

FHFC CASE
#2004-022-UC

PETITION FOR FORMAL ADMINISTRATIVE HEARING

Willow Grove LLC, a Florida limited liability company submits this Petition to The Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329 pursuant to Rule Chapters 67-21 and/or 67-48, F.A.C. and Chapters 420 and 120.57 Florida Statutes

1. Petitioner is Willow Grove LLC, a Florida limited liability company with an address of 295 North Drive, Suite G, Melbourne, Florida 32934. Telephone number is 321-435-3663. For the purposes of these proceedings the contact person will be John Saxton with an address of 295 North Drive, Suite G, Melbourne, Florida 32934 and telephone number of 321-951-7767.
2. The affected agency is The Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329. The Corporation's identification number for this matter is 2004-021C.
3. Willow Grove LLC received notice of the Corporation's decision by way of Memorandum and Scoring Summary from the Corporation dated July 9, 2004 and received by Willow Grove on July 11, 2004.
4. Statement of Disputed Facts.

a. Cure Item #10T, Part III, Section C, Subsection Z – Site Control

Petitioner submitted the above reference Cure but the Cure was deemed deficient for the following reason. **“The Applicant attempted to cure item 8T by submitting a fully executed assignment of the contract. However, the**

Assignment makes reference to an Exhibit A that was not included. Therefore, the cure is deficient.”

Exhibit A on the assignment refers to the actual contract that was included in the original application and the assignment clearly describes that contract. The instructions for filing cures clearly state, “Do not submit pages of the Application that are not revised or otherwise changed.” No part of the contract was changed therefore it was not included with the cure. The only document that was changed was the actual Assignment so that is all that was submitted with the cure.

Petitioner respectfully requests that the Corporation consider the Cure sufficient.

b. Cure Item #11T, Part V, Section B – Construction Financing Shortfall

Petitioner submitted the above reference Cure but the Cure was deemed deficient for the following reason. **“The Applicant has a construction financing shortfall of \$335,820. In its cure for item 1T, the applicant submitted a new loan commitment from ARCS Commercial Mortgage. This new loan commitment provided for \$335,820 less in construction period funding than the original loan commitment that it replaced. This accounts for the construction financing shortfall of \$335,820.”**

In its original application, Petitioner provided a construction loan commitment from Collateral Mortgage Capital, LLC that is not a regulated Financial Institution and as such, the Applicant is required to provide evidence of Collateral Mortgage Capital, LLC’s ability to fund. Since the required evidence was unavailable, it became necessary for Petitioner to obtain a new loan commitment with the required

evidence to fund. The new loan commitment from ARCS Commercial is intended to replace the original commitment from Collateral.

During the course of negotiations for this new loan commitment, ARCS provided a construction loan commitment with an incorrect amount of \$3,016,530. Upon discovery, ARCS submitted a revised construction loan commitment with the correct construction loan amount of \$3,352,350 (copy attached). Unfortunately, Applicant inadvertently included the incorrect commitment with its cure resulting in the apparent construction shortfall.

Regardless of which loan commitment is accepted by FHFC, there is no construction financing shortfall because of the terms of the Equity Commitment provided by Simpson Housing Solutions, LLC, Paragraph VII, B, Page 5 of the equity commitment:

“Construction Completion and Lease-Up Shortfall: The Managing Member would cause the Development to be fully and finally completed. If actual costs necessary to construct the Development exceed the budgeted costs set forth on the Proforma Budget or if the proceeds of the Construction Loan, together with the capital contributions due from Non-Managing Member as described in Section IV.A.2 were not sufficient to construct the Development, such additional costs of deficiency (“Construction Cost Shortfall”) would serve to reduce the amount of the Cash Portion of the Developer’s Fee available to be paid to the Managing Member and increase the amount of the Deferred Developer Fee. If the amount of the Construction Cost Shortfall exceeded the unpaid cash portion of the Petitioner Developer’s Fee, the Managing Member would immediately contribute

capital to the Limited Liability Corporation in an amount equal to such deficiency.”

Therefore, by virtue of the fact that ARCS Commercial Mortgage originally intended to provide \$3,352,350 construction financing, Petitioner respectfully requests that the correct construction loan commitment in the amount of \$3,352,350 be allowed to replace the incorrect construction loan commitment in the amount of \$3,016,530 submitted with the Cure thereby eliminating any apparent construction financing shortfall.

As an alternative, Petitioner requests the Corporation to recognize that there is no construction shortfall by the terms of the Equity Commitment provided by Simpson Housing Solutions, LLC, Paragraph VII, B, Page 5 of the equity commitment.

Acceptance of these Cures will allow the Application to meet Threshold and further compete for an allocation of tax credits.

Respectfully Submitted,
Willow Grove, LLC

By: 

William H. Walden

Date: 7-29-04



COMMERCIAL MORTGAGE CO., L.P.

**LOAN COMMITMENT AGREEMENT
FOR CONSTRUCTION AND PERMANENT LOAN**

June 9, 2004

Mr. John Saxton
Heartsprings International Ministries
295 North Drive
Suite G
Melbourne, Florida 32934

***Re: Willow Grove Apartments, a 96 unit development in Titusville, Florida
(the "Property")***

Dear Mr. Saxton:

We are pleased to provide you this firm commitment in connection with the above referenced property. This commitment is made based upon the financial information and projections provided to us in support of your loan application, and under the following terms and conditions:

Borrower:	Willow Grove, LLC	
Guaranty:	The unconditional joint and several guaranty of payment and performance of the construction loan and permanent loan. The permanent loan is non recourse, except for standard permanent loan carve-outs.	
Loan Amount ¹ :	Construction	\$3,352,350
	Permanent	\$1,700,517
Interest Rate:	Construction	LIBOR plus 500 basis points with a fixed rate at closing.
	Permanent	10-year treasury plus 350 basis points with rate fixed at closing.

¹ Permanent Loan sizing based upon a minimum 1.20 debt service coverage ratio based upon ARCS Commercial Mortgage underwriting and using a maximum 90% loan to value.

The debt was underwritten at 7.50% interest. Actual rate may be negotiated by the payment of additional points set at closing.

Repayable: Construction Interest only payments made on a monthly basis, in arrears.
 Permanent Principal and interest payments on a monthly basis.

Term: Construction 24 months
 Permanent 18 years
 Amortization 30 years

Prepayment: Years 1-10 no prepayment, subject to yield maintenance thereafter.

Commitment Fee: 1.50% of the Construction loan payable at closing.
 1.00% of the Permanent loan payable at closing.

Security: First mortgage lien on the Property (Construction and Permanent)
 Pledge of Equity Installments (Construction only)

Closing Costs: Borrower will pay all closing costs related to the closing of the construction and permanent loans including, but not limited to legal, title, survey, architectural, other necessary third party reports and out of pocket expenses.

Subordinate Financing: \$150,000 loan from Brevard County.

Conditions to funding Construction Loan:

Successful award and allocation of annual low income housing tax credits from the Florida Housing Finance Corporation.

Approval of complete plans and specifications.

Firm cost estimates with ARCS Commercial Mortgage Corporation ("ARCS") independent approval.

Appraisal acceptable to ARCS.

The general contractor and the construction contract shall be subject to approval by ARCS.

Guarantor(s) acceptable to ARCS shall issue a Guaranty of Completion of the Property and a Guaranty of Repayment of the Construction Loan.

ARCS reserves the right to assign the construction loan to a third party lender acceptable to Borrower.

Such other conditions which are customary and reasonable for a loan of this nature and amount.

Conditions to Funding Permanent Loan:

Construction of the project is 100% complete.

Property has reached 90% physical occupancy for at least 90 consecutive days and meets the minimum required debt service coverage ratio based upon the Property's net operating income as determined by ARCS.

All certificates of occupancy have been issued and remain in effect.

A final allocation of low income housing tax credits has been received.

Such other conditions which are customary and reasonable for a loan of this nature and amount.

Contact: Frank Baldasare, Vice President, ARCS Commercial Mortgage
Affordable Housing Division
17757 US Hwy. 19 N, Suite 310
Clearwater, FL 33764
Telephone: (727) 535-5006

All third-party beneficiary rights are expressly negated. No person who is not a party to this commitment shall have or enjoy any rights under this letter. No change, amendment or modification of this commitment shall be valid unless made in writing, addressed to the Borrower and signed by an authorized officer of ARCS.


Any changes to the Property and the financing will require ARCS' review and approval to ensure compliance to our underwriting standards. This commitment does not expire before December 31, 2004 and can only be extended in writing by ARCS.

ARCS' OBLIGATION TO MAKE ANY LOANS ARE AT ALL TIMES SPECIFICALLY CONDITIONED UPON ARCS' RECEIPT OF SATISFACTORY DUE DILIGENCE REPORTS, INCLUDING AN APPRAISAL, A TAX CREDIT RESERVATION, AN EQUITY COMMITMENT AND FINAL LOAN DOCUMENTS, IN FORM AND CONTENT DEEMED SATISFACTORY BY ARCS IN ITS SOLE AND ABSOLUTE DISCRETION.

Thank you for the opportunity to serve your financing needs in connection with this property. We look forward to working with you again.

**ARCS COMMERCIAL MORTGAGE CO., L.P.,
a California limited partnership**

**By: ACMC Realty, Inc.
Its: General Partner**

By: 


Frank Baldasare
Vice President

Agreed to and Accepted this 10th day of June, 2004:

BORROWER:

WILLOW GROVE, LLC

By: Heartsprings International Ministries, Co-Managing Member

By: 

John Saxton

Its: Agent

Title