

BEFORE THE STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

AGUACLARA, LTD.,

Petitioner,

vs.

FLORIDA HOUSING FINANCE
CORPORATION,

Agency Case No. 2003-087C

Respondent.

**PETITION REQUESTING INFORMAL HEARING
AND GRANT OF THE RELIEF REQUESTED**

Pursuant to Sections 120.569 and 120.57, Florida Statutes ("F.S."), Rule 67-48.005(2), Florida Administrative Code ("FAC") and Rule 28-106.301, FAC, Petitioner, AGUACLARA, LTD. ("Petitioner") requests an informal hearing concerning the scoring by Florida Housing Finance Corporation ("FHFC") of Petitioner's Application No. 2003-087C, and to then grant the relief requested. In support of this Petition, Petitioner states as follows:

AGENCY AFFECTED

1. The name and address of the agency affected is Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329. The Agency's file or identification number with respect to this matter is 2002-087C.

PETITIONER

2. The Petitioner is Aguacalara, Ltd., a Florida limited partnership. The address of the Petitioner is c/o Pinnacle Housing Group, Inc., 9400 S. Dadeland Boulevard, Suite 100, Miami, Florida 33156, telephone number (305) 854-7100. Petitioner's representative is Gary J. Cohen, Esq., whose address is c/o Shutts & Bowen LLP, 201 S. Biscayne Boulevard, Suite 1500, Miami, Florida 33131, telephone number (305) 347-7308.

PETITIONER'S SUBSTANTIAL INTERESTS

3. Petitioner's substantial interests will be affected by the determination of FHFC as follows:

(a) Petitioner has applied for an allocation of competitive 9% low-income housing tax credits under the FHFC Housing Credit ("HC") program. The HC Program is set forth in Section 42 of the Internal Revenue Code of 1986, as amended, and it awards developers and investors a dollar for dollar reduction in income tax liability through the allocation of tax credits in exchange for construction of affordable rental housing units. FHFC is the agency designated by the United States Treasury to administer the allocation of tax credits in the State of Florida.

(b) An HC application is comprised of numerous forms which request information of each applicant. FHFC adopted the forms by reference in Rule 67-48, FAC.

(c) On or about April 8, 2003, Petitioner submitted to FHFC a HC application in the Large County set-aside for the 2003 funding cycle. The application was submitted in an attempt to assist in the financing of the construction of a 185 unit apartment complex in Miami, Florida.

(d) The application was scored by FHFC in accordance with the provisions of Rule 67-48, FAC. By letter dated on or about May 13, 2003, FHFC advised Petitioner that its preliminary score was 66 points, together with 7.5 proximity tie-breaker points. As a result of Notices of Potential Scoring Errors ("NOPSE's") filed against Petitioner, FHFC notified Petitioner on or about June 9, 2003 that its score of 66 points remained the same, but that its total proximity tie-breaker points had been reduced from 7.5 to 6.25 proximity tie-breaker points, as a result of a determination that the subject application should lose 1.25 proximity tie-breaker points due to the fact that the grocery store indicated in the HC application contained less than the minimum square footage of 4,500 square feet in order to receive tie-breaker proximity points.

(e) On or about June 19, 2003, Petitioner submitted "cure" documentation to FHFC contending that Petitioner should receive an additional 1.25 proximity tie-breaker points for proximity to a grocery store. In its "cure" documentation, Petitioner substituted a new grocery store (La Fama #2) for the grocery store indicated in its initial application.

(f) On or about July 22, 2003, FHFC advised Petitioner that its total points remained at 66, and that Petitioner's total proximity tie-breaker points remained at 6.25. FHFC, in the 2003 Universal Scoring Summary attached as Exhibit "A", indicated that "Applicant attempted to cure Item 1P (the grocery store proximity issue) by submitting a new Grocery Store, but the cure was deficient because the retail establishment submitted in the cure does not meet the definition of Grocery Store as it consists of less than 4,500 square feet of air conditioned space." FHFC's scoring of Petitioner's proximity tie-breaker points pertaining to proximity to a grocery store is the subject matter of this Petition.

(g) Under the HC program, the HC applications are scored by FHFC. A finite amount of tax credits are allocated to applicants in certain geographic areas (large county,

medium county and small county areas as defined by FHFC) and pursuant to certain set-aside classifications. Only those applications receiving the highest scores are awarded tax credits. Petitioner's ability to finance its proposed project will be jeopardized if tax credits are not obtained; accordingly, Petitioner's substantial interests are affected by this proceeding.

NOTICE OF AGENCY DECISION

4. Petitioner received notice of FHFC's notice of its "cure" documentation by Federal Express delivery on or about July 22, 2003. Attached as Exhibit "A" is a copy of the Universal Scoring Summary setting forth the scoring, which scoring gives rise to this Petition.

ULTIMATE FACTS ALLEGED

5. In Petitioner's initial HC application submitted on or about April 8, 2003, Petitioner indicated (in Part III Section A. Subsection 11.b(1)) that the development site was located within 1 mile of a grocery store, thereby entitling Petitioner to receive 1.25 proximity tie-breaker points. In fact, 1.25 proximity tie-breaker points were awarded to Petitioner for proximity to a grocery store in the initial scoring received by Petitioner on or about May 12, 2003.

6. On or about June 19, 2003, Petitioner submitted "cure" documentation to FHFC. The portion of such "cure" documentation pertaining to the award of proximity tie-breaker points for proximity to a grocery store is attached as Exhibit "B".

7. In the "cure" documentation submitted with respect to the award of proximity tie-breaker points for proximity to a grocery store, Petitioner submitted new documentation (revised Part III A.11.b(1), and a map generated by the Street Atlas 2003 Software) indicating the location of a new grocery store within 1 mile of the tie breaker measurement point, thereby

entitling Petitioner to the award of an additional 1.25 proximity tie-breaker points for proximity to a grocery store.

8. In the 2003 Universal Scoring Summary (attached as Exhibit "A"), FHFC determined that the newly designated grocery store did not meet the definition of "Grocery Store" as it consisted of less than 4,500 square feet of air conditioned space. In making this determination, FHFC apparently relied exclusively upon a Notice of Alleged Deficiency ("NOAD") filed by Application No. 2003-039C (attached in its entirety as Exhibit "C"). The NOAD relied exclusively upon Miami-Dade County property records in asserting that a two story building was located on the site with a total adjusted square footage of 8,962 square feet. The NOAD asserts that a site visit found that the grocery store located in the building occupies the first story of the building. As such, the area used for the grocery store (the first floor) must have contained less than 4,500 square feet. For the reasons set out herein, this conclusion as a matter of law by FHFC is incorrect.

**FACTS WHICH WARRANT REVERSAL
OF AGENCY'S PROPOSED ACTION**

The specific facts which warrant reversal of FHFC's proposed action are as follows:

FHFC has incorrectly determined that the newly-designated grocery store included in Petitioner's "cure" documentation contains less than 4,500 square feet. FHFC apparently reaches this conclusion relying exclusively upon the NOAD filed by Application No. 2003-039C, attached hereto as Exhibit "C" and described in paragraph 8 above.

9. Attached as Exhibit "D" is a notarized affidavit from Edwin J. Fernandez (a licensed professional surveyor) with the surveying firm of Ford, Armenteros & Manucy, Inc. As is reflected in this affidavit, the area consisting of the grocery store contains more than 4,500 square feet of air conditioned space, notwithstanding the assertions made to the contrary in the

above-discussed NOAD. The public records of Miami-Dade County are in error. Petitioner cannot verify why the Miami-Dade County Public Records are in error (perhaps because an addition was constructed to the property which is not reflected in the Public Records), but is not compelled to explain the error in the public records. FHFC is entitled to rely upon the notarized affidavit of a licensed professional surveyor that the grocery store does, in fact, contain more than 4,500 square feet of air conditioned space.

10. The 2003 Universal Application does not require an applicant to provide additional information verifying that the grocery store utilized for proximity tie-breaker points consists of more than 4,500 square feet of air conditioned space. However, FHFC may, in scoring such applications, receive information (by way of Notices of Potential Scoring Error and Notices of Alleged Deficiencies) indicating that a grocery store does in fact contain less than 4,500 square feet. FHFC has done exactly that in this case. However, Petitioner has presented evidence (by way of executed notarized affidavit contained in Exhibit "D") which is more compelling than that contained in the NOAD described above, and upon which FHFC is compelled to rely upon in scoring Petitioner's application.

Petitioner has provided evidence sufficient to prove that the grocery store contained in its "cure" documentation contains more than 4,500 square feet of air conditioned space. FHFC should determine that 1.25 proximity tie-breaker points should be awarded for proximity to a grocery store. If FHFC should so determine, they are free to visit the grocery store in question and determine for themselves that the grocery store contains more than 4,500 square feet of air conditioned space.

RELEVANT RULES AND STATUTES

11. Rule 67-48, FAC, specifically incorporates the HC application, and the forms

referenced therein. The instructions to Part III Section A Subsection 11.b. (incorporated by the aforementioned Rule) provide, in relevant part, that proximity tie-breaker points will be awarded if the forms are fully and accurately completed. Petitioner has complied with the instructions for Part III Section A Subsection 11.b. and provided evidence (in its "cure" documentation) that 1.25 additional proximity tie-breaker points should be awarded for proximity to a grocery store.

RELIEF SOUGHT

12. The specific action which Petitioner wishes FHFC to take is to reverse its previous decisions and add 1.25 proximity tie-breaker points to Petitioner's score.

WHEREFORE, Petitioner respectfully requests FHFC:

1. To add 1.25 proximity tie-breaker points to Petitioner's score, resulting in 7.5 total proximity tie-breaker points.

Respectfully submitted,

By: 

GARY J. COHEN, ESQ.
Florida Bar No. 353302
Shutts & Bowen LLP
201 South Biscayne Boulevard
1500 Miami Center
Miami, Florida 33131
(305) 347-7308 telephone
(305) 347-7308 facsimile

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that an original and one copy of the foregoing have been filed with Kerey Carpenter, Deputy Development Officer, Attn: Corporation Clerk of the Florida Housing Finance Corporation, 227 N. Bronough Street, Suite 5000, Tallahassee, Florida 32301, on this 12 day of August, 2003.



GARY J. COHEN, ESQ.

EXHIBIT A

2003 MMRB, SAIL & HC Scoring Summary

As of: 07/18/2003

File # 2003-087C

Development Name: Aguaciara

As Of:	Total Points	Met Threshold?	Proximity Tie-Breaker Points	Corporation Funding per Set-Aside Unit	SAIL Request Amount as Percentage of Development Cost	Is SAIL Request Amount Equal to or Greater than 10% of Total Development Cost?
07 - 18 - 2003	66	Y	6.25	\$46,173.83	%	N
Preliminary	66	Y	7.5	\$46,173.83	%	N
NOPSE	66	Y	6.25	\$46,173.83	%	N
Final	66	Y	6.25	\$46,173.83	%	N
Post-Appeal	0	Y	0		0	

Scores:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Post-Appeal
Optional Features & Amenities									
1S	III	B	2.a.	New Construction	9	9	9	9	0
1S	III	B	2.b.	Rehabilitation/Substantial Rehabilitation	9	0	0	0	0
2S	III	B	2.c.	All Developments Except SRO	12	12	12	12	0
2S	III	B	2.d.	SRO Developments	12	0	0	0	0
3S	III	B	2.e.	Energy Conservation Features	9	9	9	9	0
Set-Aside Commitments									
4S	III	E	1.b.	Commitment to Serve Lower AMI	5	5	5	5	0
5S	III	E	1.c.	Total Set-Aside Commitment	3	3	3	3	0
6S	III	E	3.	Affordability Period	5	5	5	5	0
Resident Programs									
7S	III	F	1.	Programs for Non-Elderly & Non-Homeless	6	6	6	6	0
7S	III	F	2.	Programs for Homeless (SRO & Non-SRO)	6	0	0	0	0
7S	III	F	3.	Programs for Elderly	6	0	0	0	0
8S	III	F	4.	Programs for All Applicants	8	8	8	8	0
Local Government Support									
9S	IV		a.	Contributions	5	5	5	5	0
10S	IV		b.	Incentives	4	4	4	4	0

2003 MMRB, SAIL & HC Scoring Summary

As of: 07/18/2003

File # 2003-087C Development Name: Aguaciara

Proximity Tie-Breaker Points:

Item #	Part Section	Subsection	Description	Available	Preliminary	NOPSE Final	Post-Appeal
1P	III	A	11.b.(1) Grocery Store	1.25	1.25	0	0
2P	III	A	11.b.(2) Public School	1.25	1.25	1.25	0
3P	III	A	11.b.(3) Medical Facility	1.25	0	0	0
4P	III	A	11.b.(4) Pharmacy	1.25	0	0	0
5P	III	A	11.b.(5) Public Bus Stop or Metro-Rail Stop	1.25	1.25	1.25	0
6P	III	A	11.c. Proximity to Developments on FHFC Development Proximity List	3.75	3.75	3.75	0

Reason(s) for Failure to Achieve Selected Proximity Tie-Breaker Points:

Item #	Reason(s)	Created As Result of	Rescinded as Result of
1P	Retail establishment does not meet the definition of Grocery Store as it consists of less than 4,500 square feet of air conditioned space.	NOPSE	

Additional Application Comments:

Item #	Part Section	Subsection	Description	Reason(s)	Created As Result	Rescinded as Result
1C	III	A	11.b.1. Grocery Store	Applicant attempted to cure Item 1P by submitting a new Grocery Store, but the cure was deficient because the retail establishment submitted in the cure does not meet the definition of Grocery Store as it consists of less than 4,500 square feet of air conditioned space.	Final	

EXHIBIT B

2003 SUMMARY CURE FORM

This Summary Cure Form is submitted with regard to **Application No. 2003- 087C** and pertains to the Application parts, sections, subsections, and exhibits listed below (please list the parts, sections, and subsections and exhibits in the order they appear in the 2003 Applicant's Scoring Summary):

Part (e.g., I, II, III, IV, V)	Section (e.g., A, B, C, D, etc.)	Subsection (e.g., 1, 2, 3, 4, 5, etc. or 1.a., 2.a., etc.)	Exhibit (e.g., I, 2, 3, ...49, 50, etc.)	Submitted in Response to:			Created by:	
				Reason: Score Not Mased (Provide Item Number from Application Scoring Summary)	Reason Threshold Failed (Provide Item Number from Application Scoring Summary)	Reason for Failure to Achieve Proximity Tie-Breaker Points Selected (Provide Item Number from Application Scoring Summary)	Mark this column if Item No. indicated in previous 3 columns resulted from Preliminary Scoring	Mark this column if Item No. indicated in previous 3 columns resulted from NOPSE scoring. Also, please state the Tracking No., if known
III	A	II.b.(1)		S	T	P		X (#71)
				S	T	P		
				S	T	P		
				S	T	P		
				S	T	P		
				S	T	P		
				S	T	P		
				S	T	P		
				S	T	P		
				S	T	P		
				S	T	P		
				S	T	P		
				S	T	P		
				S	T	P		
				S	T	P		
				S	T	P		
				S	T	P		
				S	T	P		
				S	T	P		
				S	T	P		
				S	T	P		

TRACKING
201

2003 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. 2003-087C and pertains to:

Part. III Section A, Subsection 1.1.(1) Exhibit No _____ (if applicable)

The attached information is submitted in response to the 2003 Universal Scoring Summary because:

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

	2003 Universal Scoring Summary	Created by:	
		Preliminary Scoring	NOPSE Scoring
<input type="checkbox"/> Reason Score Not Maxed	Item No. _____ S	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Reason Threshold Failed	Item No. _____ T	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/> Reason for Failure to Achieve Proximity Tie-Breaker Points Selected (MMRB/SAIL/HC Applications Only)	Item No. <u>1</u> P	<input type="checkbox"/>	<input checked="" 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 _____ (if applicable).

Brief Statement of Explanation regarding
Application 2003 - 087C

Provide a separate brief statement for each Cure or NOAD

Applicant received 0 of a possible 1.25 proximity tie-breaker points with respect to proximity to a grocery store. As a result of a NOPSE filed against this application, FHFC determined that the grocery store did not contain 4,500 square feet and as such, no proximity tie-breaker points were awarded.

Enclosed is a revised page from the application reflecting the selection of a new grocery store which is located within 1 mile of the tie-breaker measurement point. Also enclosed is a map generated by Street Atlas USA 2003 reflecting that the new grocery store (which meets the definition of grocery store contained in the Universal Instructions) is in fact located within 1 mile of the tie-breaker measurement point.

For the foregoing reasons, 1.25 proximity tie-breaker points should be added to Applicant's score.



b. Is the Development complete?

Yes No

If "Yes", when were the certificates of occupancy issued?

(mm/dd/yyyy)

If certificates of occupancy were issued on more than one date, provide a listing of the issue-date for each building behind a tab labeled "Exhibit 2a".

c. Are any of the units occupied?

Yes No

d. If the proposed Development is not yet complete, what is the anticipated placed-in-service date (month/day/year)?

12/31/05

(mm/dd/yyyy)

11. Proximity (MMRB, SAIL and/or Competitive HC Applications Only)

a. Provide the Surveyor Certification Form behind a tab labeled "Exhibit 25".

b. Proximity to Services (Maximum 3.75 Tie-Breaker Points):

(1) Will the proposed Development be located within 5 miles of a Grocery Store?

Yes (check only ONE applicable distance) No

Proximity of Proposed Development to a Grocery Store	Proximity Tie-Breaker Points
<input checked="" type="radio"/> > 0 and < or equal to 1.0 mile	1.25
<input type="radio"/> > 1.0 and < or equal to 2.0 miles	1
<input type="radio"/> > 2.0 and < or equal to 3.0 miles	.75
<input type="radio"/> > 3.0 and < or equal to 4.0 miles	.5
<input type="radio"/> > 4.0 and < or equal to 5.0 miles	.25

Name of Grocery Store:

La Fama #2

Address of Grocery Store:

Street:

2288 NW 28 Street

City:

Miami

State:

FL

Zip Code:

33142

(2) If the proposed Development will serve any demographic group other than Elderly, i.e., the Applicant selected and qualified for any Demographic Commitment at Part III.D. other than Elderly, will it be located within 5 miles of a Public School?

Yes (check only ONE applicable distance) No

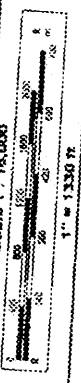
Proximity of Proposed Development to a Public School	Proximity Tie-Breaker Points
<input checked="" type="radio"/> > 0 and < or equal to 1.0 mile	1.25
<input type="radio"/> > 1.0 and < or equal to 2.0 miles	1
<input type="radio"/> > 2.0 and < or equal to 3.0 miles	.75
<input type="radio"/> > 3.0 and < or equal to 4.0 miles	.5
<input type="radio"/> > 4.0 and < or equal to 5.0 miles	.25

Name of Public School:

Comstock Elementary School

REVISED

Street Atlas L 2003



Aguaclara 2003-087C



EXHIBIT C

2003 NOTICE OF ALLEGED DEFICIENCIES (NOAD) SUMMARY FORM

This NOAD Summary Form is being submitted with regard to **Application No. 2003-087C** and pertains to the revisions/additions made to the Application parts, sections, subsections and exhibits listed below (please list the parts, sections, subsections, and exhibits in the order they appear in the 2003 Applicant's Scoring Summary with regard to the Application revisions/additions being challenged):

Part (e.g., I, II, III, IV, V)	Section (e.g., A, B, C, D, etc.)	Subsection (e.g., 1, 2, 3, 4, 5, etc. or 1.a., 2.a., etc.)	Exhibit (e.g., 1, 2, 3, ... 49, 50, etc.)	Submitted in Response to:			Created by:	
				Reason Score Not Maxed (Provide Item Number from Application Scoring Summary)	Reason Threshold Failed (Provide Item Number from Application Scoring Summary)	Reason for Failure to Achieve Proximity Tie-Breaker Points Selected (Provide Item Number from Application Scoring Summary)	Check if Item No. indicated in previous 3 columns resulted from Preliminary Scoring	Check if Item No. indicated in previous 3 columns resulted from NOPSE scoring. Also, please state the Tracking No., if known X Tracking No. 71
III	A	11.b.(1)		S	T	1 P		
				S	T	P		
				S	T	P		
				S	T	P		
				S	T	P		
				S	T	P		
				S	T	P		
				S	T	P		
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				S	T	P		
				S	T	P		

SUBMITTED BY APPLICATION NO. 2003-039C IN ACCORDANCE WITH RULES 67-21.003, F.A.C. and TRACKING NO. 71

2003 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. 2003-087C and
pertains to:

Part III Section A Subsection 1.1.1 Exhibit No _____ (if applicable)

The attached information is submitted in response to the 2003 Universal Scoring Summary
because:

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

2003 Universal Scoring Summary	Created by:	
	Preliminary Scoring	NOPSE Scoring
<input type="checkbox"/> Reason Score Not Maxed	Item No. _____ S	<input type="checkbox"/>
<input type="checkbox"/> Reason Threshold Failed	Item No. _____ T	<input type="checkbox"/>
<input checked="" type="checkbox"/> Reason for Failure to Achieve Proximity Tie- Breaker Points Selected (MMRB/SAIL/HC Applications Only)	Item No. <u>1</u> P	<input checked="" 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 _____ (if
applicable).

Brief Statement of Explanation regarding
Application 2003 – 087C

Provide a separate brief statement for each Cure or NOAD

The Applicant revised its Application to select a different Grocery Store: La Fama #2 located at 2288 NW 28 Street in Miami. According to Miami-Dade County property records, this location is a 2-story building with adjusted square footage of 8,962 square feet on a 4,050-square foot lot. A site visit found that the Grocery Store occupies the first story only of the building. Thus, the area used for grocery sales consists of less than 4,500 square feet, and fails the Corporation's definition of a Grocery Store.

The Applicant should receive zero Tie-Breaker Proximity Points for the Grocery Store service.

EXHIBIT D

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

IN RE: AGUACLARA (#2003-087C)

_____ /

AFFIDAVIT OF SURVEYOR

STATE OF FLORIDA)
)SS
COUNTY OF MIAMI-DADE)

Before me, the undersigned authority, personally appeared EDWIN J. FERNANDEZ, who, being duly sworn, states that he personally knows the following facts and that the same are true and accurate:

1. I am presently a licensed professional surveyor in the State of Florida (Florida License No. 5676), and I have maintained such status continuously from January 10, 1997 to the present.

2. I am currently employed by FORD, ARMENTEROS & MANUCY, INC., located in 1950 NW 94th Avenue, 2nd Floor, Miami, Florida, 33172 a surveying firm.

3. I have visited the grocery store known as La Fama II, located at 2288 N.W. 28th Street, Miami, Florida 33142 (the "Grocery Store"). The Grocery Store comprises almost all of the first floor of a two-story building located at that address.

4. I have measured the amount of air-conditioned square footage occupied by the Grocery Store (including its accompanying air-conditioned back room and storage space) on July 30, 2003. Such area consists of 6,684.40 square feet.

5. I am aware that the records of the Miami-Dade County Property Appraiser's office reflect a total square footage of 8,962 square feet for the two story building located at the address. I am aware that, in connection with the competition for low-income housing tax credits held by Florida Housing Finance Corporation, another competitor has contended that, since the entire two story building consists of 8,962 square feet according to the property appraiser's records, the area used for the Grocery Store (the first floor) must by definition consist of less than 4,500 square feet.

6. my measurements indicate that the total air-conditioned square footage occupied by the Grocery Store (including accompanying back room and storage space which is air conditioned) consists of 6,684.40 square feet. It is my understanding that an addition was constructed to the building some years earlier, and that the square footage of this addition is not accurately reflected on the property appraiser's records.

FURTHER AFFIANT SAYETH NOT.

[Signature]

STATE OF FLORIDA,
COUNTY OF MIAMI-DADE

Sworn to and subscribed before me on July 31st, 2003 by [Signature]

NOTARY PUBLIC



CYNTHIA M. CALDEVILLA
MY COMMISSION # DD 228521
EXPIRES: July 5, 2007
Bonded Thru Budget Notary Services

Commission No.: _____

Name of Notary, typed, printed or stamped _____

My Commission Expires: _____

Personally Known ✓ OR Produced Identification _____
Type of Identification Produced _____



NORTH

GRAPHIC SCALE

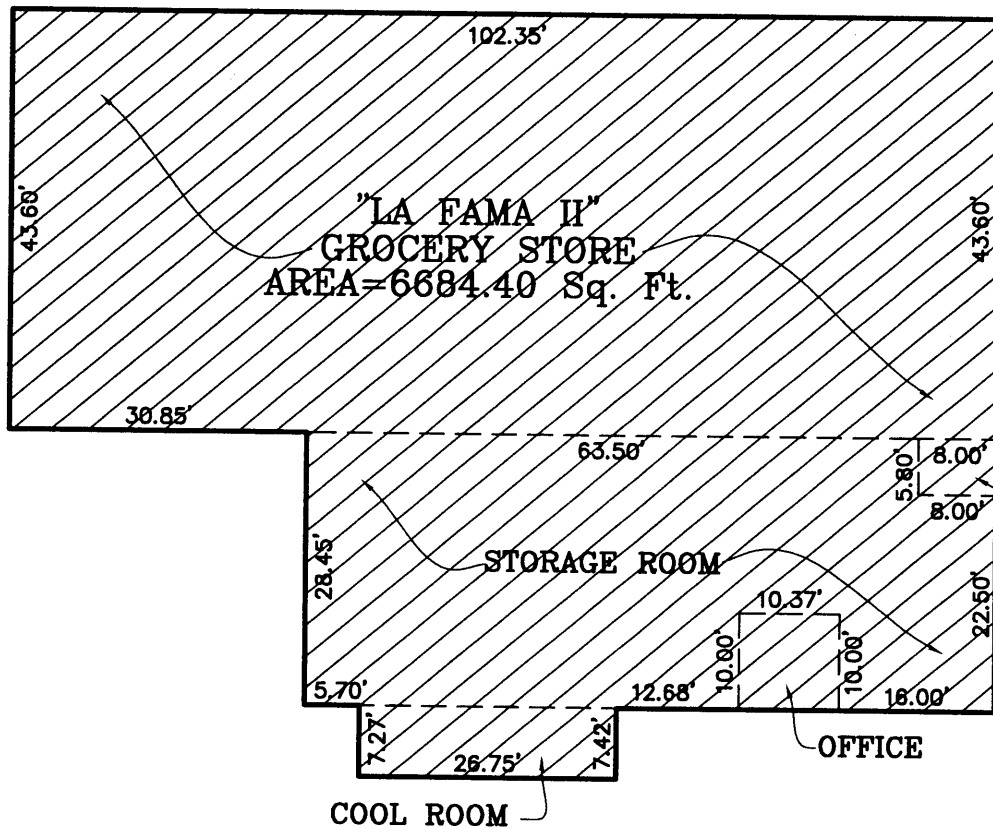


(IN FEET)

1 inch = 20 ft.

N.W. 28th STREET

N.W. 3rd AVENUE



"LA FAMA II"
GROCERY STORE
AREA=6684.40 Sq. Ft.

STORAGE ROOM

OFFICE

COOL ROOM

BATHROOM

AIR-CONDITIONED SQUARE FOOTAGE=6684.40 Sq. Ft.

AGUACLARA



FORD, ARMENTEROS & MANUCY, INC.
 1950 N.W. 94th AVENUE, 2nd FLOOR
 MIAMI, FLORIDA 33172
 PH. (305) 477-6472
 FAX (305) 470-2805

TYPE OF PROJECT:		AFFIDAVIT/ LA FAMA GROCERY	
SHEET NAME:		SKETCH OF SURVEY	
PREPARED FOR:		PINNACLE HOUSING GROUP	
DRAWN BY:	S.P	DATE:	7-30-03
DWG. CHECKED BY:		SCALE:	1" = 20'
CHECKED BY:		PROJECT No:	02-247-5801
			SHEET:
			1
			OF 1 SHEETS



National Church Residences

2335 NORTH BANK DRIVE, COLUMBUS, OHIO 43220-5499

(614) 451-2151 FAX (614) 451-0351 TDD (800) 925-8689 www.ncr.org

Petition

2003-007CS Whistling Pines Apartments

2 (a) The name and address of each agency affected and each agency's file or identification number, if known;

Florida Housing Finance Corporation 2003-007CS
227 North Bronough Street
Suite 5000
Tallahassee, Florida 32301
850-488-4197

Bruce D. Loucks (County Administrator)
Charlotte County
18500 Murdock Circle
Port Charlotte, FL 33948-1094
914-743-1944

2 (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;

Greg Will
National Church Residences
2335 North Bank Drive



Columbus, OH 43220
614-273-3541

Jeff Cecil (Attorney)
Porter, Wright, Morris & Arthur
5801 Pelican Bay Blvd
Suite 300
Naples, FL 34108
800-876-7962

Our application for Housing Credit is effected by the reduction in scoring.

2 (c) A statement of when and how the petitioner received notice of the agency decision;

We received notice of Final Score status via overnight delivery from Florida Housing Finance Corporation in July 2003.

2 (d) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;

We attempted to cure Item 10S relative to the Local Government Verification of Affordable Housing Incentives – Modification of Fee Requirements for Affordable Housing Properties or Developments form (Exhibit 48). After extensive discussion with Charlotte County representatives concerning fee modification options, a properly executed form (Exhibit 48) was secured and submitted to Florida Housing Finance Corporation.

2 (e) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action; and

It is apparent that confusion exists at the County level on this issue. We believe proper procedure was followed and that the County can honor this condition.

2 (f) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

We respectfully request reinstatement of the "one point" deducted from our application, thus restoring the full "66 points" earned.

ELECTION OF RIGHTS

Application Number: 2003-007cs Development Name: Whistling Pines Apartments

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)

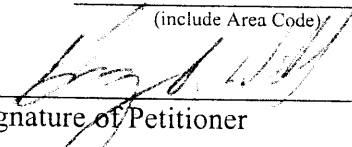
Following are my top eight preferences, in order from 1-8 (with 1 being my first choice, etc.) for scheduling my informal hearing. All formal hearings will be scheduled by the Division of Administrative Hearings.

Hearing Dates:	A.M.	P.M.
August 28, 2003	1	
September 2, 2003		8
September 3, 2003	2	
September 4, 2003	3	
September 5, 2003	4	

Hearing Dates:	A.M.	P.M.
September 8, 2003	5	
September 9, 2003	6	
September 10, 2003		
September 11, 2003	7	

Please fax a Hearing Schedule to me at this number: 614-451-0351
(include Area Code)

DATE: 8-11-2003



 Signature of Petitioner
 Name: Greg S. Will

Address: 2335 North Bank Drive, Columbus, OH 43220

Phone: 614-273-3541
(include Area Code)

TO PRESERVE YOUR RIGHT TO A PROCEEDING, YOU MUST RETURN THIS FORM WITHIN TWENTY-ONE (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.

RECEIVED
 AUG 12 2003
 12:13 PM
 DIVISION OF ADMINISTRATIVE HEARINGS
 TALLAHASSEE, FLORIDA

IN RE: ASWAN VILLAGE APPLICATION
to FLORIDA HOUSING FINANCE CORPORATION –
APPLICATION #2003-026S

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2003 AUG 12 AM 9:46

PETITION

Aswan Village Associates, LLC., a Florida limited liability company, by and through its undersigned counsel hereby submits this Petition and request an evidentiary proceeding and asserts as follows:

1. The name and address of the Agency affected and the Agency's file or identification number are as follows:

Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, FL 32301-1329
Agency's File or Identification Number: _____

2. Names, addresses and telephone numbers of Petitioner and Petitioner's representative and explanation of how interest will be affected:

- a. Petitioner: Aswan Village, Associates, LLC.
c/o Banc of America Community
Development Corporation
100 S.E. Second Street, 14th Floor
Miami, FL 33131
Telephone Number: (305) 533-2348
Fax Number: (305) 533-2309

- b. Petitioner's Representative: Holland & Knight LLP
ATTN: Lynn C. Washington, Esq.
701 Brickell Avenue, Suite 3000
Miami, FL 33131
Telephone Number: (305)789-7798
Fax Number: (305)789-7799

c. The Petitioner applied for a SAIL Loan from the Florida Housing Finance Corporation (the "Agency") from the 2003 Universal Cycle. The Agency found that the Petitioner's application did not meet the threshold requirements and did not award a SAIL Loan to the Petitioner.

3. Notification to Petitioner

The Petitioner received notification of the Agency's decision by mail on July 21, 2003.

4. Statement of Disputed Facts

a. **The Agency's position is that the commitment for financing provided by the Petitioner was not a firm commitment for financing.**

A copy of the fully executed Operating Agreement in which the purchaser of the Housing Tax Credits is obligated to provide financing for the Petitioner's development is included as part of the Petitioner's SAIL Application and is a part of the record. Based on a review of the Operating Agreement, it is clear that the obligation of the Purchaser is firm because the Purchaser has commenced the funding under the Operating Agreement. The Corporation failed to take into account that the Housing Credits at issue in this matter were not the Housing Credits that came from the Housing Corporation's limited allocation, but were instead Housing Credits that were allocated based on a local government's tax exempt bond issue. An agreement pursuant to which one is presently making payments of funds is certainly a firm commitment.

b. The Agency's position is also that certain items are missing from the Operating Agreement.

The Petitioner submits that all the required information is included: Syndication rate (page 20, section 3.03(a) and Exhibit A-1 and A-2), capital contribution pay in schedule (Exhibit A-1), percentage of the anticipated amount of credit allocation being purchased (Exhibit A, page A-1), total amount of equity being provided including the amount of credits being disbursed during construction (Exhibit A-1), and anticipated housing credit allocation (page 35, paragraph (aa), Exhibit A-2). The amount of equity required to be paid prior to closing was also provided.

c. The Agency's position is that the Applicant failed to provide documentation that it was entitled to the set-aside that it selected because it did not have an allocation of Housing Credits.

The Petitioner's position is that it had an allocation of Housing Credits. The Housing Credits are as a result of the local government bond issue. Attached to this Petition is the "comfort letter" that was issued by the Corporation acknowledging that the Petitioner did not have to apply to the Corporation for the allocation of Housing Credits until a future date.

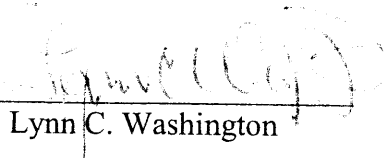
5. The rules of the Florida Housing Finance Corporation require reversal of the Agency's position.

6. The Petitioner requests that the Petitioner's Application be treated as meeting threshold and that the Applicant be eligible to participate in the FHFC 2003 Universal Application Cycle for an SAIL Loan and the Petitioner be awarded the appropriate points that

are associated with the reversal of the items set forth in this Petition. If this request is denied, the Petitioner requests a hearing.

Respectfully submitted:

HOLLAND & KNIGHT LLP
701 Brickell Avenue, Suite 3000
Miami, Fl 33131
Tel: (305) 789-7798
Direct Fax: (305) 789-7799

By: 
Lynn C. Washington

MIA1 #1244252 v1



February 17, 2003

JEB BUSH
Governor

ORLANDO J. CABRERA
Chairman

CESAR E. CALVET
Vice Chairman

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Ex Officio

MARK KAPLAN
Executive Director

Mr. Gonzalo DeRamon
Aswan Village Associates, LLC
100 Southeast Second Street
14th Floor
Miami, Florida 33131-2100

Re: Aswan Village
Housing Credit Allocation for Tax-Exempt Bond Financed Project

Dear Mr. DeRamon:

In accordance with Internal Revenue Code Section 42(h)(4)(B), if 50% or more of the aggregate basis of any building including the land is financed from tax-exempt bonds, the housing credits will come directly from the U.S. Treasury rather than from Florida's allocation authority.

This means that, although the Development's owner must *apply* to Florida Housing Finance Corporation for housing credits, competition is NOT required. The complete application for housing credits must be received by Florida Housing **no later than July 1 of the year the Development is placed in service**. Although competition is not required, the Application must achieve the required threshold score in order to qualify for the housing credits. Please contact the Housing Credit staff at (850) 488-4197 to obtain the current application.

Once the threshold score has been achieved, the Development will be subjected to credit underwriting. After underwriting, Florida Housing will issue a Preliminary Determination of housing credits and collect the required administrative fee. When all buildings are placed in service, the owner must submit the following to the Corporation: the executed Extended Use Agreement, certificates of occupancy for each building, photos of the Development, the syndication agreement, the applicable compliance monitoring fee, and the final cost certification, audited by an independent certified public accountant. These documents will be reviewed prior to issuance of the housing credit certificates (IRS Forms 8609).

Let me emphasize again that there is no need to compete for the credits. If this development meets the requirements of the Internal Revenue Code, the Qualified Allocation Plan and the Housing Credit Program Rule Chapter 67-48, F.A.C., housing credits will be available directly from Treasury (outside the Florida

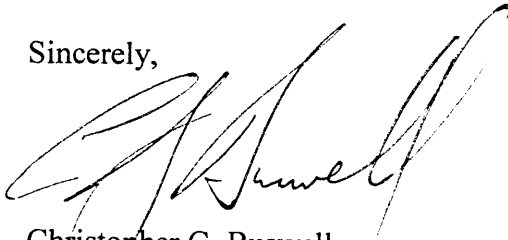
Mr. DeRamon
February 17, 2003
Page Two

allocation authority amount). For developments that meet the 50% tax-exempt financed requirements of Section 42, IRC, obtaining housing credits is largely a matter of completing paperwork and paying applicable fees.

Based on the estimated qualified basis of \$19,963,431.00, the owner can expect to receive an estimated annual allocation amount of \$708,702.00 for ten (10) years. Please understand that this is the very roughest of estimates and in no way binds Florida Housing. The Development will be further reviewed to determine the actual housing credit need prior to final allocation of the housing credits.

Please let me know if you have any questions or if I can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Buswell", written over a faint, illegible typed name.

Christopher G. Buswell
Housing Credit Administrator

CGB/jm

ELECTION OF RIGHTS

Application Number: 2003-0265 Development Name: ASWAN VILLAGE

- 1. I do not desire a proceeding.
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September 11, 2003	4	3

Please fax a Hearing Schedule to me at this number: (305) 533-2390
(include Area Code)

DATE: 8/11/03

G. Selva
Signature of Petitioner

Name: GONZALO DERAMON

Address: 100 SE 2nd St 14th Floor
MIAMI FL 33130

Phone: (305) 533-2348
(include Area Code)

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FINANCE CORPORATION

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