

BEFORE THE  
FLORIDA HOUSING FINANCE CORPORATION

RELIANCE-CYPRESS GROVE  
ASSOCIATES, LTD.,

Petitioner,

vs.

CASE NO. 2004-031-VC

FLORIDA HOUSING FINANCE  
CORPORATION,

Respondent.

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**PETITION FOR HEARING**

Petitioner, Reliance-Cypress Grove Associates, Ltd. (hereinafter "Petitioner"), files this Petition pursuant to §§ 120.569 and 120.57(1), Fla. Stat., stating:

1. Petitioner's address is 516 N.E. 13th Street, Ft. Lauderdale, Florida 33304. For the purpose of this Petition, however, the Petitioner's address is that of the undersigned counsel.

2. Petitioner is a Florida limited partnership. Reliance Housing Foundation is a non-profit entity under Florida Administrative Code Rule Chapter 67-48.002, and is the sole member of Reliance-Cypress Grove, LLC, a Florida limited liability company, Petitioner's general partner.

3. The affected agency is the Florida Housing Finance Corporation ("FHFC"), 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329; (850) 488-4197.

4. Petitioner filed an application with the Florida Housing Finance Corporation for funding under the State Apartment Incentive Loan ("SAIL") program for a proposed development in Broward County known as Sandalgrove Apartments. Petitioner's application number is 2004-082S. Under the SAIL program, successful applicants receive low-interest loans to provide housing available to very low income persons.

5. FHFC scores and ranks applications for the SAIL program pursuant to the Universal Application Package Instructions ("Application Instructions") which are adopted as rules pursuant to Rule 67-48.002(111), F.A.C.

6. The 2004 Universal Scoring Summary notified Petitioner that through either Preliminary Scoring or Notice of Possible Scoring Error scoring there were various deficiencies in its Application. Cure Forms were filed supplementing or explaining these deficiencies.

7. FHFC accepted the explanations and supplemental information provided by Petitioner in the Cure Forms, except for two items. In the Final Scoring Summary, FHFC rejected the Petitioner's explanation on the source of financing (Cure to Exhibit 58) and on the experience of the contractor (Cure for Item 11T).

Petitioner for the net operating income, there is not a construction financing or permanent financing shortfall.

12. Net operating income was accepted as a source of funding in the 2003 Supplemental Universal Cycle, Application No. 2003A for \$37,500,000 in tax exempt bonds for the renovation of the Development which is the subject of this SAIL Application.

13. Petitioner's substantial interests are affected by this proceeding because it has a substantial interest in obtaining funding requested in its Application Number 2004-082S.

14. The disputed issues of material fact include, but are not limited to, the following:

- a. whether the proposed contractor has experience in the construction of at least two completed housing developments of similar development category and development type, at least one of which consists of a total number of units no less than 50 percent of the total number of units in the proposed development;
- b. whether the experience of the contractor on three garden apartment renovations of over 407 units and more than two renovation projects of mid rise with elevators is sufficient to meet the required construction of similar development types; and

- c. whether net operating income under the facts of this case is an appropriate source of funding, and whether there is a construction financing and/or permanent financing shortfall.

15. The ultimate facts relied on by Petitioner include, but are not limited to, the following:

- a. the proposed contractor has experience in the construction of at least two completed housing developments of similar development category and development type, at least one of which consists of a total number of units no less than 50 percent of the total number of units in the proposed development;
- b. the experience of the contractor on three garden apartment renovations of over 407 units and more than two renovation projects of mid rise with elevators is sufficient to meet the required construction of similar development types; and
- c. net operating income under the facts of this case is an appropriate source of funding and there is no construction financing or permanent financing shortfall.

16. Petitioner has retained the undersigned attorneys and is obligated to pay a reasonable fee for their services.

WHEREFORE, Petitioner requests the following relief:

1. That this Petition be transferred to the Division of Administrative Hearings for the appointment of an Administrative Law Judge, who will conduct a hearing in accordance with § 120.57(1)(e).

2. The entry of a recommended and final order finding Petitioner has met threshold and is eligible for the low-interest loan requested in its application.

3. The award of reasonable attorney's fees and costs to Petitioner.

DATED this 2<sup>nd</sup> day of August, 2004.

Respectfully submitted,



CYNTHIA S. TUNNICLIFF  
Florida Bar Number: 0134939  
BRIAN A. NEWMAN  
Florida Bar Number: 0004758  
PENNINGTON, MOORE, WILKINSON,  
BELL & DUNBAR, P.A.  
215 South Monroe Street, 2nd Floor (32301)  
Post Office Box 10095  
Tallahassee, Florida 32302-2095  
Telephone: 850/222-3533  
Facsimile: 850/222-2126

**ELECTION OF RIGHTS**

Application Number: 2004- 0825 Development Name: Sandalgrove 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.

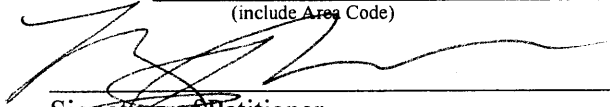
Hearing Dates:	A.M.	P.M.
August 18, 2004		
August 20, 2004		
August 23, 2004		
August 24, 2004		

Hearing Dates:	A.M.	P.M.
August 25, 2004		
August 26, 2004		
August 27, 2004		
August 31, 2004		

\*Matters heard after these dates will likely not be funded in the current Application Cycle.

Please fax a Hearing Schedule to me at this number: 850/222-2126  
(include Area Code)

DATE: 8/2/04

  
Signature of Petitioner

Name: BRIAN NEWMAN

%Pennington, Moore, Wilkinson,  
Address: Bell & Dunbar, P.A.  
P.O. Box 10095

Tallahassee, Florida 32302-2095

Phone: 850/222-3533  
(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.**

**PART II HEARINGS INVOLVING DISPUTED ISSUES OF MATERIAL FACT**  
**28-106.201 Initiation of Proceedings.**

(1) Unless otherwise provided by statute, initiation of proceedings shall be made by written petition to the agency responsible for rendering final agency action. The term "petition" includes any document that requests an evidentiary proceeding and asserts the existence of a disputed issue of material fact. Each petition shall be legible and on 8 1/2 by 11 inch white paper. Unless printed, the impression shall be on one side of the paper only and lines shall be double-spaced.

(2) All petitions filed under these rules shall contain:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (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;
- (c) A statement of when and how the petitioner received notice of the agency decision;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) 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;
- (f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action; and
- (g) 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.

(3) Upon receipt of a petition involving disputed issues of material fact, the agency shall grant or deny the petition, and if granted shall, unless otherwise provided by law, refer the matter to the Division of Administrative Hearings with a request that an administrative law judge be assigned to conduct the hearing. The request shall be accompanied by a copy of the petition and a copy of the notice of agency action.

(4) A petition shall be dismissed if it is not in substantial compliance with subsection (2) of this rule or it has been untimely filed. Dismissal of a petition shall, at least once, be without prejudice to petitioner's filing a timely amended petition curing the defect, unless it conclusively appears from the face of the petition that the defect cannot be cured.

(5) The agency shall promptly give written notice to all parties of the action taken on the petition, shall state with particularity its reasons if the petition is not granted, and shall state the deadline for filing an amended petition if applicable.

*Specific Authority 120.54(3), (5) FS. Law Implemented 120.54(5), 120.569, 120.57 FS. History—New 4-1-97, Amended 9-17-98.*

**PART III PROCEEDINGS AND HEARINGS NOT INVOLVING DISPUTED  
ISSUES OF MATERIAL FACT**

**28-106.301 Initiation of Proceedings.**

(1) Initiation of a proceeding shall be made by written petition to the agency responsible for rendering final agency action. The term "petition" includes any document which requests a proceeding. Each petition shall be legible and on 8 1/2 by 11 inch white paper or on a form provided by the agency. Unless printed, the impression shall be on one side of the paper only and lines shall be doubled-spaced.

(2) All petitions filed under these rules shall contain:

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

(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;

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

(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;

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

(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.

(3) If the petition does not set forth disputed issues of material fact, the agency shall refer the matter to the presiding officer designated by the agency with a request that the matter be scheduled for a proceeding not involving disputed issues of material fact. The request shall be accompanied by a copy of the petition and a copy of the notice of agency action.

(4) A petition shall be dismissed if it is not in substantial compliance with subsection (2) of this Rule or it has been untimely filed. Dismissal of a petition shall, at least once, be without prejudice to petitioner's filing a timely amended petition curing the defect, unless it conclusively appears from the face of the petition that the defect cannot be cured.

(5) The agency shall promptly give written notice to all parties of the action taken on the petition, shall state with particularity its reasons if the petition is not granted, and shall state the deadline for filing an amended petition if applicable.

*Specific Authority 120.54(5) FS. Law Implemented 120.54(5), 120.569, 120.57 FS. History--New 4-1-97, Amended 9-17-98.*



## MEMORANDUM

TO: Applicants for the 2004 Universal Cycle

FROM: Stephen P. Auger, Deputy Development Officer

DATE: July 9, 2004

SUBJECT: Final Scores and Notice of Rights

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Enclosed is a 2004 Universal Scoring Summary reflecting the Corporation's decision regarding any revisions ("Cures") and Notices of Alleged Deficiencies ("NOAD"), together with an Election of Rights Form with attachments. NOADs and program spreadsheets are now available on Florida Housing's web site at [www.floridahousing.org](http://www.floridahousing.org).

Applicants who wish to contest the decision relative to their own Application must petition the Corporation for review of the decision in writing within 21 Calendar Days of the date of receipt of this notice. Only petitions received by this deadline will be considered. The petition must specify in detail each issue and score sought to be reviewed. Unless the appeal involves disputed issues of material fact, the appeal will be conducted on an informal basis pursuant to section 120.57(2), Florida Statutes. If the appeal raises disputed issues of material fact, a formal administrative hearing will be conducted pursuant to Section 120.57 (1), Florida Statutes. Failure to timely file a petition shall constitute a waiver of the right of the Applicant to such an appeal. Written notifications, petitions or requests for review will NOT be accepted via telefax or other electronic means. No Applicant or other person or entity will be allowed to intervene in the appeal of another Applicant.

Petitions must be received by 5:00 p.m. Eastern Time on Monday, August 2, 2004. Petitions must comply with the provisions of Rule 28-106.201 or 28-106.301, Florida Administrative Code, and must be filed with:

Corporation Clerk  
Florida Housing Finance Corporation  
227 North Bronough Street, Suite 5000  
Tallahassee, Florida 32301-1329

An Applicant that requests a hearing will have the right to be represented by counsel or other qualified representative. Pursuant to section 120.573, Florida Statutes, mediation is not available.

Memorandum to Applicants  
Page Two  
July 9, 2004

Please complete and submit the enclosed Election of Rights Form as soon as possible to facilitate the scheduling of hearings. This form may be submitted prior to the submission of petitions. Florida Housing will make every effort to have a hearing schedule completed and posted on the Corporation web site by August 3, 2004.

Applicants will not be permitted to make oral presentations to the board in response to recommended orders. An Applicant may submit written arguments in response to a recommended order for consideration by the board. Any written argument should be typed, double-spaced with margins no less than one (1) inch, in either Times New Roman 14-point font or Courier New 12-point font, and may not exceed five (5) pages. Any written argument must be received by Florida Housing's Corporation Clerk at the above address no later than 5:00 p.m. Eastern Time on the date stated in the Recommended Order filed in each matter. Failure to timely file a written argument shall constitute a waiver of the right of the Applicant to be heard on the recommended order.

Enc.

## 2004 MMRB, SAIL & HC Scoring Summary

As of: 07/08/2004

Development Name: Sandalgrove Apartments

File # 2004-082S

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 - 08 - 2004	66	N	7.5	\$48,525.8	8.26%	N
Preliminary	66	N	7.5	\$48,525.8	8.26%	N
NOPSE	66	N	7.5	\$48,525.8	8.26%	N
Final	66	N	7.5	\$48,525.8	8.26%	N
Final-Ranking	0	N	0	0	0	

**Scores:**

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

## 2004 MMRB, SAIL & HC Scoring Summary

As of: 07/08/2004

Development Name: Sandalgrove Apartments

File # 2004-082S

**Threshold(s) Failed:**

Item #	Part	Section	Subsection	Description	Reason(s)	Created As Result of	Rescinded as Result of
1T	III	C	1	Site Plan Approval	Applicant failed to provide the required Local Government Verification of Status of Site Plan Approval for Multifamily Developments form.	Preliminary	Final
2T	III	C	3.b.	Availability of Water	Applicant failed to provide the required evidence of availability of water.	Preliminary	Final
3T	III	C	3.c.	Availability of Sewer	Applicant failed to provide the required evidence of availability of sewer, package treatment or septic tank.	Preliminary	Final
4T	III	C	3.d.	Availability of Roads	Applicant failed to provide the required evidence of availability of roads.	Preliminary	Final
5T	III	C	4	Appropriate Zoning	Applicant failed to provide the required Local Government Verification that the Development is consistent with Zoning and Land Use Regulations form or Local Government Verification that Permits are not Required for this Development form.	Preliminary	Final
6T	V	D		Exhibit 55, HFA of Broward County, Tax-Exempt Bond Financing in the amount of \$37,500,000	Applicant did not provide a letter from the Chair of the HFA specifying; a) tax-exempt allocation had been reserved, b) all approvals precedent to funding had been obtained, c) a commitment had been executed, and d) appropriate fees had been paid. Neither did Applicant provide a copy of the executed note or executed loan agreement, containing terms, interest rates or a copy of the recorded mortgage, if applicable. As such, the \$37,500,000 listed by the Applicant is not considered a source of financing.	Preliminary	Final
7T	V	D		Equity Commitment	The Applicant provided an equity commitment from SunAmerica which is conditioned on an allocation of credits. The Applicant failed to provide evidence that it had received the appropriate tax-exempt bond financing to be eligible to apply for credits. Therefore, the equity stated in the commitment was not considered a source of financing.	Preliminary	Final
8T	V	D		Exhibit 58, NOI during rehab funding	The Applicant listed as sources \$3,332,040 at item 11 under Construction or Rehab Analysis and \$4,000,000 at item 11 under Permanent Analysis. In both cases the Applicant stated the figures represented NOI during Rehab and provided a pro forma at Exhibit 58. Florida Housing does not recognize a pro forma as a commitment to fund or ability to fund. Applicants must provide commitments that meet the criteria stated in the Universal Application Instructions and where the commitments are not from a regulated Financial Institution, provide evidence of ability to fund as stated on page 67 of the Universal Application Instructions. Therefore, the \$3,332,040 and the \$4,000,000 were not considered sources of financing.	Preliminary	
9T	V	D		Construction Financing Shortfall	The Applicant has a construction financing shortfall of \$55,517,847.	Preliminary	Final
10T	V	D		Permanent Financing Shortfall	The Applicant has a permanent financing shortfall of \$55,517,847.	Preliminary	Final
11T	II	B	3	General Contractor	The prior experience chart for the General Contractor fails to demonstrate experience	NOPSE	

## 2004 MMRB, SAIL & HC Scoring Summary

As of: 07/08/2004

Development Name: Sandalgrove Apartments

File # 2004-082S

**Threshold(s) Failed:**

Item #	Part Section	Subsection	Description	Reason(s)	Created As Result of	Rescinded as Result of
12T	V	B	Construction Financing Shortfall	The Applicant has a construction financing shortfall of \$3,332,040.	Final	
13T	V	B	Permanent Financing Shortfall	The Applicant has a permanent financing shortfall of \$1,897,876.	Final	

**Proximity Tie-Breaker Points:**

Item #	Part Section	Subsection	Description	Available	Preliminary	NOPSE	Final	Final Ranking
1P	III	A	10.a.(2)(e) Grocery Store	1.25	1.25	1.25	1.25	0
2P	III	A	10.a.(2)(b) Public School	1.25	1.25	1.25	1.25	0
3P	III	A	10.a.(2)(c) Medical Facility	1.25	0	0	0	0
4P	III	A	10.a.(2)(d) Pharmacy	1.25	0	0	0	0
5P	III	A	10.a.(2)(e) Public Bus Stop or Metro-Rail Stop	1.25	1.25	1.25	1.25	0
6P	III	A	10.b. Proximity to Developments on FHFC Development Proximity List	3.75	3.75	3.75	3.75	0

**Additional Application Comments:**

Item #	Part Section	Subsection	Description	Reason(s)	Created As Result of	Rescinded as Result of
1C	V	D	Exhibit 58 Cure	The Applicant provided an unsuccessful argument as its cure to Exhibit 58 not being counted as a source of financing (Item 8T).	Final	
2C	II	B	3 General Contractor Experience	The cure for Item 11T is deficient because according to the Application Instructions, the General Contractor must demonstrate experience in the construction of at least two completed housing developments of similar development category and development type, at least one of which consists of a total number of units no less than 50 percent of the total number of units in the proposed Development. The total number of units in the proposed development is 814, and the Development Type is designated "Mid-Rise with elevator". In the Prior Experience Chart, there are no "Mid-rise" developments listed that represent the stated requirement of no less than 50 percent of the total number of units in the proposed Development. In this case, the minimum number of Mid-Rise units is 407 units.	Final	