

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

BROWNSVILLE VILLAGE III, LTD.

Petitioner,

vs.

Application No. 2009-148C

2009 Universal Cycle

FHFC File No.: 2010-0120C

**FLORIDA HOUSING FINANCE
CORPORATION,**

Respondent.

**BROWNSVILLE TRANSIT VILLAGE III'S PETITION CHALLENGING
FLORIDA HOUSING'S THRESHOLD, SCORING AND RANKING ERRORS
CONCERNING VILLA CAPRI, PHASE III, MARCIS POINTE APARTMENTS,
AND FLAGLER VILLAGE**

Petitioner Brownsville Village III, Ltd. ("Brownsville"), pursuant to sections 120.569 and 120.57(2), Florida Statutes, and rules 28-106.301 and 67-48.005(5), Florida Administrative Code, files this petition for an administrative hearing concerning the 2009 Universal Cycle Final Scoring Summary Reports for Application Nos. 2009-219C (Villa Capri Associates, Ltd.), 2009-207C (NVC – 103rd Street, Ltd.), and 2009-216C (Flagler Village Limited Partnership), and the 2009 Universal Application Cycle Ranked Order. In support of its petition, Brownsville states:

1. Villa Capri III Associates, Ltd. applied for an allocation of competitive housing credits in the 2009 Universal Application Cycle for a proposed housing development in Homestead called Villa Capri, Phase III. Villa Capri, Phase III is just ahead of Brownsville on the waiting list for funding based on the ranked order spreadsheet that was released on February 26, 2010.

2. NVC - 103rd Street, Ltd. applied for an allocation of competitive housing credits in the 2009 Universal Application Cycle for a proposed housing development in Jacksonville called Marcis Pointe Apartments. Marcis Pointe Apartments was ranked in the funding range by Florida Housing when the ranked order spreadsheet was released on February 26, 2010.

3. Flagler Village Limited Partnership applied for an allocation of competitive housing credits in the 2009 Universal Application Cycle for a proposed housing development in Key West called Flagler Village. Flagler Village was ranked in the funding range by Florida Housing when the ranked order spreadsheet was released on February 26, 2010.

4. But for certain threshold, scoring and ranking errors of Respondent Florida Housing Finance Corporation ("Florida Housing") in connection with each of these applications, Brownsville would have been in the funding range at the time Florida Housing issued its 2009 Universal Application Cycle ranked order spreadsheet on February 26, 2010. The threshold, scoring and ranking errors for each of the challenged applications are specifically identified and discussed later in this petition. These identified issues were also raised during the scoring process, either through the filing of Notices of Possible Scoring Errors ("NOPSEs") or through Notices of Alleged Deficiencies ("NOADs"). R. 67-48.004(4), (7). Fla. Admin. Code.

5. The agency affected in this proceeding is Florida Housing, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329. The agency's file number is 2009-146C.

6. The petitioner is Brownsville, 2950 SW 27th Avenue, Suite 200, Miami, Florida 33133. The petitioner's telephone numbers are 305-476-8118 (phone) and 305-476-9674 (facsimile).

7. The petitioner's attorney is Donna E. Blanton, Radey Thomas Yon & Clark, P.A., 301 S. Bronough Street, Suite 200, Tallahassee, Florida, 32301. The attorney's telephone number is 850-425-6654 (phone) and 850-425-6694 (facsimile).

8. Brownsville received notice of the Final Ranking and Notice of Rights from Kevin Tatreau, Florida Housing's Director of Multifamily Development Programs, on March 1, 2010. Accompanying that Notice was a 2009 Universal Scoring Summary and a 2009 Final Ranking spreadsheet.

9. Brownsville's substantial interests are affected by the Final Scoring Summary Reports for Villa Capri, Phase III, Marcis Pointe Apartments, and Flagler Village and by the 2009 Universal Application Cycle Ranked Order for the following reasons: (1) Brownsville timely filed an Application with Florida Housing for Housing Credits in the 2009 Universal Cycle in connection with the development of an apartment complex in Miami, Florida; (2) When final scores were released, Brownsville received a perfect score of 70 points, met all threshold requirements, and achieved perfect ability to proceed tie-breaker points and perfect proximity tie-breaker points; (3) But for the errors made by Florida Housing in scoring and ranking Villa Capri, Phase III, Marcis Pointe Apartments, and Flagler Village, Brownsville would have been in the funding range when final rankings were released on February 26, 2010.

10. Ultimate facts alleged, including those that warrant reversal of the proposed agency action, are as follows:

A. Villa Capri, Phase III

Florida Housing erred in its scoring and ranking of Villa Capri, Phase III, because the Applicant failed to adequately demonstrate site control by submitting an unverifiable and incomplete legal description that fails to identify the proposed development site.

Undefined Development Site

i. Villa Capri, Phase III, failed to adequately demonstrate site control because the required documentation, a full and complete legal description of the property, was not provided. Thus, the applicant failed to adequately identify the site for the development. Pursuant to rule 67-48.004(14), Florida Administrative Code, the "Site for the Development" is among the items "that must be in the Application and cannot be revised, corrected or supplemented after the Application deadline." *See* R. 67-48.004(14)(e), Fla. Admin. Code. Thus, Florida Housing should have rejected the application of Villa Capri, Phase III. At a minimum, Florida Housing should have found that Villa Capri, Phase III failed threshold requirements relating to site control.

ii. Florida Housing's Instructions provide that to demonstrate evidence of site control, certain documentation must be provided behind Exhibit 27, including "[a] legal description of the Development site." Instructions, p. 31 (Part III.C.2). A legal description is important for Florida Housing, among other reasons, because it allows the Corporation to verify proximity to services, proximity to existing Florida Housing built developments, whether or not the Applicant is in a Qualified Census Tract, and whether or not the Applicant has sufficient density per the zoning code to build their proposed number of Set Aside units. Villa Capri, Phase III placed a Simple Form Purchase Agreement behind Exhibit 27, which included an Exhibit A. *See Attachment A*. Exhibit A states in its entirety: "A portion of the Northwest ¼ of the Northwest ¼, less the West 40 feet, the North 40 feet and the East 25 thereof, in Section 3, Township 57 South, Range 39 East, Miami-Dade County, Florida." (Emphasis supplied). No more detailed description of the property is found behind Exhibit 27 or elsewhere in the Application of Villa Capri, Phase III. Because "a portion" could refer to anything from a single

square inch of the property to the entire 30+-acre land area that follows the phrase “a portion of,” it is impossible to tell which portion of the identified property is included in the development site.

iii. To compound the invalidity of the supplied document as sufficient “legal description,” the first paragraph of the Simple Form Purchase Agreement states that the property is situated in Broward County, Florida, not Miami-Dade County, as stated in Exhibit A to that Agreement. *See Attachment A*. This inconsistency in and of itself should have resulted in the Applicant’s threshold failure. Florida Housing routinely causes other Applicants to fail threshold simply because of inconsistencies between their Application and their exhibits. (*See, e.g.,* Scoring Summary Report for Application No. 2009-089C, Janie’s Garden, Phase 3, September 22, 2009, at p. 2, where the Applicant failed threshold because of an inconsistency between the Ground Lease Agreement, which indicated that there are occupied units on the site, and Part III.A.9.e. of the Application, which asks “Are any of the units occupied?” to which the Applicant answered “no.”). **Attachment B**. However, even if Florida Housing were permitted to “overlook” the reference to Broward County, the legal description is simply insufficient to locate and identify the property.

iv. Black’s Law Dictionary defines a legal description as: “A formal description of real property, including a description of any part subject to an easement or reservation, complete enough that a particular piece of land can be located and identified. The description can be made by reference to a government survey, metes and bounds, or lot numbers of a recorded plat.” *Black’s Law Dictionary*, pp. 912-13 (8th ed. 2004). (emphasis supplied)

v. The legal description of the property provided by Villa Capri, Phase III, is directly and facially contrary to this definition, as the reference to “[a] portion of,” without

describing which “portion” is being referenced, does not allow Florida Housing or anyone else to locate and identify the development site. This is no different from saying “a portion of South Florida,” when the Applicant is asked to identify the county where the proposed development is located.

vi. With undefined boundaries of the development site for Villa Capri, Phase III, it is not possible to determine (1) whether or not the tie-breaker measurement point is actually located on the site (and, therefore, whether or not the proposed development meets proximity requirements; see pp. 16-22 of the Instructions); (2) which portion of the site is being purchased (which also raises issues as to site control; see p. 31 of the Instructions), (3) the maximum density for the site (which calls into question the Applicant’s evidence of appropriate zoning; see p. 33 of the Instructions); (3) and whether or not the development consists of scattered sites (see rule 67-48.002(106), Fla. Admin. Code). Historically, Florida Housing has relied upon an Applicant’s properly defined, verifiable legal description in multiple ways to evaluate an Applicant’s proposed development:

(1) Verifying Proximity to Services: In 2004, on the second phase of a multi-phase site, a participant in the Universal Cycle submitted a NOPSE demonstrating that the tie-breaker measurement point shown on the Surveyor Certification for Application No. 2004-111C was not, in fact, on the Applicant’s site. In an affidavit, a Florida Licensed Surveyor compared the Applicant’s legal description to the Applicant’s Surveyor Certification and determined that the purported tie breaker measurement point was not located on the Applicant’s site. Florida Housing awarded Application 2004-11C zero proximity tie-breaker points because “Evidence in NOPSE indicates that the Tie-Breaker Measurement Point is invalid as it is not located on the Phase II

site.” *See* Application No. 2004-111C, Madison Green Apartments II, 2004 MMRB, SAIL & HC Scoring Summary, July 6, 2004 at p. 2. **Attachment C.** It would have been impossible for Florida Housing to determine that the Surveyor Certification for Application No. 2004-111C was fallacious without a defined, verifiable legal description. In the case of Villa Capri III, by not forcing the applicant to specifically identify its site with a valid legal description, Florida Housing removes the ability to definitively ascertain whether the site has proximity to services.

(2) **Verifying Availability of Infrastructure:** In 2008, a participant in the Universal Cycle compared local plat maps to the legal description submitted in Application No. 2008-112C and submitted a NOPSE demonstrating that the site was a “scattered site” due to the platted public rights of way that divided the development site. Based on this information, the Applicant cured its forms to prove that there was availability of infrastructure to each of its individual sites. *See* Application No. 2008-112C, Emerald Palms, 2008 MMRB, SAIL & HC Scoring Summary, June 4, 2008, at p. 2. **Attachment D.** In the case of Villa Capri III, it is readily apparent based on looking at the site in DeLorme (the mapping software that the Corporation uses), that parts of the land area referenced are divided by streets and therefore meet the definition of scattered sites. By not forcing Villa Capri III to specifically identify its site with a valid legal description, Florida Housing removes the ability to definitively ascertain whether the site(s) have access to infrastructure.

(3) **Verifying Zoning:** In 2009, a participant in the Universal Cycle compared the allowable number of units per acre under the zoning code to the land area demonstrated in Application No. 2009-194C’s legal description, and determined that

the number of units listed on the Zoning certification was more than local code permitted for this land area. When asked to explain this discrepancy, the local zoning official responded in an affidavit that the certification on the Zoning form was a forgery, and Florida Housing determined that the Applicant failed threshold, stating: “Information provided in a NOPSE indicates that the zoning designation stated on the Local Government Verification that Development is Consistent with Zoning and Land Use Regulations form (at Exhibit 32 of Application) will not allow the 75 units proposed in the Application.” *See* Application No. 2009-194C, Grand Reserve Villas Scoring Summary Report, October 21, 2010, at p. 5. **Attachment E**. As a result, the Applicant subsequently withdrew the application from consideration for funding. It would have been impossible for Florida Housing to determine that the Zoning form for Application No. 2009-194C was fallacious without a defined, verifiable legal description. In the case of Villa Capri III, without a valid legal description outlining which portion of the site is intended to be developed, Florida Housing removes the ability to definitively ascertain whether the site has sufficient density to build the number of units that the Applicant has committed to build.

vii. Notably, in the 2008 Universal Cycle, the same developer of Villa Capri, Phase III submitted an Application for a proposed development called Villa Capri. The legal description behind Exhibit 27 for that project was exactly the same as for Villa Capri Phase III, minus the opening phrase of “a portion of.” *See* Application No. 2008-266BS, Villa Capri, Exh. 27 (Exhibit A) (“The Northwest ¼ of the Northwest ¼, less the West 40 feet, the North 40 feet and the East 25 feet thereof, in Section 3, Township 57 South, Range 39 East, Miami-Dade County, Florida.”). *See* **Attachment F**. Thus, the developer in 2008 included the entire site in its

legal description; in 2009, however, only “a portion of” the site is included. It is not possible from the information provided to tell which “portion” of the site is proposed to be developed.

viii. An unverifiable legal description simply fails to establish site control -- much like an illegible site control document. When confronted with illegible site control documents in the past, Florida Housing has determined they fail threshold requirements. *See, e.g.,* Application No. 2004-041CS, Falcon Pass, 2004 MMRB, SAIL & HC Scoring Summary, April 27, 2004, at p. 2 (“The documentation submitted to demonstrate site control is incomplete because Exhibit B, Extension to Option to Purchase, is illegible.”) *See Attachment G.* Villa Capri, Phase III’s site control documentation also is incomplete because the legal description is so lacking that the development site cannot be identified.

ix. Because Villa Capri, Phase III did not submit an adequate legal description, the Application should fail threshold requirements for site control and it should lose an ability to proceed tie-breaker point.

B. Marcis Pointe Apartments

Florida Housing erred in scoring and ranking Marcis Pointe Apartments in two instances. First, the Applicant did not demonstrate site control. Second, Florida Housing did not require the Applicant to comply with Florida Housing’s rules concerning documents that must be attached to cures. Either of these two errors is sufficient cause to remove Marcis Pointe from the funding range.

Incomplete Site Control Documents

i. When preliminary scores were issued by Florida Housing on September 21, 2009, Florida Housing’s scoring summary sheet stated that Marcis Pointe Apartments failed threshold requirements relating to site control because “Section 1 of the Purchase and Sale

Agreement refers to an Exhibit A-1 which was not provided.” **Attachment H** (Application No. 2009-207C, Marcis Pointe Apartments, Scoring Summary Report at pg. 2).

ii. Marcis Pointe Apartments attempted to cure this deficiency by providing an amendment to the Purchase and Sale Agreement (Exhibit 27 to the Application) that removed the reference to Exhibit A-1. However, Marcis Pointe Apartments failed to properly cure the deficiency because only the amendment to the Purchase and Sale Agreement was submitted instead of the entire Purchase and Sale Agreement document. Florida Housing’s rules provide:

Pages of the Application that are not revised or otherwise changed may not be resubmitted, except that documents executed by third parties must be submitted in their entirety, including all attachments and exhibits referenced therein, even if only a portion of the original document was revised.

R. 67-48.004(6), Fla. Admin. Code (emphasis supplied).

iii. The amendment submitted with Marcis Pointe Apartments’ cure is indisputably part of a document executed by third parties, i.e., Vestcor Fund XXIV, Ltd., the seller. *See Composite Attachment I* (original Exhibit 27 and amendment to that contract submitted with Marcis Pointe’s cure). Thus, the entire contract should have been included with the cure.

iv. Moreover, the Instructions provide that all documents submitted as evidence of site control must include all attachments and exhibits. *See* Instructions, p. 31 (Part III.C.2): “The required documentation, including any attachments or exhibits refereneed in any document, must be attached to that document regardless of whether that attachment or exhibit has been provided as an attachment or exhibit to another document or whether the information is provided elsewhere in the Application or has been previously provided.” (Emphasis supplied).

v. Marcis Pointe Apartments' failure to comply with Florida Housing's rules creates another problem in that eliminating Exhibit A-1 by amendment to the purchase and sale agreement prevents any understanding of which part of the land being purchased is intended to be used for the development. Exhibit A to the Purchase and Sale Agreement (the legal description for the property) states that the parcel contains "33.550 acres, more or less" and that the buyer has "contracted for 32 +/- Acres of the above referenced Legal Description." **Composite Attachment I** at p. 3 of Exhibit A. According to page 1 of the Purchase and Sale Agreement, Exhibit A-1 "depicted" the parcel "containing approximately 32+/- acres" Thus, Exhibit A-1 was presumably a sketch illustrating which 32-acre portion of the 33.5 acres that Marcis Pointe Apartments intended to develop. When the sketch was removed as part of the cure, the site control documents (as cured) make it impossible to tell which part of the parcel the Applicant intends to use. Among the many problems with an undefined Development Site that are more fully detailed in the discussion of Villa Capri above, the tie-breaker measurement point (see Exhibit 25) cannot be verified.¹

vi. As previously noted concerning Villa Capri, Phase III, Black's Law Dictionary defines a legal description as: "A formal description of real property, including a description of any part subject to an easement or reservation, complete enough that a particular piece of land can be located and identified. The description can be made by reference to a government survey, metes and bounds, or lot numbers of a recorded plat." *Black's Law Dictionary*, pp. 912-13 (8th ed. 2004). As it stands currently, some 32-acre subset of 33.5 acres is available for purchase by the Applicant, but because of the elimination of the sketch in Exhibit

¹ The tie breaker measurement point is used to determine an applicant's proximity to services such as a grocery store and a school. Instructions, p. 16. An applicant can earn points if the proposed development is within specified distances from these services.

A-1, that description is not complete enough that the development site can be identified. Pursuant to rule 67-48.004(14), Florida Administrative Code, the “Site for the Development” is among the items “that must be in the Application and cannot be revised, corrected or supplemented after the Application deadline.” *See* R. 67-48.004(14)(e), Fla. Admin. Code. Thus, Florida Housing should have rejected the application of Marcis Point when Exhibit A-1 was removed from Exhibit 27. At a minimum, Florida Housing should have found that Marcis failed threshold requirements relating to site control.

Incomplete Surveyor Certification

vii. Marcis Pointe Apartments’ cure of another deficiency identified at preliminary scoring also violates Florida Housing’s rules, discussed above, relating to attaching all documents executed by third parties. At preliminary scoring, Marcis Pointe Apartments received only 1.00 point (out of a possible 1.25) for proximity to a public bus stop or Metro-Rail stop. **Attachment H** at p. 3. Marcis Pointe Apartments attempted to cure this deficiency by revising the tie-breaker measurement point and submitting a revised Surveyor Certification form. **Composite Attachment J** (two cures to Item 5P). However, although the form was submitted, Marcis Pointe Apartments failed to resubmit all of the sketches that are required by the Instructions for Exhibit 25. Instructions, p. 20 (Part III.A.10.b.(2): (“Additionally, for each latitude and longitude coordinate provided for a service housed within a building, the Applicant must provide a sketch depicting the locations of the exterior public entrance used for the latitude and longitude coordinates for each service.”).

viii. Instead of resubmitting all four sketches that were included with the original Exhibit 25, Marcis Pointe Apartments submitted only two sketches and stated that the others were “revised” but “intentionally omitted.” The sketches were executed by a third party

(the surveyor), and pursuant to Florida Housing's rule 67-48.004(6), they should have been attached to the applicant's cure.

ix. Marcis Pointe Apartments did not comply with the plain language of Florida Housing's rules. Florida Housing cannot simply ignore its own rules. *Collier County Bd. of County Commissioners v. Fish and Wildlife Conservation Comm'n*, 993 So. 2d 69, 72-73 (Fla. 2d DCA 2008); *Vantage Healthcare Corp. v. Agency for Health Care Admin.*, 687 So. 2d 306, 308 (Fla. 1st DCA 1997). Thus, because Marcis Pointe Apartments did not cure deficiencies relating to its tie breaker measurement point for a bus stop correctly, it should be considered ineligible for 1.25 proximity tie-breaker points relating to the bus stop.

C. **Flagler Village**

Florida Housing erred in scoring and ranking Flagler Village in three instances. First, contrary to Florida Housing's rules, Flagler Village changed the Applicant entity after the Application deadline. Second, Flagler Village changed the percentage of ownership of the Applicant Entity after the Application deadline. Third, Flagler Village did not submit complete documents so as to demonstrate evidence of site control. Any of these three errors are sufficient cause to remove Flagler Village from the funding range.

Changes to the Applicant Name

i. In its original Application, Flagler Village identified the "Applicant" as "Flagler Village Limited Partnership." See **Attachment K** (page 1 of the Application). When preliminary scores were released, Florida Housing found that Flagler Village had failed threshold, noting: "The name stated at Part II.A.2.a. of the Application (Flagler Village Limited Partnership) does not match the entity on the Department of State certificate provided at Exhibit

3 (Flagler Village Limited Partnership, Ltd.).² See **Attachment L** (Application No. 2009-216C, Flagler Village, Scoring Summary Report, September 21, 2009 at pg. 2). In fact, the Applicant's original Exhibit 3 (Certificate of Status from the Secretary of State) identified the entity as Flagler Village **Limited** Partnership, Ltd. See **Attachment M** (emphasis supplied; no "i" in the word Limited). Throughout the Exhibits attached to the original Application, three different names were used to identify the Applicant. See, e.g., Exhs. 55 and 56 (Flagler Village Limited Partnership); Exhs. 2, 9, and 27 (Flagler Village Limited Partnership, Ltd.); Exh. 3 (Flagler Village Limited Partnership, Ltd).

ii. In an attempt to cure the deficiency, Flagler Village submitted a revised Application showing the name of the Applicant as "Flagler Village Limited Partnership, Ltd.," which is consistent with the name of the entity established with the Department of State. Flagler Village also submitted several revised exhibits reflecting the correct name of the Applicant. Florida Housing erred by accepting Flagler Village's cure.

iii. Rule 67-48.004(14) provides:

Notwithstanding any other provision of these rules, there are certain items that must be included in the Application and cannot be revised, corrected or supplemented after the Application Deadline. Failure to submit these items in the Application at the time of the Application Deadline shall result in rejection of the Application without opportunity to submit additional information. Any attempted changes to these items will not be accepted. These items are as follows:

(a) Name of the Applicant; notwithstanding the foregoing, the name of the Applicant may be changed only by written request of an Applicant to Corporation staff and approval of the Board after the Applicant has been invited to enter credit underwriting;

(Emphasis supplied).

² The Universal Application Instructions, which have been incorporated into rule 67-48.004(1)(a), provide: "Except for public housing authorities, Applicant must include behind a tab labeled "Exhibit 3" a copy of the valid Certificate of Good Standing from the Florida Secretary of State." See Instructions, p. 6 (Part II.A.2.c.)

iv. The plain language of rule 67-48.004(14) provides that the name of the Applicant “cannot be revised, corrected, or supplemented after the Application deadline.” Flagler Village indisputably attempted to correct the name of the Applicant to make it consistent with the entity registered with the Department of State. Although Florida Housing’s rules permit applicants to “cure” many mistakes in their applications during a specified time period (see rule 67-48.004(6)), the agency has also determined certain items cannot be cured. R. 67-48.004(14), Fla. Admin. Code. As previously noted, Florida Housing cannot simply ignore its own rules. *Collier County*, 993 So. 2d at 72-73; *Vantage Healthcare*, 687 So. 2d at 308. The Flagler Village application should fail threshold requirements because the original name of the Applicant is a non-existent legal entity, and no correction of the Applicant name is permitted.

Changes in Ownership of the Applicant Entity

v. When Florida Housing released its second round of scores on October 21, 2009,³ the following threshold failure was identified in Flagler Village’s application:

Although the Applicant provided the required list of Principals at Exhibit 9, the list does not disclose the members and managers of the Initial Limited Partner, Flagler Village Holding, LLC.

See **Attachment N** (Application No. 2009-216C, Flagler Village, NOPSE scores, at pg. 2).

vi. Flagler Village attempted to cure this deficiency by submitting a new Exhibit 9 that includes the members and managers of the Initial Limited Partner Flagler Village Holding, LLC. However, in revising Exhibit 9, Flagler Village altered the percentage ownership of the General Partner, Overseas GP, LLC from “.0100%” (one one hundredth of one percent) to

³ These scores are called NOPSE scores because they include deficiencies identified by competing applicants through the filing of Notices of Possible Scoring Errors (NOPSEs).

“010%” (ten percent). *See Composite Attachment O* (Flagler Village’s original Exhibit 9 and Flagler Village’s revised Exhibit 9). This change results in a prohibited change in the percentage ownership of the principals of the Applicant, and also results in the ownership interests exceeding 100 percent.

vii. The Universal Application Instructions provide at page 7 (Part II.A.3.a.):

For a Limited Partnership, provide a list, as of Application Deadline, of the following: (i) the Principals of the Applicant, including percentage of ownership interest of each, and (ii) the Principals for each Developer. Provide this information behind a tab labeled “Exhibit 9”.

(Emphasis supplied). Flagler Village’s Exhibit 9 reflects a change in the percentage ownership interest from that which was in existence as of the Application deadline. This is directly contrary to Florida Housing’s rules and should result in a threshold failure. *See Instructions*, p. 6 (Part II.A.2.(1)): “Changes to the Applicant entity prior to the execution of a Carryover Allocation Agreement or without Board approval prior to the issuance of the Final Housing Credit Allocation Agreement will result in a disqualification from receiving funding and shall be deemed a material misrepresentation.”

viii. Additionally, the ownership interests of the Applicant no longer add up to 100 percent. Florida Housing relies on the accuracy of these percentages in determining overall financial feasibility and many other decisions. The ambiguity created by Flagler Village is directly contrary to long-standing Florida Housing policy. As Florida Housing is charged with awarding federal funds with strict deadlines that risk recapture of funds from Florida to be redistributed to other states, Florida Housing has correctly enforced rules requiring these exhibits to be both flawless and consistent throughout the application process. Florida Housing’s Instructions at page 74 (Part V.D.2.(b)) provide that “[t]he percentage of [housing] credits proposed to be purchased must be equal to or less than the percentage of ownership interest held

by the limited partner or member.” Because of Flagler Village’s increase to the General Partner’s ownership interests to ten percent, it is impossible for the Applicant to syndicate 99.90% of its partnership in accordance with Flagler Village’s equity commitment letter at Exhibit 55. Several applicants failed threshold on this basis in the 2009 Universal Cycle, including Application No. 2009-214C, TM Alexander, Scoring Summary Report, September 21, 2009, at p. 3 (“Per page 74 of the 2009 Universal Application Instructions, the percentage of credits being purchased must be equal to or less than the percentage of ownership interest held by the limited partner or member. The Applicant stated at Exhibit 9 of the Application that the limited partner’s interest in the Applicant entity is 99.98%. However, the equity commitment at Exhibit 55A states the 99.99% of the HC allocation is being purchased. Because of this inconsistency, the HC equity cannot be considered a source of financing.”). *See Attachment P.*

ix. In 2009, Progresso Point (App. No. 2009-123C) had a 99.9% limited partnership interest listed in its Exhibit 9, as distinct from a 99.99% limited partnership interest in its equity commitment letter. When preliminary scores were released, Florida Housing found that Progresso Point failed threshold for this reason. *See Attachment Q* (Application No. 2009-123C, Progresso Point, Scoring Summary Report for Progresso Point, September 21, 2009 at pg. 2). Seemingly tiny differences in ownership are grounds for failing threshold in the Universal Cycle. In simple mathematical terms, the discrepancies that caused TM Alexander and Progresso Point to fail threshold were much smaller than that of Flagler Village. Florida Housing refused to infer that the difference between 99.99% and 99.9% was insignificant for Progresso Point, and in turn should acknowledge the discrepancy between ten percent and .01% percent.

x. The Flagler Village Cure referred to several of the Applicant's mistakes as "obviously an inadvertent scrivener's error." These discrepancies cannot be dismissed as meaningless "scrivener's errors." Florida Housing has routinely relied on such discrepancies in scoring decisions. In Florida Housing's Argument in Opposition to the Recommended Order for *APD Housing Partners 20 v. Florida Housing Finance Corporation* (Case No. 2009-067UC), Florida Housing declared that "The Universal Application Cycle is a competitive application process in which applications are scored based not upon what an applicant may have intended to provide (or should have provided) in its application in order to satisfy the applicable rule requirements but, rather, upon the information actually provided in its application, including the exhibits and cure materials." **Attachment R** at pp. 3-4. The Corporation elaborated that "Florida Housing is neither required nor permitted to assist Petitioner or any other applicant in completing its application." *Id.* at p. 5. Florida Housing also cited *Savannah Springs Apartment II, Ltd. v. Florida Housing Finance Corporation* in concluding that FHFC was "not allowed to disregard the entity named in the application at deadline even though "natural persons" responsible for the operations of the entities were identical at all times." *Id.* at p. 5, n.6. The Florida Housing Board denied funding to APD Housing Partners for the reasons expressed in Florida Housing's Argument in Opposition to the Recommended Order. *See* Final Order in Case No. 2009067UC, at pp. 7-21, ¶ 8.S-1.-S.-19. **Attachment S.** In turn, Florida Housing should determine that Flagler Village Limited Partnership failed threshold due to the multiple instances of errant information actually provided in its Application.

Failure to Demonstrate Site Control

xi. Finally, Flagler Village also failed to demonstrate site control because it omitted part of a lease in its cure of a deficiency identified by Florida Housing at preliminary

scoring. Florida Housing noted in his preliminary scoring summary as follows: “To demonstrate site control, the Applicant provided a Sub-Lease Agreement which refers to a copy of a Ground Lease dated July 19, 2006. A Ground Lease was also provided; however, it is dated September 20, 2006 and is therefore inconsistent with the Sub-Lease.” (This language can also be found on Flagler Village’s NOPSE scores, which are at **Attachment N.**) Flagler Village attempted to cure the deficiency by submitting a revised Sub-Lease (with the Ground Lease attached as an exhibit). Unfortunately, the Applicant did not include page 51 of the Ground Lease.

xii. Florida Housing’s Instructions for Evidence of Site Control provide:

The required documentation, including any attachments or exhibits referenced in any document, must be attached to that document regardless of whether that attachment or exhibit has been provided as an attachment or exhibit to another document or whether the information is provided elsewhere in the Application or has been previously provided. Such documentation, including any attachments or exhibits, must be provided behind a tab labeled “Exhibit 27.

Instructions, p. 31. (Part III.C.2.). The missing page is part of an attachment to the site control documentation. Thus, the Applicant should have been disqualified for a threshold failure to provide evidence of site control.⁴

11. Because of the specifically identified threshold and scoring errors discussed above, Florida Housing erred by placing Villa Capri, Phase III on the waiting list for the 2009 Universal Cycle, by ranking Marcis Pointe Apartments and Flagler Village in the funding range and by failing to rank Brownsville in the funding range.

12. Rules and statutes that require reversal of the proposed agency action are the Florida Housing Finance Corporation Act (sections 420.501 et. seq., Florida Statutes); sections

⁴ Notably, the Applicant’s original submission only included a blank sheet of paper where page 51 should have been in the Ground Lease.

120.569 and 120.57(2), Florida Statutes; and rules 67-48.002, 67-48.004 (including the Universal Application Instructions, which are incorporated by reference), and 67-48.005, Florida Administrative Code.

13. Based on the foregoing, Brownsville respectfully requests that Florida Housing schedule this matter for an informal hearing and that the Hearing Officer enter a Recommended Order finding that Florida Housing erred in finding that Villa Capri, Phase III, Marcis Pointe Apartments and Flagler Village and met threshold requirements and in the scoring and ranking of each of the three challenged developments. Brownsville further requests that Florida Housing enter a Final Order adopting the requested recommendations of the Hearing Officer and determining that Brownsville should have been in the funding range when final rankings were issued for the 2009 Universal Cycle. As a result of such Final Order, Brownsville requests an allocation of housing credits and any other relief to which it is entitled, pursuant to rule 67-48.005(7), Florida Administrative Code.

14. At the time of filing this petition, Brownsville does not believe that any material facts are in dispute. Brownsville reserves the right to seek a hearing pursuant to sections 120.569 and 120.57(1) at the Division of Administrative Hearings if, during the course of proceedings on this petition, disputed issues of material fact become known to the parties.

Dated: 3/22/10

Respectfully submitted,



Donna E. Blanton

Florida Bar No. 948500

Radey Thomas Yon & Clark, P.A.

301 S. Bronough Street, Suite 200

Tallahassee, Florida 32301

850-425-6654 (phone)

850-425-6694 (facsimile)

Attorney for Brownsville Village III, Ltd.

**VILLA CAPRI, PHASE III
MIAMI-DADE COUNTY, FLORIDA**

**Year 2009 Universal Cycle
Housing Credits Application**

Applicant:

Villa Capri III Associates, Ltd.

Submitted by:

**CSG Development Services, LLC
2100 Hollywood Boulevard
Hollywood, FL 33020
Phone: (305) 443-8288/Fax: (786) 709-2363**

COPY

Exhibit 27

SIMPLE FORM PURCHASE AGREEMENT

THIS SIMPLE FORM PURCHASE AGREEMENT (the "Agreement") is made by and between VILLA CAPRI, INC., a Florida corporation ("Seller") and VILLA CAPRI III ASSOCIATES, LTD., a Florida limited partnership ("Purchaser").

WITNESSETH:

1. **Premises.** Subject to the terms and conditions set forth below, Seller shall convey to Purchaser and Purchaser shall purchase from Seller the following described parcel of property situated in Broward County, Florida:

SEE EXHIBIT A ATTACHED HERETO (the "Premises").

2. **Purchase Price.** The sum of TWO MILLION THREE HUNDRED TEN THOUSAND AND NO/100 DOLLARS (\$2,310,000.00), subject to adjustments, credits, and prorations as set forth herein (the "Purchase Price"), shall be paid by Purchaser to Seller in cash at Closing.

3. **Title Insurance and Survey.** Seller shall provide to Purchaser a title commitment (the "Title Commitment") for an ALTA Form B, Marketability Policy (the "Title Policy") issued by an agent of First American Title Insurance Company (the "Title Insurance Company") covering title to the Premises, Purchaser may obtain a survey (the "Survey").

4. **Unpermitted Exceptions and Survey Defects.** If the Survey, the Title Commitment, or Purchaser's inspection of the Premises or the improvements thereon discloses any exceptions, requirements, necessary repairs, encroachments, or other issues which are not acceptable to Purchaser, in Purchaser's sole discretion, Purchaser shall have the right to either (a) terminate this Agreement upon written notice to Seller with neither party having any further obligation hereunder, or (b) waive such objection and proceed to Closing with no requirement that Seller make any changes or repairs.

5. **Seller's Documents.** Seller shall execute and deliver to Purchaser at Closing, the following:

(a) A deed executed by Seller conveying to Purchaser fee simple title to the Premises;

(b) Such other Closing documents as reasonably may be required to consummate the transaction or which may be required by the Title Insurance Company in order to issue the Title Policy as required by the Title Commitment.

6. **Expense Provisions.** Any documentary stamps and transfer/sales taxes, the cost of recording the deed, the cost of the Survey, and the title insurance premium shall be paid by Purchaser on or before Closing.

7. **Closing.** Subject to the terms and conditions hereof, the Closing of this transaction shall be completed, on or before December 31, 2009 (the "Closing Date"), with the agent of the Title Insurance Company acting as the Escrow Agent. At Purchaser's option, the Closing may be held sooner so long as Purchaser gives Seller notice of the revised Closing Date. Seller shall deliver possession of the Premises to Purchaser on the Closing Date.
8. **Prorations.** Real estate taxes for the year of the Closing shall be prorated on an accrual basis as of the Closing Date, based upon the most recent ascertainable taxes.
9. **Contract Construction.** This Agreement shall not be interpreted against either party solely because such party drafted the Agreement.
10. **Successors and Assigns.** The Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
11. **No Representations or Warranties.** Seller makes no representations or warranties to Purchaser and it is agreed by Seller and Purchaser that the Premises is sold in as "as is" and "where is" condition with no reliance on any representations made by Seller. Purchaser agrees that it will use its own due diligence on or before October 31, 2009 to determine whether or not the Premises and any improvements thereon are fit for Purchaser's intended purposes.
12. **Amendments.** Except as otherwise provided herein, this Agreement may be amended or modified by, and only by, a written instrument executed by Seller and Purchaser.
13. **Law.** This Agreement shall be governed by and construed in accordance with Florida law.
14. **Section Headings.** The section headings inserted in this Agreement are for convenience only and are not intended to, and shall not be construed to, limit, enlarge or affect the scope or intent of this Agreement, nor the meaning of any provision hereof.
15. **Merger of Prior Agreements.** This Agreement supersedes all prior agreements and understandings between the parties hereto relating to the subject matter hereof.
16. **Attorney's Fees and Costs.** In any litigation arising out of or pertaining to the Agreement, the prevailing party shall be entitled to an award of its attorney's fees, whether incurred before, after or during trial, or upon any appellate level.
17. **Broker and Legal Representation.** Each party shall indemnify the other from claims for commissions made by any broker claiming that it had an agreement with such party.

18. **Time.** Time is of the essence of the Agreement. When any time period specified herein falls or ends upon a Saturday, Sunday or legal holiday, the time period shall be automatically extend to 5:00 P.M. in the next ensuing business day.

19. **Counterparts and Fax.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. It is the intent of the parties to circulate original signature copies, however, fax copies shall be deemed originals until original signatures are obtained.

20. **Default.** In the event of a default by Seller, Purchaser shall be entitled to demand and receive specific performance of this Agreement.

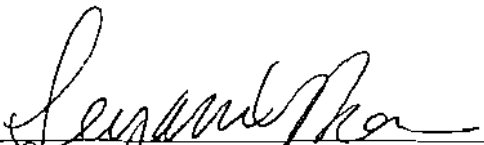
WITNESS, the due execution hereof as of the day and year so stated.

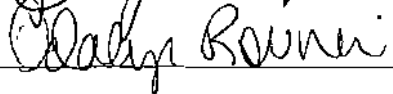
WITNESSES:

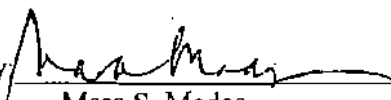
“PURCHASER”

VILLA CAPRI III ASSOCIATES, LTD. a
Florida limited partnership

By: Cornerstone Villa Capri III, LLC, a
Florida limited liability company,
its general partner






By: 

Mara S. Mades
Vice President

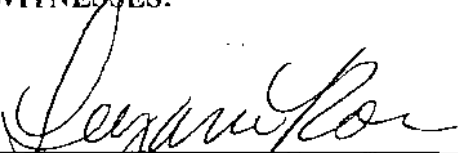
WITNESSES:

“SELLER”

VILLA CAPRI, INC. a
Florida corporation

By: 

Mara S. Mades, Vice President






Exhibit A

A portion of the Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$, less the West 40 feet, the North 40 feet and the East 25 thereof, in Section 3, Township 57 South, Range 39 East, Miami-Dade County, Florida

Scoring Summary Report

File #: 2009-089C Development Name: Janie's Garden Phase 3

As Of:	Total Points	Met Threshold?	Ability to Proceed Tie-Breaker Points	Proximity Tie-Breaker Points
09/22/2009	56.00	N	6.00	7.50
Preliminary	56.00	N	6.00	7.50
NOPSE				
Final				
Final-Ranking				

Scores:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Final Ranking
Construction Features & Amenities									
1S	III	B	2 a	New Construction	9.00	9.00			
1S	III	B	2 b	Rehabilitation/Substantial Rehabilitation	9.00	0.00			
2S	III	B	2 c	All Developments Except SRO	12.00	2.00			
2S	III	B	2 d	SRO Developments	12.00	0.00			
3S	III	B	2 e	Energy Conservation Features	9.00	9.00			
4S	III	B	3	Green Building	5.00	5.00			
Set-Aside Commitment									
5S	III	E	1.b.(2)	Special Needs Households	4.00	0.00			
6S	III	E	1.b.(3)	Total Set-Aside Commitment	3.00	3.00			
7S	III	E	3	Affordability Period	5.00	5.00			
Resident Programs									
8S	III	F	1	Programs for Non-Elderly & Non-Homeless	6.00	6.00			
8S	III	F	2	Programs for Homeless (SRO & Non-SRD)	6.00	0.00			
8S	III	F	3	Programs for Elderly	6.00	0.00			
9S	III	F	4	Programs for All Applicants	8.00	8.00			
Local Government Contributions									
10S	IV	A		Contributions	5.00	5.00			
Local Government Incentives									
11S	IV	B		Incentives	4.00	4.00			

Reason(s) Scores Not Maxed:

Item #	Reason(s)	Created As Result	Rescinded As Result
2S	The Applicant indicated at Part III.A.2.b. of the Application that the proposed Development will consist of Scattered Sites. However, at Part III.B.2., the Applicant failed to commit to locate each selected feature and amenity that is not unit-specific on each of the Scattered Sites or no more than 1/16 mile from the site with the most units, or a combination of both. As a result, the Applicant received points only for unit-specific features and amenities.	Preliminary	
5S	All of the participating Special Needs Household Referral Agencies for the county are not listed on the Applicant Notification to Special Needs Household Referral Agency form. Because the form is incomplete, the Applicant is not eligible for Special Needs points.	Preliminary	

Threshold(s) Failed:

Item #	Part	Section	Subsection	Description	Reason(s)	Created as Result of	Rescinded as Result of
1T	V	D	2	HC Equity	The equity commitment does not contain a statement that "the commitment does not expire before December 31, 2009," as required on page 74 of the 2009 Universal Application Instructions. Therefore, the HC equity was not considered a source of financing.	Preliminary	
2T	V	D	2	HC Equity	Per page 73 of the 2009 Universal Application Instructions, at least 15% of the proposed equity to be provided must be paid prior to or simultaneous with the closing of construction financing. The Applicant provided an equity commitment from Prestige Affordable Housing Equity Partners, LLC that does not meet the 15% requirement. Therefore, the commitment cannot be considered a source of financing.	Preliminary	
3T	V	B		Construction/Rehab. Analysis	The Applicant has a construction financing shortfall of \$1,482,056.	Preliminary	
4T	V	B		Permanent Analysis	The Applicant has a permanent financing shortfall of \$6,847,856.	Preliminary	
5T	III	A	9	Development Status	Section 6.2.3 of the April 23, 2009 Ground Lease Agreement indicates that there are occupied units, however, the Applicant answered "no" at Part III.A.9.c. of the Application which asks "Are any of the units occupied?"	Preliminary	

Ability To Proceed Tie-Breaker Points:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Final Ranking
1A	III	C	1	Site Plan/Plat Approval	1.00	1.00			
2A	III	C	3 a	Availability of Electricity	1.00	1.00			
3A	III	C	3.b	Availability of Water	1.00	1.00			
4A	III	C	3.c	Availability of Sewer	1.00	1.00			
5A	III	C	3.d	Availability of Roads	1.00	1.00			
6A	III	C	4	Appropriately Zoned	1.00	1.00			

Proximity Tie-Breaker Points:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Final Ranking
1P	III	A	10.b (2) (a)	Grocery Store	1.25	0.00			
2P	III	A	10.b.(2) (b)	Public School	1.25	0.00			
3P	III	A	10 b.(2) (c)	Medical Facility	1.25	0.00			
4P	III	A	10 b.(2) (d)	Pharmacy	1.25	0.00			
5P	III	A	10.b.(2) (e)	Public Bus Stop or Metro-Rail Stop	1.25	0.00			
6P	III	A	10.c	Proximity to Development on FHFC Development Proximity List	3.75	0.00			
7P	III	A	10.a	Involvement of a PHA	7.50	7.50			

Additional Application Comments:

Item #	Part	Section	Subsection	Description	Comment(s)	Created as Result of	Rescinded as Result of
1C	V	B		Development Cost Pro Forma	The Applicant listed "relocation cost and unanticipated increases in soft cost" in the amount of \$510,100. However, No. 5 on the Development Cost Pro Forma Notes states "For purposes of the Development Cost calculation in this Application, the only reserves allowed are contingency reserves for rehabilitation and construction, which cannot exceed 5%" The "relocation cost and increase in soft cost" plus the contingency reserve at A.4 on the Pro Forma exceed the maximum 5% by \$373,879. Therefore, the Development Cost was reduced by \$373,879.	Preliminary	

2004 MMRB, SAIL & HC Scoring Summary

As of: 07/06/2004

File # 2004-111C

Development Name: Madison Green Apartments II

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 - 06 - 2004	61	N	0	\$47,343.75	%	N
Preliminary	61	N	7.5	\$47,343.75	%	N
NOPSE	61	N	0	\$47,343.75	%	N
Final	61	N	0	\$47,343.75	%	N
Final-Ranking	0	N	0		0	

Scores:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Final Ranking
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.	Total Set-Aside Percentage	3	3	3	3	0
5S	III	E	1.c.	Set-Aside Breakdown Chart	5	5	5	5	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	0	0	0	0
10S	IV		b.	Incentives	4	4	4	4	0

2004 MMRB, SAIL & HC Scoring Summary

As of: 07/06/2004

File # 2004-111C

Development Name: Madison Green Apartments II

Reason(s) Scores Not Maxed:

Item #	Reason(s)	Created As Result of	Rescinded as Result of
9S	The Local Government Verification of Contribution - Grant form provided in the Application is the DRAFT form which is the strike through version and not an acceptable form for verification. Therefore, the Applicant did not qualify for any points.	Preliminary	

Threshold(s) Failed:

Item #	Part	Section	Subsection	Description	Reason(s)	Created As Result of	Rescinded as Result of
1T	III	C	3 a.	Availability of Electricity	The Verification of Availability of Infrastructure - Electricity form provided in the Application is the DRAFT form which is the strike through version and not an acceptable form for verification.	Preliminary	
2T	III	C	3 b.	Availability of Water	The Verification of Availability of Infrastructure - Water form provided in the Application is the DRAFT form which is the strike through version and not an acceptable form for verification.	Preliminary	
3T	III	C	3 c.	Availability of Sewer Capacity	The Verification of Availability of Infrastructure - Sewer Capacity, Package Treatment or Septic Tank form provided in the Application is the DRAFT form which is the strike through version and not an acceptable form for verification.	Preliminary	
4T	III	C	3.d.	Availability of Roads	The Verification of Availability of Infrastructure - Roads form provided in the Application is the DRAFT form which is the strike through version and not an acceptable form for verification.	Preliminary	

Proximity Tie-Breaker Points:

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

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

Item #	Reason(s)	Created As Result of	Rescinded as Result of
1P	Evidence in NOPSE indicates that the Tie-Breaker Measurement Point is invalid as it is not located on the Phase II site. The NOPSE provides further	NOPSE	

2004 MMRB, SAIL & HC Scoring Summary

As of: 07/06/2004

File # 2004-111C

Development Name: Madison Green Apartments II

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

Item #	Reason(s)	Created As Result of	Rescinded as Result of
1P	evidence that the latitude and longitude coordinates provided for the Grocery Store represent a point that is not in the doorway threshold of the public entrance to the service.		
2P	Evidence in NOPSE indicates that the Tie-Breaker Measurement Point is invalid as it is not located on the Phase II site.	NOPSE	
4P	Evidence in NOPSE indicates that the Tie-Breaker Measurement Point is invalid as it is not located on the Phase II site. The NOPSE provides further evidence that the latitude and longitude coordinates provided for the Pharmacy represent a point that is not in the doorway threshold of the public entrance to the service.	NOPSE	
6P	Evidence in NOPSE indicates that the Tie-Breaker Measurement Point is invalid as it is not located on the Phase II site.	NOPSE	

Additional Application Comments:

Item #	Part	Section	Subsection	Description	Reason(s)	Created As Result	Rescinded as Result
1C	V	B		Change in Total Development Cost	The Applicant exceeded the General Contractor fee and Developer fee limits. Therefore, these figures were decreased resulting in Total Development Cost decreasing from \$7,494,688 to \$7,466,886.	Preliminary	

2008 MMRB, SAIL & HC Scoring Summary

As of: 06/04/2008

File # 2008-112C

Development Name: Emerald Palms

As Of:	Total Points	Met Threshold?	Proximity Tie-Breaker Points
06 - 04 - 2008	66	N	7.5
Preliminary	66	N	7.5
NOPSE	66	N	7.5
Final	0	N	0
Final-Ranking	0	N	0

Scores:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Final Ranking
Features & Amenities									
1S	III	B	2.a.	New Construction	9	9	9	0	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	0	0
2S	III	B	2.d.	SRO Developments	12	0	0	0	0
3S	III	B	2.e.	Energy Conservation Features	9	9	9	0	0
4S	III	B	3	Green Building	5	5	5	0	0
Set-Aside Commitments									
5S	III	E	1.b.(2)(b)	Total Set-Aside Commitment	3	3	3	0	0
6S	III	E	3.	Affordability Period	5	5	5	0	0
Resident Programs									
7S	III	F	1.	Programs for Non-Elderly & Non-Homeless	6	6	6	0	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	0	0
Local Government Support									
9S	IV		A.	Contributions	5	5	5	0	0
10S	IV		B.	Incentives	4	4	4	0	0

2008 MMRB, SAIL & HC Scoring Summary

As of: 06/04/2008

File # 2008-112C

Development Name: Emerald Palms

Threshold(s) Failed:

Item #	Part	Section	Subsection	Description	Reason(s)	Created As Result of	Rescinded as Result of
1T	III	C	5	Environmental Site Assessment	The Applicant failed to provide the required Verification of Environmental Safety Phase I Environmental Site Assessment form and, if applicable, the Verification of Environmental Safety Phase II Environmental Site Assessment form.	Preliminary	
2T	III	A	2.b.	Scattered Sites	Based on information provided by a NOPSE, it appears that the Development site is divided by an easement and roadway and thus meets the definition of Scattered Sites (see subsection 67-48.002(98), F.A.C.). The Applicant failed to correctly answer the question at Part III.A.2.b. of the Application and failed to provide the required information for each site.	NOPSE	
3T	III	B	2	Optional Features and Amenities	Based on information provided by a NOPSE, it appears that the Development site is divided by an easement and roadway and thus meets the definition of Scattered Sites (see subsection 67-48.002(98), F.A.C.). The Applicant failed to answer the question at Part III.B.2. of the Application.	NOPSE	
4T				Financial Arrears	Pursuant to subsection(s) 67-48.004(5) and/or 67-21.003(5), F.A.C., NOPSE scoring may include financial obligations for which an Applicant or Principal, Affiliate or Financial Beneficiary of an Applicant or the Developer is in arrears to the Corporation or an agent or assignee of the Corporation as of the due date for NOPSE filing (May 15, 2008). As provided in paragraph(s) 67-48.004(13)(d) and/or 67-21.003(13)(d), F.A.C., following the submission of the "Cures," the Corporation shall reject an Application if the Applicant fails to satisfy any arrearages described in subsection(s) 67-48.004(5) and/or 67-21.003(5), F.A.C. A party to this Application (the Applicant or Principal, Affiliate or Financial Beneficiary of the Applicant or the Developer) is listed on the May 15, 2008 Past Due Report as being in arrears to the Corporation as a related party (the Applicant or Principal, Affiliate or Financial Beneficiary of the Applicant or the Developer) of Hidden Grove. The May 15, 2008 Past Due Report is posted to the FHFC Website at http://www.floridahousing.org/Home/PropertyOwnersManagers/PastDueReports.htm . A portion of the arrearage was satisfied prior to issuance of the NOPSE Scoring Summary; however, \$500.00 is still due and owing as of May 15, 2008. Payments and questions should be addressed to the servicer and not to Florida Housing.	NOPSE	

Proximity Tie-Breaker Points:

Item #	Part	Section	Subsection	Description	Available	Preliminary	NOPSE	Final	Final Ranking
1P	III	A	10.a.(2)(a)	Grocery Store	1.25	1.25	1.25	0	0
2P	III	A	10.a.(2)(b)	Public School	1.25	1.25	1.25	0	0

2008 MMRB, SAIL & HC Scoring Summary

As of: 06/04/2008

File # 2008-112C

Development Name: Emerald Palms

Proximity Tie-Breaker Points:

Item #	Part	Section	Subsection	Description	Available	Preliminary	NOPSE	Final	Final Ranking
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	0	0
6P	III	A	10.b.	Proximity to Development on FHFC Development Proximity List	3.75	3.75	3.75	0	0

Additional Application Comments:

Item #	Part	Section	Subsection	Description	Reason(s)	Created As Result	Rescinded as Result
1C	III	A	10	Proximity	Per page 14 of the Application Instructions, the Application automatically received 7.50 proximity tie breaker points because it involves a Public Housing Authority.	Preliminary	

Scoring Summary Report

File #: 2009-194C Development Name: Grand Reserve Villas

As Of:	Total Points	Met Threshold?	Ability to Proceed Tie-Breaker Points	Proximity Tie-Breaker Points
10/21/2009	60.00	N	1.00	3.75
Preliminary	65.00	N	6.00	3.75
NOPSE	60.00	N	1.00	3.75
Final				
Final-Ranking				

Scores:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Final Ranking
Construction Features & Amenities									
1S	III	B	2.a	New Construction	9.00	9.00	9.00		
1S	III	B	2.b	Rehabilitation/Substantial Rehabilitation	9.00	0.00	0.00		
2S	III	B	2.c	All Developments Except SRO	12.00	12.00	12.00		
2S	III	B	2.d	SRO Developments	12.00	0.00	0.00		
3S	III	B	2.e	Energy Conservation Features	9.00	9.00	9.00		
4S	III	B	3	Green Building	5.00	5.00	5.00		
Set-Aside Commitment									
5S	III	E	1.b.(2)	Special Needs Households	4.00	0.00	0.00		
6S	III	E	1.b.(3)	Total Set-Aside Commitment	3.00	3.00	3.00		
7S	III	E	3	Affordability Period	5.00	5.00	5.00		
Resident Programs									
8S	III	F	1	Programs for Non-Elderly & Non-Homeless	6.00	5.00	5.00		
8S	III	F	2	Programs for Homeless (SRO & Non-SRO)	6.00	0.00	0.00		
8S	III	F	3	Programs for Elderly	6.00	0.00	0.00		
9S	III	F	4	Programs for All Applicants	8.00	8.00	8.00		
Local Government Contributions									
10S	IV	A		Contributions	5.00	5.00	0.00		
Local Government Incentives									
11S	IV	B		Incentives	4.00	4.00	4.00		

Reason(s) Scores Not Maxed:

Item #	Reason(s)	Created As Result	Rescinded As Result
5S	The Applicant Notification to Special Needs Household Referral Agency form does not reflect the correct listing of participating Special Needs Household Referral Agencies for the county. Therefore, the Applicant is not eligible for Special Needs points.	Preliminary	
8S	The Applicant failed to select enough Resident Programs for Non-Elderly/Non-Homeless Developments to achieve maximum points.	Preliminary	
10S	Based on evidence provided by a NOPSE filed against Application numbers: 2009-128C, 2009-134C, 2009-148C, 2009-149C, 2009-198C, 2009-199C and 2009-257C, Miami-Dade County set aside a total of \$1.5 Million to provide local funding in the amount of \$300,000 each for up to five (5) 2009 Universal Cycle Applications awarded funding by Florida Housing. However, the County committed to provide Local Government contributions in the amount of \$300,000 each to as many as thirty-three(33) 2009 Universal Cycle Miami-Dade County Applications, with no contemplation given to the possibility that more than five (5) such Miami-Dade County applications could be awarded funding by Florida Housing. The 2009 Universal Cycle Application Instructions provide that "Local Government contributions that have not received final approval will not qualify as a Local Government contribution for purposes of this Application." Because the \$1.5 Million set aside by the County is not sufficient to fund all applications, it cannot be determined whether the contribution for this Application has received final approval from the Local Government. Therefore, no points were awarded for this Local Government Contribution and the Application does not qualify for automatic points.	NOPSE	
10S	Although the Applicant provided the Local Government Verification of Contribution - Loan form indicating the loan was available on or before May 26, 2009, evidence provided by a NOPSE filed against Application numbers 2009-128C, 2009-134C, 2009-148C, 2009-149C, 2009-198C, 2009-199C, 2009-257C indicates Miami-Dade County did not authorize funding for 2009 Universal Cycle Applications until September 1, 2009. In order to be eligible for points, the 2009 Universal Cycle Application Instructions require that the effective date of the commitment be on or before Application Deadline of August 20, 2009. Because funding for Local Government contributions had not been authorized by the County as of Application Deadline, the Local Government Verification of Contribution - Loan form cannot be deemed to have been effective "on or before the Application Deadline" and therefore is not eligible for points.	NOPSE	

Threshold(s) Failed:

Item #	Part	Section	Subsection	Description	Reason(s)	Created es Result of	Rescinded as Result of
1T	III	C	5	Environmental Site Assessment	The Applicant failed to provide the required Verification of Environmental Safety – Phase I Environmental Site Assessment form and, if applicable, the Verification of Environmental Safety – Phase II Environmental Site Assessment form.	Preliminary	
2T	V	D	2	HC Equity	The Applicant provided an equity commitment letter from PNC at Exhibit 56. The total amount of equity listed in the commitment letter does not equal the sum of the stated equity payments. Therefore, the equity commitment could not be considered a source of financing.	Preliminary	
3T	V	B		Construction/Rehab. Analysis	The Applicant has a construction financing shortfall of \$6,790,493.	Preliminary	NOPSE
4T	V	B		Permanent Analysis	The Applicant has a permanent financing shortfall of \$6,790,493.	Preliminary	NOPSE
5T	III	C	2	Site Control	Section 17 of the December 3, 2008 Purchase and Sale Agreement allows the Purchaser to assign its rights ". . .under this Agreement provided that any potential Assignee expressly assumes all of the terms, conditions and obligations of this Agreement in writing". Language to this effect is not included in the April 5, 2009 Assignment of Contract.	Preliminary	
6T	III	C	1	Site Plan Approval / Plat Approval	Status of Site Plan Approval has not been properly demonstrated. A NOPSE provided a letter dated October 1, 2009 from William Kiriloff of the Community Development Department at the City of Florida City which states that although a Local Government Verification of Status of Site Plan Approval for Multifamily Developments form was provided by the Applicant (at Exhibit 26 of the Application) with Mr. Kiriloff's signature, he did not sign the Site Plan Approval form.	NOPSE	
7T	III	C	4	Zoning	Based on information provided in a NOPSE, Mr. Kiriloff's signature on the Local Government Verification of Status of Site Plan Approval for Multifamily Developments form (at Exhibit 26 of the Application) is not Mr. Kiriloff's signature. Based on this NOPSE, Florida Housing is not able to determine whether the signature on the Local Government Verification That Development Is Consistent With Zoning and Land Use Regulations form (at Exhibit 32 of Application) purporting to be that of Mr. Kiriloff is in fact Mr. Kiriloff's signature.	NOPSE	

Item #	Part	Section	Subsection	Description	Reason(s)	Created as Result of	Rescinded as Result of
8T	III	C	3.b	Availability of Water	Based on information provided in a NOPSE, Mr. Kiriloff's signature on the Local Government Verification of Status of Site Plan Approval for Multifamily Developments form (at Exhibit 26 of the Application) is not Mr. Kiriloff's signature. Based on this NOPSE, Florida Housing is not able to determine whether the signature on the Verification of Availability of Infrastructure – Water form (at Exhibit 29 of the Application) purporting to be that of Mr. Kiriloff is in fact Mr. Kiriloff's signature.	NOPSE	
9T	III	C	3.c	Availability of Sewer	Based on information provided in a NOPSE, Mr. Kiriloff's signature on the Local Government Verification of Status of Site Plan Approval for Multifamily Developments form (at Exhibit 26 of the Application) is not Mr. Kiriloff's signature. Based on this NOPSE, Florida Housing is not able to determine whether the signature on the Verification of Availability of Infrastructure – Sewer form (at Exhibit 30 of the Application) purporting to be that of Mr. Kiriloff is in fact Mr. Kiriloff's signature.	NOPSE	
10T	III	C	3.d	Availability of Roads	Based on information provided in a NOPSE, Mr. Kiriloff's signature on the Local Government Verification of Status of Site Plan Approval for Multifamily Developments form (at Exhibit 26 of the Application) is not Mr. Kiriloff's signature. Based on this NOPSE, Florida Housing is not able to determine whether the signature on the Verification of Availability of Infrastructure - Roads form (at Exhibit 31 of the Application) purporting to be that of Mr. Kiriloff is in fact Mr. Kiriloff's signature.	NOPSE	
11T	III	C	1	Site Plan Approval / Plat Approval	A NOPSE provided a letter dated October 1, 2009 from William Kiriloff of the Community Development Department at the City of Florida City which states that the zoning designation indicated on the Local Government Verification of Status of Site Plan Approval for Multifamily Developments form (at Exhibit 26 of the Application) is incorrect.	NOPSE	

Item #	Part	Section	Subsection	Description	Reason(s)	Created as Result of	Rescinded as Result of
12T	III	C	4	Zoning	A NOPSE provided a letter dated October 1, 2009 from William Kiriloff of the Community Development Department at the City of Florida City which states that the zoning designation indicated on the Local Government Verification of Status of Site Plan Approval for Multifamily Developments form (at Exhibit 26 of the Application) is incorrect. Based on this NOPSE, the zoning designation indicated on the Local Government Verification That Development Is Consistent With Zoning and Land Use Regulations form (at Exhibit 32 of Application) is incorrect.	NOPSE	
13T	III	C	4	Zoning	Information provided in a NOPSE indicates that the zoning designation stated on the Local Government Verification That Development Is Consistent With Zoning and Land Use Regulations form (at Exhibit 32 of Application) will not allow the 75 units proposed in the Application.	NOPSE	
14T	V	B		Construction/Rehab. Analysis	The Applicant has a construction financing shortfall of \$7,090,493.	NOPSE	
15T	V	B		Permanent Analysis	The Applicant has a permanent financing shortfall of \$7,090,493.	NOPSE	
16T	V	D	1	Non-Corporation Funding	Because the Local Government Verification of Contribution - Loan form does not qualify as a Local Government contribution for purposes of this Application (See Item 10S), the Local Government Contribution could not be considered as a source of financing.	NOPSE	

Item #	Part	Section	Subsection	Description	Reason(s)	Created as Result of	Rescinded as Result of
17T				Financial Arrears	Pursuant to subsection 67-48.004(5), F.A.C., NOPSE scoring may include financial obligations for which an Applicant or Developer or Principal, Affiliate or Financial Beneficiary of an Applicant or the Developer is in arrears to the Corporation or an agent or assignee of the Corporation as of the due date for NOPSE filing (October 1, 2009). As provided in paragraph 67-48.004(13)(d), F.A.C., following the submission of the "Cures," the Corporation shall reject an Application if the Applicant fails to satisfy any arrearages described in subsection 67-48.004(5), F.A.C. The Applicant or Developer or Principal, Affiliate or Financial Beneficiary of the Applicant or the Developer is listed on the October 1, 2009 Past Due Report as being in arrears to the Corporation in connection with the following Development(s): Whistler's Cove. The October 1, 2009 Past Due Report is posted to the FHFC Website at http://www.floridahousing.org/Home/PropertyOwnersManagers/PastDueReports.htm . Payments and questions should be addressed to the servicer.	NOPSE	

Ability To Proceed Tie-Breaker Points:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Final Ranking
1A	III	C	1	Site Plan/Plat Approval	1.00	1.00	0.00		
2A	III	C	3.a	Availability of Electricity	1.00	1.00	1.00		
3A	III	C	3.b	Availability of Water	1.00	1.00	0.00		
4A	III	C	3.c	Availability of Sewer	1.00	1.00	0.00		
5A	III	C	3.d	Availability of Roads	1.00	1.00	0.00		
6A	III	C	4	Appropriately Zoned	1.00	1.00	0.00		

Reason(s) for Failure to Achieve Selected Ability To Proceed Tie-Breaker Points:

Item #	Reason(s)	Created As Result	Rescinded As Result
1A	The Application is not eligible for 1 Ability to Proceed Tie-Breaker Point for site plan approval. See Item 6T and 11T above.	NOPSE	
3A	The Application is not eligible for 1 Ability to Proceed Tie-Breaker Point for availability of water. See Item 8T above.	NOPSE	
4A	The Application is not eligible for 1 Ability to Proceed Tie-Breaker Point for availability of sewer. See Item 9T above.	NOPSE	
5A	The Application is not eligible for 1 Ability to Proceed Tie-Breaker Point for availability of roads. See Item 10T above.	NOPSE	
6A	The Application is not eligible for 1 Ability to Proceed Tie-Breaker Point for appropriate zoning and land use. See Item 7T, 12T and 13T above.	NOPSE	

Proximity Tie-Breaker Points:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Final Ranking
1P	III	A	10.b.(2) (a)	Grocery Store	1.25	0.00	0.00		
2P	III	A	10.b.(2) (b)	Public School	1.25	0.00	0.00		
3P	III	A	10.b.(2) (c)	Medical Facility	1.25	0.00	0.00		
4P	III	A	10.b.(2) (d)	Pharmacy	1.25	0.00	0.00		
5P	III	A	10.b.(2) (e)	Public Bus Stop or Metro-Rail Stop	1.25	0.00	0.00		
6P	III	A	10.c	Proximity to Development on FHFC Development Proximity List	3.75	3.75	3.75		
7P	III	A	10.a	Involvement of a PHA	7.50	0.00	0.00		

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

Item #	Reason(s)	Created As Result	Rescinded As Result
1P	The Applicant did not submit the Surveyor Certification form.	Preliminary	
1P	The Applicant did not provide the required sketch.	Preliminary	
2P	The Applicant did not provide the required sketch.	Preliminary	
2P	The Applicant did not submit the Surveyor Certification form.	Preliminary	
5P	The Applicant did not submit the Surveyor Certification form.	Preliminary	

Additional Application Comments:

Item #	Part	Section	Subsection	Description	Comment(s)	Created as Result of	Rescinded as Result of
1C	I	B	1	Related Application	Based on a review of the Declaration of Priority I Related Applications forms and Exhibit 9 information provided by the Applicants, it appears that Applications 2009-193C, 2009-194C, 2009-195C, 2009-196C, and 2009-197C are part of the same Pool of Related Applications. Per page 3, number 3 of the 2009 Universal Cycle Instructions, "no more than three (3) Applications may be Non-Joint Venture Applications." Further, page 4, paragraph 9 states that "all Applications designated as Priority I Applications within a Pool of Related Applications will be deemed by the Corporation to be Priority II Applications if . . . (ii) it is determined that the number of Applications designated as Priority I Applications within the Pool of Related Applications exceeds the limitations outlined in paragraph B.3. above." Therefore Applications 2009-193C, 2009-194C, 2009-195C, 2009-196C, and 2009-197C have been deemed by the Corporation to be Priority II Applications.	Preliminary	
2C	III	A	10	Proximity	The Applicant qualified for 3.75 automatic proximity points at 6P.	Preliminary	
3C				Financial Arrears	The Applicant or Developer or Principal, Affiliate or Financial Beneficiary of the Applicant or the Developer is listed on the October 1, 2009 Past Due Report as being in arrears to the Corporation in connection with the following Development(s): Crescent Club (Camden Club). The October 1, 2009 Past Due Report is posted to the FHFC Website at http://www.floridahousing.org/Home/PropertyOwnersManagers/PastDueReports.htm . Either the arrearage was satisfied or a work-out agreement was finalized prior to issuance of the NOPSE Scoring Summary.	NOPSE	

2008-266BS

**VILLA CAPRI
MIAMI-DADE COUNTY, FLORIDA**

Year 2008 Universal Cycle

**Applicant:
Villa Capri Associates, Ltd.**

Submitted By:

**Cornerstone Development Management Services, Inc.
2121 Ponce de Leon Blvd., Penthouse
Coral Gables, FL 33134
Phone: (305) 443-8288/Fax: (305) 443-9339**

COPY

Attachment F

Exhibit 27

SIMPLE FORM PURCHASE AGREEMENT

THIS SIMPLE FORM PURCHASE AGREEMENT (the "Agreement") is made by and between **VILLA CAPRI, INC**, a Florida corporation ("Seller") and **VILLA CAPRI ASSOCIATES, LTD**, a Florida limited partnership ("Purchaser")

WITNESSETH

1 **Premises** Subject to the terms and conditions set forth below, Seller shall convey to Purchaser and Purchaser shall purchase from Seller the following described parcel of property situated in Miami-Dade County, Florida

SEE EXHIBIT A ATTACHED HERETO (the "Premises")

2 **Purchase Price** The sum of THREE MILLION TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$3,200,000), subject to adjustments, credits, and prorations as set forth herein (the "Purchase Price"), shall be paid by Purchaser to Seller in cash at Closing

3 **Title Insurance and Survey** Seller shall provide to Purchaser a title commitment (the "Title Commitment") for an ALTA Form B, Marketability Policy (the "Title Policy") issued by an agent of First American Title Insurance Company (the "Title Insurance Company") covering title to the Premises, Purchaser may obtain a survey (the "Survey")

4 **Unpermitted Exceptions and Survey Defects** If the Survey, the Title Commitment, or Purchaser's inspection of the Premises or the improvements thereon discloses any exceptions, requirements, necessary repairs, encroachments, or other issues which are not acceptable to Purchaser, in Purchaser's sole discretion, Purchaser shall have the right to either (a) terminate this Agreement upon written notice to Seller with neither party having any further obligation hereunder, or (b) waive such objection and proceed to Closing with no requirement that Seller make any changes or repairs

5 **Seller's Documents** Seller shall execute and deliver to Purchaser at Closing, the following

(a) A deed executed by Seller conveying to Purchaser fee simple title to the Premises,

(b) Such other Closing documents as reasonably may be required to consummate the transaction or which may be required by the Title Insurance Company in order to issue the Title Policy as required by the Title Commitment

6 **Expense Provisions** Any documentary stamps and transfer/sales taxes, the cost of recording the deed, the cost of the Survey, and the title insurance premium shall be paid by Purchaser on or before Closing

7 **Closing** Subject to the terms and conditions hereof, the Closing of this transaction shall be completed, on or before December 31, 2008 (the "Closing Date"), with the agent of the Title Insurance Company acting as the Escrow Agent. At Purchaser's option, the Closing may be held sooner so long as Purchaser gives Seller notice of the revised Closing Date. Seller shall deliver possession of the Premises to Purchaser on the Closing Date.

8 **Prorations** Real estate taxes for the year of the Closing shall be prorated on an accrual basis as of the Closing Date, based upon the most recent ascertainable taxes.

9 **Contract Construction** This Agreement shall not be interpreted against either party solely because such party drafted the Agreement.

10 **Successors and Assigns** The Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

11 **No Representations or Warranties** Seller makes no representations or warranties to Purchaser and it is agreed by Seller and Purchaser that the Premises is sold in as "as is" and "where is" condition with no reliance on any representations made by Seller. Purchaser agrees that it will use its own due diligence on or before August 31, 2007 to determine whether or not the Premises and any improvements thereon are fit for Purchaser's intended purposes.

12 **Amendments** Except as otherwise provided herein, this Agreement may be amended or modified by, and only by, a written instrument executed by Seller and Purchaser.

13 **Law** This Agreement shall be governed by and construed in accordance with Florida law.

14 **Section Headings** The section headings inserted in this Agreement are for convenience only and are not intended to, and shall not be construed to, limit, enlarge or affect the scope or intent of this Agreement, nor the meaning of any provision hereof.

15 **Merger of Prior Agreements** This Agreement supersedes all prior agreements and understandings between the parties hereto relating to the subject matter hereof.

16 **Attorney's Fees and Costs** In any litigation arising out of or pertaining to the Agreement, the prevailing party shall be entitled to an award of its attorney's fees, whether incurred before, after or during trial, or upon any appellate level.

17 **Broker and Legal Representation** Each party shall indemnify the other from claims for commissions made by any broker claiming that it had an agreement with such party.

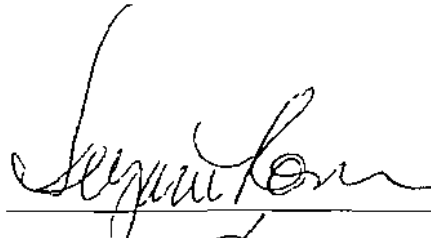
18 **Time** Time is of the essence of the Agreement. When any time period specified herein falls or ends upon a Saturday, Sunday or legal holiday, the time period shall be automatically extended to 5:00 P.M. in the next ensuing business day.

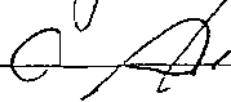
19 **Counterparts and Fax** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. It is the intent of the parties to circulate original signature copies, however, fax copies shall be deemed originals until original signatures are obtained.

20 **Default** In the event of a default by Seller, Purchaser shall be entitled to demand and receive specific performance of this Agreement.

WITNESS, the due execution hereof as of the day and year so stated.

WITNESSES

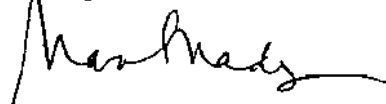




“PURCHASER”


VILLA CAPRI ASSOCIATES, LTD, a
Florida limited partnership


By Cornerstone Villa Capri, LLC, a
Florida limited liability company,
its general partner

By 

Mara S. Mades
Vice President

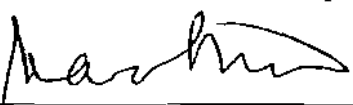
WITNESSES





“SELLER”

VILLA CAPRI, INC, a Florida corporation

By 

Mara Mades, Vice President

Exhibit A

The Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$, less the West 40 feet, the North 40 feet and the East 25 feet thereof, in Section 3, Township 57 South, Range 39 East, Miami-Dade County, Florida

2004 MMRB, SAIL & HC Scoring Summary

As of: 04/27/2004

File # 2004-041CS

Development Name: Falcon Pass

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?
04 - 27 - 2004	66	N	7.25	\$81,499.52	18.07%	Y
Preliminary	66	N	7.25	\$81,499.52	18.07%	Y
NOPSE	0	N	0		0	
Final	0	N	0		0	
Final-Ranking	0	N	0		0	

Scores:

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

2004 MMRB, SAIL & HC Scoring Summary

As of: 04/27/2004

File # 2004-041CS

Development Name: Falcon Pass

Threshold(s) Failed:

Item #	Part	Section	Subsection	Description	Reason(s)	Created As Result of	Rescinded as Result of
1T	III	C	2	Site Control	The documentation submitted to demonstrate site control is incomplete because Exhibit B, Extension to Option to Purchase, is illegible.	Preliminary	

Proximity Tie-Breaker Points:

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

Scoring Summary Report

File #: 2009-207C Development Name: Marcis Pointe Apartments

As Of:	Total Points	Met Threshold?	Ability to Proceed Tie-Breaker Points	Proximity Tie-Breaker Points
09/21/2009	66.00	N	6.00	7.25
Preliminary	66.00	N	6.00	7.25
NOPSE				
Final				
Final-Ranking				

Scores:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Final Ranking
Construction Features & Amenities									
1S	III	B	2.a	New Construction	9.00	9.00			
1S	III	B	2.b	Rehabilitation/Substantial Rehabilitation	9.00	0.00			
2S	III	B	2.c	All Developments Except SRO	12.00	12.00			
2S	III	B	2.d	SRO Developments	12.00	0.00			
3S	III	B	2.e	Energy Conservation Features	9.00	9.00			
4S	III	B	3	Green Building	5.00	5.00			
Set-Aside Commitment									
5S	III	E	1.b.(2)	Special Needs Households	4.00	0.00			
6S	III	E	1.b.(3)	Total Set-Aside Commitment	3.00	3.00			
7S	III	E	3	Affordability Period	5.00	5.00			
Resident Programs									
8S	III	F	1	Programs for Non-Elderly & Non-Homeless	6.00	0.00			
8S	III	F	2	Programs for Homeless (SRO & Non-SRO)	6.00	0.00			
8S	III	F	3	Programs for Elderly	6.00	6.00			
9S	III	F	4	Programs for All Applicants	8.00	8.00			
Local Government Contributions									
10S	IV	A		Contributions	5.00	5.00			
Local Government Incentives									
11S	IV	B		Incentives	4.00	4.00			

Reason(s) Scores Not Maxed:

Item #	Reason(s)	Created As Result	Rescinded As Result
5S	All of the participating Special Needs Household Referral Agencies for the county are not listed on the Applicant Notification to Special Needs Household Referral Agency form. Because the form is incomplete, the Applicant is not eligible for Special Needs points.	Preliminary	

Threshold(s) Failed:

Item #	Part	Section	Subsection	Description	Reason(s)	Created as Result of	Rescinded as Result of
1T	III	C	2	Site Control	Section 1 of the Purchase and Sale Agreement refers to an Exhibit A-1 which was not provided.	Preliminary	
2T	V	D	2	HC Equity	Per page 73 of the 2009 Universal Application Instructions, at least 15% of the proposed equity to be provided must be paid prior to or simultaneous with the closing of construction financing. The Applicant provided an equity commitment from Wachovia that does not meet the 15% requirement. Therefore, the commitment cannot be considered a source of financing.	Preliminary	
3T	V	B		Construction/Rehab. Analysis	The Applicant has a construction financing shortfall of \$7,055,294.	Preliminary	
4T	V	B		Permanent Analysis	The Applicant has a permanent financing shortfall of \$7,055,294.	Preliminary	

Ability To Proceed Tie-Breaker Points:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Final Ranking
1A	III	C	1	Site Plan/Plat Approval	1.00	1.00			
2A	III	C	3.a	Availability of Electricity	1.00	1.00			
3A	III	C	3.b	Availability of Water	1.00	1.00			
4A	III	C	3.c	Availability of Sewer	1.00	1.00			
5A	III	C	3.d	Availability of Roads	1.00	1.00			
6A	III	C	4	Appropriately Zoned	1.00	1.00			

Proximity Tie-Breaker Points:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Final Ranking
1P	III	A	10.b.(2) (a)	Grocery Store	1.25	1.25			
2P	III	A	10.b.(2) (b)	Public School	1.25	0.00			
3P	III	A	10.b.(2) (c)	Medical Facility	1.25	1.25			
4P	III	A	10.b.(2) (d)	Pharmacy	1.25	0.00			
5P	III	A	10.b.(2) (e)	Public Bus Stop or Metro-Rail Stop	1.25	1.00			
6P	III	A	10.c	Proximity to Development on FHFC Development Proximity List	3.75	3.75			
7P	III	A	10.a	Involvement of a PHA	7.50	0.00			

2009-207C

MARCIS POINTE APARTMENTS

Florida Housing Finance Corporation
2009 Universal Application Cycle
August 20, 2009

Composite
Attachment I

Exhibit 27

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is entered into as of the ~~30th~~^{20th} day of April 2009, between Vestcor Fund XXIV, Ltd., a Florida limited partnership, (the "Seller") and NVC-103rd Street, Ltd., a Florida limited partnership, or its permitted assigns ("Purchaser").

WITNESSETH:

In consideration of the mutual covenants set forth herein and the earnest money deposit herein called for, the parties hereto mutually agree as follows:

Section 1. Sale and Purchase.

Seller hereby agrees to sell, convey, and assign to Purchaser and Purchaser hereby agrees to purchase and accept from Seller, for the Purchase Price (hereinafter defined) and on and subject to the terms and conditions herein set forth, the following:

The parcel of land situated in Duval County, Florida, described in Exhibit "A" and depicted on Exhibit A-1 attached hereto containing approximately 32 +/- acres ("Property"); and all right, title, and interest appurtenant or related to the Land, including, but not limited to, all rights to underlying roads adjacent thereto, access easements and rights-of-way relating thereto or benefiting the Land, riparian, littoral rights, and other water rights relating thereto or benefiting the Land, utility mains, service laterals, hydrants and valves servicing or available to service the Land, and all minerals, soil, fill, landscaping and other embellishments now or in the future on or appurtenant thereto;

All of the Property shall be conveyed, assigned and transferred to Purchaser at Closing (hereinafter defined) free and clear of all liens, claims, and encumbrances except for taxes for the year of closing and easements and restrictions of record. Purchaser plans to develop and construct up to one hundred twenty (120) units in a senior multi-family affordable housing development, a community center and attendant facilities (the "Project"). The attendant facilities shall be more particularly set forth and developed in accordance with the requirements of the Federal Low Income Housing Tax Credits ("LIHTC") program, and/or the Florida Housing Finance Corporation ("FHFC").

Section 2. Purchase Price.

The price ("Purchase Price") for which Seller agrees to sell and convey the Property to Purchaser, and which the Purchaser agrees to pay to Seller the sum of **One Million Dollars and NO/100 (\$1,000,000)**.

a. Purchaser, within ten (10) business days of signing this Agreement, shall pay to Seller a deposit of **One Thousand and No/100 Dollars (\$1,000.00)** ("First Deposit").

b. Within ten (10) business days of the date Purchaser receives written notification from the Florida Housing Finance Corporation ("FHFC") that Purchaser has received a preliminary reservation of Low Income Housing Tax Credits ("LIHTC"), in an amount acceptable to Purchaser, Purchaser shall pay to Seller an additional deposit of **One Thousand Dollars and No/100 (\$1,000.00)** ("Second Deposit", together with the First Deposit ("Deposit"). Once made, the Deposit shall become non-refundable to Purchaser, but applicable to the Purchase Price.

c. Wire transfer on the date of Closing and delivery of Deed (or such greater or lesser amounts as may be necessary to complete payment of the Purchase Price after all credits, adjustments and pro-rations required herein).

d. The Deposit shall be held by Seller. The Deposit shall, if this transaction closes, become a credit in favor of Purchaser toward payment of the Purchase Price at closing. If this transaction shall fail to close, the disposition of the Deposit shall be as hereinafter provided.

e. All funds payable hereunder shall be tendered in lawful money of the United States of America. The Deposit and sum payable on the date of closing shall be paid by wire transfer of immediately available U.S. federal funds.

Section 3. Escrow Agent.

~~Escrow Agent has agreed to act as escrow agent for the convenience of the parties without fee or compensation for its services. Escrow Agent shall hold the Deposit, and, if applicable, invest same as provided for, and any other documents required herein, and to deliver same to the parties herein in accordance with the provisions of this Agreement. Escrow Agent, as escrow agent, is acting in the capacity of a depository only, and shall not be liable or responsible to anyone for any damages, losses or expenses unless same shall be caused by the gross negligence or willful misconduct of Escrow Agent. Escrow Agent may rely upon the written notices, communications, orders or instructions given by Seller or Purchaser or believed by it to be genuine. Seller and Purchaser will indemnify and hold Escrow Agent harmless against any matters directly or indirectly related to the Deposit and any other funds held by Escrow Agent under this Agreement, including, without limitation, attorneys' fees. In the event of any disagreement among any of the parties to this Agreement resulting in adverse claims and demands being made in connection with the Property, Escrow Agent shall be entitled to refuse to comply with any such claims or demands as long as such disagreement may continue, and in so refusing, shall make no delivery or other disposition of the Deposit then held by it under this Agreement, and in doing so, Escrow Agent shall not become liable in any way for such refusal, and Escrow Agent shall be entitled to continue to refrain from acting until (a) the rights of adverse claimants shall have been finally settled by binding arbitration or finally adjudicated in a court assuming and having jurisdiction of the Property, or (b) all differences shall have been adjusted by agreement and Escrow Agent shall have been notified in writing of such agreement signed by the parties hereto. Further, Escrow Agent shall have the right at any time after a dispute between Seller and Purchaser has arisen, to pay the Deposit held by it into any court of competent jurisdiction for payment to the appropriate party, whereupon Escrow Agent's obligations hereunder shall terminate. Seller and Purchaser agree that the status of Seller's counsel as Escrow Agent under this Agreement does not disqualify such law firm from representing Seller in this transaction and in any disputes that may arise between Seller and Purchaser concerning this transaction, including any dispute or controversy with respect to the Deposit.~~

Section 4. Inspection Period.

a. Purchaser shall have 180 days (the "Inspection Period") within which to conduct a general investigation of the Property (the "Property Inspection") and determine the feasibility of the Project. If Purchaser is not satisfied with the results of the Property Inspection and determines that it does not wish to purchase the Property, Purchaser may elect to cancel and terminate this Agreement by delivering notice to Seller within the Inspection Period, whereupon Purchaser shall restore any damage to the Property caused by Purchaser's inspections and deliver to Seller all Due Diligence Materials as defined below, upon which Escrow Agent shall return to Purchaser all deposits paid hereunder and this Agreement shall be terminated and the parties shall be relieved of any further obligations hereunder. If Purchaser does not elect to terminate by delivering written notice to Seller on or before the expiration of the Inspection Period, the Deposit shall be non-refundable, except in the event of a default by Seller or a failure of the contingencies set forth in Section 5 and Section 6 hereof.

b. Purchaser, during the Inspection Period, may enter upon the Property to perform such reasonable acts as are necessary in order to conduct the Property Inspection. During the Inspection Period, Seller will make available at Seller's office for inspection by Purchaser all of Seller's documents regarding the Property and the Intangible Personal Property, including, but not limited to, surveys, appraisals, environmental reports, soil reports, service contracts, leases and title reports in Seller's possession or control which such documents Seller shall deliver to Purchaser within ten (10) days of the Effective Date of this Agreement. Purchaser may make copies of the foregoing documents provided that Purchaser shall not disclose the contents of them to anyone other than Purchaser's advisors and consultants, and provided further that all such copies shall be returned to Seller if this Agreement is terminated. Purchaser may continue to enter upon the Property after the expiration of the Inspection Period provided this Agreement remains in full force and effect. Purchaser, its agents, representatives or contractors shall enter the Property at their own risk, all such entries and studies shall be at Purchaser's cost, and Seller shall have no liability for any injuries or cost sustained by Purchaser, its agents, employees, officers, representatives or contractors, unless caused by Seller's negligence or willful misconduct. Purchaser agrees the Property shall not be unnecessarily disturbed during the Property Inspection and prior to closing and agrees to promptly repair or restore any damage to the Property caused by such entry or entries onto the Property. Any invasive testing shall be subject to Seller's prior written approval of a testing plan. Purchaser shall not allow any liens to be placed against the Property arising out of its activities on the Property. Purchaser shall indemnify and hold harmless Seller (and its legal representatives, successors and assigns) from and against any and all claims, liens, demands, personal injury, property damage, or liability of any nature whatsoever arising from or incident to Purchaser's (or its agents, representatives' or contractors') entry or entries onto the Property or activities upon the Property, unless caused by Seller's negligence or willful misconduct. This indemnification shall include payment of court costs and attorneys' fees including those incurred in appellate proceedings.

c. Purchaser's indemnification obligations contained above shall survive any assignment, cancellation and termination of this Agreement.


d. If this Agreement is terminated, Purchaser, at no cost to Seller, and upon Seller's written request, shall furnish Seller with copies of all tests and studies prepared by third party contractors, consultants and vendors engaged by Purchaser relating to the Property Inspection that are in Purchaser's possession, and, if not in Purchaser's possession, then within five (5) business days after Purchaser's receipt of same (collectively the "Due Diligence Materials").

Section 5. Tax Credit Contingency.

Purchaser's obligation to acquire the Property is contingent on its ability to obtain a tax credit allocation from the Florida Housing Finance Corporation ("FHFC") (the "Tax Credit Allocation"). Purchaser shall use its good faith best efforts and due diligence to obtain such Tax Credit Allocation. Purchaser shall file all necessary applications for such Tax Credit Allocation with the Florida Housing Finance Corporation on or before May 26, 2009, or such other date in 2009 as required by FHFC. In the event Purchaser is unable to obtain the Tax Credit Allocation from The FHFC despite full cooperation with the FHFC and exercising Purchaser's best efforts and due diligence, this Agreement shall automatically terminate, in which event the Escrow Agent shall return the Deposit to Purchaser and the parties shall be released and discharged of and from all obligations hereunder, except for those obligations which specifically survive termination of this Agreement.

Section 6. Permits and Approvals Contingency.

Upon the execution hereof, Purchaser, at the Purchaser's expense and option, shall engage the appropriate professionals, in order to prepare all of the plans, specifications and documents necessary for the Purchaser to obtain approval from Duval County, Florida, and all other appropriate, regulatory agencies for the preliminary site plan approval for the Project and Purchaser's obligation to acquire the

Seller 

Property is contingent upon obtaining such approvals. Purchaser shall apply and diligently and in good faith pursue the site plan approval for the Project from all appropriate governmental and quasi-governmental agencies. The Purchaser shall be responsible for paying for all professional fees, and governmental approval fees and applications associated with the approvals which Purchaser has incurred. Seller and Purchaser hereby agree to fully cooperate with each other in connection with obtaining the preliminary site plan approval for the Property, but in no event will Seller be required to incur costs or attend hearings. In the event Purchaser is unable to obtain the site plan approval of the Property by January 31, 2010, Purchaser, at Purchaser's option may terminate this Agreement by delivering written notice of same to Seller on or before January 31, 2010 and receive the return of Purchaser's Deposits hereunder.

Section 7. Closing.

a. The closing ("Closing") of the sale of the Property by Seller to Purchaser shall occur at a time and place designated by Purchaser on or before December 31, 2009 (the "Closing Date"), unless extended by the provisions of this Agreement.

b. Purchaser, at its sole option, may elect to extend the Closing Date for up to three (3) additional thirty (30) day periods in return for \$500 extension payments per 30-day period ("Extension Payments"). The Extension Payments are not applicable to the Purchase Price.

c. At the Closing, the following shall occur:

(i) Purchaser, at its sole cost and expense, shall deliver or cause to be delivered at Closing the following:

1. The balance of the Purchase Price as set forth in Section 2 hereof, subject to prorations, adjustments and credits as described in this Agreement; and

2. Execute and deliver or obtain for delivery any instruments reasonably necessary to close this transaction, including, by way of example but not limitation, [corporate] [limited partnership certificates] and resolutions, closing statements, corporate resolutions or affidavits and delivery of instruments reasonably required by the title agent.

(ii) Seller, at its sole cost and expense, shall deliver or cause to be delivered to Purchaser the following:

1. Special Warranty Deed fully executed and acknowledged by Seller, conveying, to Purchaser the Property, subject only to (a) real estate taxes for the year of closing, which are not yet due and payable, and subsequent years; (b) zoning and use restrictions in effect or which may hereafter come into existence due to governmental action; and (c) easements and restrictions of record which have been approved by Purchaser;

2. Affidavit attesting to the absence, of any financing statements, claims of lien or potential liens known to Seller and further attesting that there have been no improvements or repairs to the Property which remain unpaid for ninety (90) days immediately preceding the date of Closing;

3. A certificate meeting the requirements of Section 1445 of the Internal Revenue Code executed and sworn to by Seller;

4. Evidence reasonably satisfactory to Purchaser and the title agent that the person or persons executing the closing documents on behalf of Seller have full right, power and authority to do so;

5. Execute and deliver or obtain for delivery any other instruments reasonably necessary to close this transaction, including, by way of example but not limitation, closing statements, releases, affidavits and delivery of instruments reasonably required by the title agent;

6. Deliver all Intangible Personal Property, if any, in Seller's possession.

d. The following items shall be prorated or adjusted at the closing:

(i) Real estate taxes and assessments, shall be prorated as of the Closing Date. Real estate taxes and assessments shall be prorated based on actual taxes and assessments for the year of Closing, or, if same are not available, on taxes and assessments for the preceding year, subject to proration between the parties upon receipt of final tax bill for the year of the closing.

e. Upon completion of the Closing, (i) Seller shall deliver to Purchaser possession of the Property; and (ii) Escrow Agent shall promptly record the deed of conveyance, the mortgage and any other applicable closing documents upon confirmation of clearance of all funds.

f. Purchaser, at closing, shall pay the recording fee for the deed.

g. Seller, at closing shall pay (i) current real estate taxes; (ii) documentary stamp tax on the deed of conveyance; and (iii) the premium for the Owner's Title Insurance Policy based on the minimum promulgated rate.

h. Certified, confirmed and ratified special assessment liens as of the date hereof shall be paid by Seller and pending liens as of the date hereof shall be assumed by Purchaser.

Section 8. Evidence of Title and Title Insurance.

a. On or before ninety (90) days after the Effective Date, Seller shall obtain, at Seller's expense not to exceed the minimum promulgated rate set forth by the Insurance Commissioner of the State of Florida a title insurance commitment for an ALTA Form B marketability policy issued by Commonwealth Land Title Insurance Company, through its agent Pepple Johnson Cantu & Schmidt PLLC (the "Title Company") in the full amount of the Purchase Price (the "Commitment"), together with legible copies of any encumbrances listed thereon. The Commitment shall have an effective date that is after the Effective Date of the Agreement and that is within 10 days of the date of its issuance. At the Closing, Title Company shall deliver an endorsement to, or "mark-up" of, the Commitment deleting all Schedule B-I requirements, all standard exceptions except taxes for the current year not then due and payable, and the "gap" exceptions.

b. If the Commitment contains any exceptions which render title unmarketable or adversely affect the value of the Property or Purchaser's intended use of the Property as determined by Purchaser in its sole discretion, Purchaser shall deliver written notice ("Purchaser's Notice") to Seller specifying the additional exceptions that render title unmarketable or objectionable to Purchaser ("Objections"). Purchaser's Notice shall be given not later than fifteen (15) days after receipt of the Commitment by Purchaser. Seller shall notify Purchaser in writing ("Seller's Notice") within fifteen (15) days after receipt of Purchaser's Notice as to which Objections that Seller is unwilling or unable to remove as of the Closing Date (the "Remaining Objections").

c. If there are any Remaining Objections, Purchaser may, at its option by written notice to Seller (i) reject title as it then exists and terminate this Agreement and thereupon be entitled to a return of the Deposit, or (ii) waive such objections and proceed with the Closing and accept the Property subject to such exceptions without reduction of the Purchase Price. Upon return of the Deposit to Purchaser

pursuant to subparagraph (i) above, this Agreement shall cease and terminate and the parties shall have no further rights, duties, or obligations under this Agreement, except for those rights, duties and obligations that specifically survive termination of this Agreement. If Purchaser fails to send any notice by the required date, Purchaser shall be deemed to have waived the objections to such exceptions and shall proceed to the Closing as provided by this Agreement.

d. If any subsequent endorsement to the Commitment reveals any additional exceptions not permitted by this Agreement, the provisions for Purchaser's Notice and Seller's Notice shall be reinstated, with the Purchaser's Notice regarding the additional exception(s) being due five (5) business days after the date that Purchaser receives the updated exceptions.

e. Seller and Purchaser each agree to provide reasonable affidavits and documentation to enable the Title Company to delete all Schedule B-I requirements, the "gap" exception, and the construction lien and parties in possession exceptions from the Commitment at Closing. Seller and Purchaser each shall be responsible for satisfying those Schedule B-I requirements applicable to each of them.

Section 9. Survey.

Within ninety (90) days after delivery to Purchaser of the Title Commitment and exception documents, Purchaser may obtain, at Purchaser's expense, a survey ("Survey") of the Property prepared by a duly licensed surveyor. Purchaser hereby agrees, at Purchaser's expense, to cause any additional surveying work Purchaser obtains to be timely completed as may be necessary or required by the Title Company to enable them to delete all Schedule B-I requirements and the standard exceptions. If the Survey shows any encroachment on the Property, the same shall be treated as an Objection and the notice and cure provisions set forth in Section 8 above shall control. The legal descriptions prepared by the surveyor shall be utilized as the legal descriptions for the Warranty Deed given by Seller to Purchaser.

Section 10. Representations of Purchaser and Seller.

Seller and Purchaser respectively hereby make the following representations:

a. Purchaser's Representations.

To induce Seller to enter into this Agreement and to sell the Property, Purchaser represents and warrants to Seller:

(i) Except for this Agreement, Purchaser has entered into no other purchase or commission agreement with respect to the Property.

(ii) Purchaser shall pay prior to Closing or arrange for payment after Closing of all claims, liabilities or expenses associated with its inspection, permitting and development of the Property, except as otherwise provided herein.

(iii) Purchaser has not (a) made a general assignment for the benefit of creditors, (b) filed any voluntary petition or suffered the filing of an involuntary petition by Purchaser's creditors, (c) suffered the appointment of a receiver to take all, or substantially all, of Purchaser's assets, (d) suffered the attachment or other judicial seizure of all, or substantially all, of Purchaser's assets, or (e) admitted in writing its inability to pay its debts as they fall due, and no such action is threatened or contemplated. If any of such actions have been taken or brought against Purchaser, then prior to the date hereof the same have been fully disclosed and Purchaser discharged therefrom so that there are no prohibitions or conditions upon Purchaser's acquisition of the Property.

(iv) Neither the execution and delivery of this Agreement nor the consummation of the transaction contemplated by this Agreement will result (either immediately or after the passage of time and/or the giving of notice) in breach or default by Purchaser under any agreement or understanding to which Purchaser is a party or by which Purchaser may be bound or which would have an effect upon Purchaser's ability to fully perform its obligations under this Agreement.

(v) That Purchaser has the right, power and authority to execute, deliver and perform this Agreement without obtaining any consents or approvals from or the taking of any action with respect to, any third parties. This Agreement, when executed and delivered by Purchaser and Seller, will constitute the valid and binding Agreement of Purchaser.

(vi) Purchaser is an experienced commercial real estate owner and shall rely solely upon its own evaluation and investigation of the condition and all aspects of the Property. Purchaser acknowledges that this Agreement grants to Purchaser every opportunity which Purchaser may need to fully evaluate the condition and all aspects of the Property. Purchaser has asked for and will obtain in this Agreement disclosure of certain information and documents regarding the Property which are in Seller's possession. This does not reduce Purchaser's duty to fully evaluate the Property on its own. Accordingly, except to the extent that the Seller fraudulently or intentionally makes misrepresentations as to the condition of the Property, Purchaser acknowledges that it is not relying upon any representations of Seller as to the condition of the Property or its suitability for Purchaser's intended use. In the event Purchaser does not timely terminate pursuant to Section 4, Section 5, or Section 6 hereof, Purchaser shall be deemed to accept the Property "as is" in all respects. This Section shall survive Closing.

b. Seller's Representations.

To induce Purchaser to enter into this Agreement and to purchase the Property, Seller represents and warrants to Purchaser that:

(i) That Seller owns fee simple title to the Property;

(ii) That Seller has no actual knowledge regarding, and has received no written notice of, violations of any law, ordinance, order or regulation affecting the Property issued by any governmental or quasi-governmental authority having jurisdiction over the Property that has not been corrected; and that before the Closing, Seller shall promptly disclose to Purchaser any knowledge regarding, and furnish to Purchaser copies of any and all written notices of, violations that Seller receives between the Effective Date and the Closing Date from any governmental or quasi-governmental authorities having jurisdiction over the Property;

(iii) To the best of Seller's knowledge, there are no (i) existing or pending improvement liens affecting the Property; (ii) existing, pending, or threatened lawsuits or appeals of prior lawsuits affecting the Property or Seller; (iii) existing, pending, or threatened condemnation proceedings affecting the Property; (iv) except as disclosed to Purchaser by Seller, any existing, pending, or threatened zoning, building, or other moratoria, down zoning petitions, proceedings, restrictive allocations, or similar matters that could affect Purchaser's use of the Property, the value of the Property or the issuance of building permits or certificates of occupancy with respect to the Property; (v) existing, pending, or threatened water or sewer hookup, water extraction, electrical or other utility moratoria; or (vi) pending real estate tax appeals or protests with respect to the Property before any applicable governmental authority;

(iv) That there are no other purchase and sale agreements, nor options or rights of first refusal in effect as of the Effective Date relating to the Property nor will any such interest be in effect as of the time of Closing;

(v) That Seller has not received a written summons, citation, directive, notice, complaint, or letter from the United States Environmental Protection Agency, the State of Florida Department of Environmental Protection, or other federal, state, or local governmental agency or authority specifying any alleged violation of any environmental law, rule, regulation, or order at or on the Property and, to the best of Seller's knowledge, the Property is not currently under investigation for any such violation;

(vi) During the term of this Agreement, Seller shall not, without in each instance first obtaining Purchaser's written consent, which may be withheld in Purchaser's sole discretion, consent to or permit (i) any modification, termination or alteration to existing easements, dedications, covenants, conditions, restrictions, or rights of way adversely affecting Purchaser's intended use for the Property, (ii) any new easements, covenants, dedications, conditions, restrictions, or rights of way affecting Purchaser's intended use for the Property, (iii) any zoning changes or other changes of governmental approvals, (iv) any modifications to or future advances under any existing liens, mortgages, or other encumbrances on the Property, or (v) any new liens, mortgages, or other encumbrances on the Property;

(vii) That Seller is not a "foreign person" within the meaning of the Foreign Investment in Real Property Tax Act (FIRPTA), as amended;

(viii) That Seller is solvent, and no receivership, bankruptcy, or reorganization proceedings are pending or, to Seller's knowledge, contemplated against Seller in any court;

(ix) Seller has the right, power, and authority to execute, deliver, and perform this Agreement without obtaining any consents or approvals from, or the taking of any other actions with respect to, any third parties, and this Agreement, when executed and delivered by Seller and Purchaser, will constitute the valid and binding Agreement of Seller;

(x) That, at all times during the term of this Agreement and as of the Closing, all of Seller's representations, warranties, and covenants in this Agreement shall be true and correct; and

(xi) That no representation or warranty by Seller contained in this Agreement and no statement delivered or information supplied to Purchaser pursuant to this Agreement contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements or information contained in them or in this Agreement not misleading.

Seller shall notify Purchaser in writing within five days after Seller's knowledge thereof, if Seller's representations or warranties set forth above become untrue or misleading in light of information obtained by Seller after the Effective Date. As a condition to the survival of the representations and warranties as provided herein, Purchaser must deliver to Seller a sworn certificate at Closing stating that as a result of its inspection of the Property, Purchaser is not aware of any matter that constitutes, or with the passage of time would constitute a breach of Seller's representations or warranties in this Agreement, or that Purchaser elects to waive all such breaches or misrepresentations that Purchaser has discovered as a result of its inspection of the Property. The representations and warranties set forth in this Section 10 shall survive the Closing as to claims of which Purchaser notifies Seller in writing, with a description of the claim made, on or before six months after Closing. Subject to the limitations set forth in this paragraph, Seller agrees to reimburse Purchaser for actual out of pocket damages resulting from a breach of a representation or warranty made in this Section 10. In no event shall Purchaser be entitled to incidental, consequential or punitive damages. Purchaser agrees that Seller shall have the opportunity to remedy or cure any such breach or defect provided that Seller commences remedying and curing within thirty (30) days after written notice of the claim and diligently continues to remedy or cure until completion. Seller shall be entitled to defend against any action that would constitute a breach of warranty under this Agreement with legal counsel of its own selection, provided that Seller diligently and continuously defends the action.

Section 11. Remedies.

In the event of a breach by Purchaser of its obligations under this Agreement, Seller may terminate this Agreement by written notice to Purchaser specifying the breach, and Purchaser shall have five (5) business days opportunity to cure the same (provided that no such cure period shall apply for a breach of the obligation to close by the Closing Date. In the absence of a timely cure by Purchaser, Seller's sole remedy shall be to retain all Deposits paid by Purchaser and agreed to be paid and any earnings thereon as liquidated damages for withholding the Property from the market and for expenses incurred, not as a penalty. PURCHASER AND SELLER AGREE THAT IT WOULD BE EXTREMELY DIFFICULT OR IMPRACTICAL TO QUANTIFY THE ACTUAL DAMAGES TO SELLER IN THE EVENT OF A BREACH BY PURCHASER, THAT THE AMOUNT OF ALL DEPOSITS IS A REASONABLY ESTIMATE OF SUCH ACTUAL DAMAGES. Notwithstanding the foregoing, this liquidated damages provision does not limit Purchaser's obligations of document delivery, restoration, indemnity, and confidentiality under Section 4, Section 10, Section 13, and Section 15 which expressly survive termination and/or closing of this Agreement for any reason, including default by Purchaser.

In the event of a breach by Seller of Seller's obligations under this Agreement, which breach is not cured within five (5) business days after Seller's receipt of notice of default from Purchaser (provided, however that no such cure period shall apply for breach of the obligation to close by the Closing Date, Purchaser may elect only one of the following two remedies: (i) terminate this Agreement and receive a refund of the Deposit paid hereunder, or, (ii) enforce specific performance against Seller.

Section 12. Destruction, Damage or Taking Prior to Closing.

If, prior to Closing, the Property is destroyed, damaged or becomes subject to condemnation or eminent domain proceedings, the Purchaser shall have the option, which must be exercised within ten (10) days after its receipt of written notice from Seller advising of such destruction, damage or taking (which Seller hereby agrees to give), to terminate this Agreement or to proceed with the Closing, without reduction in the Purchase Price. If Purchaser elects to terminate this Agreement, the Deposit shall be returned to Purchaser and neither party shall have any further rights, duties or obligations hereunder, except as otherwise provided herein. If Purchaser elects to proceed with the Closing, Purchaser shall be entitled to the insurance proceeds or condemnation proceeds payable as a result of such damage, destruction or taking up to the amount of the Purchase Price and, to the extent the same may be necessary or appropriate, Seller shall assign to Purchaser, at Closing, Seller's rights to such proceeds up to the amount of the Purchase Price, and Seller will not settle or adjust any insurance claims without Purchaser's prior consent. All insurance proceeds or condemnation proceeds in excess of the Purchase Price shall belong to and be retained by Seller.

Section 13. Real Estate Commission.

The parties each represent and warrant that there are no real estate agents or brokers or transactional brokers involved in this transaction. Each party agrees to indemnify and hold harmless the other from all claims or demands of any other real estate agent or broker or transactional broker claiming by, through or under said party. This indemnification shall also include payment of court costs and attorneys fees, including those incurred in appellate proceedings. This indemnification shall survive Closing and/or termination of this Agreement.

Section 14. Prohibition Against Recording.

Neither this Agreement nor any part hereof, shall be recorded among the Public Records of any County in the State of Florida.

Section 15. Confidentiality.

At all times before the Closing Date of the Property, Purchaser agrees to hold in strict confidence and not to disclose to any other party without the prior written consent of Seller, all information regarding the Property, as expressed in this Agreement, except as may be required by applicable law or as otherwise contemplated in this Agreement, or to Purchaser's legal and financial advisors, lending institutions, and Purchaser's investors.

Section 16. Notices.

Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States mail, addressed to the party to be notified, postage prepaid and registered or certified with return receipt requested; by delivering the same in person to such party; by prepaid telegram or telex; by facsimile copy or by express mail. Notice given in accordance herewith shall be effective upon receipt at the address of the party to be served. For purposes of notice, the addresses of the parties shall be as follows:

If to Seller, to: Vestcor Fund XXIV, Ltd.
Attn: Stephen A. Frick
3020 Hartley Road, Suite 300
Jacksonville, FL 32257
Telephone: (904) 260-3030
Facsimile: (904) 260-9031
frick@vestcor.com

With a copy to: Papas, Metcalf, Jenks & Miller, P.A.
Attn: Todd Cottrill
245 Riverside Avenue, Suite 400
Jacksonville, FL 32202
Telephone: (904) 353-1980
Facsimile: (904) 353-5217
gtc@papmet.com

If to Purchaser, to: NVC-103rd Street, Ltd.
Attn: Jim Dyal
2602 Merida Lane
Tampa, FL 33618
Telephone: (813) 960-1991
Facsimile: (813) 962-8435
jimdyal@verizon.net

Section 17. Assigns.

All or any portion of Purchaser's rights and duties under the Agreement shall be transferable or assignable, solely at Purchaser's discretion.

Section 18. Entire Agreement.

This Agreement and all exhibits, when accepted by Seller, shall constitute the entire agreement between Seller and Purchaser concerning the sale of the Property and supersedes all prior agreements, representations or understandings, whether oral or written, between the parties and no modification hereof or subsequent agreement relative to the subject matter hereof shall be binding on either party unless reduced to writing and signed by the party to be bound. This Agreement, when accepted by Seller, shall be binding on and shall inure to the benefit of the parties and their respective successors and permitted assigns.

Section 19. Counterparts.

This Agreement may be executed in multiple counterparts, all of which together shall constitute one agreement. A facsimile signature shall be deemed to be an original. Offer and acceptance of this Agreement by facsimile is binding.

Section 20. Time of Essence.

Time is important to both Seller and Purchaser in the performance of this Agreement, and they have agreed that strict compliance is required as to any date or time period set out or described herein. All references to days herein (unless otherwise specified) shall include Saturdays, Sundays and legal holidays. If the final date of any period which is set out in any section of this Agreement falls upon a Saturday, Sunday or legal holiday under the laws of the United States or the State of Florida, then, in such event, the time of such period shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

Section 21. Effective Date.

Whenever the term or phrase "effective date" or "date hereof" or other similar phrases describing the date this Agreement becomes binding on Seller and Purchaser are used in this Agreement, such terms or phrases shall mean and refer to the date on which a counterpart or counterparts of this Agreement executed by Seller and Purchaser, together with the First Deposit, are deposited with the Seller.

Section 22. Time for Acceptance.

Delivery of this document to Purchaser shall not be deemed nor taken to be an offer to sell by Seller. Only when executed by Purchaser or Seller and delivered to the other party hereto shall this Agreement constitute an offer to buy or sell the Property, as the case may be, on the terms herein set forth, acceptable by the party receiving such executed Agreement within seven (7) business days after such receipt, by executing this Agreement and delivering the original hereof to the Escrow Agent and an originally signed copy hereof to the other party hereto. Failure to accept in the manner and within the time specified shall constitute a rejection and termination of such offer. No acceptance shall be valid and binding upon Seller unless in writing and signed by an authorized officer of Seller.

Section 23. Attorney's Fees.

In any legal proceeding arising in connection with this Agreement (including without limitation any arbitration and appellate proceedings as well as any bankruptcy, reorganization, liquidation, receivership or similar proceeding) the substantially non-prevailing party agrees to pay to the substantially prevailing party all reasonable costs and expenses, including court costs and attorneys fees, expended or incurred by the substantially prevailing party in connection therewith (whether incurred before, during or subsequent to any such action or proceeding). In the event of enforcement of this Agreement, or any dispute as to interpretation or construction hereof the laws of the State of Florida shall apply, and this Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that this Agreement may have been prepared by counsel for one of the parties, it being recognized that both Seller and Purchaser have contributed substantially and materially to the

preparation of this Agreement. In the event of litigation, the parties hereto agree that all suits shall be instituted and maintained in the Circuit Court in and for Duval County, Florida, the jurisdiction of which Court the parties hereby consent to. Purchaser and Seller mutually agree that they waive all rights to a trial by jury in the event of any dispute or court action arising from or related to this Agreement. The parties acknowledge that this waiver is a significant consideration to, and a material inducement for, Purchaser and Seller to enter into this Agreement.

Section 24. Severability.

If any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such invalidity, illegality or unenforceability shall not affect any other provision hereof.

Section 25. Headings.

The headings of the sections, paragraphs and subdivisions of this Agreement are for convenience and reference only, and shall not limit or otherwise affect any of the terms hereof.

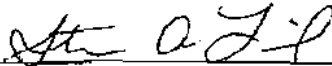
REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE ATTACHED HERETO

EXECUTED as of the date and year written below.

SELLER:

VESTCOR FUND XXIV, LTD., a Florida limited partnership

By: Vestcor Partners XXIV, LLC, a Florida limited liability company



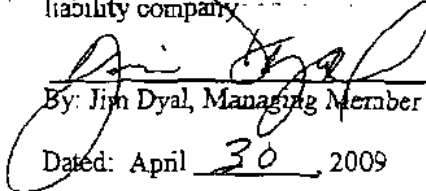
By: Stephen A. Frick, Vice President

Dated: April 30, 2009

PURCHASER:

NVC-103rd Street, Ltd., a Florida limited partnership

By: NVC/GP 103rd Street, LLC, a Florida limited liability company



By: Jim Dyal, Managing Member

Dated: April 30, 2009

EXHIBIT "A"

Legal Description

See Attached Legal Description

EXHIBIT "A"

OVERALL LEGAL DESCRIPTION FROM SURVEY

THAT CERTAIN TRACT OR PARCEL OF LAND, BEING PARTS OF TRACTS 6, 7, 8, 9, 10 AND 11 OF BLOCK 1, SECTION 13, TOWNSHIP 3 SOUTH, RANGE 25 EAST, JACKSONVILLE HEIGHTS, AS PER RECORD IN PLAT BOOK 5, PAGE 93, OF THE CURRENT PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGIN AT THE SOUTHWEST CORNER OF THAT 30 FOOT RIGHT OF WAY FOR DRAINAGE & UTILITIES, AS SHOWN ON THE PLAT OF OAK HILL UNIT 7, AS PER PLAT OF RECORD IN PLAT BOOK 27, PAGE 66, OF THE CURRENT PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA, BEING ALSO THE WESTERLYMOST CORNER OF SAID SUBDIVISION; THENCE PROCEED NORTH 89°11'05" EAST, ALONG THE SOUTHERLY LINE OF THE AFOREMENTINED 30 FOOT RIGHT OF WAY, A DISTANCE OF 194.83 FEET TO THE NORTHWESTERLYMOST CORNER OF BLOCK 11 OF SAID SUBDIVISION; THENCE CONTINUE SOUTH 01°45'44" WEST, ALONG THE WESTERLY LINE THEREOF, A DISTANCE OF 688.87 FEET TO AN INTERSECTION WITH THE SOUTHERLY LINE OF TRACT 10 OF BLOCK 1 OF THE SAID JACKSONVILLE HEIGHTS, AS DESCRIBED IN OFFICIAL RECORDS VOLUME (O.R.V.) 848, PAGE 325, OF THE SAID OFFICIAL RECORDS; THENCE PROCEED SOUTH 88°41'40" WEST, ALONG THE SAID SOUTHERLY LINE OF TRACT 10 AS DESCRIBED IN SAID OFFICIAL RECORD, A DISTANCE OF 624.94 FEET TO THE SOUTHEAST CORNER OF A PARCEL ACQUIRED BY THE CITY OF JACKSONVILLE, AS DESCRIBED IN SAID OFFICIAL RECORD, SAID CORNER BEING 5.26 FEET BEYOND AN INTERSECTION OF THE WESTERLY RIGHT OF WAY LINE OF AN UNRECORDED 100 FOOT ELECTRIC TRANSMISSION LINE RIGHT OF WAY WITH THE SOUTHERLY LINE OF SAID TRACT 10 OF BLOCK 1 OF THE SAID JACKSONVILLE HEIGHTS; THENCE NORTH 42°51'30" WEST, ALONG THE NORTHEAST LINE OF THE CITY PARCEL OF RECORD IN ORV 848, PAGE 325, A DISTANCE OF 71.99 FEET TO THE NORTHERLYMOST CORNER OF SAID PARCEL, BEING ALSO ON THE EASTERLY LINE OF A 60 FOOT WIDE RIGHT OF WAY FOR DRAINAGE AND UTILITIES BELONGING TO THE CITY OF JACKSONVILLE, AS SHOWN ON THE PLAT OF OAK HILL UNIT NO. 12, AS RECORDED IN PLAT BOOK 30, PAGES 64 & 64A, OF THE CURRENT PUBLIC RECORDS OF DUVAL COUNTY; THENCE ALONG THE EASTERLY LINE THEREOF, NORTH 02°08'34" EAST, A DISTANCE OF 1944.00 FEET TO THE SOUTHWESTERLY CORNER OF THAT PARCEL DESCRIBED IN O.R.V. 9822, PAGE 337, OF THE SAID PUBLIC RECORDS; THENCE ALONG THE SOUTHERLY LINE THEREOF, SOUTH 87°59'13" EAST, A DISTANCE OF 322.51 FEET TO THE SOUTHEASTERLY CORNER THEREOF; THENCE NORTH 01°54'43" EAST, ALONG THE EASTERLY LINE OF SAID PARCEL, A DISTANCE OF 100.00 FEET TO THE NORTHEASTERLY CORNER THEREOF, BEING ALSO THE SOUTHEASTERLY CORNER OF THAT PARCEL DESCRIBED IN O.R.V. 2524, PAGE 597, OF THE SAID PUBLIC RECORDS; THENCE, ALONG THE EASTERLY LINE THEREOF, NORTH 01°53'36" EAST, A DISTANCE OF 380.00 FEET TO THE NORTHEASTERLY CORNER THEREOF; THENCE NORTH 87°53'54" WEST, ALONG THE NORTHERLY LINE THEREOF, A DISTANCE OF 7.24 FEET TO THE SOUTHEAST CORNER OF PARCEL 2 OF RECORD IN ORV 9822, PAGE 337, OF THE SAID PUBLIC RECORDS OF DUVAL COUNTY; THENCE NORTH 01°34'34" EAST, IN PART ALONG THE EASTERLY LINE OF SAID PARCEL 2, AND PARTLY ALONG THE EASTERLY LINE OF A PARCEL OF RECORD IN ORV 5483, PAGE 996, A DISTANCE OF 272.38 FEET TO THE POINT OF CURVATURE OF A CURVE, CONCAVE SOUTHERLY, HAVING A RADIUS OF 25.19 FEET, AN ARC ANGLE OF 91°09'13", AND BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF NORTH 44°00'02" WEST, 35.98 FEET; THENCE, ALONG THE ARC OF SAID CURVE, A DISTANCE OF 40.07 FEET TO THE POINT OF INTERSECTION OF SAID CURVE WITH THE SOUTHERLY RIGHT OF WAY OF 103RD STREET (STATE RD. NO. 134), AN EXISTING 104 FOOT RIGHT OF WAY, AS DEFINED BY THE FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT OF WAY MAPS BEARING



SECTION NO. 72511-1602, AND SECTION NO. 72220-2501, DATED OCTOBER 20, 1975; SAID POINT OF INTERSECTION ALSO BEING ON THE NORTHERLYMOST LINE OF THAT PARCEL DESCRIBED IN ORV 5483, PAGE 996, OF THE SAID CURRENT PUBLIC RECORDS OF DUVAL COUNTY; THENCE CONTINUE ALONG THE SOUTHERLY RIGHT OF WAY OF SAID 103RD STREET, SOUTH 89°56'35" EAST, NON-TANGENTIALLY TO THE LAST DESCRIBED CURVE, A DISTANCE OF 85.79 FEET TO THE NORTHWESTERLY CORNER OF A PARCEL DESCRIBED IN O.R.V. 4907, PAGE 1115, OF THE SAID OFFICIAL PUBLIC RECORDS; THENCE SOUTH 01°52'28" WEST, A DISTANCE OF 240.46 FEET TO THE SOUTHWESTERLY CORNER THEREOF; THENCE ALONG THE SOUTHERLY LINE THEREOF, SOUTH 89°52'10" EAST, A DISTANCE OF 118.61 FEET TO THE SOUTHEASTERLY CORNER OF SAID PARCEL, BEING A POINT ON THE EASTERLY LINE OF THE WEST 1/2 OF THE EAST 1/2 OF TRACT 7 OF BLOCK 1 OF THE AFOREMENTIONED JACKSONVILLE HEIGHTS; THENCE SOUTH 01°29'05" WEST, ALONG THE SAID EASTERLY LINE OF THE WEST 1/2 OF THE EAST 1/2 OF TRACT 7, AND IN PART ALONG THE EASTERLY LINE OF THE WEST 1/2 OF THE EAST 1/2 OF TRACT 8 OF BLOCK 1 OF THE SAID JACKSONVILLE HEIGHTS, AND ALONG THE WESTERLY LINE OF THAT PARCEL DESCRIBED IN O.R.V. 6874, PAGE 385, OF THE SAID OFFICIAL PUBLIC RECORDS, A DISTANCE OF 617.19 FEET TO THE SOUTHWESTERLY CORNER OF THE SAID PARCEL; THENCE SOUTH 84°35'37" EAST, ALONG THE SOUTHERLY LINE THEREOF, A DISTANCE OF 353.96 FEET TO THE SOUTHEASTERLY CORNER OF SAID PARCEL, BEING A POINT ON THE WESTERLY LINE OF THAT PARCEL NOW BELONGING TO THE CITY OF JACKSONVILLE, BEING THAT EXCEPTION OF RECORD IN O.R.V. 6874, PAGE 383, OF THE SAID OFFICIAL PUBLIC RECORDS; THENCE SOUTH 04°25'51" WEST, A DISTANCE OF 229.45 FEET TO A CORNER; THENCE CONTINUING ON THE SAID WESTERLY LINE, SOUTH 25°34'42" WEST, A DISTANCE OF 210.29 FEET TO A CORNER OF SAID PARCEL; THENCE SOUTH 89°24'38" WEST, A DISTANCE OF 33.43 FEET TO A CORNER; THENCE ALONG THE MOST WESTERLY LINE OF SAID PARCEL, SOUTH 25°34'42" WEST, A DISTANCE OF 50.14 FEET TO THE SOUTHWESTERLYMOST CORNER THEREOF; THENCE NORTH 89°24'38" EAST, A DISTANCE OF 83.56 FEET TO AN INTERSECTION WITH THE NORTHWESTERLY LINE OF OAK HILL UNIT 7, AS PER PLAT THEREOF, RECORDED IN PLAT BOOK 27, PAGE 66, OF THE AFOREMENTIONED OFFICIAL PUBLIC RECORDS; THENCE SOUTH 25°34'42" WEST, ALONG THE SAID NORTHWESTERLY LINE THEREOF, A DISTANCE OF 784.97 FEET TO THE POINT OF BEGINNING.

SUBJECT PARCEL THUS DESCRIBED, INCLUSIVE OF THAT 100 FOOT ELECTRIC TRANSMISSION LINE RIGHT OF WAY AND COINCIDENT EASEMENT FOR DRAINAGE, RECORDED IN O.R.V. 263, PAGE 353, ALONG THE WESTERLY LINE THEREOF, AND ALSO THAT 30 FOOT WIDE DRAINAGE EASEMENT ALONG THE WESTERLY LINE OF SUBJECT PARCEL, CONTAINS AN AREA OF 1,461,443 SQUARE FEET, OR 33.550 ACRES, MORE OR LESS.

Contracted for 32 +/- Acres of the above referenced Legal Description



ATLANTIC - GULF SURVEYING CO.

2009 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. 2009-207C** and pertains to:

Part III Section C Subsection 2 Exhibit No. 27 (if applicable)

The attached information is submitted in response to the 2009 Universal Scoring Summary Report because:

1. Preliminary Scoring and/or NOPSE scoring resulted in the imposition of a *failure to achieve maximum points, a failure to achieve threshold, and/or a failure to achieve maximum proximity points* relative to the Part, Section, Subsection, and/or Exhibit stated above. Check applicable item(s) below:

	2009 Universal Scoring Summary Report	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 Ability to Proceed Score Not Maxed	Item No. ____ A	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/> Reason Failed Threshold	Item No. 1T	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Reason Proximity Points Not Maxed	Item No. ____ P	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Additional Comment	Item No. ____ C	<input type="checkbox"/>	<input type="checkbox"/>

2. 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 2009-207C

Provide a separate brief statement for each Cure

The Applicant failed Threshold relating to Item #1T, Part III, Section C, Subsection 2, Site Control. Section 1 of the Purchase and Sale Agreement provided in Exhibit 27 referenced Exhibit A-1 which was not provided.

As a Cure for Item #1T, the Applicant is providing an amendment to the Purchase and Sale Agreement, which removes the reference to Exhibit A-1.

This Cure is in addition to the Purchase and Sale Agreement provided in Exhibit 27 of the original Application submission. Therefore, Site Control is demonstrated as a result of the existing Purchase and Sale Agreement and the First Amendment now submitted for Exhibit 27 within this Cure.

As a result of this Cure, the Applicant demonstrates Site Control in accordance with Application Instructions and passes Threshold.

**FIRST AMENDMENT TO
PURCHASE AND SALE AGREEMENT**

This First Amendment to Purchase and Sale Agreement (the "Amendment") is made as of the 29th day of October, 2009 by and between **NVC-103rd Street, Ltd., a Florida limited partnership** (the "Purchaser"), and **Vestcor Fund XXIV, Ltd., a Florida limited partnership** (the "Seller").

RECITALS

WHEREAS, Seller and Purchaser entered into that certain Purchase and Sale Agreement dated as of April 30, 2009 (the "Contract") for the sale and purchase of certain real property more particularly described in the Contract.

WHEREAS, Seller and Purchaser desire to amend the terms of the Contract on the terms and conditions hereinafter defined.

AGREEMENT

IN CONSIDERATION OF the foregoing facts and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Purchaser and Seller, intending to be legally bound, hereby agree as follows:

1. Recitals. The Recitals herein contained are true and correct and are made a part hereof.
2. Removal of Exhibit A-1. Exhibit A-1 and any and all references thereto in the Contract are hereby deleted.
3. This Amendment may be executed in several counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same Amendment. A facsimile shall serve as an original for all purposes.
4. In the event of any conflict between the terms of the Contract and the terms of this Amendment, the terms of this Amendment shall prevail. All capitalized terms not defined herein shall have the meaning ascribed to them in the Contract.
5. Purchaser and Seller acknowledge that the correct name of the Purchaser's General Partner is NVC/GP-103rd Street, LLC, a Florida limited liability company.
6. Except as modified herein, the Contract remains unchanged and is hereby ratified and confirmed in all respects.

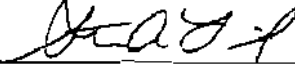
[Signatures appear on the following page.]

IN WITNESS WHEREOF, the parties hereto have duly executed this Amendment as of the date first written above.

SELLER:

VESTCOR FUND XXIV, LTD.,
a Florida limited partnership

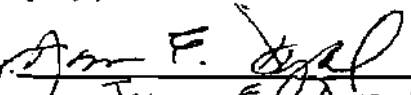
By: Vestcor Partners XXIV, LLC,
a Florida limited liability company, ITS GENERAL PARTNER

By: 
Name: Stephen A. Frick
Title: Vice President

PURCHASER:

NVC-103rd STREET, LTD., a
Florida limited partnership

By: NVC/GP-103rd Street, LLC, a Florida limited liability
company, ITS GENERAL PARTNER

By: 
Name: James E. Dyal
Title: Managing Member

2009 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. 2009-207C** and pertains to:

Part III Section A Subsection 10.b.(2) (e) Exhibit No. 25 (if applicable)

The attached information is submitted in response to the 2009 Universal Scoring Summary Report because:

1. Preliminary Scoring and/or NOPSE scoring resulted in the imposition of a failure to achieve maximum points, a failure to achieve threshold, and/or a failure to achieve maximum proximity points relative to the Part, Section, Subsection, and/or Exhibit stated above. Check applicable item(s) below:

	2009 Universal Scoring Summary Report	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 Ability to Proceed Score Not Maxed	Item No. ____ A	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Reason Failed Threshold	Item No. ____ T	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/> Reason Proximity Points Not Maxed	Item No. 5P	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Additional Comment	Item No. ____ C	<input type="checkbox"/>	<input type="checkbox"/>

2. 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 2009-207C

Provide a separate brief statement for each Cure

The Applicant failed to achieve maximum points for Item #5P – Proximity to Public Bus Stop

An error occurred on the original Surveyor Certification form. The Applicant's Tie Breaker Measurement Point has been corrected and a revised Surveyor Certification form is being submitted as a Cure in response to Item #5P. This revised form replaces the original form in Exhibit 25.

The proximity between the nearest Public Bus Stop and the revised Tie Breaker Measurement Point submitted within this Cure is less than 2/10 mile. Therefore the Applicant should receive 1.25 Proximity Tie-Breaker Points relating to Part III, Section A, Subsection 10.b. (2) (e), Proximity to Public Bus Stop

REVISED

2009 UNIVERSAL CYCLE - SURVEYOR CERTIFICATION

Name of Development: Marina Pointe Apartments

Development Location: 6734 103rd Street, Jacksonville, Florida 32210-7136

On a separate sheet, provide the address assigned by the United States Postal Service including the address number, street name and city, or if the address has not yet been assigned, provide the address, street name and city.

If the Development consists of several lots, the horizontal length and width must reflect the width and length of the Development Plot to be located

the unincorporated Florida (incorporated survey or ordinance that the method used to determine the following latitude and longitude coordinates complies with the Florida Surveying Act, F.S. 403.01.

Name of Development	Latitude			Longitude		
	Degrees	Minutes	Seconds (truncated after 1 decimal place)	W or E	Minutes	Seconds (truncated after 1 decimal place)
Marina Pointe Apartments	N 30	14	44.3	W	81	45
<p>State the Tie-Breaker Measurement Point. The Tie-Breaker Measurement Point means a single point selected by the Applicant on the proposed Development Plot located within 100 feet of a residential building existing or to be constructed as part of the proposed Development. For a Development which consists of several lots, the Tie-Breaker Measurement Point may be one of the several lots which the applicant has located within 100 feet of a residential building existing or to be constructed as part of the proposed Development. In addition, the Tie-Breaker Measurement Point may be located on the site with the most units.</p> <p>If the Development consists of several lots, it is part of the boundary of each lot located within 1/2 mile of the site with the most units? <input type="checkbox"/> Yes or <input checked="" type="checkbox"/> No (Must check one if Development consists of several lots.)</p> <p>State the State for a single Development or a Development consisting of several lots in the vicinity (i) may part of which is not contiguous ("non-contiguous parts") or (ii) any part of which is divided by a street or common "divided parts" and (iii) it is readily apparent from the proximity of the non-contiguous parts or the divided parts of the real property, other than the divided parts of the real property, one part of a common or related subdivision of development. (See Florida Statutes 67-2.002 and 67-2.002, F.S.C.)</p> <p>To be eligible for proximity tie-breaker points, Degrees and Minutes must be stated on whole numbers and Seconds must be truncated after 1 decimal place. The Commission will utilize Street Atlas USA 2008, published by DeLorme, to determine the proximity of an eligible service to the proposed Development. Tie-Breaker Measurement Point.</p>						
Location of closest Public Bus Stop or Metro Mall Stop	Latitude			Longitude		
	Degrees	Minutes	Seconds (truncated after 1 decimal place)	W or E	Minutes	Seconds (truncated after 1 decimal place)
Marina Pointe Apartments	N 30	14	54.5	W	81	48.0
<p>State the name, address and latitude and longitude coordinates of the closest service(s) on the chart below. The name and latitude and longitude coordinates for each service must be provided in order to be eligible for tie-breaker points. A service is located if there is no exterior public access to the service. A point should be selected in the exterior public access to the service. The closest walking distance to the service should be indicated.</p>						
Grocery Store:	Latitude			Longitude		
	Degrees	Minutes	Seconds (truncated after 1 decimal place)	W or E	Minutes	Seconds (truncated after 1 decimal place)
Marina Pointe Apartments	N 30	15	00.5	W	81	45
Public School:	Latitude			Longitude		
	Degrees	Minutes	Seconds (truncated after 1 decimal place)	W or E	Minutes	Seconds (truncated after 1 decimal place)
Marina Pointe Apartments	N 30	14	52.7	W	81	46
Medical Facility:	Latitude			Longitude		
	Degrees	Minutes	Seconds (truncated after 1 decimal place)	W or E	Minutes	Seconds (truncated after 1 decimal place)
Marina Pointe Apartments	N 30	14	52.7	W	81	46
Pharmacy:	Latitude			Longitude		
	Degrees	Minutes	Seconds (truncated after 1 decimal place)	W or E	Minutes	Seconds (truncated after 1 decimal place)
Marina Pointe Apartments	N 30	14	52.7	W	81	46

If the Commission determines that there are any false statements made in this certification, the Commission will forward a copy to the State of Florida Department of Business and Professional Regulation for investigation.

CERTIFICATION - Under penalty of perjury, I declare that the foregoing statement is true and correct.

Signature: Charles P. Delcambre

Title or Type Name of Signatory: Vice President

Name of Surveyor: Atlantic Gulf Surveying Co., Inc.

Address (street address, city, state): 5716 Timpanua Road, Jacksonville, Florida 32210

Telephone Number (including area code): 904-771-6412

Florida License Number: PL 05100

2009 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. 2009-207C** and pertains to:

Part III Section A Subsection 10.b.(2) (e) Exhibit No. 25 (if applicable)

The attached information is submitted in response to the 2009 Universal Scoring Summary Report because:

1. Preliminary Scoring and/or NOPSE scoring resulted in the imposition of a failure to achieve maximum points, a failure to achieve threshold, and/or a failure to achieve maximum proximity points relative to the Part, Section, Subsection, and/or Exhibit stated above. Check applicable item(s) below:

	2009 Universal Scoring Summary Report	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 Ability to Proceed Score Not Maxed	Item No. ____A	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Reason Failed Threshold	Item No. ____T	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Reason Proximity Points Not Maxed	Item No. ____P	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Additional Comment	Item No. ____C	<input type="checkbox"/>	<input type="checkbox"/>

2. 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 III Section A Subsection 10.b.2.e Exhibit 25 (if applicable).

Brief Statement of Explanation regarding

Application 2009-207C

Provide a separate brief statement for each Cure

The Applicant failed to achieve maximum points for Item #SP – Proximity to Public Bus Stop.

In its original submission, the Applicant provided one or more sketches within Exhibit 25 as support for the Surveyor Certification form.

The Applicant has submitted a revised Surveyor Certification form as a separate Cure for Item #SP. The submission of this Cure has caused an inconsistency with one or more of the sketches within Exhibit 25, for which the Applicant intends to provide revised pages to address any inconsistency.

In accordance with the Application Instructions, the Applicant is providing a sketch depicting the location of the exterior public entrance for each service housed within a building.

The attached copy of the revised Surveyor Certification form and applicable revised sketches are submitted as a replacement for all of Exhibit 25.

The proximity between the nearest Public Bus Stop and the revised Tie Breaker Measurement Point submitted within this Cure is less than 2/10 mile. All applicable sketches required by the Application Instructions have been revised to be consistent with the revised Surveyor Certification form. Therefore the Applicant should receive 1.25 Proximity Tie-Breaker Points relating to Part III, Section A, Subsection 10.b. (2)(e) – Proximity to Public Bus Stop.

2009 UNIVERSAL CYCLE - SURVEYOR CERTIFICATION

Name of Development: Malibu Pointe Apartments

Development Location: Jacksonville, Florida 32210-7136

(As a minimum, provide the address including the United States Postal Service, including the address number, street name and city, or if the address has not yet been assigned, provide the street name, street assigned lot/lotline and city.)

* If the Development Location stated above does not reflect the site where the Developer Measurement Point is located.

The undersigned Florida licensed surveyor certifies that the method used to determine the following latitude and longitude coordinates conforms to Rule 61G17-6, F.A.C.:

Latitude	Longitude	
	Minutes	Seconds (truncated after 1 decimal place)
N 30	14	44.3
Minutes	Minutes	Seconds (truncated after 1 decimal place)
State that the Developer Measurement Point is a single point already in use by the Applicant on the proposed Development site that is located within 100 feet of a residential building existing or to be constructed on part of the proposed Development. For a Development which consists of a single lot, the surveyor shall provide the coordinates of the Development site in the 100-foot radius. For a Development which consists of multiple lots, the surveyor shall provide the coordinates of the lot containing the Developer Measurement Point. If the Developer Measurement Point is located on the lot with the most units: If the Development consists of scattered lots, is a part of the boundary of, or is located within 1/2 mile of the site with the most units? <input type="checkbox"/> Yes or <input checked="" type="checkbox"/> No. (What class was the Development consists of Scattered Lots.) Scattered lots for a single Development means a Development consisting of real property in the same county (i) any part of which is not contiguous ("non-contiguous parts") or (ii) any part of which is divided by a street or easement ("divided parts") and (iii) is readily apparent from the proximity of the non-contiguous parts or the divided parts of the real property, or other information available to the Corporation that the non-contiguous parts or the divided parts of the real property are part of a common or related scheme of development. (See Rules 67-8.002 and 67-8.002, F.A.C.) To be eligible for proximity to the Developer Measurement Point, the coordinates must be truncated after 1 decimal place. The Corporation will utilize the coordinates published by DeLorme to determine the proximity of an eligible service to the proposed Development's Developer Measurement Point.		

Latitude		Longitude	
Minutes	Seconds (truncated after 1 decimal place)	Minutes	Seconds (truncated after 1 decimal place)
N 30	14	W 81	45
Minutes	Seconds (truncated after 1 decimal place)	Minutes	Seconds (truncated after 1 decimal place)

State the name, address and latitude and longitude coordinates of the closest services on the development. The latitude and longitude coordinates for each service must represent a point that is on the surveyor's records of an existing subject the provider direct public access to the building where the service is located. If there is no existing public entrance to the service, then a point should be used that is the closest existing access threshold that is the closest existing distance to the surveyor's records of the service.

Latitude	Longitude		
	Minutes	Seconds (truncated after 1 decimal place)	
N 30	15	W 81	45
Minutes	Seconds (truncated after 1 decimal place)	Minutes	Seconds (truncated after 1 decimal place)
N 30	14	W 81	46
Minutes	Seconds (truncated after 1 decimal place)	Minutes	Seconds (truncated after 1 decimal place)

If the Corporation discovers that there are any false statements made in this certification, the Corporation will forward a copy to the State of Florida Department of Business and Professional Regulation for investigation.

CERTIFICATION - Under penalty of perjury, I declare that the foregoing statement is true and correct.

Signature: Charles P. Deslaurie

Print or Type Name of Signatory: Charles P. Deslaurie

Address (omit address city, state): 5736 Punguan Road, Jacksonville, Florida 32210

Name of Surveyor: Atlantic Gulf Surveying Co., Inc.

Address (omit address city, state): 5736 Punguan Road, Jacksonville, Florida 32210

Name of Surveyor:

Vice President

Print or Type Title of Signatory

PL 05100

Florida License Number

904-771-6812

Telephone Number (including area code)

This certification may not be signed by the Applicant, its duly elected parties of the Applicant, or by any individual or Financial Representative of the Applicant. If the certification is inappropriately signed, the Applicant will not receive jurisdictional approval. If this certification contains corrections or "white-out," or if it is stamped, initialed, or retyped, the Applicant will not receive jurisdictional approval. The Applicant may only be eligible for a automatic protest. The certification may be photocopied. **Address of Applicant for purposes of this certification (from website, not a mailing-street address and city).

REVISED

PROXIMITY SKETCH OF:
PROPOSED LAYOUT OF MARCIS POINTE, 103rd STREET,
CITY OF JACKSONVILLE, DUVAL COUNTY, FLORIDA

REVISED

**INTENTIONALLY
OMITTED**

CHARLES P. DELCAMBRE, P.S.M., FL. REG. #5100



ATLANTIC~GULF SURVEYING CO. INC.

LAND AND ENGINEERING SURVEYS

LICENSED BUSINESS NO. 4226
5734 THRUQUANA ROAD JACKSONVILLE, FLORIDA 32210
PHONE NO. (904) 771-8412 - FAX (904) 776-8578

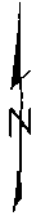
FIELD BOOK _____
DATE 12-18-08
DRAFTER CPO
SCALE MET TO SCALE

PROXIMITY SKETCH OF:

WAL-MART SUPERCENTER, LOCATED AT 6767 103rd STREET,
CITY OF JACKSONVILLE, DUVAL COUNTY, FLORIDA

ENTRANCE
PROXIMITY POINT
LATITUDE N 30°15'00.5"
LONGITUDE W 81°45'13.6"

WAL-MART SUPERCENTER
6767 103rd STREET



NOT TO SCALE

103RD STREET
(STATE RD. NO. 134)

REVISED

CHARLES P. DELCAMBRE, P.S.M., FL. REG. #5100



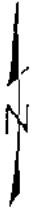
ATLANTIC-GULF SURVEYING CO. INC.

LAND AND ENGINEERING SURVEYS

LICENSED BUSINESS NO. 8226
5735 TIMUCUAMA ROAD, JACKSONVILLE, FLORIDA 32210
PHONE NO. (904) 771-5412 - FAX (904) 775-8578

DATE OF SURVEY 10-18-2009
FIELD BOOK _____
DATE 10-18-09
DRAWN BY CPD
SCALE NOT TO SCALE

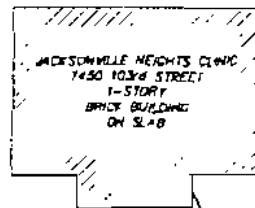
PROXIMITY SKETCH OF:
 JACKSONVILLE HEIGHTS CLINIC, LOCATED AT 7450
 CITY OF JACKSONVILLE, DUVAL COUNTY, FLORIDA



NOT TO SCALE

REVISED

103RD STREET
 (STATE RD. NO. 134)



ENCHANTED STREET

ENTRANCE
 LATITUDE N: 30°14'52.7"
 LONGITUDE W: 81°46'10.8"

CHARLES P. DELCAMBRE, P.S.M., FL. REG. #5100



ATLANTIC~GULF SURVEYING CO. INC.

LAND AND ENGINEERING SURVEYS

LICENSED BUSINESS NO. 8226
 5736 TIMQUANA ROAD, JACKSONVILLE, FLORIDA 32210
 PHONE NO. (904) 771-8412 - FAX (904) 778-8378

DATE OF SURVEY 10-16-08
 FIELD BOOK
 DATE 10-16-08
 DRAFTER CPD
 SCALE NOT TO SCALE

PROXIMITY SKETCH OF:
BUS STOP FRONTING WAL-MART
CITY OF JACKSONVILLE, DUVAL COUNTY, FLORIDA

REVISED

INTENTIONALLY
OMITTED

CHARLES P. DELCAMBRE, P.S.M., FL. REG. #5100



ATLANTIC~GULF SURVEYING CO. INC.

LAND AND ENGINEERING SURVEYS

LICENSED BUSINESS NO. 8226
3736 THUQUANA ROAD, JACKSONVILLE, FLORIDA 32210
PHONE NO. (904) 771-8412 - FAX (904) 775-8378

DATE OF SURVEY 10-10-2008
FIELD BOOK _____
DATE 10-16-2008
DRAWN BY CPO
SCALE NOT TO SCALE

**2009 Universal Application
 Multifamily Mortgage Revenue Bonds (MMRB) Program
 HOME Investment Partnerships (HOME) Rental Program
 Housing Credit (HC) Program**

Part I. Applicant Certification / Related and Priority I Applications

A. Applicant Certification:

The Applicant must provide the properly completed and executed Applicant Certification and Acknowledgement form behind a tab labeled "Exhibit 1.A."

B. Related Applications and Priority I Application Designation

(Applies only to Competitive HC Applications):

1. Is this Application a Related Application?

Yes No

If "Yes", answer the applicable question at B.2. below.

If "No", the Application will automatically be considered to be designated by the Applicant as a Priority I Application and the Applicant is not required to provide the Declaration of Priority I Related Applications form.

2. Indicate which one of the following applies to this Related Application and, if the Applicant selects Item 2.a., 2.b., or 2.c. below, provide the Declaration of Priority I Related Applications form behind a tab labeled "Exhibit 1.B.":

- a. This is a Non-Joint Venture Application designated as a Priority I Application.
- b. This is a Joint Venture Application designated as a Priority I Application and the Applicant is a Joint Venture Public Housing Authority Applicant.
- c. This is a Joint Venture Application designated as a Priority I Application and the Applicant is a Joint Venture Non-Profit Applicant. The questions at Part II.A.2 e. of the Application must be answered and the required documentation must be provided.
- d. This Application is not designated as a Priority I Application.

Part II. Applicant and Development Team

A. Applicant

1. Indicate the Corporation program(s) applied for in this Application (see Application Instructions for permitted program combinations):

- Tax-Exempt Multifamily Mortgage Revenue Bonds (Corporation-Issued MMRB)
- Taxable Multifamily Mortgage Revenue Bonds
- Housing Credits (HC) [Competitive 4% and/or 9%]
- Housing Credits (HC) [non-competitive 4%]
- HOME Investment Partnerships (HOME) Rental

2. Applicant Information:

a. Name of Applicant: Flagler Village Limited Partnership

Street Address: 3158 Northside Drive

City: Key West State: FL Zip: 33040

Telephone: (305)294-1049 Facsimile: (305)294-3951

E-Mail Address: oropeza@oropeza-parks.com
 (Optional)

b. Federal Employer Identification Number: 27-0730147

Scoring Summary Report

File #: 2009-216C Development Name: Flagler Village

As Of:	Total Points	Met Threshold?	Ability to Proceed Tie-Breaker Points	Proximity Tie-Breaker Points
09/21/2009	70.00	N	4.00	5.00
Preliminary	70.00	N	4.00	5.00
NOPSE				
Final				
Final-Ranking				

Scores:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Final Ranking
Construction Features & Amenities									
1S	III	B	2 a	New Construction	9.00	9.00			
1S	III	B	2.b	Rehabilitation/Substantial Rehabilitation	9.00	0.00			
2S	III	B	2.c	All Developments Except SRO	12.00	12.00			
2S	III	B	2 d	SRO Developments	12.00	0.00			
3S	III	B	2.e	Energy Conservation Features	9.00	9.00			
4S	III	B	3	Green Building	5.00	5.00			
Set-Aside Commitment									
5S	III	E	1.b.(2)	Special Needs Households	4.00	4.00			
6S	III	E	1.b.(3)	Total Set-Aside Commitment	3.00	3.00			
7S	III	E	3	Affordability Period	5.00	5.00			
Resident Programs									
8S	III	F	1	Programs for Non-Elderly & Non-Homeless	6.00	6.00			
8S	III	F	2	Programs for Homeless (SRO & Non-SRO)	6.00	0.00			
8S	III	F	3	Programs for Elderly	6.00	0.00			
9S	III	F	4	Programs for All Applicants	8.00	8.00			
Local Government Contributions									
10S	IV	A		Contributions	5.00	5.00			
Local Government Incentives									
11S	IV	B		Incentives	4.00	4.00			

Threshold(s) Failed:

Item #	Part	Section	Subsection	Description	Reason(s)	Created as Result of	Rescinded as Result of
1T	II	A		Applicant	The name stated at Part II.A.2.a. of the Application (Flagler Village Limited Partnership) does not match the entity on the Department of State certificate provided at Exhibit 3 (Flagler Village Limited Partnership, Ltd.).	Preliminary	
2T	III	C	2	Site Control	To demonstrate site control, the Applicant provided a Sub-Lease Agreement which refers to a copy of a Ground Lease dated July 19, 2006. A Ground Lease was also provided; however, it is dated September 20, 2006 and is therefore inconsistent with the Sub-Lease.	Preliminary	
3T	III	C	3.a	Availability of Electricity	The Verification of Availability of Infrastructure – Electricity form provided in the Application is incomplete because the correct city is not included in the Development Location. The form states "Stock Island" as the city instead of "Key West" as stated in the Application at Part III A.2.a.	Preliminary	
4T	III	C	3.b	Availability of Water	The Verification of Availability of Infrastructure – Water form provided in the Application is incomplete because the correct city is not included in the Development Location. The form states "Stock Island" as the city instead of "Key West" as stated in the Application at Part III A.2.a.	Preliminary	

Ability To Proceed Tie-Breaker Points:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Final Ranking
1A	III	C	1	Site Plan/Plat Approval	1.00	1.00			
2A	III	C	3.a	Availability of Electricity	1.00	0.00			
3A	III	C	3.b	Availability of Water	1.00	0.00			
4A	III	C	3.c	Availability of Sewer	1.00	1.00			
5A	III	C	3.d	Availability of Roads	1.00	1.00			
6A	III	C	4	Appropriately Zoned	1.00	1.00			

Reason(s) for Failure to Achieve Selected Ability To Proceed Tie-Breaker Points:

Item #	Reason(s)	Created As Result	Rescinded As Result
2A	The Application is not eligible for 1 Ability to Proceed Tie-Breaker Point for availability of electricity See Item 3T above.	Preliminary	
3A	The Application is not eligible for 1 Ability to Proceed Tie-Breaker Point for availability of water. See Item 4T above.	Preliminary	

Proximity Tie-Breaker Points:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Final Ranking
1P	III	A	10.b.(2) (a)	Grocery Store	1.25	1.00			
2P	III	A	10.b.(2) (b)	Public School	1.25	1.25			
3P	III	A	10.b.(2) (c)	Medical Facility	1.25	0.00			
4P	III	A	10.b.(2) (d)	Pharmacy	1.25	0.00			
5P	III	A	10.b.(2) (e)	Public Bus Stop or Metro-Rail Stop	1.25	1.25			
6P	III	A	10.c	Proximity to Development on FHFC Development Proximity List	3.75	1.50			
7P	III	A	10.a	Involvement of a PHA	7.50	0.00			

2009 UNIVERSAL CYCLE APPLICATION

FOR

FLAGLER VILLAGE

**FLAGLER VILLAGE LIMITED PARTNERSHIP, LTD
3158 NORTHSIDE DRIVE
KEY WEST, FL 33040
(305)294-1094**

**SUBMITTED TO:
FLORIDA HOUSING FINANCE CORPORATION
227 NORTH BRONOUGH STREET
TALLAHASSEE, FL 32301**

●

Exhibit 3

●

●

Certificate of Status

I certify from the records of this office that FLAGLER VILLAGE LIMITED PARTNERSHIP, LTD., is a Limited Partnership organized under the laws of the state of Florida, filed electronically on August 05, 2009, effective August 05, 2009.

The document number of this Limited Partnership is A09000000558.

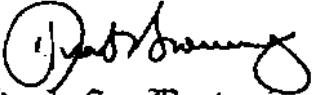
I further certify said Limited Partnership has paid all filing fees due this office through December 31, 2009, and its status is active.

I further certify that this is an electronically transmitted certificate authorized by section 15.16, Florida Statutes, and authenticated by the code noted below.

Authentication Code: 090806095956-100159288711#1

Given under my hand and the
Great Seal of the State of Florida
at Tallahassee, the Capital, this the
Sixth day of August, 2009




Kurt S. Browning
Secretary of State

Scoring Summary Report

File #: 2009-216C Development Name: Flagler Village

As Of:	Total Points	Met Threshold?	Ability to Proceed Tie-Breaker Points	Proximity Tie-Breaker Points
10/21/2009	70.00	N	4.00	5.00
Preliminary	70.00	N	4.00	5.00
NOPSE	70.00	N	4.00	5.00
Final				
Final-Ranking				

Scores:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Final Ranking
Construction Features & Amenities									
1S	III	B	2.a	New Construction	9.00	9.00	9.00		
1S	III	B	2.b	Rehabilitation/Substantial Rehabilitation	9.00	0.00	0.00		
2S	III	B	2.c	All Developments Except SRO	12.00	12.00	12.00		
2S	III	B	2.d	SRO Developments	12.00	0.00	0.00		
3S	III	B	2.e	Energy Conservation Features	9.00	9.00	9.00		
4S	III	B	3	Green Building	5.00	5.00	5.00		
Set-Aside Commitment									
5S	III	E	1.b.(2)	Special Needs Households	4.00	4.00	4.00		
6S	III	E	1.b.(3)	Total Set-Aside Commitment	3.00	3.00	3.00		
7S	III	E	3	Affordability Period	5.00	5.00	5.00		
Resident Programs									
8S	III	F	1	Programs for Non-Elderly & Non-Homeless	6.00	6.00	6.00		
8S	III	F	2	Programs for Homeless (SRO & Non-SRO)	6.00	0.00	0.00		
8S	III	F	3	Programs for Elderly	6.00	0.00	0.00		
9S	III	F	4	Programs for All Applicants	8.00	6.00	8.00		
Local Government Contributions									
10S	IV	A		Contributions	5.00	5.00	5.00		
Local Government Incentives									
11S	IV	B		Incentives	4.00	4.00	4.00		

Threshold(s) Failed:

Item #	Part	Section	Subsection	Description	Reason(s)	Created as Result of	Rescinded as Result of
1T	II	A		Applicant	The name stated at Part II.A.2.a. of the Application (Flagler Village Limited Partnership) does not match the entity on the Department of State certificate provided at Exhibit 3 (Flagler Village Limited Partnership, Ltd.).	Preliminary	
2T	III	C	2	Site Control	To demonstrate site control, the Applicant provided a Sub-Lease Agreement which refers to a copy of a Ground Lease dated July 19, 2006. A Ground Lease was also provided; however, it is dated September 20, 2006 and is therefore inconsistent with the Sub-Lease.	Preliminary	
3T	III	C	3.a	Availability of Electricity	The Verification of Availability of Infrastructure – Electricity form provided in the Application is incomplete because the correct city is not included in the Development Location. The form states "Stock Island" as the city instead of "Key West" as stated in the Application at Part III A.2.a.	Preliminary	
4T	III	C	3.b	Availability of Water	The Verification of Availability of Infrastructure – Water form provided in the Application is incomplete because the correct city is not included in the Development Location. The form states "Stock Island" as the city instead of "Key West" as stated in the Application at Part III A.2.a.	Preliminary	
5T	II	A	3	Principals	Although the Applicant provided the required list of Principals at Exhibit 9, the list does not disclose the members and managers of the Initial Limited Partner, Flagler Village Holding, LLC.	NOPSE	

Item #	Part	Section	Subsection	Description	Reason(s)	Created as Result of	Rescinded as Result of
6T				Financial Arrears	Pursuant to subsection 67-48.004(5), F.A.C., NOPSE scoring may include financial obligations for which an Applicant or Developer or Principal, Affiliate or Financial Beneficiary of an Applicant or the Developer is in arrears to the Corporation or an agent or assignee of the Corporation as of the due date for NOPSE filing (October 1, 2009). As provided in paragraph 67-48.004(13)(d), F.A.C., following the submission of the "Cures," the Corporation shall reject an Application if the Applicant fails to satisfy any arrearages described in subsection 67-48.004(5), F.A.C. The Applicant or Developer or Principal, Affiliate or Financial Beneficiary of the Applicant or the Developer is listed on the October 1, 2009 Past Due Report as being in arrears to the Corporation in connection with the following Development(s): Whistler's Cove. The October 1, 2009 Past Due Report is posted to the FHFC Website at http://www.floridahousing.org/Home/PropertyOwnersManagers/PastDueReports.htm . Payments and questions should be addressed to the servicer.	NOPSE	

Ability To Proceed Tie-Breaker Points:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Final Ranking
1A	III	C	1	Site Plan/Plat Approval	1.00	1.00	1.00		
2A	III	C	3.a	Availability of Electricity	1.00	0.00	0.00		
3A	III	C	3.b	Availability of Water	1.00	0.00	0.00		
4A	III	C	3.c	Availability of Sewer	1.00	1.00	1.00		
5A	III	C	3.d	Availability of Roads	1.00	1.00	1.00		
6A	III	C	4	Appropriately Zoned	1.00	1.00	1.00		

Reason(s) for Failure to Achieve Selected Ability To Proceed Tie-Breaker Points:

Item #	Reason(s)	Created As Result	Rescinded As Result
2A	The Application is not eligible for 1 Ability to Proceed Tie-Breaker Point for availability of electricity. See Item 3T above.	Preliminary	
3A	The Application is not eligible for 1 Ability to Proceed Tie-Breaker Point for availability of water. See Item 4T above.	Preliminary	

Proximity Tie-Breaker Points:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Final Ranking
1P	III	A	10.b.(2) (a)	Grocery Store	1.25	1.00	1.00		
2P	III	A	10.b.(2) (b)	Public School	1.25	1.25	1.25		
3P	III	A	10.b.(2) (c)	Medical Facility	1.25	0.00	0.00		
4P	III	A	10.b.(2) (d)	Pharmacy	1.25	0.00	0.00		
5P	III	A	10.b.(2) (e)	Public Bus Stop or Metro-Rail Stop	1.25	1.25	1.25		
6P	III	A	10.c	Proximity to Development on FHFC Development Proximity List	3.75	1.50	1.50		
7P	III	A	10.a	Involvement of a PHA	7.50	0.00	0.00		

Additional Application Comments:

Item #	Part	Section	Subsection	Description	Comment(s)	Created as Result of	Rescinded as Result of
1C				Financial Arrears	The Applicant or Developer or Principal, Affiliate or Financial Beneficiary of the Applicant or the Developer is listed on the October 1, 2009 Past Due Report as being in arrears to the Corporation in connection with the following Development(s): Crescent Club (Camden Club). The October 1, 2009 Past Due Report is posted to the FHFC Website at http://www.floridahousing.org/Home/PropertyOwnersManagers/PastDueReports.htm . Either the arrearage was satisfied or a work-out agreement was finalized prior to issuance of the NOPSE Scoring Summary.	NOPSE	

2009 UNIVERSAL CYCLE APPLICATION

FOR

FLAGLER VILLAGE

**FLAGLER VILLAGE LIMITED PARTNERSHIP, LTD
3158 NORTHSIDE DRIVE
KEY WEST, FL 33040
(305)294-1094**

**SUBMITTED TO:
FLORIDA HOUSING FINANCE CORPORATION
227 NORTH BRONOUGH STREET
TALLAHASSEE, FL 32301**



Exhibit 9

**LIST OF GENERAL & LIMITED PARTNERS FOR APPLICANT ENTITY
AND DEVELOPER ENTITY
INCLUDES MEMBERS, DIRECTORS AND SHAREHOLDERS**

		OWNERSHIP INTEREST
APPLICANT ENTITY:	FLAGLER VILLAGE LIMITED PARTNERSHIP, LTD.	
GENERAL PARTNER:	OVERSEAS G.P., LLC	.0100%
INITIAL LIMITED PARTNER*:	FLAGLER VILLAGE HOLDING, LLC	<u>99.9900%</u> 100%
<hr/>		
GENERAL PARTNER:	OVERSEAS G.P., LLC	
DIRECTOR AND MANAGING MEMBER OF OVERSEAS G.P., LLC (GENERAL PARTNER)		
H-TRY, LLC	MANAGING MEMBER	100%
MEMBERS OF H-TRY, LLC		
SCOTT OROPEZA		33.333%
TIM KOENIG		33.333%
ROBERT HIGHSMITH		<u>33.333%</u>
		100%
<hr/>		
DEVELOPER:	OVERSEAS DEVELOPER, LLC	
PRINCIPALS OF OVERSEAS DEVELOPER, LLC (DEVELOPER)		
SCOTT OROPEZA		
TIM KOENIG		
JEFF SHARKEY		
JONATHAN WOLF		

* THE INITIAL LIMITED PARTNER'S INTEREST WILL BE SOLD AT CLOSING.

2009 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. 2009-216C** and pertains to:

Part II Section A Subsection 3 Exhibit No. 9 (if applicable)

The attached information is submitted in response to the 2009 Universal Scoring Summary Report because:

1. Preliminary Scoring and/or NOPSE scoring resulted in the imposition of a failure to achieve maximum points, a failure to achieve threshold, and/or a failure to achieve maximum proximity points relative to the Part, Section, Subsection, and/or Exhibit stated above. Check applicable item(s) below:

	2009 Universal Scoring Summary Report	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 Ability to Proceed Score Not Maxed	Item No. ____ A	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/> Reason Failed Threshold	Item No. ST	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/> Reason Proximity Points Not Maxed	Item No. ____ P	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Additional Comment	Item No. ____ C	<input type="checkbox"/>	<input type="checkbox"/>

2. 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 II Section A Subsection 2.a Exhibit ____ (if applicable).

**LIST OF GENERAL & LIMITED PARTNERS FOR APPLICANT ENTITY
AND DEVELOPER ENTITY
INCLUDES MEMBERS, DIRECTORS AND SHAREHOLDERS**

	OWNERSHIP INTEREST
APPLICANT ENTITY: FLAGLER VILLAGE LIMITED PARTNERSHIP, LTD.	
GENERAL PARTNER: OVERSEAS GP, LLC	010%
INITIAL LIMITED PARTNER*: FLAGLER VILLAGE HOLDING, LLC	<u>99.990%</u> 100%
<hr/>	
GENERAL PARTNER: OVERSEAS GP, LLC	
MANAGER & SOLE MEMBER OF OVERSEAS GP, LLC (GENERAL PARTNER) H-TRY, LLC	100%
MANAGING MEMBERS OF H-TRY, LLC	
SCOTT OROPEZA	33.333%
TIM KOENIG	33.333%
ROBERT HIGHSMITH	<u>33.333%</u>
	100%
INITIAL LIMITED PARTNER : FLAGLER VILLAGE HOLDING, LLC	
MANAGER & SOLE MEMBER OF FLAGLER VILLAGE HOLDING, LLC (LTD PARTNER) H-TRY, LLC	100%
MANAGING MEMBERS OF H-TRY, LLC	
SCOTT OROPEZA	33.333%
TIM KOENIG	33.333%
ROBERT HIGHSMITH	<u>33.333%</u>
	100%
<hr/>	
DEVELOPER: OVERSEAS DEVELOPER, LLC	
MANAGING MEMBERS OF OVERSEAS DEVELOPER, LLC (DEVELOPER)	
SCOTT OROPEZA	
TIM KOENIG	
JEFF SHARKEY	
JONATHAN WOLF	
NO OTHER MANAGERS, MEMBERS, OR MANAGING MEMBERS	

* THE INITIAL LIMITED PARTNER'S INTEREST WILL BE SOLD AT CLOSING.

Brief Statement of Explanation regarding Cure for Application

No.2009-216C

Provide a separate brief statement for each Cure

Item #5T

Exhibit #9 has been modified to include the members and managers of the initial Limited Partner, Flagler Village Holding, LLC.

Scoring Summary Report

File #: 2009-214C Development Name: TM Alexander

As Of:	Total Points	Met Threshold?	Ability to Proceed Tie-Breaker Points	Proximity Tie-Breaker Points
09/21/2009	57.00	N	6.00	7.50
Preliminary	57.00	N	6.00	7.50
NOPSE				
Final				
Final-Ranking				

Scores:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Final Ranking
Construction Features & Amenities									
1S	III	B	2 a	New Construction	9.00	0.00			
1S	III	B	2 b	Rehabilitation/Substantial Rehabilitation	9.00	9.00			
2S	III	D	2.c	All Developments Except SRO	12.00	12.00			
2S	III	B	2.d	SRO Developments	12.00	0.00			
3S	III	B	2.e	Energy Conservation Features	9.00	9.00			
4S	III	B	3	Green Building	5.00	5.00			
Set-Aside Commitment									
5S	III	E	1.b (2)	Special Needs Households	4.00	0.00			
6S	III	E	1.b.(3)	Total Set-Aside Commitment	3.00	3.00			
7S	III	E	3	Affordability Period	5.00	0.00			
Resident Programs									
8S	III	F	1	Programs for Non-Elderly & Non-Homeless	6.00	0.00			
8S	III	F	2	Programs for Homeless (SRO & Non-SRO)	6.00	0.00			
8S	III	F	3	Programs for Elderly	6.00	6.00			
9S	III	F	4	Programs for All Applicants	8.00	8.00			
Local Government Contributions									
10S	IV	A		Contributions	5.00	5.00			
Local Government Incentives									
11S	IV	B		Incentives	4.00	0.00			

Reason(s) Scores Not Maxed:

Item #	Reason(s)	Created As Result	Rescinded As Result
5S	All of the participating Special Needs Household Referral Agencies for the county are not listed on the Applicant Notification to Special Needs Household Referral Agency form. Because the form is incomplete, the Applicant is not eligible for Special Needs points.	Preliminary	
7S	The Applicant failed to commit to an affordability period sufficient to achieve any points.	Preliminary	
11S	The Applicant did not submit any of the Local Government Verification of Affordable Housing Incentives forms (Exhibits 47, 48,49,50). Therefore, zero points were awarded.	Preliminary	

Threshold(s) Failed:

Item #	Part	Section	Subsection	Description	Reason(s)	Created as Result of	Rescinded as Result of
1T	III	C	2	Site Control	The August 17, 2009 Purchase and Sale Agreement does not reflect the Applicant as the buyer and no assignment was provided.	Preliminary	
2T	V	D	2	HC Equity	The Applicant submitted an equity commitment from RBC Capital Markets. However, the sum of the equity installment payments does not equal the total amount of equity reflected in the commitment. As a result, the commitment is not considered a source of financing.	Preliminary	
3T	V	D	2	HC Equity	Per page 74 of the 2009 Universal Application Instructions, the percentage of credits being purchased must be equal to or less than the percentage of ownership interest held by the limited partner or member. The Applicant stated at Exhibit 9 of the Application that the limited partner's interest in the Applicant entity is 99.98%. However, the equity commitment at Exhibit 55A states the 99.99% of the HC allocation is being purchased. Because of this inconsistency, the HC equity cannot be considered a source of financing.	Preliminary	
4T	V	D	1	Non-Corporation Funding	Although the Applicant listed first mortgage financing of \$4,038,000, no commitment for this loan has been provided. Therefore, the loan amount cannot be counted as a source of financing.	Preliminary	
5T	V	D	1	Non-Corporation Funding	Although the Applicant listed second mortgage financing of \$3,900,000, no commitment for this loan has been provided. Therefore, the loan amount cannot be counted as a source of financing.	Preliminary	
6T	V	B		Construction/Rehab. Analysis	The Applicant has a construction financing shortfall of \$17,082,722.	Preliminary	
7T	V	B		Permanent Analysis	The Applicant has a permanent financing shortfall of \$17,144,189.	Preliminary	
8T	V	D	1	Non-Corporation Funding	The Applicant reflected capitalized interest paid in the amount of \$664,997 in the construction and permanent analysis. However, no documentation was provided for this source. As a result, it was not considered a source of financing.	Preliminary	
9T	II	B	3	General Contractor	The Development name on the General Contractor or Qualifying Agent Certification form (TM Alexander Plaza) is inconsistent with the Development name listed at Part III A. 1. of the Application (TM Alexander).	Preliminary	

Item #	Part	Section	Subsection	Description	Reason(s)	Created as Result of	Rescinded as Result of
10T	II	B	3	General Contractor	The name of the General Contractor or qualifying agent is not included on the Prior Experience Chart.	Preliminary	
11T	V	D	1	Non-Corporation Funding	The Applicant provided a loan commitment from PNC Multifamily Capital. The commitment states the name of the Development is Civic Tower Apartments on page one. The Applicant stated at Part III.A.1., the Development name is TM Alexander. Due to the inconsistency, the loan commitment was not considered a source of financing.	Preliminary	

Ability To Proceed Tie-Breaker Points:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Final Ranking
1A	III	C	1	Site Plan/Plat Approval	1.00	1.00			
2A	III	C	3.a	Availability of Electricity	1.00	1.00			
3A	III	C	3.b	Availability of Water	1.00	1.00			
4A	III	C	3.c	Availability of Sewer	1.00	1.00			
5A	III	C	3.d	Availability of Roads	1.00	1.00			
6A	III	C	4	Appropriately Zoned	1.00	1.00			

Proximity Tie-Breaker Points:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Final Ranking
1P	III	A	10.b.(2) (a)	Grocery Store	1.25	1.25			
2P	III	A	10.b.(2) (b)	Public School	1.25	0.00			
3P	III	A	10.b.(2) (c)	Medical Facility	1.25	1.25			
4P	III	A	10.b.(2) (d)	Pharmacy	1.25	0.00			
5P	III	A	10.b.(2) (e)	Public Bus Stop or Metro-Rail Stop	1.25	1.25			
6P	III	A	10.c	Proximity to Development on FHFC Development Proximity List	3.75	3.75			
7P	III	A	10.a	Involvement of a PHA	7.50	0.00			

Additional Application Comments:

Item #	Part	Section	Subsection	Description	Comment(s)	Created as Result of	Rescinded as Result of
1C	I	B	2	Priority I Application	The Applicant stated that it is a Joint Venture Non-Profit Applicant. In order to qualify as a Joint Venture Non-Profit Applicant, the Non-Profit must receive at least 25 percent of the total Developer fee as provided in subsection 67-48.002(73), F.A.C. However, the Applicant stated at Part II.A.e.(2). (d). of the Application that the percentage of Developer's fee that will go to the Non-Profit entity is only 20 percent. As a result, the Applicant does not meet the definition of Joint Venture Non-Profit Applicant and, therefore, the Application does not qualify as a Priority I Application. In its present form, the Application is deemed to be a Priority II Application.	Preliminary	
2C	V	B		Developer Fee	On the Construction Analysis, the Applicant listed a Deferred Developer fee of \$478,532 for construction financing. Because the Developer only committed to defer \$270,000 on the Commitment to Defer Developer Fee form, only \$270,000 could be used as a source of construction financing.	Preliminary	
3C	III	A	10	Proximity	The Applicant qualified for 3.75 automatic proximity points at 6P.	Preliminary	
4C	V	B		Development Cost Pro Forma	The Applicant listed "reserve totaling six months worth of operating and debt service expenses" totaling \$863,106. However, No. 5 on the Development Cost Pro Forma Notes states "For purposes of the Development Cost calculation in this Application, the only reserves allowed are contingency reserves for rehabilitation and construction" Therefore, the Development Cost was reduced by \$863,106.	Preliminary	
5C	V	B		Developer Fee	On the Permanent Analysis, the Applicant listed a Deferred Developer fee of \$478,532 for permanent financing. Because the Developer only committed to defer \$208,533 on the Commitment to Defer Developer Fee form, only \$208,533 could be used as a source of permanent financing.	Preliminary	

Scoring Summary Report

File #: 2009-123C Development Name: Progresso Point

As Of:	Total Points	Met Threshold?	Ability to Proceed Tie-Breaker Points	Proximity Tie-Breaker Points
09/21/2009	68.00	N	6.00	7.50
Preliminary	68.00	N	6.00	7.50
NOPSE				
Final				
Final-Ranking				

Scores:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Final Ranking
Construction Features & Amenities									
1S	III	B	2.a	New Construction	9.00	7.00			
1S	III	B	2.b	Rehabilitation/Substantial Rehabilitation	9.00	0.00			
2S	III	B	2.c	All Developments Except SRO	12.00	12.00			
2S	III	B	2.d	SRO Developments	12.00	0.00			
3S	III	B	2.e	Energy Conservation Features	9.00	9.00			
4S	III	B	3	Green Building	5.00	5.00			
Set-Aside Commitment									
5S	III	E	1.b.(2)	Special Needs Households	4.00	4.00			
6S	III	E	1.b.(3)	Total Set-Aside Commitment	3.00	3.00			
7S	III	E	3	Affordability Period	5.00	5.00			
Resident Programs									
8S	III	F	1	Programs for Non-Elderly & Non-Homeless	6.00	6.00			
8S	III	F	2	Programs for Homeless (SRO & Non-SRO)	6.00	0.00			
8S	III	F	3	Programs for Elderly	6.00	0.00			
9S	III	F	4	Programs for All Applicants	8.00	8.00			
Local Government Contributions									
10S	IV	A		Contributions	5.00	5.00			
Local Government Incentives									
11S	IV	B		Incentives	4.00	4.00			

Reason(s) Scores Not Maxed:

Item #	Reason(s)	Created As Result	Rescinded As Result
1S	Because the Unit Mix chart at Part III A.7. of the Application does not reflect any 2-bedroom units, the Application is not eligible for 2 points for "At least 1-1/2 bathrooms in all 2-bedroom new construction units."	Preliminary	

Threshold(s) Failed:

Item #	Part	Section	Subsection	Description	Reason(s)	Created as Result of	Rescinded as Result of
1T	V	D	2	HC Equity	Per page 74 of the 2009 Universal Application instructions, the percentage of credits being purchased must be equal to or less than the percentage of ownership interest held by the limited partner or member. The Applicant stated at Exhibit 9 of the Application that the limited partner's interest in the Applicant entity is 99.90%. However, the equity commitment at Exhibit 56 states that 99.99% of the HC allocation is being purchased. Because of this inconsistency, the HC equity cannot be considered a source of financing.	Preliminary	
2T	V	D	1	Non-Corporation Funding	Per page 70 of the 2009 Universal Application Instructions, a financing commitment must contain all attachments. The first mortgage financing from JPMorgan Chase Bank, N.A. (Exhibit 55) does not include the due diligence materials attachment. Therefore, it cannot be considered a source of financing.	Preliminary	
3T	V	B		Construction/Rehab. Analysis	The Application has a construction financing shortfall of \$13,211,469.	Preliminary	
4T	V	B		Permanent Analysis	The Application has a permanent financing shortfall of \$13,211,469.	Preliminary	

Ability To Proceed Tie-Breaker Points:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Final Ranking
1A	III	C	1	Site Plan/Plat Approval	1.00	1.00			
2A	III	C	3.a	Availability of Electricity	1.00	1.00			
3A	III	C	3.b	Availability of Water	1.00	1.00			
4A	III	C	3.c	Availability of Sewer	1.00	1.00			
5A	III	C	3.d	Availability of Roads	1.00	1.00			
6A	III	C	4	Appropriately Zoned	1.00	1.00			

Proximity Tie-Breaker Points:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Final Ranking
1P	III	A	10.b.(2) (a)	Grocery Store	1.25	1.25			
2P	III	A	10.b.(2) (b)	Public School	1.25	1.25			
3P	III	A	10.b.(2) (c)	Medical Facility	1.25	0.00			
4P	III	A	10.b.(2) (d)	Pharmacy	1.25	0.00			
5P	III	A	10.b.(2) (e)	Public Bus Stop or Metro-Rail Stop	1.25	1.25			
6P	III	A	10 c	Proximity to Development on FHFC Development Proximity List	3.75	3.75			
7P	III	A	10.a	Involvement of a PHA	7.50	0.00			

Additional Application Comments:

Item #	Part	Section	Subsection	Description	Comment(s)	Created as Result of	Rescinded as Result of
1C	III	A	10	Proximity	The Applicant qualified for 3.75 automatic proximity points at 6P.	Preliminary	

STATE OF FLORIDA

FLORIDA HOUSING FINANCE CORPORATION

APD HOUSING PARTNERS 20, LP,
a Florida limited partnership

Petitioner,

v.

FHFC CASE NO.: 2009-067UC
Application No. : 2009-214C

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

**FLORIDA HOUSING FINANCE CORPORATION'S
ARGUMENT IN OPPOSITION TO RECOMMENDED ORDER**

The conclusions in paragraphs 7, 8, 9 and 10, on page 10 of the Recommended Order are without basis under Florida Housing's rules, and are contrary to case precedent and basic contract law.

Relevant to the issue in this case are the instructions governing a "Qualified Contract" found at Part III.C.2.a. of the Application Instructions. One of the requirements for a Qualified Contract is that

"...the buyer **MUST** be the Applicant unless a fully executed assignment of the Qualified Contract which assigns all of the buyer's rights, title and interest in the Qualified Contract to the Applicant, is provided." (*Emphasis added*)

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Della M. Harrell / DATE: 2/10/2010

Acceptance of an assignment by an assignee is an essential element to a valid assignment.¹ Implicit in the Application Instructions requirement of a “*fully executed* assignment of the Qualified Contract” is that the assignment be signed by the Applicant in order to demonstrate that essential element, i.e., that the assignment was accepted by the Applicant.²

Here, the only document purporting to demonstrate site control in the name of the Petitioner, APD 20, is the Assignment and Assumption Agreement. (Exhibit J-6) It is undisputed that the Assignment and Assumption Agreement was not signed in the name of Petitioner, APD 20. In fact, APD 20’s name does not appear on the signature page at all. Instead, the name appearing on the signature line and identified as the new buyer is a different entity. And, making the document even more problematic is that it was not signed by the seller named in the underlying purchase and sale agreement but instead by a different legal entity.³ (Exhibits J-5 and J-6)

¹ See, Essential Workforce Housing, LLC v. Florida Housing Finance Corporation, FHFC Case No. 2008-022CW, and the cases cited therein (Acceptance of an assignment by an assignee is an essential element to a valid assignment)

² There is no question that the Qualified Contract itself must be executed by the Applicant as the buyer where the contract is relied upon to demonstrate site control in the name of the Applicant. The same requirement governs the execution of the assignment of the Qualified Contract by the Applicant as the assignee under the assignment of that contract.

³ It is likely that the signature page at issue here was never intended as the signature page for this Assignment and Assumption Agreement in the first place but, instead, represents the signature page intended for an entirely different agreement involving the parties named on the signature lines. And, having never been intended as the signature page for the Assignment and Assumption Agreement, it cannot now be recast as just that.

As a result, the Assignment and Assumption Agreement on its face is insufficient to demonstrate site control in the name of the Petitioner, APD 20, as required by Florida Housing's rules. It is well established that an agency cannot ignore its own rules.⁴ And, because the assignment is signed by neither the seller under the contract which it purports to assign or by the Petitioner as the purported assignee, its enforceability as a matter of contract law against either is questionable.⁵

Yet, the RO summarily concludes in Paragraph 10 that, "Based on the totality of the application and the cure materials, Florida Housing can readily ascertain the correct signatories and parties to the assignment, and the title above the signature lines does not change the terms or the validity and enforceability" of the Assignment and Assumption Agreement.

The Universal Application Cycle is a competitive application process in which the applications are scored based not upon what an applicant may have intended to provide (or should have provided) in its application in order

⁴ Department of Revenue v. Race, 743 So. 2d 169, 171 (Fla. 5th DCA 1999); Savannah Springs Apartment II, Ltd. V. Florida Housing Finance Corporation, FHFC Case Nos. 2007-048UC and 2007-049UC (Final Order, adopting Recommendation Order, August 8, 2008)

⁵ See, Socarras v. Cloughton Hotels, Inc., 374 So. 2d 1057 (Fla. 3rd DCA 1979) (To be an enforceable land sales contract, statute of frauds requires contract to be embodied in a written memorandum signed by the party against whom enforcement is sought); Sill v. Ocala Jewelers, Inc., 210 So. 2d 458 (Fla. 1st DCA 1968) (Phrase "party to be charged" as used in the statute of frauds applies to person against whom liability is asserted, whether person is alleged vendor or purchaser).

The enforceability of the contract against the seller is of added significance here in that one of the requirements for a Qualified Contract is that the buyer have the remedy of specific performance against the seller. The lack of that remedy alone is grounds for rejection of the Assignment and Assumption Agreement. See, Part III.C.2.a. of the Application Instructions.

to satisfy the applicable rule requirements but, rather, upon the information actually provided in its application, including the exhibits and cure materials.

The fact that the individuals who signed the Assignment and Assumption Agreement on behalf of the entities named on the signature lines may also be authorized to sign on behalf of the Petitioner, APD 20, and the seller under the underlying contract, does not change or alter the names of the entities appearing on the signature lines on the signature page. The seller named on the signature page, and the new buyer named on the signature page, are themselves existing entities, and the individuals who signed on their behalf are authorized signatories for those entities. Importantly, and in the context of scoring the Petitioner's Application, no documents were submitted to Florida Housing during the cure period demonstrating that the individuals who signed on the signature page to the Assignment and Assumption Agreement did so on behalf of any entity other than the entity named on the signature line appearing above that individual's signature. To now conclude that those individuals, in signing on behalf the entities named on the signature line, instead bound a different entity (in this case, the Petitioner, APD 20, and the original seller) to the terms of the Assignment and Assumption Agreement is not only speculative but contrary

to the face of the signature page itself. The entities named on the signature lines cannot be ignored as meaningless.⁶

In Essential Workforce Housing, LLC v. Florida Housing Finance Corporation, FHFC Case No. 2008-022CW, the assignment was rejected because it was not signed by the applicant as assignee. There is no meaningful distinction between that assignment and the assignment at issue here that would warrant a different result.

Florida Housing is neither required nor permitted to assist Petitioner or any other applicant in completing its application.⁷ Moreover, as recognized by the Hearing Officer in Essential, even if Florida Housing could somehow infer (from the names of the individual signers or the relationship of the parties) that APD 20 accepted and assumed, or intended to accept and assume, the Assignment and Assumption Agreement “such an inference would necessarily be speculative and improper on the part of” Florida Housing in the context of the Universal Application Cycle.

⁶ See, Savannah Springs Apartment II, Ltd. V. Florida Housing Finance Corporation, FHFC Case Nos. 2007-048UC and 2007-049UC (Final Order, adopting Recommend Order, August 8, 2008) (Where identity of developer at issue, Florida Housing not allowed to disregard the entity named in the application at deadline even though “natural persons” responsible for the operations of the entities were identical at all times); see also, Finlay Interests 35, Ltd., v. Florida Housing Finance Corporation, FHFC Case No. 2005-019UC (2005)(Had the applicant's name on the signature line of the assignment “been misspelled or misspelled, that may have constituted grounds for rejection of the document since it would not be clear that the ‘applicant’ was the recipient of the assignment.”)

⁷ Rule 67-48.004(1)(b), F.A.C.

Florida Housing's scoring decision in the instant case is entirely consistent with its rules and Application Instructions. To have reached a different result would have required Florida Housing to ignore the plain meaning of those rules and instructions. An agency's interpretation of its own rules will be upheld unless it is clearly erroneous, or amounts to an unreasonable interpretation.⁸ The interpretation should be upheld even if the agency's interpretation is not the sole possible interpretation, the most logical interpretation, or even the most desirable interpretation.⁹

In the instant case, and in the context of a competitive funding process, Florida Housing has reasonably interpreted its rules and incorporated instructions and forms, and properly determined that Petitioner's Application should be rejected because it failed to satisfy applicable threshold requirements relating to site control.

For the reasons set forth herein, Conclusions of Law 7, 8, 9 and 10, in the Recommended Order are contrary to Florida Housing's rules and applicable law, and should be rejected as a matter of law.

Instead, the Board should adopt conclusions of law consistent with its rules and applicable law as set forth herein and enter its Final Order rejecting Petitioner's Application.

⁸ Legal Environmental Assistance Foundation, Inc., v. Board of County Commissioners of Brevard County, 642 So.2d 1081 (Fla. 1994); Miles v. Florida A & M University, 813 So.2d 242 (Fla. 1st DCA 2002).

⁹ Golfcrest Nursing Home v. Agency for Health Care Administration, 662 So.2d 1330 (Fla. 1st DCA 1995).

Respectfully submitted, this 10th day of February, 2010.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Argument in Opposition to Recommend Order has been furnished this 10th day of February, 2010 by electronic mail to David E. Ramba at David@rambaconsulting.com and to Michael P. Donaldson at mdonaldson@carltonfields.com



Robert J. Pierce
Assistant General Counsel
Florida Housing Finance Corporation

STATE OF FLORIDA

FLORIDA HOUSING FINANCE CORPORATION

APD HOUSING PARTNERS 20, LP,
a Florida limited partnership

Petitioner.

v.

FHFC CASE NO.: 2009-067UC
Application No. : 2009-214C

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

_____ /

FINAL ORDER

This cause came before the Board of Directors of the Florida Housing Finance Corporation ("Board") for consideration and final agency action on February 26, 2010. The matter for consideration before this Board is a recommended order pursuant to Section 120.57(2), Florida Statutes, and Rule 67-48.005(2), F.A.C.

APD Housing Partners 20, LP, ("Petitioner") timely submitted its 2009 Universal Cycle Application ("Application") to Respondent, Florida Housing Finance Corporation ("Florida Housing") to compete for an allocation of competitive housing credits under the Housing Credit (HC) Program administered by Florida Housing. Petitioner timely filed its Petition for Review, pursuant to

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Debra M. Hamill / DATE: 2/26/10

Sections 120.569 and 120.57(2), Florida Statutes, (the "Petition") challenging Florida Housing's scoring of its Application. Florida Housing reviewed the Petition pursuant to Section 120.569(2)(c), Florida Statutes, and determined that the Petition did not raise disputed issues of material fact. An informal hearing was held in this case on January 13, 2010, in Tallahassee, Florida, before Florida Housing's designated Hearing Officer, David E. Ramba. Petitioner and Respondent timely filed Proposed Recommended Orders.

After consideration of the evidence and arguments presented at hearing, and the Proposed Recommended Orders, the Hearing Officer issued a Recommended Order. A true and correct copy of the Recommended Order is attached hereto as "Exhibit A." The Hearing Officer recommended Florida Housing enter a Final Order determining that Petitioner met the threshold requirements for site control, and reversing Florida Housing's rejection of Petitioner's Application.

Florida Housing timely filed its Argument in Opposition to the Recommended Order, a copy of which is attached hereto as "Exhibit B" and made a part hereof by reference. Petitioner filed its Motion to Strike Respondent's Argument in Opposition to the Recommended Order, a copy of which is attached hereto as "Exhibit C."

Upon consideration of the foregoing, the Board enters this as its Final Order in this matter.

RULING ON PETITIONER'S MOTION TO STRIKE

This Board has not, and cannot, chosen to delegate *final* order authority to the designated hearing officer. The matter for consideration before this Board is a recommended order pursuant to Rule 67-48.005(2), F.A.C. ("At the conclusion of any administrative hearing, a *recommended* order shall be entered by the designated hearing officer which will then be *considered* by the Board.") And, while in the vast majority of cases no exception is taken to the recommended order entered by the designated hearing officer, this Board is not constrained by its rules to accept the recommended order as its final order. To the contrary, there is precedent not only for this Board's rejection of conclusions of law (or recommendations) in a recommended order but for the very procedure objected to by Petitioner here, namely the filing of an argument in opposition to the recommended order by Florida Housing's legal staff.

Petitioner correctly asserts that Rule 67-48.005(3), F.A.C., provides a procedure for an Applicant to challenge the findings of a recommended order entered pursuant to an informal hearing, and that the rule is silent in terms of a procedure for Florida Housing as a party litigant to challenge the findings of a recommended order. However, the rule cannot, and does not, limit this Board's absolute right to advice of counsel on any matter properly before it, including the recommended orders entered by its designated hearing officers.

Even when adopting the recommended order *in toto*, this Board does so based upon advice of counsel, in the form of a recommendation by its legal staff. And, on those few occasions where the Board has previously rejected conclusions of law or recommendations made by its informal hearing officer in a recommended order, it has done so based upon the recommendation of its legal staff, communicated to the Board in the form of written arguments in opposition to the recommended order. See, e.g., Catholic Charities Housing, Inc. (a/k/a San Jose Mission, Catholic Charities, Inc.) v. Florida Housing Finance Corporation, FHFC Case No. 2004-019-UC (this Board, in its final order, rejected a recommendation made by the hearing officer in the Recommended Order); Merry Place at Pleasant City Associates, Ltd., v. Florida Housing Finance Corporation, FHFC Case No. 2005-018UC, (this Board, in its final order, rejected certain of the informal hearing officer's conclusions of law). Each of these actions was based upon a Written Argument in Opposition to the Recommended Order filed by Florida Housing's legal staff.

This Board views the Argument in Opposition to Recommended Order filed in this case as a recommendation made by its legal staff and the Board elects to treat it as such. In fact, it is an exhibit to the staff recommendation included in the Board agenda for this meeting. That Florida Housing staff chose the procedure available to an Applicant under Rule 67-48.005(3), F.A.C., is a matter of

fundamental fairness in that it afforded Petitioner advance notice of those recommendations and the opportunity for Petitioner to register its objections in advance of today's Board meeting. One alternative, which would not have violated the rule, would have been for Florida Housing legal staff to only let its recommendations or advice to the Board regarding the recommended order be known during the Board meeting.

As a matter of procedure, the Board finds that Florida Housing's filing of Written Argument in Opposition to the Recommended Order does not in any way work to the disadvantage of the Petitioner, or to the advantage of Florida Housing.

The substantive issues raised by Petitioner in its motion are addressed below.

Accordingly, Petitioner's Motion to Strike is denied.

RULING ON THE RECOMMENDED ORDER

1. The findings of fact set out in the Recommended Order are supported by competent substantial evidence.
2. The conclusions of law in paragraphs 1 through 6 of the Recommended Order are supported by competent substantial evidence.
3. The conclusions of law or interpretations of the administrative rules governing this matter as set forth in paragraphs numbered 7 through 10 on page 10 of the Recommended Order are contrary to Florida Housing's rules and applicable

law for the reasons stated in Respondent's Argument in Opposition to the Recommended Order and as otherwise implicit in the substituted conclusions in paragraph 8 below.

4. The conclusions of law or interpretations of the administrative rules governing this matter as set forth in paragraph 8 of this Final Order are substituted in place of the rejected conclusions.

5. The substituted conclusions of law or interpretations of the administrative rules governing this matter are found to be as or more reasonable than the conclusions of law that were rejected or modified hereby.

6. Based upon the substituted conclusions of law or interpretations of the administrative rules governing this matter, the Recommendation in the Recommended Order is contrary to Florida Housing's rules and applicable law.

ORDER

In accordance with the foregoing, it is hereby **ORDERED**:

5. The findings of fact of the Recommended Order are adopted as Florida Housing's findings of fact and incorporated by reference as though fully set forth in this Order.

6. The conclusions of law in paragraphs 1 through 6 of the Recommended Order are adopted as Florida Housing's conclusions of law and incorporated by reference as though fully set forth in this Order.

7. The conclusions of law in paragraphs numbered 7 through 10 on page 10 of the Recommended Order are rejected as contrary to Florida Housing's rules and applicable law for the reasons stated in Respondent's Argument in Opposition to the Recommended Order and as otherwise implicit in the substituted conclusions in paragraph 8 below.

8. The following conclusions of law or interpretations of the administrative rules governing this matter are substituted in place of the rejected conclusions:

S-1. Relevant here are the instructions governing a "Qualified Contract" found at Part III.C.2.a. of the Application Instructions. One of the requirements for a Qualified Contract is that **"...the buyer MUST be the Applicant unless a fully executed assignment of the Qualified Contract which assigns all of the buyer's rights, title and interest in the Qualified Contract to the Applicant, is provided."** (*Emphasis added*)

S-2. In its original application, the Petitioner ("APD 20") attempted to demonstrate site control by providing a Contract for Purchase and Sale of Real Property (the "Contract") between Mederos-T.M. Alexander Acquisitions, LLC, as "Seller," and The American Opportunity Foundation, Inc., and Allied Pacific

Development, LLC, as “Buyer.” The Petitioner, APD 20, was not a party to the Contract. (*Exhibit J-5*)

S-3. At preliminary scoring, Florida Housing determined that Petitioner’s Application failed to satisfy the threshold requirements for site control because the “August 17, 2009 Purchase and Sale Agreement does not reflect the Applicant as the buyer and no assignment was provided.” (*Exhibit J-2*)

S-4. During the cure period, APD 20 provided a First Amendment to and Assignment and Assumption of Contract for Purchase and Sale of Real Property (the “Assignment and Assumption Agreement”). The Assignment and Assumption Agreement on its first page purports to be a tri-party agreement entered into by the Seller and the original Buyer under the Contract, and by APD 20, as the new buyer, or assignee. Under its terms, the original Buyer assigns its rights, title and interest under the Contract to the new buyer; the new buyer agrees to assume and perform the obligations of the original Buyer under the Contract; the Seller consents to the assignment and assumption of the Contract; and, the parties purportedly agree to amend the Contract. (*Exhibit J-6*)

S-5. While the Assignment and Assumption Agreement was executed by the original Buyer under the Contract, neither the Seller under the Contract, Mederos-T.M. Alexander Acquisitions, LLC, nor the Petitioner, APD Housing Partners 20, LP, executed the agreement. Instead, the Assignment and Assumption Agreement was executed by an entity named Mederos-Civic Acquisitions, LLC, as the seller, and an entity named APD Housing Partners 19, LP, as the new buyer. *(Exhibits J-5 and J-6)*

S-6. Given the nature of the Universal Cycle Application process, the site control documentation provided by an Applicant must be facially sufficient to demonstrate site control in the name of the Applicant in accordance with the governing rules and instructions. As with other application requirements, Florida Housing's rules do not permit site control to be demonstrated circumstantially or by inference.¹

S-7. Acceptance of an assignment by an assignee is an essential element to a valid assignment.² Implicit in the Application

¹ E.g., see Bonita Cove, LLC v. Florida Housing Finance Corporation, FHFC Case No. 2008-056UC (2008) (Florida Housing's "rules do not permit water and sewer availability to be demonstrated circumstantially or by inference. Instead, the Instructions explicitly require and provide for the means and methods...of demonstrating the availability of water and of sewer as of the application deadline.") (Final Order adopting Recommended Order, pgs. 9-10)

² See, Essential Workforce Housing, LLC v. Florida Housing Finance Corporation, FHFC Case No. 2008-022CW (2008) and the cases cited therein (Acceptance of an assignment by an assignee is an essential element to a valid assignment)

Instructions requirement of a “*fully executed* assignment of the Qualified Contract” is that the assignment be signed by the Applicant in order to demonstrate that essential element, i.e., that the assignment was accepted by the Applicant.³

S-8. Here, the only document purporting to demonstrate site control in the name of the Petitioner, APD 20, is the Assignment and Assumption Agreement. (*Exhibit J-6*) It is clear based on the face of the signature page that the Assignment and Assumption Agreement was not executed in the name of the Petitioner, APD 20. In fact, APD 20’s name does not appear on the signature page at all. Instead, the name appearing on the signature line and identified as the new buyer is APD Housing Partners 19, LP, a separate and distinct entity. (*Exhibit P-2*) The Assignment and Assumption Agreement provided by APD 20 does not on its face establish that APD 20 accepted the assignment. Nor does it establish on its face that APD 20 assumed the obligations of the original Buyer (which is stated as an affirmative obligation of the new buyer) under the specific terms of the Assignment and Assumption Agreement. And, making the document

³ There is no question that the Qualified Contract itself must be executed by the Applicant as the buyer where the contract is relied upon to demonstrate site control in the name of the Applicant. The same requirement governs the execution of the assignment of the Qualified Contract by the Applicant as the assignee under the assignment of that contract.

even more problematic is that it was not signed by the seller named in the underlying Contract but instead by a different legal entity.⁴ (*Exhibits J-5 and J-6*)

S-9. As a result, the Assignment and Assumption Agreement is on its face insufficient to demonstrate site control in the name of the Petitioner, APD 20, as required by Florida Housing's rules. Furthermore, because the assignment is signed by neither the seller under the contract which it purports to assign or by the Petitioner as the purported assignee, its enforceability on its face as a matter of contract law against either is questionable.⁵

S-10. Petitioner argues that there is no confusion that the proper parties signed the Assignment and Assumption Agreement and that the "error" in the signature lines does not change that fact; an argument apparently recognized in the Recommended Order's

⁴ See, Shepherd's Court, LLC v. Florida Housing Finance Corporation, FHFC Case No. 2007-029UC (2007) (Assignment was not effective to amend the underlying agreement where the assignment was not signed by one of the parties to the underlying agreement); Tidewater Revitalization, Ltd. v. Florida Housing Finance Corporation, FHFC Case No. 2002-0023 (2002) (Amendment to contract could not be specifically enforced against a seller who did not sign the amendment)

⁵ See, Socarras v. Cloughion Hotels, Inc., 374 So. 2d 1057 (Fla. 3d DCA 1979) (To be an enforceable land sales contract, statute of frauds requires contract to be embodied in a written memorandum signed by the party against whom enforcement is sought); Sill v. Ocala Jewelers, Inc., 210 So. 2d 458 (Fla. 1st DCA 1968) (Phrase "party to be charged" as used in the statute of frauds applies to person against whom liability is asserted, whether person is alleged vendor or purchaser); Tidewater Revitalization, Ltd. v. Florida Housing Finance Corporation, FHFC Case No. 2002-0023 (2002) (Amendment to contract could not be specifically enforced against a seller who did not sign the amendment)

The enforceability of the contract against the seller is also of significance under Florida Housing's rules in that one of the requirements for a Qualified Contract is that the buyer must have the remedy of specific performance against the seller. The lack of that remedy alone is grounds for rejection of the Assignment and Assumption Agreement. See, Part III.C.2.a. of the Application Instructions.

summary conclusion in Paragraph 10 that, “Based on the totality of the application and the cure materials, Florida Housing can readily ascertain the correct signatories and parties to the assignment, and the title above the signature lines does not change the terms or the validity and enforceability” of the Assignment and Assumption Agreement. This conclusion ignores both the applicable requirements for demonstrating site control in the name of the applicant a by Florida Housing’s rules as well as the framework within which the Universal Application Process functions.⁶ Here, the entities named on the signature lines go to the very issue of whether or not the Petitioner demonstrated site control in the name of APD 20 as required by Florida Housing’s rules. Florida Housing is not permitted to disregard its rules and score Petitioner’s Application based on inference and speculation.⁷ Moreover, the notion that Florida Housing is required to determine Petitioner’s compliance with site control requirements based on the “totality of the application” is contrary to Florida

⁶ *Bonita Cove, LLC v. Florida Housing Finance Corporation*, FHFC Case No. 2008-056UC (2008) (“To assess the relative merits of proposed developments, Florida Housing has established a competitive and detailed application process. Just as Florida Housing is bound in its scoring of applications by the rules governing that process, applicants are likewise bound to submit information in accordance with those rules.”) (Final Order adopting Recommended Order, p. 11).

⁷ *See Bonita Cove, supra* (In rejecting petitioner’s argument that water and sewer availability was demonstrated elsewhere in petitioner’s application, Hearing Officer found that “While that may be a logical inference, the acceptance of this argument would require both speculation and a complete disregard of the Application Instructions . . .”) (Final Order adopting Recommended Order, p. 9)

Housing's requirement in Part III.C.2.a. of the Application Instructions that all documentation evidencing site control be provided in one specific place in the application.⁸ Part III.C.2.a. of the Application Instructions provides in relevant part:

Evidence of Site Control (Threshold)

...The required documentation, including any attachments or exhibits referenced in any document, must be attached to that document regardless of whether that attachment or exhibit has been provided as an attachment or exhibit to another document or whether the information is provided elsewhere in the Application or has been previously provided. Such documentation...must be provided behind a tab labeled "Exhibit 27."... (Emphasis added)

S-11. Here, it is true that Florida Housing undoubtedly knew the names of the parties that should have appeared on the signature lines of the Assignment and Assumption Agreement in order to meet the applicable rule requirements. *(Emphasis added)* That, however, does not excuse the Petitioner's failure to comply with those rules. Under Florida Housing's rules, the Petitioner is responsible for the accurate completion of "each page and applicable exhibit of [its]"

⁸ See, Bonita Cove, supra. (Petitioner's argument that water and sewer availability was demonstrated elsewhere in its application was rejected as contrary to Florida Housing's instructions which "explicitly require and provide for the means and methods (including the designated exhibit number) of demonstrating the availability of water and sewer as of application deadline.") (Final Order adopting Recommended Order, p. 10)

Application” and Florida Housing is not permitted to assist the Petitioner in that process.⁹ The Universal Application Cycle is a competitive application process in which the applications are scored objectively based not upon what an applicant may have intended to provide (or should have provided) in its application in order to satisfy the applicable rule requirements but, rather, upon the information actually provided in its application, including the exhibits and cure materials.

S-12. The fact that the individuals who signed the Assignment and Assumption Agreement on behalf of Mederos-Civic Acquisitions, LLC, and APD Housing Partners 19, LP, respectively, may also be authorized to sign on behalf of Mederos-T.M. Alexander Acquisitions, LLC, and APD Housing Partners 20, LP, in no way changes the names of the entities identified as the seller and the new buyer clearly shown on the signature lines on the face of the signature page and on whose behalf those individuals signed. The seller named on the signature page, Mederos-Civic Acquisitions, LLC, and, the

⁹ “Each page and applicable exhibit of the Application must be accurately completed, and Applicants must provide all requested information. Failure to provide the requested information and documentation shall result in failure to meet threshold for threshold items ...” 2009 Universal Application Instructions, p.2.
See, also Marian Manor, Inc v. Florida Housing Finance Corporation, FHFC Case No. 2006-019UC (2006) (“Rule 67-48.004(1)(b), F.A.C., provides, in pertinent part, that “all applications must be complete...” and also prohibits Florida Housing from assisting an applicant with its application.”)

new buyer named on the signature page, APD Housing Partners 19, LP, are existing entities, and the individuals who signed on their behalf are authorized signatories for those entities as well. (*Exhibit P-2*) Importantly, and in the context of scoring the Petitioner's Application, no documents were submitted to Florida Housing during the application process, including the cure period, demonstrating that the individuals who signed on the signature page to the Assignment and Assumption Agreement did so on behalf of any entity other than the entity named on the signature line appearing above that individual's signature as reflected on the face of the signature page. To now conclude that those individuals, in signing on behalf the entities named on the signature line, instead bound a different entity (in this case, the Petitioner, APD 20, and the original seller) to the terms of the Assignment and Assumption Agreement is not only speculative but contrary to the face of the signature page itself. The entities named on the signature lines cannot be ignored as meaningless, particularly when the entity name itself is at the very core of the issue as it is here where the rules require that site control be demonstrated in the name of the applicant.¹⁰

¹⁰ See, Savannah Springs Apartment II, Ltd. v. Florida Housing Finance Corporation, FHFC Case Nos. 2007-048UC

S-13. Unlike cases relied on by Petitioner, the issue here is not merely an obvious misspelling of a word (e.g., “Michaels Developmetn Co. I, L.P.” instead of “Michaels Development Co. I, L.P.”) or a typographical error in the name of the development (“Clarcona Groves” instead of “Clarcona Grove”). Instead, the issue here involves an assignment of a contract which on its face is executed by a seller and an assignee, themselves legal entities, who are strangers to the transaction. Mederos-Civic Acquisitions, LLC, the entity identified on the signature page as the seller, and APD Housing Partners 19, LP, the entity identified on the signature page as the new buyer, exist as legal entities; those names are not the result of a spelling error.¹¹ (*Exhibit P-2*) Under these circumstances (where both the assignee and seller named on the signature page are strangers to

and 2007-049UC (Final Order, adopting Recommend Order, August 8, 2008) (Where identity of developer at issue, Florida Housing is not allowed to disregard the entity named in the application at deadline even though “natural persons” responsible for the operations of that entity and the entity at issue on cure were identical at all times) ; see also, Finlay Interests 35, Ltd., v. Florida Housing Finance Corporation, FHFC Case No. 2005-019UC (2005)(Had the applicant’s name on the signature line of the assignment “been misspelled or misstated, that may have constituted grounds for rejection of the document since it would not be clear that the ‘applicant’ was the recipient of the assignment.”)

¹¹ Finlay, supra, recognized that even a misspelling of the applicant’s name on the signature line of the assignment may be grounds for rejection of the assignment.

It should be noted that there is no provision in the rules and instructions governing the Universal Application Cycle by which a scrivener’s error operates to excuse a threshold failure. According to Black’s Law Dictionary (8th ed. 2004) the Doctrine of Scrivener’s Error is a “rule permitting a typographical error in a document to be reformed by parol evidence, if the evidence is precise, clear, and convincing.” Such is at odds with the Universal Cycle Application process in that, by definition, the doctrine depends on parol evidence offered to reform a document. In the context of the Universal Application Cycle that would imply (incorrectly) that an Applicant is afforded another cure opportunity, following final scoring, in which to offer additional (parol) evidence not presented in its application or on cure.

the transaction), it is reasonable to conclude that the signature page at issue here was never intended as the signature page for this Assignment and Assumption Agreement in the first place but, instead, represents the signature page intended for an entirely different agreement involving the parties named on the signature lines. In other words, the signature page and the parties named on the signature lines are not the result of an “error” at all but are exactly what was intended as far as the particular signature page itself; the problem is that the signature page wound up attached to the wrong agreement – a case of the “right” agreement but “wrong” signature page. Having never been intended as the signature page for the Assignment and Assumption Agreement at issue here, it cannot now be recast to serve that very purpose.

S-14. In Essential Workforce Housing, LLC v. Florida Housing Finance Corporation, FHFC Case No. 2008-022CW, a case that arose under Florida Housing’s Community Workforce Housing Innovation Pilot (CWHIP) Program, the issue was whether the petitioner, Essential Workforce Housing, demonstrated site control by providing a valid assignment of the Qualified Contract. There, as here, the assignment at issue was not executed by the Applicant. The CWHIP

Program requirements for demonstrating site control at issue in Essential were the same as those at issue here. And, like the 2009 Universal Application Cycle, the CWHIP Program involved a competitive application process. In rejecting the assignment, the Hearing Officer in Essential concluded that:

27. During the Cure Period, Essential timely provided an Assignment of the Qualified Contract. The Assignment purports to assign the Qualified Contract to Essential. However, in the documents submitted to FHFC, including the Assignment, there is no indication, statement or conclusive evidence that Essential had accepted the Assignment.

31. The Assignment provided by Essential during the Cure Period does not, on its face, establish that Essential accepted the Assignment. One could infer from the terms of the Qualified Contract and the Assignment that Essential accepted, or intended to accept the Assignment. However, such an inference would necessarily be speculative and improper on the part of FHFC in the context of the CWHIP Program.

33. The CWHIP Program is a competitive application process requiring that FHFC objectively assess each individual application based on the information and documentation presented during the application process including the Cure Period. There is no dispute that the Assignment presented during the Cure Process by Essential, is the document it purports to be. What is missing, however, is evidence within the application process including the Cure Period to establish that the Assignment was accepted by Essential and to establish that the conditions in the Assignment have been met. To allow additional evidence and/or documentation to establish those matters subsequent to the end of the Cure Period would be to, in effect, allow a second Cure Process. Such is not the nature of the process nor is it allowed by FHFC's rules.

37. It is concluded as a matter of law that the Applicant failed to establish that the Assignment to Essential had been accepted and that the obligations upon which the Assignment was based had been met.

S-15. The Hearing Officer's observations and conclusions noted above are equally applicable here. As was the case in Essential, the Assignment and Assumption Agreement provided by Petitioner, APD 20, does not on its face establish that APD 20 accepted the assignment. Neither does the Assignment and Assumption Agreement establish on its face that APD 20 "...assumes and agrees to pay and perform the obligations of purchaser under the Contract," an affirmative obligation as stated paragraph 1 of the agreement. And, like Essential, what is missing here is evidence within the application process including the cure period to establish that the Assignment and Assumption Agreement was accepted by APD 20 and to establish that APD 20 agreed to assume the obligations of the purchaser under the Contract. There is no meaningful distinction between Essential and this case that would warrant a different result here. If anything, the Assignment and Assumption Agreement at issue this case is more problematic than the assignment in Essential. Here, on its face, the Assignment and Assumption Agreement not only fails to establish that it was accepted by the Petitioner but, to the contrary, affirmatively establishes that it was accepted by a completely different entity.

S-16. The case of Finlay Interests 35, Ltd., v. Florida Housing Finance Corporation, FHFC Case No. 2005-019UC, also involved site control and an assignment of the contract. Unlike here where the assignment was executed by an entity other than the Applicant, in Finlay, the Applicant's name was on the signature line. Instead, the issue in Finlay concerned the name of the general partner entity who signed on behalf of the Applicant. While the Hearing Officer ultimately determined that Finlay's application satisfied the site control requirements,¹² the Hearing Officer observed that the outcome would have been different had the issue involved the misspelling or misstatement of the applicant's name on the signature line of the assignment:

First, the name of the applicant in this case is "Finlay Interests 35, Ltd.," a Florida limited partnership. That is the name listed on the Assignee signature line of the Assignment. Had that name been misspelled or misstated, that may have constituted grounds for rejection of the document since it would not be clear that the "applicant" was the recipient of the assignment. (Emphasis added)

¹² Finlay may have had a different result regarding the site control issue had the issue with the name of the general partner been raised at preliminary scoring. As it was, Florida Housing's so-called "gotcha" rule (Rule 67-48.004(9)) was a determining factor in that case. In Finlay, the original assignment contained the same deficiency in the name of the general partner as the assignment presented on cure. Because Florida Housing failed to raise the issue regarding the name of the general partner at preliminary scoring, the Hearing Officer determined that under Florida Housing's "gotcha" rule the same issue could not be raised for the first time at final scoring.

S-17. Florida Housing is not permitted to assist Petitioner or any other applicant in completing its application.¹³ Moreover, as recognized by the Hearing Officer in *Essential*, even if Florida Housing could somehow infer (from the names of the individual signers or the relationship of the parties) that APD 20 accepted and assumed, or intended to accept and assume, the Assignment and Assumption Agreement “such an inference would necessarily be speculative and improper on the part of” Florida Housing in the context of the Universal Application Cycle.

S-18. Florida Housing’s scoring decision in the instant case is consistent with its rules and Application Instructions. To have reached a different result would have required Florida Housing to ignore the plain meaning of those rules and instructions. An agency’s interpretation of its own rules will be upheld unless it is clearly erroneous, or amounts to an unreasonable interpretation.¹⁴ The interpretation should be upheld even if the agency’s interpretation is

¹³ *Marian Manor, supra*.

¹⁴ *Legal Environmental Assistance Foundation, Inc., v. Board of County Commissioners of Brevard County*, 642 So.2d 1081 (Fla. 1994); *Miles v. Florida A & M University*, 813 So.2d 242 (Fla. 1st DCA 2002).

not the sole possible interpretation, the most logical interpretation, or even the most desirable interpretation.¹⁵

S-19. In the instant case, and in the context of a competitive funding process, Florida Housing has reasonably interpreted its rules and incorporated instructions and forms, and properly determined that Petitioner's Application should be rejected because it failed to satisfy applicable threshold requirements pertaining to site control.

9. The substituted conclusions of law or interpretations of the administrative rules governing this matter as set out above are found to be as or more reasonable than the conclusions of law that were rejected or modified hereby.

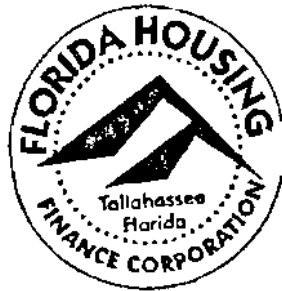
10. Based upon the substituted conclusions of law or interpretations of the administrative rules governing this matter, the Recommendation in the Recommended Order is rejected as contrary to Florida Housing's rules and applicable law.

11. It is determined as a matter of law that Florida Housing reasonably interpreted its rules and incorporated instructions and forms, and properly determined that Petitioner's Application should be rejected because it failed to satisfy applicable threshold requirements relating to site control.


¹⁵ Golfcrest Nursing Home v. Agency for Health Care Administration, 662 So.2d 1330 (Fla. 1st DCA 1995).

IT IS HEREBY ORDERED that Petitioner's Application be rejected for failure to meet the threshold requirements relating to site control.

DONE and ORDERED this 26th day of February, 2010.



FLORIDA HOUSING FINANCE CORPORATION

By: 
Chair

Copies to:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329, AND A SECOND COPY, ACCOMPANIED BY THE FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, 300 MARTIN LUTHER KING, JR., BLVD., TALLAHASSEE, FLORIDA 32399-1850, OR IN THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

FILED
JAN 13 2010
TALLAHASSEE, FLORIDA
CLERK OF COURT

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

APD Housing Partners 20, LP,
a Florida limited partnership

Petitioner,

v.

FHFC 2009-067UC
Application No. 2009-214C

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

RECOMMENDED ORDER

Pursuant to notice, an informal Administrative Hearing was held in this case in Tallahassee, Florida, on January 13, 2010, before Florida Housing Finance Corporation's appointed Hearing Officer, David E. Ramba.

Appearances

For Petitioner:

Michael P. Donaldson
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215 South Monroe Street, Suite 500
Tallahassee, Florida 32301

For Respondent:

Robert J. Pierce
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Florida Housing Finance Corporation
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PRELIMINARY STATEMENT

Pursuant to notice and Sections 120.569 and 120.57(2), Fla. Stat., Florida Housing Finance Corporation ("Florida Housing"), by its duly designated Hearing Officer, David E. Ramba, held an informal hearing in Tallahassee, Florida, in the above-styled case on January 13, 2010.

At the informal hearing the parties filed a Joint Stipulation of Facts and Exhibits (“Joint Stipulation”). Joint Exhibits 1 through 11 were stipulated into evidence, consisting of the following documents:

- Exhibit J-1 Joint Stipulation of Facts and Exhibits
- Exhibit J-2 Preliminary Scoring Summary 9/21/2009
- Exhibit J-3 NOPSE Scoring Summary 10/22/2009
- Exhibit J-4 Final Scoring Summary 12/2/2009
- Exhibit J-5 Contract for Purchase and Sale dated August 17, 2009, submitted as Exhibit 27 to APD 20’s original application.
- Exhibit J-6 First Amendment to and Assignment and Assumption Agreement of Contract for Purchase and Sale of Real Property submitted by APD 20 on cure.
- Exhibit J-7 Equity Commitment dated August 17, 2009 from Alliant Capital, Ltd., submitted as Exhibit 56 to APD 20’s original application.
- Exhibit J-8 Construction or Rehab Analysis excerpted from APD 20’s original application.
- Exhibit J-9 Equity Commitment dated August 17, 2009 from Alliant Capital, Ltd., submitted by APD 20 on cure.
- Exhibit J-10 Revised Construction or Rehab Analysis submitted by APD 20 on cure.
- Exhibit J-11 Excerpted pages from APD 20’s original application showing the amount of Competitive HC (annual amount) requested at Part V.A.1.

In addition, Petitioner offered into evidence the following three documents, the first two were received over Respondent’s objections of relevancy, the third document ruling was deferred upon until this order, and Respondent’s objections to Exhibit P-3 are SUSTAINED, as the information is irrelevant and was not within the four corners of the application or cure material that was available to Florida Housing in the scoring process.

- Exhibit P-1 Selected pages from APD 20’s application.

Exhibit P-2 Printout from online records of the Florida Department of State, Division of Corporations.

Exhibit P-3 Letter dated December 23, 2009 by Jorge C. Mederos and December 21, 2009 signed by Philip Kennedy.

Petitioner is referred to below as "Petitioner" or "APD 20" and Respondent is referred to as "Respondent" or "Florida Housing."

STATEMENT OF THE ISSUE

The original petition had two issues to be determined during this informal hearing. Prior to the hearing Florida Housing conceded the threshold item relating to the construction financing shortfall, so the remaining issue in this case is whether Florida Housing erred in determining the APD 20 failed to meeting the applicable threshold requirements regarding site control.

There are no disputed issues of material fact.

WITNESSES

No witnesses were called by either party.

FINDINGS OF FACT

Based upon the stipulated facts agreed to by the parties and exhibits received into evidence at the hearing, the following relevant facts are found:

1. APD 20 is a Florida limited partnership with its address at 1700 Seventh Avenue, Suite 2075, Seattle, Washington 98101-1394, and is in the business of providing affordable rental housing units.

2. Florida Housing is a public corporation, organized to provide and promote the public welfare by administering the governmental function of financing and refinancing housing and related facilities in the State of Florida.

3. Florida Housing administers various affordable housing programs including the Multifamily Mortgage Revenue Bonds (MMRB) Program pursuant to Section 420.509, Fla. Stat., and Rule 67-21, Fla. Admin. Code, and the Housing Credit (HC) Program pursuant to Sections 420.507 and 420.5099, Fla. Stat., and Rule Chapter 67-48, Fla. Admin Code.

4. The 2009 Universal Cycle Application, through which affordable housing developers apply for funding under various affordable housing programs administered by Florida Housing is adopted as the Universal Application Package or UA1016 (Rev. 5-09) by Rule 67-48.004(1)(a), Fla. Admin. Code, respectively, and consists of Parts I through V with instructions.

5. Because the demand for an allocation of Housing Credit and MMRB funding exceeds that which is available under the HC and MMRB Programs, qualified affordable housing developments must compete for this funding. To assess the relative merits of proposed developments, Florida Housing has established a competitive application process known as Universal Cycle pursuant to Rule 67-21 and Rule 67-48, Fla. Admin. Code, respectively. Specifically, Florida Housing's application process for the 2009 Universal Cycle is set forth in Rule 67-21.002-.0035 and 67-48.001-.005, Fla. Admin. Code.

6. As discussed in more detail below, Florida Housing scores and competitively ranks the applications to determine which applications will be allocated MMRB funds or an allocation of Housing Credits.

7. Florida Housing's scoring and evaluation process for applications is set forth in Rules 67-21.003 and 67-48.004, Fla. Admin. Code. Under these Rules, the applications are preliminary scored based upon factors contained in the application package and Florida Housing's rules. After the preliminary scoring, Florida Housing issues preliminary scores to all applicants.

8. Following release of the preliminary scores, competitors can alert Florida Housing of an alleged scoring error concerning another application by filing a writing Notice of Possible Scoring Error (“NOPSE”) within a specified time frame. After Florida Housing considered issues raised in a timely filed NOPSE, it notifies the affected application of its decision by issuing its NOPSE scoring summary.

9. Applicants then have an opportunity to submit “additional documentation, revised pages and such other information as the Applicant deems appropriate (‘cures’) to address the issues” raised by preliminary or NOPSE scoring. See Rules 67-21.003 and 67-48.004(6), Fla. Admin. Code. In other words, within parameters established by the rules, applicants may cure certain errors and omissions in their applications pointed out during preliminary scoring or raised by a competitor during the NOPSE process.

10. After affected applicants submit their “cure” documentation, competitors can file a Notice of Alleged Deficiency (“NOAD”) challenging the sufficiency of an applicant’s cure. Following Florida Housing’s consideration of the cure materials and its review of the NOADS, Florida Housing issues final scores for all the applications.

11. Rules 67-21.0035 and 67-48.005, Fla. Admin. Code, establish a procedure through which an applicant can challenge the final scoring of its application. The Notice of Rights that accompanies an applicant’s final score advises an adversely affected applicant of its right to appeal Florida Housing’s scoring decision.

12. APD 20 timely submitted its application for financing in Florida Housing’s 2009 Universal Cycle. Pursuant to Application No. 2009-214C (the “Application”), APD 20 applied for an allocation of Housing Credits in the amount of \$1,405,417 (*Exhibit J-11*) to help finance the construction of a 151-unit affordable housing rental complex in Miami, Florida, named TM Alexander.

13. In its preliminary scoring of the APD 20 Application (*Exhibit J-2*), Florida Housing identified certain deficiencies, including the following site control and financing issues relevant to these proceedings (*Exhibits J-5 and J-7, respectively*):

Site Control

1T	M	C	2	Site Control	The August 17, 2009 Purchase and Sale Agreement does not reflect the Applicant as the buyer and no assignment was recorded	Preliminary
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Financing

2T	V	D	2	HC Equity	The Applicant submitted an equity commitment from RBC Capital Markets. However, the sum of the equity installment payments does not equal the total amount of equity reflected in the commitment. As a result, the commitment is not considered a source of financing	Preliminary
3T	V	D	2	HC Equity	Per page 74 of the 2009 Universal Application Instructions, the percentage of credits being purchased must be equal to or less than the percentage of ownership interest held by the limited partner or member. The Applicant stated at Exhibit 9 of the Application that the limited partner's interest in the Applicant entity is 99.98%. However, the equity commitment at Exhibit 55A states the 99.99% of the HC allocation is being purchased. Because of this inconsistency, the HC equity cannot be considered a source of financing.	Preliminary
ET	V	B		Construction/Rehab Analysis	The Applicant has a construction financing shortfall of \$17,082,722	Preliminary

14. APD 20 timely submitted cures in response to these scoring deficiencies. In response to the site control failure, APD 20 provided a First Amendment to and Assignment and Assumption of Contract for Purchase and Sale of Real Property (*Exhibit J-6*); and in response to the financing failures, a revised equity commitment letter from Alliant Capital, Ltd., and a revised Construction or Rehab Analysis. (*Exhibits J-9 and J-10, respectively*)

Item # 2T: The equity commitment provider was Alliant Capital, Ltd., not RBC Capital Markets. The error in the name was corrected on the NOPSE scoring summary (*Exhibit J-3*).

14T	V	D	2	HC Equity	The Applicant submitted an equity commitment from Alliant Capital, Ltd. However, the sum of the equity installment payments does not equal the total amount of equity reflected in the commitment. As a result, the commitment is not considered a source of financing.	NOPSE
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15. Following submission of cures, Florida Housing scored APD 20's Application and issued its final scoring summary dated December 2, 2009 (*Exhibit J-4*), in which APD 20 was awarded maximum total points, maximum ability to proceed tiebreaker points and maximum proximity tie-breaker measurement points. However, Florida Housing concluded that APD 20 failed to meet threshold requirements for site control and financing.

16. Specifically, the threshold failures identified by Florida Housing regarding site control and financing in its final scoring summary are as follows:

Site Control

15T	III	C	2	Site Control	In an attempt to cure item 1T, the Applicant provided a First Amendment to and Assignment and Assumption of Contract for Purchase and Sale of Real Property; however the cure was deficient because the Amendment was signed on behalf of Mederos-Civic Acquisitions, LLC and not the Seller (Mederos-T.M. Alexander Acquisitions, LLC).	Final
16T	III	C	2	Site Control	In an attempt to cure item 1T, the Applicant provided a First Amendment to and Assignment and Assumption of Contract for Purchase and Sale of Real Property; however the cure was deficient because the Amendment was signed on behalf of APD Housing Partners 19, LP and not the Applicant (APD Housing Partners 20, LP).	Final

Financing

17T	V	B		Construction/Rehab. Analysis	The Applicant has a construction financing shortfall of \$910,360.	Final
7C	V	B		Construction/Rehab. Analysis	The Applicant attempted to cure item 6T by providing a revised Construction and Permanent Analysis that shows \$7,920,133 of HC equity as a source of financing during the construction period. The revised equity commitment letter from Alliant Capital, Ltd indicates that only \$7,009,773 will be paid during the construction period. Therefore, the Applicant will have a construction financing shortfall of \$910,360 (see item 17T).	Final

17. APD 20 timely filed its Petition contesting Florida Housing's scoring of its Application whereupon Florida Housing noticed the matter for an informal hearing.

18. The original HC equity commitment (*Exhibit J-7*) included in APD 20's original Application contained the same equity pay-in structure as the revised HC equity commitment letter provided by APD 20 on cure. In both the original and revised letters, the equity pay-in was scheduled in 4 installments, with only the first 2 installments being paid during construction. The third payment was conditioned upon factors which would result in its payment only after

completion of construction; thus, the amount of the third equity installment was not eligible to be considered as equity proceeds paid prior to completion of construction on the Construction or Rehab Analysis. Nevertheless, that amount was included (along with the amounts representing the first 2 equity installments) in the total amount of "HC Equity Proceeds Paid Prior to Completion of Construction ..." shown on line B.3. of not only the revised Construction or Rehab Analysis provided by APD 20 on cure (which, as explained in the comment at Item # 7C, resulted in the threshold failure at Item # 17T), but in the original Construction or Rehab Analysis (*Exhibit J-8*) included in APD 20's original Application as well. As a result, a construction shortfall (in the amount of the third equity installment shown on the original HC equity commitment) existed at the time of preliminary scoring due to the same equity pay-in structure that resulted in the \$910,360 shortfall described at Item # 17T (and as explained in Item #7C) of the final scoring summary. While a construction shortfall failure was determined to exist at preliminary scoring, the reasons for the shortfall described in the preliminary scoring summary were based on other deficiencies unrelated to the issue involving the equity pay-in structure in the HC equity commitment.

Because the issue involving the equity pay-in structure was not identified or otherwise alluded to during preliminary or NOPSE scoring, Florida Housing is precluded by rule² from assessing a threshold failure for that same issue for the first time at final scoring. Accordingly, the threshold failure for the construction financing shortfall of \$910,360 described at Item # 17T in the final scoring summary of the ADP 20 Application is rescinded.

² Subject to exceptions not germane here, Rule 67-48.004(9), F.A.C., provides in relevant part that "... no Application shall fail threshold or receive a point reduction as a result of any issues not previously identified in [the preliminary or NOPSE scoring processes]."

CONCLUSIONS OF LAW

1. Pursuant to Sections 120.569 and 120.57(2), Fla. Stat., and Rule Chapter 67-48, Fla. Admin. Code, the Hearing Officer has jurisdiction of the parties and the subject matter of this proceeding.

2. As requested by the parties during the informal hearing, official recognition is taken of Respondent's rules, particularly Rule Chapters 67-21 and 67-48, Fla. Admin. Code, as well as the Universal Application Package or UA1016 (Rev. 3-08), which includes the forms and instructions.

3. The Universal Application Package, or UA1016 (Rev. 3-08), which includes both its forms and instructions, is adopted as a rule. *See*, Rule 67-48.004(1)(a), Fla. Admin. Code, and Section 120.55(1)(a)4., Fla. Stat. The forms and instructions are agency statements of general applicability that implement, interpret, or prescribe law or policy or describe the procedure or practice requirements of Florida Housing and therefore meet the definition of a "rule" found in Section 120.52, Fla. Stat. As such, the instructions and forms are themselves rules.

4. As a threshold item, an applicant in the 2009 Universal Cycle is required to demonstrate site control by providing documentation pursuant to Part III.C.2 of the Application Instructions. If an applicant fails to properly demonstrate this or other threshold issues, Florida Housing's rules mandate that the application be rejected.

5. In its original application, APD 20 demonstrated site control by providing a Contract for Purchase and Sale of Real Property between Mederos-T.M. Alexander Acquisitions, LLC, as the "Seller" and The American Opportunity Foundation, Inc. and Allied Pacific Development, LLC, as "Buyer." APD 20 was not a party to the agreement submitted in the original application.

6. At preliminary scoring, Florida Housing determined that APD 20's application failed threshold requirements for site control because the agreement submitted does not reflect APD 20 as the buyer and no assignment was provided. (Exhibit J-2)

7. During the cure period, APD 20 provided a First Amendment to and Assignment and Assumption of Contract for Purchase and Sale of Real Property. This document properly documented the Assignment in the terms of the agreement, although titles on the signature lines of the agreement did not reflect the parties to the agreement.

8. Despite the error in the titles of the signature lines, Florida Housing did not contend that the signatures were invalid or were not the authorized signatories to the agreement. In reviewing the entirety of the stipulated and received exhibits in the APD 20 application, the individuals required to sign the assignment match the parties for an appropriate Assignment and Assumption of Contract for Purchase and Sale of Real Property.

9. There is no question in the assignment submitted as a cure who the seller and new buyer are, and the plain reading of the assignment confirms and explains the relationship between the listed companies.

10. Based on the totality of the application and cure materials, Florida Housing can readily ascertain the correct signatories and parties to the assignment, and the title above the signature lines does not change the terms or the validity and enforceability of the First Amendment to and Assignment and Assumption of Contract for Purchase and Sale of Real Property.

RECOMMENDATION

Based on the Findings of Fact and Conclusions of Law stated above, in is hereby RECOMMENDED that Florida Housing enter a Final Order finding that APD 20 has achieved threshold for site control, and reversing Florida Housing's rejection of Petitioner's application.

Respectfully submitted this 4th day of February, 2010.



David E. Ramba, Hearing Officer

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