BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

TIDEWATER REVITALIZATION, LTD.,

Petitioners,

vs. Applicant No. 2002-067C

FLORIDA HOUSING FINANCE CORPORATION,

Respondents.
_____/

PETITION FOR REVIEW

Pursuant to Section 120.569 and 120.57, *Florida Statutes*, ("F.S."), and Rule 67-48.005, *Florida Administrative Code* ("F.A.C."), Petitioner, TIDEWATER REVITALIZATION, LTD. ("Tidewater"), requests an administrative hearing on the FLORIDA HOUSING FINANCE CORPORATION's ("FHFC") scoring of Tidewater's 2002 Universal Application. In support of this Petition, Tidewater provides as follows:

1. Tidewater is a Florida for-profit limited partnership in the business of developing affordable housing units in the State of Florida. Tidewater's address is 4243 Northlake Blvd., Suite D, Palm Beach Gardens, FL 33410.

2. FHFC is the state agency delegated the authority and responsibility by the Legislature to implement and administer several programs, which provide financing incentives to developers for the development of affordable housing in Florida including the Housing Tax Credit Program ("HC").

3. The HC program is a federally funded program that awards project owners a dollar-for-dollar reduction in income tax liability in exchange for the acquisition and substantial rehabilitation of new construction of low and very low-income rental housing units. FHFC is the designated housing credit agency for the allocation of HC's in the State of Florida.

4. The Award of HC funds is made through a competitive process which project owners apply using the Universal Application. The Universal Application is comprised of numerous forms, which request information from each applicant. FHFC has adopted the Universal Application by reference at Rule 67-48.002(116), F.A.C.

5. On April 15, 2002, all applicants, including Tidewater, submitted Universal Applications to FHFC for review. Tidewater submitted its Application in an attempt to obtain funding to assist in the construction of a 100-unit affordable housing apartment complex in Taylor County, Florida.

6. On May 13, 2002, FHFC completed its preliminary review and scoring of Tidewater's Application. At that time, Tidewater was awarded a preliminary score of 62 points out of a possible 71 points.

7. Subsequent to the release of FHFC's preliminary scores, each applicant, pursuant to Rule 67-48.004(9), F.A.C., was allowed to submit to FHFC Notice of Possible Scoring Errors ("NOPSE"). The purpose was to point out errors in FHFC's scoring of applications.

8. In response to the NOPSE's and FHFC's preliminary review, applicants were allowed 15 days to submit revised documentation to correct any errors in their

applications pursuant to Rule 67-48.004(11), F.A.C. All revised documentation was due to FHFC by June 26, 2002. Tidewater submitted numerous "cures" in an attempt to receive maximum points.

9. Subsequent to the submittal of revised information pursuant to Rule 67-48.004(12), F.A.C., each applicant was allowed the opportunity to provide a Notice of Alleged Deficiency in Scoring ("NOAD") with respect to the revised documentation submitted by other applicants.

10. On July 22, 2002, FHFC finalized its review of the revised documentation and NOADs and issued final scores. Tidewater's final score was 71 out of a possible 71 points. FHFC concluded however, that Tidewater failed to satisfy a threshold criterion.

11. Tidewater's position in the ranking and its ability to be awarded funding is dependent upon how FHFC scores its Application. The ability to finance the proposed project will be jeopardized if funding is not obtained; accordingly, Tidewater's substantial interests are affected by this proceeding. In the instant appeal, Tidewater is challenging FHFC's threshold determination.

12. The Universal Application beginning at page 13 of 21 requests an Applicant to provide evidence of site control. One of the ways an applicant can demonstrate site control is by providing a fully executed qualified contract for purchase and sale for the subject property. During the cure process, Tidewater submitted a fully executed Purchase and Sale Agreement ("Agreement").

13. In scoring Tidewater's cure, FHFC concluded that the Agreement did not adequately demonstrate site control. Specifically, in its 2002 Universal Scoring

Summary, dated July 22, 2002, FHFC indicated, "The cure for 1T does not include Exhibit A, legal description. In addition, since the cure provides no evidence that one seller can sign for all, the amendments to the contract are invalid. Therefore, the contract does not have a term which does not expire before December 31, 2002". FHFC's threshold determination is erroneous.

14. The absence of the legal description identified in "Exhibit A" in the application is not indicative of whether Tidewater adequately demonstrated site control. The real property description in 2(A) of the Agreement dated February 7, 2000 ("Agreement") reads as follows:

> All of Seller's rights to that certain parcel of land and buildings containing 100 rental apartments and known as "Tidewater Apartments", together with any buildings, structures and improvements thereon located in City of Perry, Taylor County, Florida as more particularly described in Exhibit "A" attached hereto.

15. In this case, "Tidewater Apartments" is widely known as a property, even more so than the street on which it is located. Because Tidewater Apartments is a widely known and existing property in Perry, Florida, there can be no confusion as to which property is being described in section 2(A) of the Agreement.

16. A legal description is not a formal requirement of every valid and enforceable agreement for the sale of land, although such agreements must sufficiently describe the property to be sold. *Jordan v. Boisvert*, 632 So.2d 254 (Fla. 1st DCA 1994); *Triplett v. Lucas*, 113 So. 685 (Fla. 1927); *Kington v. Boone*, 109 So. 580 (Fla. 1926); *Schofield v. Talley*, 84 So. 193 (Fla. 1920); *S. Fla. Citrus Land Co. v. Walden*, 51 So. 554 (Fla. 1910); See generally 44 Fla. Jur. 2d *Real Property Sales and Exchanges* §

10 (1996). In this case, due to the widely known nature of the Tidewater Apartments property in Perry, Florida, the Agreement did not need the legal description attached as "Exhibit A" to be legally binding on the parties that entered into the Agreement. *Triplett*, 113 So. at 686. Thus, the absence of "Exhibit A" from the application is not definitive on the adequacy of site control.

17. Furthermore, a legal description is included within the four (4) corners of the application. Specifically, the legal description of Tidewater Apartments is included in Exhibit 21 on the survey of the property, which further evidences site control.

18. As to the signature issue, the original Agreement was signed by three parties as Sellers, namely Hazel Baumgardner, Judith Ware Abbott and Tidewater Apartments. The first amendment of the Agreement dated October 11, 2001, was signed by the same parties. The second amendment to the Agreement dated June 25, 2002, was signed by Hazel Baumgardner, who was authorized to sign on behalf of Tidewater Apartments, just as she did in the original Agreement. Further, in the second amendment, Hazel Baumgardner was authorized to sign for Judith Ware Abbott, and Ms. Abbott submits that she is bound by the second amendment to the Agreement. (See affidavit attached as Exhibit "A" and incorporated herein)

19. Even assuming all parties had not signed all agreements as a matter of law, FHFC's assertion that the Agreement is invalid is incorrect. Florida law provides that all parties to a contract can be bound by the terms of the agreement, even if the agreement is only executed by one of the parties. *S.E. Bank of Deerfield Beach v. Ralph Jackson Realty, Inc.* 354 So.2d 1217 (Fla. 4th DCA 1978)(citing at n.1 to *Burke v.*

Wallace, 124 So. 30 (Fla. 1929), and *Harper v. Bronson* 139 So. 203 (Fla. 1932)); *Lord v. DiePolder*, 113 So.2d 440 (Fla. 2d DCA 1959); *Malsby v. Gamble*, 54 So. 766 (Fla. 1911). Further, several written instruments can be considered when determining whether a contract is valid and enforceable. *Rohlfing v. Tomorrow Realty & Auction Co., Inc.*, 528 So.2d 463, 465 (Fla. 5th DCA 1988); *Middelthon v. Crowder*, 563 So.2d 94, 95 (Fla. 3d DCA 1990).

20. Thus, given that Ms. Baumgardner had legal authority to execute the Agreement and the amendments, which will be considered together when determining the enforceability of the contract, Tidewater has adequately demonstrated site control.

21. The material issues of fact and conclusions of law in the instant proceeding are as follows:

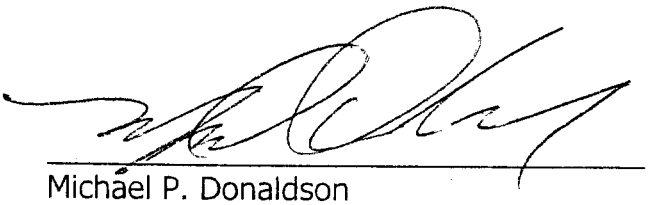
a) Whether FHFC erred in making its threshold determination

b) Whether the purchase and sale agreement submitted by Tidewater is legally sufficient.

c) Whether the purchase and sale agreement submitted by Tidewater is consistent with the requirements of the Universal Application.

WHEREFORE, based on the foregoing, Tidewater respectfully requests, to the extent the facts are undisputed, the entry of a recommended order which finds that Tidewater has satisfied threshold. To the extent facts are in dispute, Tidewater requests a formal hearing.

Respectfully submitted,



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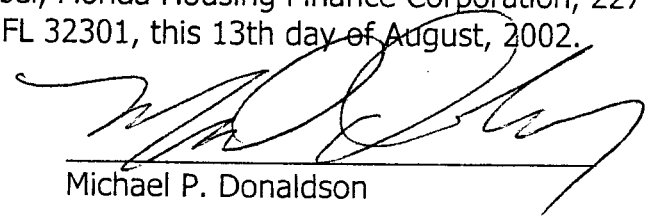
Attorneys for Petitioner,
Tidewater Revitalization, Ltd.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing has been filed by Hand Delivery with the Agency Clerk, Florida Housing Finance Corporation, 227 N. Bronough Street, Suite 5000, Tallahassee, FL 32301, and a copy furnished by Hand Delivery to Wellington H. Meffert, II, General Counsel, Florida Housing Finance Corporation, 227 N. Bronough St., Suite 5000, Tallahassee, FL 32301, this 13th day of August, 2002.



Michael P. Donaldson

AFFIDAVIT

STATE OF Florida
COUNTY OF Collier

I acknowledge that I, JUDITH WARE ABBOTT, authorized Mrs. Hazel Baumgardner to execute on my behalf that certain Amendment to the Purchase and Sale Agreement for Tidewater Apartments dated June 25, 2002, a copy of which is attached. I acknowledge and agree that as of June 25, 2002, I was legally obligated to perform according to the terms of that agreement.

EXECUTED this 13 day of August, 2002.

WITNESSES:

Kimberly S. Best

Judith Ware Abbott
JUDITH WARE ABBOTT, Affiant

STATE OF Florida
COUNTY OF Collier

Sworn to and subscribed before me this 13 day of August, 2002, by JUDITH WARE ABBOTT, who is personally known to me or who produced _____ as identification, and who did take an oath.

Kimberly S. Best
NOTARY PUBLIC
My commission expires:

KIMBERLY S. BEST
MY COMMISSION # CC 872645
EXPIRES: January 18, 2004
Bonded Thru Notary Public Underwriters

ATTACHMENT A

SECOND AMENDMENT TO PURCHASE AND SALE AGREEMENT FOR IRREVOCABLE APARTMENTS

THIS AMENDMENT, made and executed on 12th, 2002, by HAZEL BAUMGARDNER, whose post office address is 110 West High Street, Perry, Florida 32347, hereinafter referred to as Seller, is made for the purpose of amending that certain Purchase and Sale Agreement dated February 7, 2000 and amended October 11, 2000, executed by Seller and Tidewater Revitalization, Ltd., as Purchaser.

Paragraph 8, subparagraphs A thru C are stricken and replaced with the following:

8. The purchase price shall be as follows:

A. Assumption or satisfaction of the existing HUD insured mortgage, with a principal balance of $609,934.56 as of December 31, 2001, with monthly installments of $7,041.00 including interest at seven percent (7%) through 2013 in addition to monthly deposits for taxes, insurance and replacement for depreciable assets. Seller shall be released from any further obligations with respect to the HUD mortgage.

B. Payment of Two Hundred Fifty Thousand and Sixty Five and 65/100 dollars ($250,065.65) to Seller at closing in cash or by certified check.

C. Payment of Thirty Thousand and no/100 dollars ($30,000.00) to Smith, Moore & Smith, Attorneys at Law, P.A. at closing in cash or by certified check.

D. Payment of Ten Thousand and no/100 dollars ($10,000.00) to John Yarbrough, CPA at closing in cash or by certified check.

E. Buyer will reimburse to Seller One Hundred Twenty Four thousand and Nine Hundred Thirty Four and 35/100 dollars ($124,934.35) for the improvement done to the property by the Seller at closing in cash or by certified check.

F. Upon execution of this document, Buyer shall pay to the attorney for the Buyer an Escrow Deposit of Twelve Thousand Five Hundred and no/100 dollars ($12,500.00).

Paragraph 7, Closing Date, is stricken and replaced with the following:

Seller is not obligated to complete a 'mark to market' mortgage restructuring of their existing obligation. Buyer may, at its option, engage in and complete a 'mark to market' mortgage restructuring by Buyer shall not in any way impede or affect the date of closing. The costs associated with the TRA shall be paid by Buyer. Notwithstanding the provisions of this amendment or prior amendments and contract which provide this agreement shall terminate on December 31, 2002.

Seller hereby ratifies and affirms all other terms, covenants, conditions and agreements of the

original Purchase and Sale Agreement hereinabove described shall remain in full and force and effect. Nothing herein contained shall in anywise impair, alter or diminish the effect of the original Agreement of Sale entered into by and between the Seller and Purchaser, except as herein provided.

IN WITNESS WHEREOF, Seller has executed this instrument as of the day and year first hereinabove written.

Signed, sealed and delivered in the presence of:

Witness

Witness as to Baumgardner

SELLER:

HAZEL BAUMGARDNER (SEAL)

Witness

Witness as to Barot

BUYER:

TIDEWATER REVITALIZATION, LTD.

By: DILIP BAROT, as President of (SEAL)

GENERAL PARTNER