site at
<http://www.hud.gov/offices/cpd/affordablehousing/lawsandregs/regs/home/sube/92219.cfm>.



92.219 recognition of matching contribution

[Code of Federal Regulations]
 [Title 24, Volume 1]
 [Revised as of April 1, 2001]
 From the U.S. Government Printing Office via GPO Access
 [CITE: 24CFR92.219]

- a. Match contribution to HOME-assisted housing. A contribution is recognized as a matching contribution if it is made with respect to:
 1. A tenant who is assisted with HOME funds;
 2. A HOME-assisted unit;
 3. The portion of a project that is not HOME-assisted provided that at least 50 percent of the housing units in the project are HOME-assisted. If the match contribution to the portion of the project that is not HOME-assisted meets the affordable housing requirements of 92.219(b)(2), the percentage requirement for HOME-assisted units does not apply; or
 4. The commercial space in a mixed-use project in which at least 51 percent of the floor space is residential provided that at least 50 percent of the dwelling units are HOME-assisted.
- b. Match contribution to affordable housing that is not HOME-assisted. The following requirements apply for recognition of matching contributions made to affordable housing that is not HOME-assisted:
 1. For tenant-based rental assistance that is not HOME-assisted:
 - i. The contribution must be made with respect to a tenant who is assisted with tenant-based rental assistance that meets the requirements of 92.203 (Income determinations) and paragraphs (a), (c), (f), and (i) of 92.209 (Tenant-based rental assistance); and
 - ii. The participating jurisdiction must demonstrate in writing that such assistance meets the provisions of 92.203 and 92.209 (except 92.209(e)).
 2. For affordable housing that is not HOME-assisted:
 - i. The contribution must be made with respect to housing that qualifies as affordable housing under 92.252 or 92.254.
 - ii. The participating jurisdiction or its instrumentality must execute, with the owner of the housing (or, if the participating jurisdiction is the owner, with the manager or developer), a written agreement that imposes and enumerates all of the affordability requirements from 92.252 and 92.253(a) and (b) (Tenant protections), or 92.254, whichever are applicable; the

property standards requirements of 92.251; and income determinations made in accordance with 92.203. This written agreement must be executed before any match contributions may be made.

- iii. A participating jurisdiction must establish a procedure to monitor HOME match-eligible housing to ensure continued compliance with the requirements of 92.203 (Income determinations), 92.252 (Qualification as affordable housing: Rental housing), 92.253(a) and (b) (Tenant protections) and 92.254 (Qualification as affordable housing: Homeownership). No other HOME requirements apply.
- iv. The match may be in any eligible form of match except those in 92.220(a)(2) (forbearance of fees), (a)(4) (on-site and off-site infrastructure), (a)(10) (direct cost of supportive services) and (a)(11) (direct costs of homebuyer counseling services).
- v. Match contributions to mixed-use or mixed-income projects that contain affordable housing units will be recognized only if the contribution is made to the project's affordable housing units.

U.S. Department of Housing and Urban Development
451 7th Street, S.W., Washington, DC 20410
Telephone: (202) 708-1112 TTY: (202) 708-1455

ELECTION OF RIGHTS

Application Number: 2002- 715H Development Name: Brittany Bay Apts., Phase III

- 1. I do not desire a proceeding.
- 2. I elect an informal proceeding to be conducted in accordance with Sections 120.569 and 120.57(2), Florida Statutes. In this regard I desire to (Choose one):
 - submit a written statement and documentary evidence; or
 - attend an informal hearing to be held in Tallahassee.

Note: Rule 28-106.301, Florida Administrative Code, requires Applicant to submit a petition in a prescribed format. (attached)

- 3. I elect a formal proceeding at the Division of Administrative Hearings. This option is available only if there are disputed issues of material fact.

Note: Applicant must submit an appropriate petition in accordance with Rule 28-106.201, Florida Administrative Code. (attached)

Following are my top eight preferences, in order from 1-8 (with 1 being my first choice, etc.) for scheduling my informal hearing. Formal hearings will be scheduled by the Division of Administrative Hearings.

Hearing Dates:	A.M.	P.M.	Hearing Dates:	A.M.	P.M.	Hearing Dates:	A.M.	P.M.
August 29, 2002	___	___	September 9, 2002	___	___	September 17, 2002	___	___
August 30, 2002	___	___	September 10, 2002	___	___	September 18, 2002	___	___
September 3, 2002	___	___	September 11, 2002	___	___	September 19, 2002	___	___
September 4, 2002	___	___	September 12, 2002	___	___	September 20, 2002	___	___
September 5, 2002	___	___	September 13, 2002	___	___			
September 6, 2002	___	___	September 16, 2002	___	___			

Please fax a Hearing Schedule to me at this fax number: ()

DATE: August 13, 2002

M. Christopher Bryant
Signature of Petitioner

Name: M. Christopher Bryant
Oertel, Hoffman, Fernandez & Cole, P.A.

Address: 301 S. Bronough St., Fifth Floor
P. O. Box 1110
Tallahassee, FL 32302-1110

Phone: (850) 521-0700
Fax: (850) 521-0720

TO PRESERVE YOUR RIGHT TO A PROCEEDING, YOU MUST RETURN THIS FORM WITHIN (21) DAYS OF RECEIPT OF THIS NOTICE TO THE FLORIDA HOUSING FINANCE CORPORATION AT THE ADDRESS INDICATED IN THE NOTICE OF RIGHTS. TO FACILITATE THE SCHEDULING OF HEARINGS, THIS FORM MAY BE SUBMITTED PRIOR TO FILING A PETITION.

ELECTION OF RIGHTS

Application Number: 2002- 715H Development Name: Brittany Bay Apts., Phase III

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August 29, 2002	___	___	September 9, 2002	___	___	September 17, 2002	___	___
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September 4, 2002	___	___	September 12, 2002	___	___	September 20, 2002	___	___
September 5, 2002	___	___	September 13, 2002	___	___			
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M. Christopher Bryant
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RECEIVED
2002 AUG 13 PM 4:21
FLORIDA HOUSING FINANCE CORPORATION