Application # 2002-022CS
Case # (legal) 2002-025

LAW OFFICES
KORGE & KORGE
230 PALERMO AVENUE
CORAL GABLES, FLORIDA 33134

TELEPHONE (305) 444-5630
FACSIMILE (305) 444-5633

direct dial: (305) 444-5601
tkorge@korgelaw.com

July 31, 2002

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

Re: Application of Fifth Avenue Estates, Ltd.
file no.: 3003-022CS

Dear Sir or Madam:

I have enclosed an original and one copy of Petition for Review of Decision Involving Disputed Issues of Material Fact for the above referenced application. I have also enclosed an Election of Rights form, electing a formal proceeding at the Division of Administrative Hearings. Please note that I will be on vacation and unavailable through August 16, 2002. Otherwise, if you need any further information or have any questions, please feel free to call me at (305) 444-5601.

Yours truly,

Thomas J. Korge

TJK:rg
Encl.
cc: Mr. Barry Goldmeier

FLORIDA HOUSING FINANCE CORPORATION

In Re: The Application of
FIFTH AVENUE ESTATES, LTD.,
a Florida limited partnership

FHFC File No. 2002-022CS

PETITION FOR REVIEW OF DECISION INVOLVING DISPUTED ISSUES OF MATERIAL FACT

Petitioner, Fifth Avenue Estates, Ltd., petitions the Florida Housing Finance Corporation for review of its determination of final scoring errors in petitioner's application for an allocation of federal housing tax credits and SAIL financing, and as grounds therefor states as follows:

1. Petitioner, Fifth Avenue Estates, Ltd., is a Florida limited partnership organized for the purpose of constructing, owning, and leasing low income farm worker housing in southern Miami-Dade County (the "Project"). Petitioner's address and phone number are 1101 Brickell Avenue, Suite 402B, Miami, Florida 33131, (305) 350-9898. Petitioner's representative, Barry Goldmeier, can be reached at the same address and phone number as petitioner. Petitioner's legal counsel can be reached at the address and phone number set forth at the conclusion of this petition.

2. Petitioner has timely filed an application for an allocation of federal low income housing tax credits ("Housing Credit Program") and SAIL financing for the Project.

3. Petitioner seeks review, by an administrative law judge, of a decision of the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, rejecting revisions made by petitioner to its application to cure a scrivener's error in the application and to address a notice of alleged deficiency, which effectively denies petitioner's application for the Housing Credit Program and SAIL financing for the Project. The Corporation's file number for its decision is 2002-022CS. The Corporation's decision involves disputed issues of material fact.

4. On July 23, 2002, Petitioner received by overnight delivery a copy of a 2002 Universal Scoring Summary dated July 22, 2002, reflecting the Corporation's decision regarding Petitioner's revisions to its application. The Corporation has also published a copy of the scoring summary on the internet. A copy of the July 22nd scoring summary is attached as **Exhibit 1**.

STATEMENT OF DISPUTED ISSUES OF MATERIAL FACT

5. The Corporation has committed the following errors in its decision, each of which constitutes a disputed issue of material fact:

a. The Corporation erroneously decided that petitioner's total set-aside percentage commitment fails to meet the Housing Credit Program requirements;

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b. The Corporation erroneously decided that petitioner's total set-aside percentage commitment equals only 27% of the total units;

c. The Corporation erroneously decided that petitioner's total set-aside percentage commitment does not equal 100% of the total units;

d. The Corporation erroneously decided that petitioner's correction of an obvious scrivener's error in Part III, Section E, Subsection 3, of the Application constitutes a revision of petitioner's total set-aside percentage commitment prohibited by the Corporation's rules;

e. The Corporation erroneously decided that petitioner's equity commitment is not a firm commitment;

f. The Corporation erroneously decided that petitioner's bridge loan commitment is not a firm commitment;

g. The Corporation erroneously decided that petitioner has a financial shortfall of $7,038,174 for the construction financing and $8,433,666 for permanent financing;

h. The Corporation erroneously decided that Rule 67-48.004(14)(k) validly prohibits any *increase* in petitioner's total set-aside percentage commitment; and

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i. The Corporation erroneously decided that petitioner's contract for the purchase of real property does not reflect a term that does not expire before December 31, 2002.

STATEMENT OF ULTIMATE FACTS

6. Petitioner has timely filed its universal application for SAIL financing and the Housing Credit Program for the 2002 Universal Cycle, file no. 2002-022CS (the "Application").

7. At Part III, Section E, Subsection 1, of the Application, petitioner unconditionally committed to set-aside a *minimum* of 40% of the Project's units for rent to qualifying individuals and families having incomes at 60% Area Median Income ("AMI") or lower. In addition, at Part III, Section E, Subsection 2, of the Application, petitioner unconditionally committed to set-aside a *minimum* of 27% of the Project's units for rent to very low income individuals and families having incomes at 40% AMI or lower. A copy of Section E of Part III of the Application, as originally filed, is attached as **Exhibit 2**.

8. Petitioner used the Corporation's computerized on-line application form to complete the Application.

9. Part III, Section E, Subsection 3, of the Corporation's computerized on-line application form requires petitioner to list the various percentage commitments

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made in Subsections 1 and 2. The Corporation's computerized on-line application form then automatically sums all percentage amounts so listed and reflects the total on a separate line of Subsection 3 entitled "Total Set-Aside Commitment." Thus, any scrivener's errors (such as the inadvertent omission of a percentage amount for any particular category of low income housing) on any of the lines of Subsection 3 immediately preceding the "Total Set-Aside Commitment" line of Subsection 3 will cause a corresponding scrivener's error in the calculation of the amount that is automatically inserted by the computer program on the "Total Set-Aside Commitment" line of Subsection 3. Moreover, the Corporation's computerized on-line application form is programmed so that the resulting scrivener's error on the "Total Set-Aside Commitment" line of Subsection 3 *cannot* be manually corrected.

10. Petitioner's Application contained a scrivener's error on one of the lines of Subsection 3 immediately preceding the "Total Set-Aside Commitment" line. In particular, petitioner inserted in Subsection 3 its commitment (made at Subsection 2) to set-aside a *minimum* of 27% of the units at 40% AMI or lower, but inadvertently failed to insert the balance of the commitment (made at Subsection 1) to set-aside a *minimum* of 40% of the units at 60% AMI or lower or the *total* commitment of 73% of the units at 60% AMI or lower (as reflected in the Application exhibits for petitioner's financing commitment, development cost pro forma, and county fee

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waivers). Because of this obvious scrivener's error in Subsection 3 of the Application, the application form provided by the Corporation and used by petitioner to prepare the Application automatically summed only the commitment for 27% of the units inserted in Subsection 3 and therefore erroneously reflected a "Total Set-Aside Commitment" equal to 27% of the units, instead of petitioner's total percentage commitment of 100% of the units as reflected elsewhere the Application. As a result, Subsection 3 literally was inconsistent with Subsections 1 and 2 and the various exhibits of the Application. Indeed, as explained below, and as correctly observed by the Corporation elsewhere on its notice of proposed scoring errors, petitioner's financing commitment for the Project in fact "is based on the proposed Development setting aside 100% of its units" for low income housing. **Exhibit 1**, Item 2T, at page 2. Thus, it was clear on the face of the Application that petitioner actually intended to commit, and in fact did commit, 100% of its units for low income housing, not just the 27% amount erroneously shown in Subsection 3.

11. On June 10, 2002, the Corporation issued its notice of proposed scoring errors for the Application. A copy of the June 10th notice of proposed scoring errors is attached as **Exhibit 3**. Rather than finding a literal inconsistency in the Application resulting from the scrivener's error in Subsection 3 that may be cured by correcting the error, the Corporation erroneously concluded that the Application had failed to

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meet certain threshold requirements to qualify for the Housing Credit Program. In particular, at item 1T in its notice of proposed scoring errors, the Corporation erroneously decided that the Application does not meet the Housing Credit Program requirements because "[t]he total set-aside percentage commitment of 27% is less than the Applicant's selected minimum set-aside of 40% of the units at 60% AMI or less." **Exhibit 3**, Item 1T, at page 2. In other words, the Corporation found an inconsistency between Subsections 1 and 3 of Section E of Part III of the Application, and then decided that contrary to the unconditional commitment made by petitioner in Subsection 1 to set-aside a *minimum* of 40% of the units at 60% AMI or lower as well as the various exhibits clearly reflecting a commitment to set aside 100% of the units, petitioner committed to set aside only 27% of the units.

12. In addition, at items 2T, 3T, and 4T in its notice of proposed scoring errors, the Corporation erroneously found that petitioner did not have a firm financing commitment, and as a result has a financial shortfall for the Project, because the commitments "assume that the commitment is based on the proposed Development setting aside 100% of its units." **Exhibit 3**, Item 2T, at page 2. In other words, instead of recognizing the financing commitment as obvious evidence of the scrivener's error in Subsection 3, the Corporation illogically found the financing

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commitment attached as exhibits to the Application to be inadequate because of the obvious scrivener's error in Subsection 3.

13. Finally, at item 5T of its notice of proposed scoring errors, the Corporation found that the Corporation could not determine the term of the real property purchase and sale contract, submitted by petitioner as an exhibit to the Application, because the copy was illegible. **Exhibit 3**, Item 5T, at page 3.

14. Upon receipt of the Corporation's notice of proposed scoring errors, petitioner timely filed its proposed cure for the errors. A copy of petitioner's proposed cure is attached as **Exhibit 4**.

15. To cure the perceived errors in its Application, petitioner revised Part III, Section E, Subsections 1 and 2, of the Application to elect to commit a *minimum* of 20% of the units at 50% AMI or lower. Petitioner also increased its commitment to serve lower AMI (*i.e.,* to serve very low income individuals and families) by including a commitment to serve 73% of the units at 50% AMI or lower (instead of an initial commitment to serve 73% of the units at 60% AMI or lower), while retaining the commitment to serve 27% of the units at 40% AMI or lower. Petitioner merely corrected the scrivener's error in Part III, Section E, Subsection 3, of the Application to reflect the petitioner's actual commitment at all pertinent times to set aside 100% of the units for low income housing. In addition, to avoid any further misunderstanding

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about the nature and extent of the financing commitments for the Project, petitioner obtained, and provided as part of its cure, letters from Alliant Capital, Ltd., and Alliant Mortgage Company, Inc., re-affirming that their financing commitments remain firm and would not be withdrawn. Finally, petitioner provided an enlarged, more legible copy of its real estate purchase contract.

16. Notwithstanding petitioner's revisions to Subsections 1 and 2 and petitioner's correction of the scrivener's error in Subsection 3, the Corporation has arbitrarily and capriciously rejected petitioner's Application. In particular, despite all evidence to the contrary, the Corporation has apparently concluded that petitioner has changed its total set-aside commitment from 27% of the units to 100% of the units in violation of the rules. *Compare* **Exhibit 3**, Item 1T, at page 2, *with* **Exhibit 3**, Item 2C, at page 4.

17. As discussed below, petitioner had unconditionally elected to commit a *minimum* of 40% of the units at 60% AMI or lower in Subsection 1 before any revision was made to address the Corporation's notice of proposed scoring errors. Moreover, as the Corporation effectively recognized when it found that petitioner's financing commitment "is based on the proposed Development setting aside 100% of the units," **Exhibit 3**, Item 2T, at page 2; the percentage amount set forth in Subsection 3 contained a scrivener's error that should have reflected petitioner's

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otherwise obvious commitment to set aside more than 27% of the units and indeed to set aside 100% of the units. Thus, by refusing to accept the corrections made by petitioner to its Application, the Corporation arbitrarily and capriciously ignored the election made by petitioner in Subsection 1 and arbitrarily and capriciously decided instead that petitioner had committed only 27% of the units at 40% AMI or lower despite all evidence to the contrary as set forth in the Application as initially filed.

18. In addition, the Corporation misread petitioner's purchase contract as providing for a term that does not expire before December 31, 2002. In fact, the term of the contract does not expire until 745 days after the contract's effective date. The contract's effective date was July 12, 2001, when the seller signed the contract. *See* **Exhibit 4**, Part III, Section C, Contract for Sale and Purchase, ¶3. Accordingly, the contract does not expire before July 27, 2003.

STATEMENT OF APPLICABLE LAW REQUIRING THE REVERSAL OR MODIFICATION OF THE CORPORATION'S PROPOSED ACTION

19. The Corporation's decision is fundamentally flawed. First, contrary to the decision of the Corporation, petitioner in fact committed, at Part III, Section E, Subsection 1, of its Application, to set aside the *minimum* units required by law to qualify for the Housing Credit Program. Moreover, the Corporation's rules permit petitioner to change its selection of the *minimum* set-aside percentage. Since the

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Application at all times selected a *minimum* set-aside percentage required to meet, and on its face does meet, the Housing Credit Program requirements, the Corporation cannot lawfully reject the Application on the ground that the Application does not meet the Housing Credit Program requirements. Second, contrary to the decision of the Corporation, petitioner did **not** change its total set-aside percentage of the Total Set-Aside Commitment, but merely altered a scrivener's error in Subsection 3 of the Application. The Corporation's decision to prohibit any correction of an obvious scrivener's error and to disregard both the minimum set-aside percentage selected in Subsection 1 and the total set-aside percentage reflected in the financing commitment and other exhibits to the Application is arbitrary and capricious and accordingly must be overturned. Third, to the extent that Fla. Admin. Code R. 67-48.004(14)(k) is interpreted to prohibit an *increase* in the total set-aside percentage of the Total Set-Aside Commitment, the rule is contrary to the primary purpose of the Housing Tax Credit Program, *viz.* to encourage the development of low income housing in the State, and therefore is invalid. Finally, petitioner's real estate purchase contract unequivocally provides for a term that does not expire before July 27, 2003, and cannot be reasonably interpreted otherwise. Accordingly, the Corporation's finding to the contrary must also be overturned.

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Petitioner Set Aside the *Minimum* Units Required by Law

20. As stated, the Application does not fail to set aside the *minimum* units required by law to meet the threshold for approval of the Application under either the Housing Credit Program or the SAIL Program. The Housing Credit Program requires only a *minimum, not a total,* set-aside percentage commitment. Because, as explained below, petitioner elected to commit the *minimum* set-aside percentage required by law, the Application on its face clearly meets the Housing Credit Program requirements. Accordingly, the Corporation's rejection of the Application on this ground must be overturned.

21. Section 420.5087(2)(b), Florida Statutes (2001), provides that the corporation shall have the power to underwrite and make state apartment incentive loans or loan guarantees to sponsors (such as petitioner) provided the sponsor uses taxable financing for the first mortgage and at least 20 percent of the units are set aside for persons or families who have incomes below 50 percent of the state or local median income, whichever is higher, as adjusted for family size. Alternatively, Section 420.5087(2)(c), Florida Statutes (2001), provides that the corporation shall have the power to underwrite and make such loans if the sponsor uses federal low-income housing tax credits and the project meets the eligibility requirements of Section 42 of the Internal Revenue Code of 1986, as amended (hereinafter cited as "Code").

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Similarly, Section 420.5099(1), Florida Statutes (2001), provides that the Corporation shall have the responsibility and authority to establish procedures for the allocation and distribution of low income housing tax credits under Code Section 42 in Florida.

22. Code Section 42(a) provides that the amount of the low-income housing credit shall be an amount equal to the applicable percentage of the qualified basis of each qualified low-income building. For this purpose, a qualified low-income building generally means a building that is part of a qualified low-income project. *See* Code Section 42(c)(2). Code Section 42(g)(1) defines the term "qualified low income housing project" to mean any project for residential rental property if the project meets either of the following requirements that is selected by the taxpayer: (a) 20 percent or more of the units are both rent restricted and occupied by individuals whose income is 50 percent or less of the area median gross income, or (b) 40 percent or more of the units are both rent restricted and occupied by individuals whose income is 60 percent or less of the area median gross income. Florida Administrative Code Rule 67-48.002(104) similarly defines the SAIL Minimum Set-Aside Requirement to be either (a) 20 percent of the units set aside for residents with annual household incomes at or below 50 percent of the area, MSA or state or county median income, whichever is higher, adjusted for family size, or (b) 40 percent of the units set aside for residents

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with annual household incomes at or below 60 percent of the area, MSA or state or county median income, whichever is higher, adjusted for family size.

23. At Part III, Section E, Subsection 1, of the Application, petitioner selected a *minimum* set-aside of 40% of the units at 60% AMI or lower. This selection clearly meets the *minimum* set-aside percentage commitment required by law to qualify for the Housing Credit Program. Moreover, petitioner revised Subsection 1 by selecting a *minimum* set-aside of 20 percent of the units at 50 percent AMI or lower (the "20% of 50% test"). This selection also clearly complies with the *minimum* set-aside percentage commitment required by law to qualify for the Housing Credit Program. Moreover, selection of the 20% of 50% test obviates any perceived inconsistencies between Subsections 1 and 3 of Part III, Section E, of the Application. Even if the Corporation erroneously reads Subsection 3 to reflect a total set-aside percentage of 27% of the units at 40% AMI or lower, instead of a total set-aside percentage of 100%, and thus (as discussed below) arbitrarily and capriciously ignores that Subsection 3 contains an obvious scrivener's error, petitioner's selection of the 20% of 50% test would be adequate to qualify the Project for the Housing Credit Program under the 20% of 50% test. *See, e.g.,* Code Section 42(g)(1)(A). Accordingly, in all events, the Application clearly meets the requirements of the Housing Credit Program for the *minimum* set-aside percentage commitment.

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24. Moreover, the Corporation's rules do **not** prohibit petitioner from revising the *minimum* set aside percentage commitments of Subsections 1 or 2 of Section E of Part III of the Application. *Cf.* Fla. Admin. Code R. 67.48.004(6) (permitting revisions to an application to address issues "that could result in rejection of the Application or a score less than the maximum available"). The rules prohibit a revision to the total set-aside percentage of the Total Set-Aside Commitment, but not to the *minimum* set-aside percentage. *See* Fla. Admin. Code R. 67.48.004(14)(k). Consequently, petitioner is clearly permitted under the rules to increase its *minimum* commitment to serve very low income individuals and families even if the Corporation refuses to accept any change or purported change in the total set-aside percentage.

25. In addition, the Corporation's rules expressly require petitioner to revise Subsection 3 of the Application because of the permitted changes made in Subsections 1 and 2. In particular, Fla. Admin. Code R. 67-48.004(6) provides, in pertinent part, as follows:

> Where revised or additional information submitted by the Applicant creates an inconsistency with another item in that Application, the Applicant shall also be required in its submittal to make such other changes as necessary to keep the Application consistent as revised.

Because petitioner has properly elected to increase its *minimum* commitment to serve very lower income individuals and families, Subsection (3) of the Application must be

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revised to reflect that increased commitment. The Corporation's decision wholly to ignore its own rules solely to prohibit petitioner from curing what amounts to little more than a scrivener's error is patently unreasonable and hence arbitrary and capricious.

Petitioner Did *Not* Change Its Total Set-Aside Commitment

26. The Corporation's rejection of the Application is based on a fundamentally flawed assumption that petitioner revised its total set-aside percentage of the Total Set-Aside Commitment. In fact, in the Application as initially filed, petitioner had committed to set-aside 100% of the units as low income housing. Indeed, in its notice of proposed scoring errors, the Corporation actually acknowledged that petitioner intended to commit 100% of the units as low income housing units, stating that petitioner's financing commitment for the Project "is based on the proposed Development setting aside 100% of its units" for low income housing. **Exhibit 1**, Item 2T, at page 2.

27. As stated, the financing commitment attached as exhibits to the Application clearly indicate that petitioner expected to qualify, and thus to commit, 100% of the units as low income housing. Further, in Part V, Section A, Subsection 1, of the Application, petitioner applied for federal housing credits in the annual amount of $1,129,328. This tax credit amount is based on a total development

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cost (*i.e.*, qualified tax basis), eligible for tax credits, in the amount of $10,220,622.23. *See* **Exhibit 5**, Application Exhibit 41, Development Cost Pro Forma. Under Code Section 42, petitioner must commit 100% of the units as low income housing to obtain tax credits on that amount of qualified tax basis, which represents the qualified tax basis to be incurred for 100% of the units. *See* Code Section 42(c)(1)(B), (C), and (D). In addition, Miami-Dade County committed to various fee waivers for all 78 units (*i.e,* 100%) of the Project, based on petitioner's commitment of 100% of the units at 60% AMI or lower. *See* **Exhibit 6**, Application Exhibit 51, Miami-Dade County Impact Fee Waiver and attached schedule. Thus, it was clear on the face of the Application as originally filed that petitioner actually intended to commit, and in fact did commit, 100% of its units for low income housing, not just the 27% amount that, due to an obvious scrivener's error, was inconsistently reflected on Subsection 3.

28. Further, in Part III, Section E, Subsection 1, of the Application, petitioner unconditionally elected to commit a *minimum* of 40% of the units at 60% AMI or lower. For this reason alone, the Corporation's assumption that petitioner's total set-aside percentage commitment equals 27% simply is unwarranted and appears to be arbitrary and capricious. Based on the inconsistencies in the Application, the most reasonable, and perhaps only reasonable, assumption is that petitioner intended to commit 100% of the units since petitioner's financing, county fee waivers, and

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qualified tax basis were all based on an obvious commitment of 100% of the units. Indeed, considering that petitioner had affirmatively committed to meet the *minimum* set-aside requirements for 40% of the units, the Corporation's assumption that petitioner had committed to set aside only 27% of the units is patently unreasonable. ***In effect, the Corporation has explicitly chosen to ignore all evidence found in the Application that petitioner has obviously committed 100% of the units as low income housing and accepted, as an immutable fact, an obvious scrivener's error in Subsection 3 inadvertently suggesting that petitioner had committed only 27% of the units as low income housing.*** As a result, the Corporation's refusal to permit petitioner to correct its scrivener's error is arbitrary and capricious and therefore must be overturned.

If Interpreted to Prohibit Any *Increase* in Total Set-Aside Percentage, Rule 67-48.004(14)(k) Would Defeat State Policy and Thus Would Be Invalid

29. The Corporation has apparently relied on Fla. Admin. Code R. 67-48.004(14)(k) to reject petitioner's Application. The Corporation interprets the rule to prohibit all changes, including any *increase*, in the total set-aside percentage of the Total Set-Aside Commitment. As stated, petitioner in fact did **not** change the total set-aside percentage, which at all pertinent times was actually 100% of the units. Petitioner has simply changed the *allocation* of its 100% commitment from (i) 27% of the units

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at 40% of AMI or lower and 73% of the units at 60% of AMI or lower, to (ii) 27% of the units at 40% of AMI or lower and 73% of the units at 50% of AMI or lower. Thus, in furtherance of the purpose of the Housing Credit Program to maximize the use of available tax credits to encourage development of low income housing in the State, § 420.5099(2), Fla. Stat. (2001); petitioner's revision to the Application allocates 100% of the units to very low income individual and families. And by refusing to accept this cure, the Corporation effectively defeats the purpose of the Housing Credit Program.

30. In addition, and in any event, Rule 67-48.004(14)(k) cannot validly prohibit petitioner from *increasing* the total set-aside percentage because such a prohibition would be contrary to the primary purpose of the State's Housing Credit Program. Florida law requires the Corporation to adopt allocation procedures for the Housing Credit Program to "ensure the maximum use of available tax credits in order to encourage development of low income housing in the state..." § 420.5099(2), Fla. Stat. (2001). If interpreted to prohibit an applicant from *increasing* the total percentage commitment for low income housing within the time period set by the Corporation for revisions to an application, the rule **on its face** would be contrary to the purpose of the Housing Credit Program. Indeed, so interpreted, the rule would preclude the Corporation from accepting any *increase* in the total number of units

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committed by an application for low income housing, thus effectively *decreasing* the total number of units potentially available for development with the limited federal housing tax credits allocated to the State.

31. For example, in Part V, Section A, Subsection 1, of the Application, petitioner sought a funding request of $1,068,850 in total SAIL financing ($50,897 per unit with a 27% commitment or only $13,703 per unit with a 100% commitment) and $1,129,328 in annual housing tax credits ($53,777 per unit with a 27% commitment or only $14,478 per unit with a 100% commitment). By prohibiting petitioner from (purportedly) increasing its total commitment of 27% to 100%, the rule would effectively prevent the State from obtaining the benefit of lower SAIL financing and housing tax credit per unit costs of the Project and instead force the Corporation to approve other developments that may actually have higher per unit costs. An interpretation of the rule that effectively inhibits the maximum use of federal housing tax credits by the State by precluding an increased percentage commitment for low income housing units during the application and cure periods would, and quite frankly should, render the rule invalid. *See, e.g., Meridian v. Dept. of Health and Rehabilitative Services,* 548 So.2d 1169, 1170 (Fla. 1st DCA 1989). Presumably for this reason, the Corporation's rules broadly permit applicants to cure even "shell" applications that lack such essential elements as site control, zoning and site plan

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approvals, availability of utilities, and other factors crucial to a successful low income housing development. *Compare* Fla. Admin. Code § 67-48.004(6) (permitting additional documentation, revisions, and other information during the cure period), *with* Fla. Admin. Code § 67-48.004(14) (prohibiting specified revisions during the cure period). Accordingly, the Corporation should not, and cannot validly, interpret Rule 67-48.004(14)(k) to prohibit an *increase* in the total percentage commitment.

32. Again, assuming, for the sake of argument, that petitioner did not merely correct a scrivener's error, but *increased* its total set-aside percentage from 27% to 100%, the increased percentage furthers the purpose of the Housing Credit Program. Petitioner proposes to build, and to commit to set-aside, 78 detached homes for very low income individuals and families. In addition to lowering the per unit cost of federal housing tax credit and state financing for the Project as explained above, petitioner has also increased the percentage of the units committed as very low income housing, from (i) a total of 27% of the units committed at 40% AMI or lower to (ii) a total of 100% of the units, comprised of 27% of the units committed at 40% AMI or lower and 73% of the units committed at 50% AMI or lower. In addition, petitioner has committed at least 40% of the units for rent to farm workers. As demonstrated by petitioner's market study attached as exhibit 31 to the Application, the need in the

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area for such very low income housing and farm worker housing greatly exceeds the availability of such housing.

33. Petitioner has demonstrated that the Project will be economically feasible if the Corporation approves the requested allocation of housing tax credits and SAIL financing for the Project. Petitioner has also demonstrated its ability to proceed to completion of the Project in the calendar year for which the credit is sought, provided that the allocation request is granted. More important, unless Petitioner is allocated the housing tax credits sought by the Application, a substantial portion of the SAIL financing and related housing tax credits prioritized by the State for allocation to commercial fishing worker and farm worker housing projects during the 2002 housing cycle in fact may not be allocated to commercial fishing worker or farm worker housing projects, thus defeating the State's priorities. *See* Florida Housing Finance Corporation, State Apartment Incentive Loan Program (SAIL), Cycle XIV (2001-2002) & Special Geographic Distribution, Notice of Funding Availability (NOFA), pp. 1-2. Thus, after taking into consideration the timeliness of the Application, as well as the other circumstances of the Project, Rule 67-48.004(14)(k) cannot be validly interpreted, under the circumstances of this case, to deny petitioner's request for an allocation of housing credits.

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Petitioner's Contract to Purchase the Land for the Project Terminates On or After July 27, 2003, Not Before December 31, 2002

34. The Corporation's notice of proposed scoring errors found that the Corporation could not determine the term of petitioner's contract to purchase the real property to be developed with housing tax credits because the copy of the contract submitted with the Application was illegible. Petitioner therefore provided an enlarged and more legible copy. The Corporation inexplicably determined that "[t]he more legible contract provided as a cure for 5T does not reflect a term that does not expire before 12/31/02." **Exhibit 3,** Item 6T, at p. 3.

35. The contract contains a financing contingency that explicitly takes into consideration petitioner's Application for housing tax credits. In particular, paragraph 3(a) of the contract provides that if petitioner ". . . fails to obtain a written commitment for the HC [*i.e.,* housing tax credits from the Corporation] *within 745 days after the Effective Date,* this Contract shall be automatically cancelled. . ." **Exhibit 4**, Part III, Section C, Contract for Sale and Purchase, ¶3(a) (emphasis added). Paragraph 4 of the contract defines the term "Effective Date" to mean the date on which the last of the buyer and seller has signed the contract. *Id.*, at ¶4. The seller was the last to sign the contract on July 12, 2001. *See id.* Therefore, the contract terminates no sooner than

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July 27, 2003, or 745 days after the effective date of July 12, 2001. There is simply no basis in law or fact for the Corporation to conclude otherwise.

CONCLUSION

36. The Corporation has erroneously rejected the Application, ignoring all evidence that clearly indicates petitioner's affirmative commitment of 100% of the units as low income housing. Petitioner has met all requirements for the Housing Credit Program and should be granted an allocation of housing tax credits based on the Application as revised.

WHEREFORE, petitioner respectfully requests that the Corporation accept the cure submitted by petitioner for its Application in the entirety and grant petitioner the allocation of housing tax credits and SAIL financing as requested.

Respectfully submitted,

KORGE & KORGE
Counsel for Petitioner,
Fifth Avenue Estates, Ltd.
230 Palermo Avenue
Coral Gables, Florida 33134
(305) 444-5601
(305) 444-5633 Facsimile

By: _____
THOMAS J. KORGE
Fla. Bar No. 186923

TABLE OF CONTENTS

FLORIDA HOUSING FINANCE CORPORATION

In Re: The Application of
FIFTH AVENUE ESTATES, LTD.,
a Florida limited partnership

FHFC File No. 2002-022CS

LIST OF EXHIBITS

Exhibit 1. **2002 Universal Scoring Summary, file no. 2002-022CS, dated July 22, 2002**

Exhibit 2. **Part III, Section E, Subsections 1, 2, and 3, Application No. 2002-022CS**

Exhibit 3. **2002 Universal Scoring Summary, file no. 2002-022CS, dated June 10, 2002**

Exhibit 4. **Proposed Cure of Scoring Errors for Application No. 2002-022CS**

Exhibit 5. **Application No. 2002-022CS, Exhibit 41, Development Cost Pro Forma**

Exhibit 6. **Application No. 2002-022CS, Exhibit 51, Miami-Dade County Impact Fee Waiver letter**

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As of: 07/22/2002

2002 Universal Scoring Summary

File # 2002-022CS **Development Name:** Fifth Avenue Estates

As Of:	Total Points	Met Threshold?	Proximity Tie-Breaker Points	Corporation Funding per Set-Aside Unit *	SAIL as Percentage of Total Development Cost
07 - 22 - 2002	68	N	6	$344,724.69	10.18%
Preliminary	68	N	6	$344,724.69	10.18%
NOPSE	68	N	6	$344,724.69	10.18%
Final	68	N	6	$344,724.69	10.18%
Post-Appeal	0	N	0		0

*Corporation funding includes Local Government-issued tax-exempt bond financing

Scores:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Post-Appeal
1S	III	A	2.b	If SAIL Application for Development in one of these counties where no SAIL Application has ever been funded: Bay, Citrus, Leon, Nassau, Okaloosa, Okeechobee, St. Lucie or Santa Rosa	2	0	0	0	0
				Optional Features & Amenities:					
2S	III	B	2.a	New Construction	9	9	9	9	0
2S	III	B	2.b	Rehabilitation/Substantial Rehabilitation	9	0	0	0	0
3S	III	B	2.c	All Developments Except SRO	12	12	12	12	0
3S	III	B	2.d	SRO Developments	12	0	0	0	0
4S	III	B	2.e	Energy Conservation Features	9	9	9	9	0
				Demographic or Area Commitment:					
5S	III	D	1.	Florida Keys Area	7	0	0	0	0
5S	III	D	2.	RD 515 or RD 514/516	5	0	0	0	0
5S	III	D	3.	Elderly	5	0	0	0	0
5S	III	D	4.	Farmworker/Commercial Fishing Worker	5	5	5	5	0
5S	III	D	5.	Homeless	5	0	0	0	0
5S	III	D	6.	Urban In-Fill	5	0	0	0	0
5S	III	D	7.	Large Family	5	0	0	0	0
5S	III	D	8.	HOPE VI	5	0	0	0	0
5S	III	D	9.	Front Porch Florida	5	0	0	0	0

2002 Universal Scoring Summary

As of: 07/22/2002

File # 2002-022CS **Development Name:** Fifth Avenue Estates

Additional Application Comments:

Item #	Part	Section	Subsection	Description	Reason(s)	Created As Result	Rescinded as Result
2C	III	E	Exhibit 50	CURE for 1T	Applicant attempted to cure item 1T. However, per Rule 67-48, F.A.C., the total set-aside percentage of the Total Set-Aside Commitment cannot be changed.	Final	
3C	V	B	Exhibit 43	CURE for 2T & 3T	Applicant attempted to cure items 2T & 3T. However, because the item Applicant is attempting to cure in item 1T cannot be cured, the issues in 2T and 3T cannot be addressed.	Final	
4C	V	B	Exhibit 43	CURE for 4T	Applicant attempted to cure item 4T. However, because item 1T is not curable, the cure to 4T is not sufficient.	Final	

Assistance Continuum of Care Plan exists, evidence of a local need for Homeless housing must be provided behind a tab labeled "Exhibit 31".

6. Urban In-Fill Development - Provide the properly completed and executed Local Government Verification of Qualification as Urban In-Fill Development Form behind a tab labeled "Exhibit 31".
7. Large Family Development
8. HOPE VI Development - Provide evidence of Applicant's eligibility to make this selection behind a tab labeled "Exhibit 31."
9. Front Porch Florida Community (HC or SAIL Applicants Only) Provide the properly completed and executed Verification of Front Porch Florida Funding Commitment Form behind a tab labeled "Exhibit 31":

E. Set-Aside Commitments

1. Minimum Set-Aside:

Applicants must select one of the following:

20% of units at 50% Area Median Income (AMI) or lower

✔ 40% of units at 60% Area Median Income (AMI) or lower

Deep rent skewing option as defined in Section 42, IRC, as amended

2. Commitment to Serve Lower AMI:

If Applicant commits to set-aside units beyond the minimum set-aside selected above, indicate the lowest AMI level and the percentage of total units that will be set-aside at that level.

	% of total units at 30% AMI or less
	% of total units at 35% AMI or less
27	% of total units at 40% AMI or less
	% of total units at 50% AMI or less

3. Total Set-Aside Commitment:

	Percentage of Set-Aside Units			
Commitment for MMRB	Commitment for SAIL Only, SAIL and MMRB, or SAIL and Competitive HC		Commitment for Competitive HC or non-competitive HC	At or Below this AMI Level
				30%
				35%
	27			40%
				50%
				60%
Total Set-Aside Percentage:	%	27	%	%

4. Affordability Period:

Applicant irrevocably commits to set-aside units in the proposed Development for a total of

2002 Universal Scoring Summary

As of: 06/10/2002

File # 2002-022CS **Development Name:** Fifth Avenue Estates

As Of:	Total Points	Met Threshold?	Proximity Tie-Breaker Points	Corporation Funding per Set-Aside Unit *	SAIL as Percentage of Total Development Cost
06 - 10 - 2002	68	N	6	$344,724.69	10.18%
Preliminary	68	N	6	$344,724.69	10.18%
NOPSE	68	N	6	$344,724.69	10.18%
Final	0	N	0		0
Post-Appeal	0	N	0		0

*Corporation funding includes Local Government-issued tax-exempt bond financing

Scores:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Post-Appeal
1S	III	A	2.b	If SAIL Application for Development in one of these counties where no SAIL Application has ever been funded: Bay, Citrus, Leon, Nassau, Okaloosa, Okeechobee, St. Lucie or Santa Rosa	2	0	0	0	0
				Optional Features & Amenities:					
2S	III	B	2.a	New Construction	9	9	9	0	0
2S	III	B	2.b	Rehabilitation/Substantial Rehabilitation	9	0	0	0	0
3S	III	B	2.c	All Developments Except SRO	12	12	12	0	0
3S	III	B	2.d	SRO Developments	12	0	0	0	0
4S	III	B	2.e	Energy Conservation Features	9	9	9	0	0
				Demographic or Area Commitment:					
5S	III	D	1.	Florida Keys Area	7	0	0	0	0
5S	III	D	2.	RD 515 or RD 514/516	5	0	0	0	0
5S	III	D	3.	Elderly	5	0	0	0	0
5S	III	D	4.	Farmworker/Commercial Fishing Worker	5	5	5	0	0
5S	III	D	5.	Homeless	5	0	0	0	0
5S	III	D	6.	Urban In-Fill	5	0	0	0	0
5S	III	D	7.	Large Family	5	0	0	0	0
5S	III	D	8.	HOPE VI	5	0	0	0	0
5S	III	D	9.	Front Porch Florida	5	0	0	0	0

2002 Universal Scoring Summary

As of: 06/10/2002

File # 2002-022CS **Development Name:** Fifth Avenue Estates

Scores:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Post-Appeal
				Set-Aside Commitment:					
6S	III	E	2.	Commitment to Serve Lower AMI	5	5	5	0	0
7S	III	E	3.	Total Set-Aside Commitment	3	0	0	0	0
8S	III	E	4.	Affordability Period	5	5	5	0	0
				Resident Programs:					
9S	III	F	1.	Programs for Non-Elderly & Non-Homeless	6	6	6	0	0
9S	III	F	2.	Programs for Homeless (SRO & Non-SRO)	6	0	0	0	0
9S	III	F	3.	Programs for Elderly	6	0	0	0	0
10S	III	F	4.	Programs for All Developments	8	8	8	0	0
				Local Government Support					
11S	IV		a.	Contributions	5	5	5	0	0
12S	IV		b.	Incentives	4	4	4	0	0

Reason(s) Scores Not Maxed:

Item #	Reason(s)	Created As Result	Rescinded as Result
1S	The proposed Development is not located in one of the stated counties.	Preliminary	
5S	The proposed Development is not located in the Florida Keys Area.	Preliminary	
7S	Applicant failed to commit to set-aside a minimum of 70% of the proposed Development's units.	Preliminary	

Threshold(s) Failed:

Item #	Part	Section	Subsection	Description	Reason(s)	Created As Result of	Rescinded as Result of
1T	III	E		Set-Aside Percentage	The total set-aside percentage commitment of 27% is less than the Applicant's selected minimum set-aside of 40% of units at 60% AMI or less. As such, the Application does not meet Housing Credit Program requirements.	Preliminary	
2T	V	E	Exhibit 50	Alliant Capital Equity Commitment	The Alliant Capital equity commitment is not a firm commitment. The commitment is based on the proposed Development receiving an annual allocation of $1,129,328 in housing credits. Given the figures presented in Exhibit 41, one can reasonably assume that the commitment is based on the proposed Development setting aside 100% of its units. The Applicant though committed to a total set-aside of 27% at Part III E of the Application. As such, the Development will not have a high enough	Preliminary	

2002 Universal Scoring Summary

As of: 06/10/2002

File # 2002-022CS **Development Name:** Fifth Avenue Estates

Threshold(s) Failed:

Item #	Part	Section	Subsection	Description	Reason(s)	Created As Result of	Rescinded as Result of
					qualified basis for the Development to receive the commitment's estimated annual allocation of $1,129,328 in housing credits.		
3T	V	E	Exhibit 48	Alliant Mortgage Company	The Alliant Mortgage Bridge Loan commitment for $1,500,000 was not counted as firm for it was conditioned upon the proposed Development receiving an annual allocation of $1,129,328 in housing credits. Given that the Applicant committed to a total set-aside of 27%, it is not possible for the proposed Development to receive an annual allocation close to the estimated amount of $1,129,328.	Preliminary	
4T	V	B	Exhibit 43	Sources versus Uses	The Applicant has a financial shortfall of $7,038,147 for construction financing and $8,433,666 for permanent financing.	Preliminary	
5T	III	C	2	Site Control	Unable to determine the term of the contract because copy provided is illegible.	NOPSE	

Proximity Tie-Breaker Points:

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

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

Item #	Reason(s)	Created As Result of	Rescinded as Result of
3P	Proximity Tie-Breaker Points selected by the Applicant were adjusted based on FHFC verification.	Preliminary	

Additional Application Comments:

Item #	Part	Section	Subsection	Description	Reason(s)	Created As Result	Rescinded as Result
1C	V	B	Exhibit 41	Pro Forma	The development cost (line B on pro forma) and the total development cost (line F on pro forma) were reduced by the amount of the impact fees refunded and the sources were reduced by the amount of the impact fees refunded. The Developer's fee was adjusted accordingly.	Preliminary	

REVISED

COPY

Fifth Avenue Estates

78 (Seventy Eight) Zero Lot Line Homes for Farmworker Families

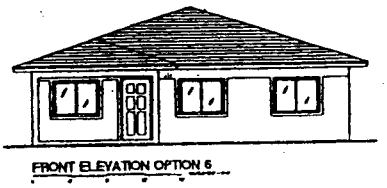
Submitted by:

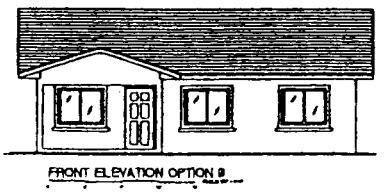
Fifth Avenue Estates, Ltd.
Advanced Affordable Development Corporation
General Partner
1101 Brickell Avenue Suite 402 B
Miami, Florida 33131
Tel: (305) 350-9898
Fax: (305) 358-5381

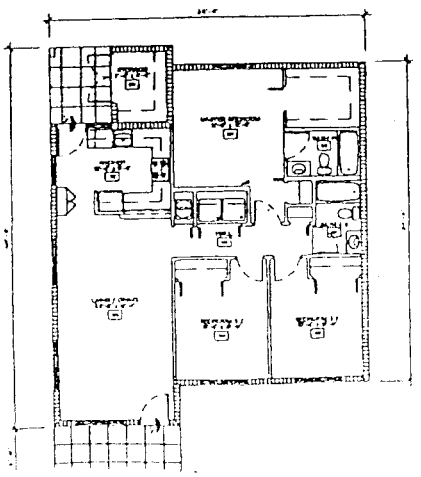
Application for SAIL and HC submitted to:

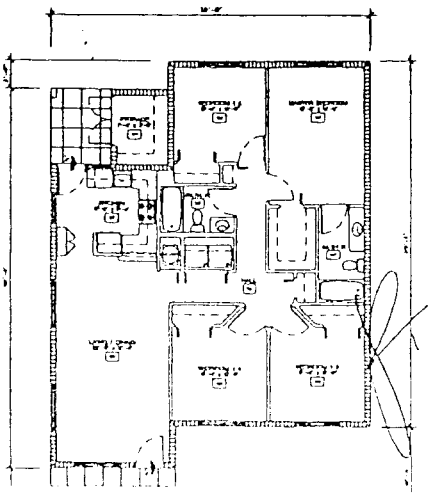
Mr. Mark Kaplan
Executive Director
Florida Housing Finance Corporation
227 North Bronough Street Suite 500
Tallahassee, Florida

April 15, 2002









2002 SUMMARY CURE FORM

This Summary Cure Form is submitted with regard to **Application No. 2002-** 022CS and pertains to the Application parts, sections, subsections, and exhibits listed below (please list the parts, sections, and subsections and exhibits in the order they appear in the 2002 Universal or Home Rental Summary Report):

				Submitted in Response to:			Created by:	
Part (e.g., I, II, III, IV, V, VI)	Section (e.g., A, B, C, D, etc.)	Subsection (e.g., 1, 2, 3, 4, 5, etc. or 1.a., 2.a., etc.)	Exhibit (e.g., 1, 2, 3, ...49, 50, etc.)	Reason Score Not Maxedr (Provide Item Number from Application Summary)	Reason Threshold Failed (Provide Item Number from Application Summary)r	Reasop for Failure to Achieve Proximity Tie-Breaker Points Selected (Provide Item Number from Application Summary)	Mark this column if Item No, indicated in previous 3 columns resulted from Preliminary Scoring	Mark this column if Item No. indicated in previous 3 columns resulted from a NOPSE. Also, please state the Tracking No., if known.
III	E	3		7 S	T	P	X	
				S	T	P		
III	E			S	1 T	P	X	
				S	T	P		
V	E	50		S	2 T	P	X	
				S	T	P		
V	E	48		S	3 T	P	X	
				S	T	P		
V	B	43		S	4 T	P	X	
				S	T	P		
III	C	2		S	5 T	P		X
				S	T	P		
				S	T	P		
				S	T	P		
				S	T	P		
				S	T	P		
				S	T	P		
				S	T	P		
				S	T	P		

2002 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. 2002- 022 CS and pertains to:

Part III Section E Subsection 3 Exhibit No._____ (if applicable)

The attached information is submitted in response to the 2002 Universal Scoring Summary or Home Rental Scoring Summary because:

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

	2002 Universal or HOME Rental Scoring Summary	Created by:	
		Preliminary Scoring	NOPSE
☒ Reason Score Not Maxed	Item No. 7 S	☒	☐
☐ Reason Threshold Failed	Item No. _____T	☐	☐
☐ Reason for Failure to Achieve Proximity Tie-Breaker Points Selected (Universal Application Only)	Item No. _____P	☐	☐

OR

☐ **II.** Other changes are necessary to keep the Application consistent:

This revision or additional documentation is submitted to address an issue resulting from a "cure" to Part_____ Section _____ Subsection _____ Exhibit _____, as applicable).

Assistance Continuum of Care Plan exists, evidence of a local need for Homeless housing must be provided behind a tab labeled "Exhibit 31".

6. Urban In-Fill Development - Provide the properly completed and executed Local Government Verification of Qualification as Urban In-Fill Development Form behind a tab labeled "Exhibit 31".

7. Large Family Development

8. HOPE VI Development - Provide evidence of Applicant's eligibility to make this selection behind a tab labeled "Exhibit 31."

9. Front Porch Florida Community (HC or SAIL Applicants Only) Provide the properly completed and executed Verification of Front Porch Florida Funding Commitment Form behind a tab labeled "Exhibit 31".

E. Set-Aside Commitments

1. Minimum Set-Aside:

Applicants must select one of the following:

XXX 20% of units at 50% Area Median Income (AMI) or lower

40% of units at 60% Area Median Income (AMI) or lower

Deep rent skewing option as defined in Section 42, IRC, as amended

2. Commitment to Serve Lower AMI:

If Applicant commits to set-aside units beyond the minimum set-aside selected above, indicate the lowest AMI level and the percentage of total units that will be set-aside at that level.

	% of total units at 30% AMI or less
	% of total units at 35% AMI or less
27	% of total units at 40% AMI or less
73	% of total units at 50% AMI or less

3. Total Set-Aside Commitment:

	Percentage of Set-Aside Units		
Commitment for MMRB	Commitment for SAIL Only, SAIL and MMRB, or SAIL and Competitive HC	Commitment for Competitive HC or non-competitive HC	At or Below this AMI Level
			30%
			35%
	27		40%
	73		50%
			60%
Total Set-Aside Percentage:	% 100	%	%

4. Affordability Period:

Applicant irrevocably commits to set-aside units in the proposed Development for a total of

BRIEF STATEMENT OF EXPLANATION FOR CURE FOR APPLICATION 2002-022CS

Cure for Item 7S, Part III, Section E, Subsection 3

A brief statement of explanation for cure of this item is the same as the explanation set forth for Item 1T, and will not be repeated here.

2002 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. 2002-022CS and pertains to:

Part III Section E Subsection _____ Exhibit No._____ (if applicable)

The attached information is submitted in response to the 2002 Universal Scoring Summary or Home Rental Scoring Summary because:

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

	2002 Universal or HOME Rental Scoring Summary	Created by:	
		Preliminary Scoring	NOPSE
☐ Reason Score Not Maxed	Item No. _____S	☐	☐
☒ Reason Threshold Failed	Item No. 1 T	☒	☐
☐ Reason for Failure to Achieve Proximity Tie-Breaker Points Selected (Universal Application Only)	Item No. _____P	☐	☐

OR

☐ **II.** Other changes are necessary to keep the Application consistent:

This revision or additional documentation is submitted to address an issue resulting from a "cure" to **Part**_____ **Section** _____ **Subsection** _____ **Exhibit** _____, as applicable).

Assistance Continuum of Care Plan exists, evidence of a local need for Homeless housing must be provided behind a tab labeled "Exhibit 31".

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E. Set-Aside Commitments

1. Minimum Set-Aside:

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40% of units at 60% Area Median Income (AMI) or lower

Deep rent skewing option as defined in Section 42, IRC, as amended

2. Commitment to Serve Lower AMI:

If Applicant commits to set-aside units beyond the minimum set-aside selected above, indicate the lowest AMI level and the percentage of total units that will be set-aside at that level.

	% of total units at 30% AMI or less
	% of total units at 35% AMI or less
27	% of total units at 40% AMI or less
73	% of total units at 50% AMI or less

3. Total Set-Aside Commitment:

	Percentage of Set-Aside Units		
Commitment for MMRB	Commitment for SAIL Only, SAIL and MMRB, or SAIL and Competitive HC	Commitment for Competitive HC or non-competitive HC	At or Below this AMI Level
			30%
			35%
	27		40%
	73		50%
			60%
Total Set-Aside Percentage:	% 100	%	%

4. Affordability Period:

Applicant irrevocably commits to set-aside units in the proposed Development for a total of

BRIEF STATEMENT OF EXPLANATION FOR CURE FOR APPLICATION 2002-022CS

Cure for Item 1T, Part III, Section E

Overview

Fifth Avenue Estates, Ltd., a Florida limited partnership (the "Applicant"), has timely filed its universal application for the SAIL and Housing Credit Programs for the 2002 Universal Cycle, file no. 2002-022CS (the "Application"). As a result of the preliminary scoring, the corporation's 2002 Universal Scoring Summary for the Application (the "Scoring Summary") concludes that the Application failed to meet the minimum set-aside required for the Housing Credit Program. In fact, the Applicant did not fail to meet the minimum set-aside required by law for approval under either the Housing Credit Program or the SAIL Program. Indeed, at Part III, Section E, Subsection 1, the Applicant selected 40% of the units at 60% Area Median Income ("AMI") or lower. As explained below, this selection meets the SAIL Minimum Set-Aside Requirement as defined in Rule 67-48.002(104)(b) and also qualifies the project for housing tax credits as a "qualified low-income housing project" within the meaning of section 42(g)(1)(B) of the Internal Revenue Code of 1986, as amended (the "Code"). Accordingly, the Application on its face does **not** fail to meet the minimum set-aside threshold to qualify for the State Apartment Incentive Loan ("SAIL")

program or for federal low-income housing tax credits under Code section 42, *i.e.* the Housing Credit Program.

Nevertheless, as explained below, the *minimum* commitment selected at Subsection 1 of the Application appears to be inconsistent with the *total* percentage commitment shown at Part III, Section E, Subsection 3, of the Application *due to an obvious scrivener's error in Subsection 3*. In particular, the Applicant failed to insert on the line immediately above the "Total Set-Aside Percentage" line of Subsection 3 the Applicant's commitment to set aside 73 percent of the units at or below 60 percent AMI. Moreover, because the corporation's application form automatically sums the percentages set forth on all the lines immediately above the "Total Set-Aside Percentage" line, the Application form itself erroneously incorporated the scrivener's error onto the "Total Set-Aside Percentage" line. Thus the "Total Set-Aside Percentage" line inadvertently showed a total set-aside percentage commitment of 27 percent instead of 100 percent.

The Applicant proposes to cure the inconsistency by correcting this obvious scrivener's error. Moreover, the Applicant proposes to increase its commitment to set-aside units for very low income persons and families (1) by revising Part III,

Section E, Subsection 1, to select a minimum set-aside of 20 percent of the units at 50 percent AMI or lower, and (2) by revising Part III, Section E, Subsection 2, to commit to serve 27 percent of total units at 40 percent AMI or less and 73 percent of total units at 50 percent AMI or less. As a result of this increased commitment to very low income persons, Part III, Section E, Subsection 3, must also be revised to eliminate any inconsistency with the revision to Subsection 2.

The Application Meets the Minimum Set-Aside Threshold for the Housing Credit and SAIL Programs

As stated, the Application does not fail to commit the minimum set-aside required by law to meet the threshold for approval of the Application under either the Housing Credit Program or the SAIL Program. Section 420.5087(2)(b), Florida Statutes (2001), provides that the corporation shall have the power to underwrite and make state apartment incentive loans or loan guarantees to sponsors (such as the Applicant) provided the sponsor uses taxable financing for the first mortgage and at least 20 percent of the units are set aside for persons or families who have incomes below 50 percent of the state or local median income, whichever is higher, as adjusted for family size. Alternatively, Section 420.5087(2)(c), Florida Statutes (2001), provides that the corporation shall have the power to underwrite and make such loans

if the sponsor uses federal low-income housing tax credits and the project meets the eligibility requirements of Code Section 42.

Code Section 42(a) provides that the amount of the low-income housing credit shall be an amount equal to the applicable percentage of the qualified basis of each qualified low-income building. For this purpose, a qualified low-income building generally means a building that is part of qualified low-income project. *See* Code Section 42(c)(2). Code Section 42(g)(1) defines the term "qualified low income housing project" to mean any project for residential rental property if the project meets either of the following requirements that is selected by the taxpayer: (a) 20 percent of the units are both rent restricted and occupied by individuals whose income is 50 percent or less of the area median gross income, or (b) 40 percent of the units are both rent restricted and occupied by individuals whose income is 60 percent or less of the area median gross income. Rule 67-48.002(104) similarly defines the SAIL Minimum Set-Aside Requirement to be either (a) 20 percent of the units set aside for residents with annual household incomes at or below 50 percent of the area, MSA or state or county median income, whichever is higher, adjusted for family size, or (b) 40 percent of the units set aside for residents with annual household incomes at or below

60 percent of the area, MSA or state or county median income, whichever is higher, adjusted for family size.

At Part III, Section E, Subsection 1, the Applicant selected a minimum set-aside of 40% of the units at 60% AMI or lower. This selection complies with the *minimum* set-aside percentages imposed by law. Moreover, the Applicant has revised Subsection 1 by selecting a minimum set-aside of 20 percent of the units at 50 percent AMI or lower. This selection also complies with the *minimum* set-aside percentages imposed by law. Accordingly, the Application literally meets the requirements of the Housing Credit and SAIL ProgramS for the minimum set-aside percentages both before and after revision by the Applicant.

To Avoid Inconsistency, Subsection 3 Is Corrected for a Scrivener's Error and Revised for an Increased Commitment to Very Low Income Persons

The Application contains a obvious scrivener's error in Part III, Section E, Subsection 3. In particular, Subsection 3 failed to show that the Applicant had committed to set aside not only 27 percent of the units at 40 percent of AMI or lower, but also 73 percent of the units at 60 percent of AMI or lower. As a result of this scrivener's error, the corporation's preliminarily scoring concludes that the Application failed to meet the minimum set-aside percentage required for the Housing

Credit Program since the Applicant appears in Subsection 3 to have committed to set aside a minimum of 27 percent of the units at 40 percent of AMI or lower. However, other portions of the Application clearly reflect that the Applicant has in fact committed 27 percent of the units at 40 percent of AMI or lower and more than 27 percent of the units at 60 percent of AMI or lower. In Part III, Section E, Subsection 2, of the Application, the Applicant has unequivocally committed to set aside 27 percent of the units at 40 percent of AMI or lower. In Part III, Section E, Subsection 1, the Applicant has unequivocally committed to set aside a *minimum* of 40 percent of the units at 60 percent of AMI or lower. Indeed, as observed by the corporation in its preliminary scoring for thresholds failed at Items 2T and 3T of the Scoring Summary, the financing commitments obtained by the Applicant for the proposed development are also based on the Applicant having set aside *100 percent* of its units for low income housing. Similarly, Exhibit 41 (Development Cost Pro Forma), Exhibit 44 (Permanent Analysis), and Exhibit 51 (Miami-Dade County impact fee waiver) of the Application clearly show that the Applicant has committed more than 27 percent of the units for low-income housing, contrary to the percentage set forth in Subsection 3 of Part III, Section E.

BRIEF STATEMENT OF EXPLANATION FOR CURE FOR APPLICATION 2002-022CS

This obvious scrivener's error in Subsection 3 is inconsistent with the *minimum* set-aside commitment made in Subsection 1 as well as the Applicant's private and local government financing commitments and financing analysis and fee waivers included in the exhibits to the Application. The Applicant has therefore cured the inconsistency created by the scrivener's error in Subsection 3 by correcting Subsection 3 to be consistent with Subsection 1 and with the financing commitments and financing analysis and fee waivers. In addition, the Applicant has revised Subsections 1 and 2 of Part III, Section E, to increase the Applicant's commitment for very low income persons and families by including a commitment to set aside 73 percent of the units at 50 percent AMI or less in addition to the commitment to set aside 27 percent of the units at 40 percent AMI or less. This increased commitment totaling *100 percent* of the units for very low income persons and families, though not prohibited by the Rules, creates an inconsistency with Subsection 3 that must be cured by revising Subsection 3 to include the increased commitment.

The various revisions and corrections to Subsections 1, 2, and 3 of Part III, Subsection E are explained below.

BRIEF STATEMENT OF EXPLANATION FOR CURE FOR APPLICATION 2002-022CS

Revision to Part III, Section E, Subsection 1

The Applicant has revised Part III, Section E, Subsection 1, of the Application to correct the scrivener's error in Part III, Section E, Subsection 3, of the Application. In particular, the Applicant has revised Subsection 1 to select a minimum set-aside equal to "20% of units at 50% Area Median Income (AMI) or lower." As a result of this revision to Subsection 1, the minimum set-aside commitment of the Applicant set forth in Subsections 2 and 3 (both before and after the revisions of Subsections 2 and 3) will at all times equal or exceed the minimum set-aside required by law to qualify for the Housing Credit Program under the selection made in Subsection 1 as revised.

Revision to Part III, Section E, Subsection 2

The Applicant has also revised Part III, Section E, Subsection 2, to commit to set aside "27% of total units at 40% AMI or less" and "73% of total units at 50% AMI or less." This revision increases the Applicant's commitment made in Subsection 2 to serve very low income persons and families from 27 percent to 100 percent of the total units. This revision to Subsection 2 is not prohibited by the Rules, is consistent with the minimum set-aside commitment of the Applicant as set forth in Subsection 1

(both before and after the revision of Subsection 1), and fully complies with the minimum set-aside required by law to qualify for the Housing Credit and SAIL Programs.

Revision and Correction to Part III, Section E, Subsection 3

The Applicant has revised Part III, Section E, Subsection 3, of the Application to reflect the additional commitment to very low income persons and families made in the Applicant's revision to Subsection 2. This revision to Subsection 3 must be made to avoid any inconsistency between the commitment made in Subsection 2 and the commitment made in Subsection 3. *See also* Rule 67-48.004(9) ("Where revised or additional information submitted by the Applicant creates an inconsistency with another item in that Application, the Applicant *shall* also be required in its submittal to make such other changes as necessary to keep the Application consistent as revised") (emphasis added). In addition, the Applicant has corrected the scrivener's error in Subsection 3. As explained above, due to that scrivener's error, Subsection 3 was inconsistent with Subsection 1 and with the various financing commitments included in the Application (as well as the obvious intent of the Applicant to commit 100 percent of the units as low-income housing) and must therefore be corrected.

BRIEF STATEMENT OF EXPLANATION FOR CURE FOR APPLICATION 2002-022CS

This correction to a scrivener's error in Subsection 3 is not prohibited by Rule 67-48.004(14)(k). That Rule generally precludes an applicant from revising the total set-aside percentage of the Total Set-Aside Commitment. However, the Rule must be interpreted in accord with the purpose of the statute. *See, e.g., Meridian v. Dept. of Health and Rehabilitative Services,* 548 So.2d 1169, 1170 (Fla. 1st DCA 1989). In this regard, ***the corporation is mandated by statute to adopt allocation procedures that will ensure the maximum use of available tax credits to encourage low income housing in the State,*** taking into consideration the timeliness of the application, the location of the proposed housing project, the relative need in the area for low-income housing and the availability of such housing, the economic feasibility of the project, and the ability of the applicant to proceed to completion of the project in the calendar year for which the credit is sought. § 420.5099(2), Fla. Stat. (2001). It would be contrary to the purpose of the statute – indeed patently unreasonable – to interpret the Rule to prohibit an applicant from correcting an inconsistency in an application resulting from a scrivener's error where the application otherwise meets the criteria for a housing credit allocation.

BRIEF STATEMENT OF EXPLANATION FOR CURE FOR APPLICATION 2002-022CS

The correction made to the scrivener's error in the "Total Set-Aside Percentage" in Subsection 3 of the Application does not constitute a revision within the meaning of the Rule since the correction has been made not to increase or decrease the total set-aside percentage commitment of the Applicant, but to correct an obvious scrivener's error in the total set-aside commitment and to cure any inconsistency created by that scrivener's error. *Cf.* Rule 67-48.004(9) ("Where revised or additional information submitted by the Applicant creates an inconsistency with another item in that Application, the Applicant *shall* also be required in its submittal to make such other changes as necessary to keep the Application consistent as revised") (emphasis added).

Moreover, the Applicant's proposed development will further the purpose of the statute. The Applicant proposes to build, and to commit to set-aside, 78 detached homes for very low income persons and families, at least 40 percent of whom will be farm workers. The need in the area for such housing greatly exceeds the availability of such housing. The Applicant has demonstrated that the housing project will be economically feasible if the corporation approves the requested allocation of housing tax credits and SAIL financing for the project. The Applicant has also demonstrated

its ability to proceed to completion of the project in the calendar year for which the credit is sought, provided that the allocation request is granted. More important, unless the Applicant is allocated the housing tax credits sought by the Application, a substantial portion of the SAIL financing and related housing tax credits prioritized by the State for allocation to commercial fishing worker and farm worker housing projects during the 2002 housing cycle in fact may not be allocated to commercial fishing worker or farm worker housing projects, thus defeating the State's priorities. *See* Florida Housing Finance Corporation, State Apartment Incentive Loan Program (SAIL), Cycle XIV (2001-2002) & Special Geographic Distribution, Notice of Funding Availability (NOFA), pp. 1-2. After taking into consideration the timeliness of the Application, as well as the other circumstances of the development, it is evident that the denial of the Applicant's request for an allocation of housing credits merely because of this scrivener's error would be contrary to the purpose and spirit of the statute.

Finally, as stated, the Applicant has revised Part III, Section E, Subsection 3, by *increasing* the Applicant's percentage commitment to serve very low income persons and families from 27 percent to 100 percent of the units, including an

additional commitment to set-aside 73 percent of the units at 50 percent AMI or less. That revision to Subsection 3 is required by Rule 67-48.004(6) to avoid an inconsistency with Subsection 2 as revised. Moreover, neither the revision to Subsection 2 nor the revision to Subsection 3 is expressly prohibited by Rule 67-48.004(14)(k), which generally prohibits a change in the total set-aside commitment, but clearly does not prohibit an increase in the percentage of set-aside units at or below the various specified AMI levels. In any event, considering the purpose of the statute to *maximize* the use of available tax credits to encourage the development of low income housing in the State, and especially considering the State's policy adopted by the corporation for approval of farm worker housing projects during the 2002 housing cycle, any interpretation of the Rules to prohibit an increase from 27 percent to 100 percent of units committed to serve very low income persons and families (at least 40 percent of whom will be farm workers) under these circumstances would appear to be arbitrary and capricious and certainly contrary to the letter and spirit of the statute. *See* § 420.5099(2), Fla. Stat. (2001).

Based on the foregoing, the Applicant has more than adequately cured any technical defect resulting from its scrivener's error in Part III, Section E.

Part V
Exhibit 50

2002 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. 2002-_____ and pertains to:

Part V Section E Subsection _____ Exhibit No. 50 (if applicable)

The attached information is submitted in response to the 2002 Universal Scoring Summary or Home Rental Scoring Summary because:

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

	2002 Universal or HOME Rental Scoring Summary	Created by:	
		Preliminary Scoring	NOPSE
☐ Reason Score Not Maxed	Item No. _____S	☐	☐
☒ Reason Threshold Failed	Item No. 2 T	☒	☐
☐ Reason for Failure to Achieve Proximity Tie-Breaker Points Selected (Universal Application Only)	Item No. _____P	☐	☐

OR

☐ II. Other changes are necessary to keep the Application consistent:

This revision or additional documentation is submitted to address an issue resulting from a "cure" to Part_____ Section _____ Subsection _____ Exhibit _____, as applicable).

REVISED

ALLIANT

June 20, 2002

Mr. Barry Goldmeier, President
Advanced-Affordable Development Corp.
General Partner of
Fifth Avenue Estates, Ltd.
C/o Advanced Housing Corporation
1101 Brickell Avenue
Suite 402B
Miami, FL 33131

Dear Barry:

Please let this letter serve as my company's reaffirmation that the Equity Investment and Bridge Construction Loan Commitments dated April 10, 2002 for Fifth Avenue Estates remains firm despite a reduction in rental revenue resulting from the increased commitment to serve very low income families from 27% to 100% of the units.

Yours truly,

Alliant Capital, Ltd. And
Alliant Mortgage Company, Inc.

By: Scott L. Kotick, Executive Vice President

ALLIANT CAPITAL, LTD.
340 ROYAL POINCIANA WAY, SUITE 305 PALM BEACH, FL 33480
561.833.5795 561.833.3694 FAX
www.alliantcapital.com

BRIEF STATEMENT OF EXPLANATION FOR CURE FOR APPLICATION 2002-022CS

Cure for Item 2T, Part V, Section E, Exhibit 50

At Item 2T of the Scoring Summary, the corporation finds that the equity financing commitment of Alliant Capital, Ltd., is not a firm commitment because the commitment is based on the Applicant setting aside 100 percent of the units for housing tax credits.[1] As correctly observed by the corporation, the Applicant had obtained financing commitments based on the assumption that the proposed development would qualify for federal low-income housing credits for 100 percent of the units ***because the Applicant had committed in the Application to set aside 100 percent of the units for housing tax credits.*** Due to a scrivener's error, however, the Application inadvertently failed to reflect in Part III, Section E, Subsection 3, the total set-aside commitment actually made by the Applicant in Part III, Section E, Subsection 1, and in the financing commitments, financial analysis, and fee waiver

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[1] In Item 2T, the corporation inadvertently refers to a commitment for equity financing made by Alliant Capital, Ltd., at "Exhibit 50" of the Application. In fact, Alliant's firm commitments for equity financing and Alliant Mortgage Company, Inc.'s, firm commitment for construction and permanent loan financing are set forth in Exhibits 48 and 49 of the Application. Exhibit 50 verifies Miami-Dade County's contribution to the proposed development's financing by a subsidized loan in the principal amount of $1,000,000, which is not contingent on any allocation of housing credits.

exhibits of the Application. The Applicant has cured the inconsistency created by the scrivener's error by revising Part III, Section E. As a result, the Applicant's financing commitments set forth in Part V, Section E, Exhibits 48 and 49, remain firm commitments. In addition, the Applicant has obtained an additional commitment letter from Alliant Capital, Ltd., reconfirming that its equity commitment for $8,438,147 remains a firm commitment even though the Applicant has increased its set-aside commitment for very low income persons and families from 27 percent to 100 percent of the units.

2002 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. 2002- 022CS and pertains to:

Part V Section E Subsection _____ Exhibit No. 48 (if applicable)

The attached information is submitted in response to the 2002 Universal Scoring Summary or Home Rental Scoring Summary because:

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

	2002 Universal or HOME Rental Scoring Summary	Created by:	
		Preliminary Scoring	NOPSE
☐ Reason Score Not Maxed	Item No. _____S	☐	☐
☒ Reason Threshold Failed	Item No. 3 T	☒	☐
☐ Reason for Failure to Achieve Proximity Tie-Breaker Points Selected (Universal Application Only)	Item No. _____P	☐	☐

OR

☐ **II.** Other changes are necessary to keep the Application consistent:

This revision or additional documentation is submitted to address an issue resulting from a "cure" to Part_____ Section _____ Subsection _____ Exhibit _____, as applicable).

REVISED

ALLIANT

June 20, 2002

Mr. Barry Goldmeier, President
Advanced-Affordable Development Corp.
General Partner of
Fifth Avenue Estates, Ltd.
C/o Advanced Housing Corporation
1101 Brickell Avenue
Suite 402B
Miami, FL 33131

Dear Barry:

Please let this letter serve as my company's reaffirmation that the Equity Investment and Bridge Construction Loan Commitments dated April 10, 2002 for Fifth Avenue Estates remains firm despite a reduction in rental revenue resulting from the increased commitment to serve very low income families from 27% to 100% of the units.

Yours truly,

Alliant Capital, Ltd. And
Alliant Mortgage Company, Inc.

By: Scott L. Kotick, Executive Vice President

ALLIANT CAPITAL, LTD.
340 ROYAL POINCIANA WAY, SUITE 305 PALM BEACH, FL 33480
561.833.5795 561.833.3694 FAX
www.alliantcapital.com

BRIEF STATEMENT OF EXPLANATION FOR CURE FOR APPLICATION 2002-022CS

Cure for Item 3T, Part V, Section E, Exhibit 48

As correctly observed by the corporation, the Applicant had obtained financing commitments based on the assumption that the proposed development would qualify for SAIL and federal low-income housing credits for 100 percent of the units *because the Applicant committed in the Application to set aside 100 percent of the units for housing tax credits.* Due to a scrivener's error, however, the Application inadvertently failed to reflect in Part III, Section E, Subsection 3, the total set-aside commitment actually made by the Applicant in Part III, Section E, Subsection 1, and in the financing commitments, financial analysis, and fee waiver exhibits of the Application. The Applicant has cured the inconsistency created by the scrivener's error by revising Part III, Section E. As a result, the Applicant's financing commitments set forth in Part V, Section E, Exhibits 48 and 49, remain firm commitments. In addition, the Applicant has obtained an additional commitment letter from Alliant Mortgage Company, Inc., reconfirming that the loan commitment for $1,500,000 remain a firm commitment even though the Applicant has increased its set-aside commitment for very low income persons and families from 27 percent to 100 percent of the units.

percent to 100 percent of the units. Based on these firm financing commitments, the Applicant will have no financial shortfall for construction or permanent financing. Accordingly, the Applicant's Exhibit 43 has not been revised.

2002 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. 2002-022CS and pertains to:

Part V Section B Subsection _____ Exhibit No. 43 (if applicable)

The attached information is submitted in response to the 2002 Universal Scoring Summary or Home Rental Scoring Summary because:

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

	2002 Universal or HOME Rental Scoring Summary	Created by:	
		Preliminary Scoring	NOPSE
☐ Reason Score Not Maxed	Item No. _____S	☐	☐
☒ Reason Threshold Failed	Item No. 4 T	☒	☐
☐ Reason for Failure to Achieve Proximity Tie-Breaker Points Selected (Universal Application Only)	Item No. _____P	☐	☐

OR

☐ II. Other changes are necessary to keep the Application consistent:

This revision or additional documentation is submitted to address an issue resulting from a "cure" to Part_____ Section _____ Subsection _____ Exhibit _____, as applicable).

BRIEF STATEMENT OF EXPLANATION FOR CURE FOR APPLICATION 2002-022CS

Cure for Item 4T, Part V, Section B, Exhibit 43

As correctly observed by the corporation, the Applicant had obtained financing commitments based on the assumption that the proposed development would qualify for SAIL and federal low-income housing credits for 100 percent of the units *because the Applicant committed in the Application to set aside 100 percent of the units for housing tax credits.* Due to a scrivener's error, however, the Application inadvertently failed to reflect in Part III, Section E, Subsection 3, the total set-aside commitment actually made by the Applicant in Part III, Section E, Subsection 1, and in the financing commitments, financial analysis, and fee waiver exhibits of the Application. The Applicant has cured the scrivener's error by revising Part III, Section E, which also cures the corporation's misunderstanding about the financing commitments set forth in Part V, Section E, Exhibits 48 and 49. In addition, the Applicant has obtained amended financing commitments from Alliant Capital, Ltd., and Alliant Mortgage Company, Inc., respectively, reconfirming that their commitments for equity financing in the amount of $8,438,147 and for debt financing in the amount of $1,500,000 remain firm commitments even though the Applicant has increased its set-aside commitment for very low income persons and families from 27

percent to 100 percent of the units. Based on these firm financing commitments, the Applicant will have no financial shortfall for construction or permanent financing. Accordingly, the Applicant's Exhibit 43 has not been revised.

2002 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. 2002- 022CS and pertains to:

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

The attached information is submitted in response to the 2002 Universal Scoring Summary or Home Rental Scoring Summary because:

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

	2002 Universal or HOME Rental Scoring Summary	Created by:	
		Preliminary Scoring	NOPSE
☐ Reason Score Not Maxed	Item No. _____S	☐	☐
☒ Reason Threshold Failed	Item No. 5 T	☐	☒
☐ Reason for Failure to Achieve Proximity Tie-Breaker Points Selected (Universal Application Only)	Item No. _____P	☐	☐

OR

☐ **II.** Other changes are necessary to keep the Application consistent:

This revision or additional documentation is submitted to address an issue resulting from a "cure" to **Part**_____ **Section** _____ **Subsection** _____ **Exhibit** _____, as applicable).

BRIEF STATEMENT OF EXPLANATION FOR CURE FOR APPLICATION 2002-022CS

Cure for Item 5T, Part III, Section C, Subsection 2

An enlarged and thus more legible copy of the contract is enclosed.

6. EVIDENCE OF TITLE:

A. DEFINED: Evidence Of Title shall be defined as

(1) AN EXISTING ABSTRACT OF TITLE, prepared by a reputable and existing abstract firm (if firm is not existing, then abstract must be certified as correct by an existing firm), purporting to be an accurate synopsis of the instruments affecting the title to the Real Property recorded in the public records of the county wherein the Real Property is located, which shall commence with the earliest public records ("Abstract"); or

(2) IF AN EXISTING ABSTRACT OF TITLE IS NOT AVAILABLE, Seller shall provide an existing or prior owner's title insurance policy qualified for use as a title base for reissuance of coverage on the Real Property at the Purchase Price ("Prior Policy") together with copies of all exceptions thereto and, at Seller's option, either (a) an abstract continuation from the effective date of the Prior Policy, or (b) a computer title search printout and name search printout, from the effective date of the Prior Policy recited in the Prior Policy and in the computer searches; or

(3) IF NEITHER AN EXISTING ABSTRACT NOR A PRIOR POLICY IS AVAILABLE: Seller shall provide, at Seller's option, either, (a) alternative title evidence acceptable to Buyer's closing agent, or (b) a standard title insurance commitment issued by a Florida licensed title insuror agreeing to issue to Buyer, upon recording of the deed to Buyer, an owners' policy of title insurance in the amount of the Purchase Price, subject only to those title exceptions set forth in this Contract or which shall be discharged by Seller at or before Closing. If Seller provides a title insurance commitment, Seller shall pay the premium for the owner's title insurance policy.

B. CERTIFICATION; MARKETABILITY: Evidence Of Title shall be certified or brought current through a date not more than 30 days prior to Closing. Evidence Of Title shall show a marketable title of record in Seller, in accordance with current title standards adopted by the Florida Bar, subject only to those title exceptions permitted by this Contract or which shall be discharged by Seller at or before Closing. At Closing, Seller shall convey to Buyer a marketable title of record as described in this paragraph.

C. DELIVERY; EXAMINATION: Seller, at Seller's expense, shall deliver Evidence Of Title to Buyer at least 15 days prior to Closing and if Evidence Of Title is not received by Buyer as required, Buyer may delay the Closing so that Buyer shall have up to 15 days from date of receipt of Evidence of Title to examine same. Buyer shall examine Evidence Of Title within 15 days after receipt thereof, and Buyer shall, within the same 15 day period, notify Seller in writing of any title defects. If any title defects render the title unmarketable, Seller shall use diligent effort to cure such defects (including the bringing of necessary lawsuits) within 90 days from receipt of such notice. If Seller shall fail to cure such defects within the 90 day period, Buyer shall have the option of: (1) accepting title as it is; or (2) demanding a refund of the Deposit, in which case, the Deposit shall forthwith be returned to Buyer, and Buyer and Seller shall be relieved, as to each other, of all obligations under this Contract. Upon Closing, the Evidence Of Title shall become the property of Buyer.

9. RESTRICTIONS AND EASEMENTS; BUILDING AND ZONING: (A) Buyer shall take title subject to: (1) zoning restrictions imposed by governmental authority; (2) restrictions and matters appearing on the plat, or otherwise common to the subdivision; (3) taxes for year of Closing; (4) assumed mortgages and purchase money mortgages, if any; (5) restrictions, utility easements or other matters which do not render the title unmarketable or adversely affect the present use of the Property. (B) Seller warrants that, at the time of Closing, there shall be no violation of building or zoning codes. If the Property is in violation of such codes, Seller shall pay for the expenses required to bring the Property into compliance with such codes at time of Closing, subject to Subparagraph 12.E. below. This warranty shall not survive Closing.

10. SURVEY: Buyer, within the time allowed for delivery of Evidence Of Title and examination thereof, may have the Real Property surveyed at Buyer's expense. If the survey shows any encroachment on the Real Property or that the improvements presumed to be located on the Real Property in fact encroach on setback lines, easements, or lands of others, or violate any restriction, Contract covenant, or applicable governmental regulation, the same shall be treated as a title defect which renders title unmarketable.

11. INGRESS AND EGRESS: Seller covenants and warrants that there is ingress and egress to the Property over public roads.

12. INSPECTIONS: The parties acknowledge that the Property is vacant land. Buyer may at its own cost inspect the property and All reports, repairs and/or treatments described in Subparagraph C below shall be performed by a person or firm holding an appropriate Florida license. All reports, repairs and treatments described in Subparagraph C below shall be performed by an appropriately licensed Florida contractor. Buyer may have repairs and treated items reinspected prior to Closing. Should the Property suffer any damage as a result of any inspections performed at Buyer's request, Buyer shall be solely responsible for repair of any such damage and restoration of the Property. Seller shall provide access and utilities to the Property for all inspections.

A. TERMITES: (1) If the report discloses evidence of live termites, other wood-boring insect infestation, or wood destroying organisms (collectively, "Infestation"), Seller shall be required to have said Infestation chemically treated or repaired prior to Closing by a person or firm chosen by Seller, subject to Subparagraph E below. (2) If the report discloses evidence of prior Infestation, then Seller shall have the affected area chemically treated or repaired prior to Closing by a person or firm chosen by Seller, subject to Subparagraph E below, unless Seller furnishes Buyer with a certificate of chemical treatment by a person or firm within five (5) years of the Effective Date and a current transferrable guarantee. (3) If the report discloses damage from Infestation, Seller shall pay for the cost of such repairs, subject to Subparagraph E. below.

B. ROOF: If the report discloses evidence of existing leaks, or damage to facia, soffit, sheathing or rafters, Seller shall pay for the required repairs by a person or firm chosen by Seller, subject to Subparagraph E below.

C. OTHER INSPECTIONS: If the report discloses functional defects (as distinguished from aesthetic defects) with respect to air conditioning and heating systems, electrical systems, alarm systems, plumbing systems, septic tank, appliances, machinery, sprinkler systems, seawall, pool, structural, radon and environmental inspections, Seller shall pay for the required repairs by a person or firm chosen by Seller, subject to Subparagraph E below, to place such inspected items in working condition or free from contamination, as appropriate, prior to Closing.

D. SECOND INSPECTIONS: Within 5 days of Seller's receipt of Buyer's written inspection reports, Seller shall have the right, at Seller's expense, to obtain, and deliver to Buyer, a second written inspection report. In the event Buyer's and Seller's respective reports do not agree and the parties cannot mutually resolve their differences, then Buyer and Seller shall agree on a third inspector and obtain a third written report within 3 days, which report shall be binding upon the parties. The cost of a third inspector shall be borne equally between the Buyer and Seller.

E. LIMITATION: In no event shall Seller's total liability under Paragraph 9.(B) and Subparagraphs A, B, C and D above exceed four percent (4%) of the Purchase Price. If the total cost of all required expenses, treatment and repairs does exceed said percentage, Buyer may elect to pay such excess. Should Buyer elect not to pay the excess, Seller may pay the excess or cancel the Contract by delivery of written notice to Buyer or his agent, and the Deposit shall forthwith be returned to Buyer, and Buyer and Seller shall be relieved, as to each other, of all obligations under this Contract.

F. WALK-THROUGH: Within forty-eight (48) hours prior to Closing, Buyer shall be entitled to inspect the Property to ensure that all items included in the sale are on the Property, that all required repairs have been made, and that the Property has been maintained, including but not limited to the lawn, shrubbery and pool, if any, in the condition as contracted, ordinary wear and tear excepted.

G. WAIVER OF BUYER'S INSPECTION RIGHTS: Buyer's failure to provide written inspection reports in accordance with this paragraph shall be deemed a waiver of Buyer's inspection rights hereunder.

8. EVIDENCE OF TITLE:

A. DEFINED: Evidence Of Title shall be defined as

(1) AN EXISTING ABSTRACT OF TITLE, prepared by a reputable and existing abstract firm (if firm is not existing, then abstract must be certified as correct by an existing firm), purporting to be an accurate synopsis of the instruments affecting the title to the Real Property recorded in the public records of the county wherein the Real Property is located, which shall commence with the earliest public records ("Abstract"), or

(2) IF AN EXISTING ABSTRACT OF TITLE IS NOT AVAILABLE, **Seller** shall provide an existing or prior owner's title insurance policy qualified for use as a title base for reissuance of coverage on the Real Property at the Purchase Price ("Prior Policy") together with copies of all exceptions thereto and, at **Seller's** option, either (a) an abstract continuation from the effective date of the Prior Policy, or (b) a computer title search printout and name search printout, from the effective date of the Prior Policy and certified to **Buyer's** closing agent, together with copies of all documents recited in the Prior Policy and in the computer searches; or

(3) IF NEITHER AN EXISTING ABSTRACT NOR A PRIOR POLICY IS AVAILABLE; **Seller** shall provide, at **Seller's** option, either (a) alternative title evidence acceptable to **Buyer's** closing agent, or (b) a standard title insurance commitment issued by a Florida licensed title insuror agreeing to issue to **Buyer**, upon recording of the deed to **Buyer**, an owners' policy of title insurance in the amount of the Purchase Price, subject only to those title exceptions set forth in this Contract or which shall be discharged by **Seller** at or before Closing. If **Seller** provides a title insurance commitment, **Seller** shall pay the premium for the owner's title insurance policy.

B. CERTIFICATION; MARKETABILITY: Evidence Of Title shall be certified or brought current through a date not more than 30 days prior to Closing. Evidence Of Title shall show a marketable title of record in **Seller**, in accordance with current title standards adopted by the Florida Bar, subject only to those title exceptions permitted by this Contract or which shall be discharged by **Seller** at or before Closing. At Closing, **Seller** shall convey to **Buyer** a marketable title of record as described in this paragraph.

C. DELIVERY; EXAMINATION: **Seller**, at **Seller's** expense, shall deliver Evidence Of Title to **Buyer** at least 15 days prior to Closing and if Evidence Of Title is not received by **Buyer** as required, **Buyer** may delay the Closing so that **Buyer** shall have up to 15 days from date of receipt of Evidence of Title to examine same. **Buyer** shall examine Evidence Of Title within 15 days after receipt thereof, and **Buyer** shall, within the same 15 day period, notify **Seller** in writing of any title defects. If any title defects render the title unmarketable, **Seller** shall use diligent effort to cure such defects (including the bringing of necessary lawsuits) within 90 days from receipt of such notice. If **Seller** shall fail to cure such defects within the 90 day period, **Buyer** shall have the option of: (1) accepting title as it is, or (2) demanding a refund of the Deposit, in which case, the Deposit shall forthwith be returned to **Buyer**, and **Buyer** and **Seller** shall be relieved, as to each other, of all obligations under this Contract. Upon Closing, the Evidence Of Title shall become the property of **Buyer**.

9. RESTRICTIONS AND EASEMENTS; BUILDING AND ZONING: (A) **Buyer** shall take title subject to: (1) zoning restrictions imposed by governmental authority; (2) restrictions and matters appearing on the plat or otherwise common to the subdivision; (3) taxes for year of Closing; (4) assumed mortgages and purchase money mortgages, if any; (5) restrictions, utility easements or other matters which do not render the title unmarketable or adversely affect the present use of the Property. (B) **Seller** warrants that, at the time of Closing, there shall be no violation of building or zoning codes. If the Property is in violation of such codes, **Seller** shall pay for the expenses required to bring the Property into compliance with such codes at time of Closing, subject to Subparagraph 12.E. below. This warranty shall not survive Closing.

10. SURVEY: **Buyer**, within the time allowed for delivery of Evidence Of Title and examination thereof, may have the Real Property surveyed at **Buyer's** expense. If the survey shows any encroachment on the Real Property or that the improvements presumed to be located on the Real Property in fact encroach on setback lines, easements, or lands of others, or violate any restriction, Contract covenant, or applicable governmental regulation, the same shall be treated as a title defect which renders title unmarketable.

11. INGRESS AND EGRESS: **Seller** covenants and warrants that there is ingress and egress to the Property over public roads.

12. INSPECTIONS: The parties acknowledge that the Property is vacant land. Buyer may at its own cost inspect the Property and All reports, repairs and/or treatments described in Subparagraphs A, B and C below shall be performed by a person or firm holding an appropriate Florida license. All reports, repairs and/or treatments described in Subparagraph C below shall be performed by a person or firm holding an appropriately licensed Florida contractor. **Buyer** may have repairs and treated items reinspected prior to Closing. Should the Property suffer any damage as a result of any inspections performed at **Buyer's** request, **Buyer** shall be solely responsible for repair of any such damage and restoration of the Property. **Seller** shall provide access and utilities to the Property for all inspections.

A. TERMITES: (1) If the report discloses evidence of live termites, other wood-boring insect infestation, or wood destroying organisms (collectively, "Infestation"), **Seller** shall be required to have said Infestation chemically treated or repaired prior to Closing by a person or firm chosen by **Seller**, subject to Subparagraph E below. (2) If the report discloses evidence of prior Infestation, then **Seller** shall have the affected area chemically treated or repaired prior to Closing by a person or firm chosen by **Seller**, subject to Subparagraph E below, unless **Seller** furnishes **Buyer** with a certificate of chemical treatment by a person or firm within five (5) years of the Effective Date and a current transferrable guarantee. (3) If the report discloses damage from Infestation, **Seller** shall pay for the cost of such repairs, subject to Subparagraph E. below.

B. ROOF: If the report discloses evidence of existing leaks, or damage to facia, soffit, sheathing or rafters, **Seller** shall pay for the required repairs by a person or firm chosen by **Seller**, subject to Subparagraph E below.

C. OTHER INSPECTIONS: If the report discloses functional defects (as distinguished from aesthetic defects) with respect to air conditioning and heating systems, electrical systems, alarm systems, plumbing systems, septic tank, appliances, machinery, sprinkler systems, seawall, pool, structural, radon and environmental inspections, **Seller** shall pay for the required repairs by a person or firm chosen by **Seller**, subject to Subparagraph E below, to place such inspected items in working condition or free from contamination, as appropriate, prior to Closing.

D. SECOND INSPECTIONS: Within 5 days of **Seller's** receipt of **Buyer's** written inspection reports, **Seller** shall have the right, at **Seller's** expense, to obtain, and deliver to **Buyer**, a second written inspection report. In the event **Buyer's** and **Seller's** respective reports do not agree and the parties cannot mutually resolve their differences, then **Buyer** and **Seller** shall agree on a third inspector and obtain a third written report within 3 days, which report shall be binding upon the parties. The cost of a third inspector shall be borne equally between the **Buyer** and **Seller**.

E. LIMITATION: In no event shall **Seller's** total liability under Paragraph 9.(B) and Subparagraphs A, B, C and D above exceed four percent (4%) of the Purchase Price. If the total cost of all required expenses, treatment and repairs does exceed said percentage, **Buyer** may elect to pay such excess. Should **Buyer** elect not to pay the excess, **Seller** may pay the excess or cancel the Contract by delivery of written notice to **Buyer** or his agent, and the Deposit shall forthwith be returned to **Buyer**, and **Buyer** and **Seller** shall be relieved, as to each other, of all obligations under this Contract.

F. WALK-THROUGH: Within forty-eight (48) hours prior to Closing, **Buyer** shall be entitled to inspect the Property to ensure that all items included in the sale are on the Property, that all required repairs have been made, and that the Property has been maintained, including but not limited to the lawn, shrubbery and pool, if any, in the condition as contracted, ordinary wear and tear excepted.

G. WAIVER OF BUYER'S INSPECTION RIGHTS: **Buyer's** failure to provide written inspection reports in accordance with this paragraph shall be deemed a waiver of **Buyer's** inspection rights hereunder.

13. EXISTING MORTGAGES: Seller shall obtain, and furnish to Buyer no later than 10 days prior to Closing: (a) an estoppel letter for each existing mortgage encumbering the Property, and (b) for equity line loans, a written statement from the mortgagee showing that the account has been closed in accordance with mortgagee's requirements to facilitate payoff at Closing. Any prepayment penalties charged by mortgagees shall be paid by Seller.

14. POSSESSION; LEASES: Unless otherwise specified in this Contract: (a) Seller warrants and represents that there are no parties in possession or with a right to possession of the Property other than Seller, and (b) Seller shall deliver possession of the Property to Buyer at the time of delivery to Seller of the proceeds of the sale in accordance with Paragraph 20. If this Contract specifies that there are parties in possession or with a right to possession who shall retain such possession or right to possession after Closing and delivery to Seller of the proceeds of sale, then: (c) Seller shall, no later than 15 days after Effective Date, furnish to Buyer copies of all written leases and estoppel letters from each tenant specifying the nature and duration of the tenants occupancy, rental rates, advance rent and security deposits paid by tenant, and (d) at Closing: (1) the rent shall be prorated; (2) any security deposit and advance rent shall be paid to Buyer; and (3) all original leases shall be assigned and delivered to Buyer.

15. INSURANCE: The premium on any hazard insurance and flood insurance policies in force covering improvements on the Property shall be prorated between parties, or the policies may be cancelled as Buyer may elect. If insurance is to be prorated, Seller shall, on or before Closing, furnish Buyer all insurance policies or copies thereof. Seller shall not be responsible if the insuror cancels the policies

16. ~~RISK OF LOSS: If the improvements are damaged by fire or other casualty before delivery of the deed and are be restored to substantially the same condition as now existing within a period of 60 days~~ thereafter, Seller may restore the improvements and the Closing shall be extended accordingly. If Seller fails to so restore the Property, Buyer shall have the option of (a) taking the Property in "as is" condition together with the insurance proceeds, if any, or (b) cancelling this Contract and the Deposit shall forthwith be returned to Buyer, and Buyer and Seller shall be relieved, as to each other, of all obligations under this Contract.

17. MAINTENANCE: Between the Effective Date and the Closing, the Property, including lawn, shrubbery and pool, if any, shall be maintained by Seller in the condition as it exists as of the Effective Date ~~ordinary wear and tear excepted~~.

18. ESCROW AGENT: Any escrow agent ("Agent") including the Escrow Agent for the Deposit, receiving funds or equivalent ("Escrow Funds"), is authorized to receive the Escrow Funds, hold the Escrow Funds in escrow, and, subject to clearance, disburse the Escrow Funds according to this Contract. If Agent is in doubt as to Agent's duties or liabilities under this Contract, Agent may, at Agent's option (a) continue to hold the Escrow Funds until Buyer and Seller mutually agree to its disbursement or until a judgement of a court of competent jurisdiction shall determine the rights of the parties, or (b) place the Escrow Funds into the registry of the circuit court having jurisdiction of the dispute and interplead the parties having an interest in the Escrow Funds. Upon notifying all interested parties of such action, all liability on the part of Agent shall fully terminate, except to the extent of accounting for the Escrow Funds. If Agent is a licensed real estate broker, Agent will comply with the provisions of Chapter 475 F. S. (1991), as amended. Any suit between Buyer and Seller wherein Agent is made a party because of acting as Agent hereunder, or in any suit wherein Agent places the Escrow Funds into the registry of the court and interpleads the interested parties, Agent shall recover reasonable attorney's fees and costs incurred, which fees and costs shall be paid from and out of the Escrow Funds and charged and awarded as court costs in favor of the prevailing party. All parties agree that Agent shall not be liable to any party or person for misdelivery to Buyer or Seller of the Escrow Funds unless such misdelivery is due to willful breach of this Contract or gross negligence of Agent.

19. CLOSING DOCUMENTS: Seller shall deliver to Buyer at Closing: (a) statutory warranty, trustee's, personal representative's or guardian's deed, as appropriate to the status of Seller, free and clear of all reverter clauses and reservations for drainage, phosphate, minerals, metals, petroleum and road rights-of-way, whether in favor of an individual or governmental unit (waiver of right of entry from governmental unit shall be sufficient), but subject to matters contained in Paragraph 9.(A); (b) Bill of Sale conveying Personality; (c) affidavit attesting to the absence of liens or potential lienors known to Seller, gap affidavit, and affidavit of possession; (d) IRS form 1099b or such other forms as may be required by federal government from time to time; (e) FIRPTA affidavits or exemption certificates as may be required to exempt Seller or any agent from the income tax withholding requirements or Seller shall authorize Buyer to withhold the necessary amount.

20. CLOSING PROCEEDS; ESCROW AND DELIVERY: The proceeds of the sale, including the Deposit, shall be held in escrow by Seller's attorney, or by such other mutually acceptable escrow agent, for a period of not longer than 7 days after Closing, to allow Evidence of Title to be continued at Buyer's expense, to show record title in Buyer without any intervening liens, encumbrances, or defects which would render Buyer's title unmarketable. If title is rendered unmarketable through no fault of Buyer, Buyer shall, within 7 day period, notify Seller and the escrow agent in writing of the defect and Seller shall have 30 days from date of receipt of such notification to cure said defect. If Seller fails to timely cure said defect, all monies paid hereunder, including the Deposit, shall, upon written demand therefore and within 5 days thereafter, be returned to Buyer by escrow agent and, simultaneously with such repayment, Buyer shall vacate the Property, reconvey same to Seller by special warranty deed, and return the Personality. If Buyer fails to timely notify Seller of any such title defects, Buyer shall take title as is, waiving all rights against Seller as to such intervening defect except as may be available to Buyer by virtue of warranties, if any, contained in the deed. Buyer shall be entitled to possession of the Property upon delivery to Seller of the proceeds of the sale, which shall be at Closing if the escrow of closing proceeds is waived. The escrow of closing proceeds required by this Paragraph shall be waived if the Buyer receives title insurance against adverse matters pursuant to Section 627.7841, F.S. (1991), as amended. Seller shall have the right to receive Seller's net proceeds of sale in cashier's checks issued by local financial institutions if Seller gives Buyer written demand for such checks at least 3 days prior to Closing.

21. EXPENSES: State documentary stamps and surtax on deed and the cost or recording any corrective instruments shall be paid by Seller. Documentary stamps to be affixed to the note secured by the purchase money mortgage, intangible tax on the purchase money mortgage and the cost of recording the deed and purchase money mortgage shall be paid by Buyer.

22. PRORATIONS: All prorations shall be made as of midnight of the day preceding the Closing. Real and personal property taxes shall be prorated based on the current year's tax with due allowance being made for the maximum allowable discount and for homestead or other exemption if allowed for said year. If Closing occurs at a date when the current year's assessment is not available, then taxes shall be prorated based on the prior year's tax. However, if there are completed improvements on the property by January 1st of the year of Closing which improvements were not in existence on January 1st of the prior year, then the taxes shall be prorated based upon the prior year's millage and at an equitable assessment to be agreed upon between the parties. However, any tax proration based on an estimate may at the request of either party be subsequently readjusted upon receipt of the tax bill, and a statement to that effect will be set forth in the closing statement. Waste fees, association fees, expenses and revenues of the Property shall also be prorated.

23. SPECIAL ASSESSMENT LIENS: Certified, confirmed and ratified special assessment liens as of Closing are to be paid by Seller. Pending liens as of Closing shall be assumed by Buyer, provided, however, that where the improvement has been substantially completed as of the Effective Date, such pending lien shall be considered as certified or ratified and Seller shall, at Closing, be charged an amount equal to the last estimate by the public body of the assessment for the improvement.

24. JOINDER OF SPOUSE: In the event there is failure of a spouse of Buyer or Seller to join in the execution of any documents required by a mortgage lender due to Florida homestead law considerations, whether in the case of a new mortgage or an assumption of an existing loan, such failure shall be deemed a default under this Contract.

25. PERSONS BOUND; GENDER; FLORIDA LAW: The benefits and obligations of this Contract shall enure to and bind the respective heirs, personal representatives, successors and assigns of the parties hereto. Whenever used, the singular shall include the plural, the plural the singular, and the use of any gender shall include all genders. This Contact shall be governed by the law of the State of Florida.

26. DEFAULT: If Buyer fails to perform this Contract within the time specified (including the payment of the Deposit), the Deposit made, or agreed to be made by Buyer, may be retained or recovered by or for the account of Seller as agreed upon liquidated damages as consideration for the execution of this Contract and in full settlement of Seller's claims, whereupon Buyer and Seller shall be relieved, as to each other, of all obligations under this Contract; or Seller, at Seller's option, may proceed in equity to enforce Seller's rights under this Contract. If, for any reason other than failure of Seller to make Seller's title marketable after diligent effort, Seller fails, neglects or refuses to perform this Contract, Buyer may seek specific performance or elect to receive the return of Buyer's Deposit without thereby waiving any action for damages resulting from Seller's breach.

27. ATTORNEY'S FEES AND COSTS: In connection with any litigation (including all appeals and interpleaders) involving the Seller, Buyer, Listing Broker, cooperating SubAgent of Broker, Buyer's Broker, or Escrow Agent, arising out of this Contract, the prevailing party shall be entitled to recover all costs incurred, including reasonable attorney's fees at trial and appellate levels.

28. ASSIGNABILITY: The Buyer may not assign this Contract without the written consent of Seller.

29. TIME: Time is of the essence for all provisions of this Contract.

30. ENTIRE AGREEMENT; TYPEWRITTEN OR HANDWRITTEN PROVISIONS; NOT RECORDABLE: This Contract, including any exhibits and Riders attached, sets forth the entire agreement between Buyer and Seller and contains all of the covenants, promises, agreements, representations, conditions and understandings. Typewritten or handwritten provisions inserted in this Contract or attached hereto as exhibits or Riders shall control all printed provisions in conflict therewith. Neither this Contract, nor any notice of it, shall be recorded in any public records.

31. RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

32. WARRANTY: Seller warrants and represents that there are no facts known to Seller which materially affect the value or desirability of the Real Property which are not readily observable by Buyer or which have not been disclosed to Buyer.

33. DISCLOSURES: BUYER ACKNOWLEDGES RECEIPT OF THE AGENCY, RADON, COMPENSATION, AND REAL PROPERTY SALES DISCLOSURES . . . . . BUYERS INITIALS: _____

THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT.

IF NOT FULLY UNDERSTOOD, SEEK THE ADVICE OF AN ATTORNEY PRIOR TO SIGNING.

BUYER: _____ (Seal)

Date last initialed by Buyer, if applicable: 7-10-01

Date Signed by BUYER: July 10, 2001

Fifth Avenue Estates, Ltd. by
Tax I.D. # Barry Goldmeier, President of
Advanced-Affordable Development Corp.
Address: General Partner 1101 Brickell Ave#402B, Miami, Fl. 33131

_____ (Seal)

Tax I.D. # _____

34. **BROKERAGE FEE: Seller** acknowledges that this Contract has been read in its entirety and agrees to sell the Property for the terms and conditions stated in this Contract, and does hereby approve, ratify and confirm the Contract in all respects. The undersigned **Seller** acknowledges the employment of the Broker(s) named herein as sole agent(s) of the **Seller** (or of the **Buyer**, if so designated) and agrees to pay said Broker(s) 10 % of the Purchase Price or $ 34,100 (plus service sales tax, if applicable) for services performed in finding a Buyer ready, willing and able to purchase the Property pursuant to this Contact. Said fee is payable at time of Closing of this transaction. The provisions of this paragraph shall survive the Closing. If **Buyer** fails to perform and the Deposit is retained, 50% thereof, but not exceeding the Broker's fee provided above, shall be paid to Broker as full consideration for Broker's services, and the balance shall be paid to **Seller**. If the transaction shall not close because of refusal or failure of the **Seller** to perform, or, if **Buyer** and **Seller** shall mutually rescind this Contract without Broker's consent, **Seller** shall pay the full fee to Broker upon demand. In any litigation arising out of the Contract concerning the Broker's fee, the prevailing party shall recover reasonable attorney's fees and costs, including at trial and appellate level.

SELLER: Alan Meyer Alan Meyer (Seal)

Date last initialed by Seller, if applicable: July 12, 2001

Date Signed by Seller: Alan Meyer 7/12/2001

Tax I.D. # _____

Address: 5635 Park Wood Circle
Bedford, OH 44022

_____ (Seal)

Tax I.D. # _____

35. **BROKERS:** The Broker(s) named below constitute the agent(s) of the **Seller** (or of the **Buyer**, if so designated) regarding the sale of the Property, and each Broker hereto will hold the other Broker harmless from any claims for brokerage fees arising from his/her dealings with any Broker not specified herein. By their execution, the Broker(s) agree to the brokerage fee specified herein and to the proportions set out adjacent to their names.

Keyes 75 %
Firm name of Listing Broker

By: _____
(Authorized Signatory)

Goldmeier & Associates 25 %
Firm name of Selling Broker as (check one):
☐ Cooperating Sub-agent of Listing Broker; or ☒ Buyer's Broker

By: _____
(Authorized Signatory)

36. **DEPOSIT RECEIPT:** The Deposit (subject to clearance) was received on _____ and shall be held and disbursed according to this Contract by the undersigned Escrow Agent.

_____ _____
Firm name of Escrow Agent Telephone:

By: _____
(Authorized Signatory)

DEVELOPMENT COST PRO FORMA

NOTES:
(1) For HC these fees must be included but may be included as an eligible cost only at the Applicant's discretion. Applicant should rely on the advice of a tax professional. (See Fees section in Universal Application Package.)
(2) Developer fee may not exceed the limits established in Rules 67-21 and 67-48, F.A.C. Any portion of the fee that has been deferred must be included in Development Cost.
(3) Developer fee on Existing Buildings to be Acquired/Owned may not exceed 4% of the cost of the building ONLY (exclusive of land)
(4) HC Applicants must use Columns 1, 2 and 3 to list costs. Applicants seeking ONLY SAIL or ONLY MMRB should list all costs in Columns 2 and 3.
(5) General Contractor's fee is limited to 14% of actual construction cost. General Contractor's fee must be disclosed.
(6) In reference to impact fees, a tax professional's advice should be sought regarding eligibility of these fees.
(7) Hard and soft cost contingency amounts cannot exceed the limits stated in Rules 67-21and 67-48, F.A.C.

USE THE DETAIL/EXPLANATION SHEET FOR EXPLANATION OF * ITEMS. ATTACH ADDITIONAL SHEETS IF NECESSARY.

	1 ELIGIBLE (HC ONLY)	2 HC-INELIGIBLE; OR SAIL/Bonds	3 TOTAL (SAIL, Bonds & HC)
PROJECT COST			
Actual Construction Cost			
Demolition	0.00	0.00	[redacted]
***Off-site (explain in detail)**		50,000.00	[redacted]
New Rental Units	6,185,454.23		[redacted]
Rehab of Existing Rental Units	0.00	0.00	[redacted]
Accessory Buildings	10,000.00	0.00	[redacted]
Recreational Amenities	160,000.00	0.00	[redacted]
Rehab of Existing Common Areas	0.00	0.00	[redacted]
***Other (explain in detail)**	25,000.00	0.00	[redacted]
A1. Actual Construction Cost	$ [redacted]	$ [redacted]	$ [redacted]
***Contingency (explain in detail)**	300,000.00	0.00	[redacted]
A1.1 Sub-Total	$ [redacted]	$ [redacted]	$ [redacted]
A1.2. General Contractor Fee(5) (max. 14% of A1. column 3)	$ 780,000.00	$ 0.00	$ [redacted]
A1.3. Total Actual Construction Cost	$ [redacted]	$ [redacted]	$ [redacted]
Financial Cost			
Construction Loan			
Cr. Enhancement	0.00	0.00	[redacted]

	1 ELIGIBLE (HC ONLY)	2 HC-INELIGIBLE; OR SAIL/Bonds	3 TOTAL (SAIL, Bonds &/or HC)
Construction Loan Interest	0.00	0.00	[redacted]
Construction Loan Orig. Fee	0.00	0.00	[redacted]
Bridge Loan Interest	159,650.00	0.00	159,650.00
Bridge Loan Orig. Fee	15,000.00	0.00	15,000.00
Permanent Loan Cr. Enhancement	[redacted]	0.00	[redacted]
Permanent Loan Orig. Fee	[redacted]	0.00	[redacted]
Reserves Required by Lender	[redacted]	10,000.00	10,000.00
A2. Total Financial Cost	$ [redacted]	$ [redacted]	$ [redacted]
General Development Costs			
Accounting Fees	10,000.00	0.00	[redacted]
Appraisal	6,000.00	0.00	[redacted]
Architect's Fee - Design	120,000.00	0.00	[redacted]
Architect's Fee - Supervision	30,000.00	0.00	[redacted]
Builder's Risk Insurance	30,000.00	0.00	[redacted]
Building Permit	118,000.00	0.00	[redacted]
Brokerage Fees - Land	[redacted]	0.00	[redacted]
Brokerage Fees - Buildings	[redacted]	0.00	[redacted]
Closing Costs - Construction Loan	15,000.00	0.00	[redacted]
Closing Costs - Permanent Loan	[redacted]	0.00	[redacted]
Engineering Fee	40,000.00	0.00	[redacted]
Environmental Report	6,000.00	0.00	[redacted]
FHFC Administrative Fee (1)	90,350.00	0.00	[redacted]
FHFC Application Fee (1)	2,000.00	0.00	[redacted]
FHFC Compliance Fee	[redacted]	1,829.00	[redacted]
FHFC Credit Underwriting Fee(1)	9,000.00	0.00	[redacted]

	1 ELIGIBLE (HC ONLY)	2 HC-INELIGIBLE; OR SAIL/Bonds	3 TOTAL (SAIL, Bonds &/or HC)
***Impact Fees (list in detail)**	240,000.00	0.00	240,000.00
Inspection Fees	30,000.00	0.00	30,000.00
Insurance	10,000.00	0.00	10,000.00
Legal Fees	80,000.00	0.00	80,000.00
Market Study	2,000.00	0.00	2,000.00
Marketing/Advertising	[redacted]	20,000.00	20,000.00
Property Taxes	15,000.00	0.00	15,000.00
Soil Test Report	10,000.00	0.00	10,000.00
Survey	50,000.00	0.00	50,000.00
Title Insurance	15,000.00	0.00	15,000.00
Utility Connection Fee	207,168.00	0.00	207,168.00
***Other (explain in detail)**	0.00	0.00	[redacted]
***Contingency (explain in detail)**	50,000.00	1,000.00	[redacted]
A3. TOTAL GEN. DEVL. COST	$ [redacted]	$ [redacted]	$ [redacted]
B. DEVELOPMENT COST (A1.3+A2+A3)	$ [redacted]	$ [redacted]	$ [redacted]
C. DEVELOPER'S FEE (2)	$ 1,400,000.00	$ 0.00	$ [redacted]
ACQUISITION COST OF EXISTING DEVELOPMENTS (EXCLUDING LAND)			
Existing Buildings	0.00	0.00	[redacted]
Developer fee on Existing Buildings (3)	0.00	0.00	[redacted]
***Other (explain in detail)**	0.00	0.00	[redacted]
D. TOTAL ACQUISITION COST	$ [redacted]	$ [redacted]	$ [redacted]
LAND COST			
Land	[redacted]	385,000.00	385,000.00
E. TOTAL LAND COST	$ [redacted]	$ 385,000.00	$ 385,000.00
F. TOTAL DEVELOPMENT COST (B+C+D+E)	$ 10,220,672.23	$ 467,820.00	$ 10,688,451.23

MIAMI-DADE COUNTY, FLORIDA

MIAMI-DADE

STEPHEN P. CLARK CENTER

OFFICE OF COUNTY MANAGER
SUITE 2910
111 N.W. 1st STREET
MIAMI, FLORIDA 33128-1994
(305) 375-5311

April 9, 2002

Mr. Barry Goldmeier
Fifth Avenue Estates, Ltd.
1101 Brickell Avenue, Suite 402B
Miami, Florida 33131

Re: Fifth Avenue Estates
Miami-Dade County

Dear Mr. Goldmeier:

This letter is to confirm the local government contribution for the above referenced project. According to your current contract, you have been awarded HOME funds for a 78-unit project. Pursuant to Miami-Dade County Ordinances #88-112, 90-26, 90-31 and 90-59, the waiver of Miami-Dade County impact fees (i.e. parks, road, police and fire) for this affordable housing development will result in a savings of $181,454.23.

This commitment does not expire before December 31, 2002.

If you have any questions regarding this local government contribution, please do not hesitate to contact Tawana Thompson, director, Development and Loan Administration at (305) 250-5116.

Sincerely,

Steve Shiver
County Manager

MARCH 2002

FIFTH AVENUE ESTATES, LTD.
Fifth Avenue Estates
SW 180th Avenue at 358th Street, Miami, FL 33034
78Units

Exhibits: 33, 34, 36, 37, 38 & 39
(W of 77 Ave. & S of SW 184St.)

	Gross Waiver Per Unit	% Admin. Charge	Less Contribution	Total Per Unit
Road (2%)	$1,307.00	2.00%	$26.14	$1,280.86
Fire (4%)	$176.73	4.00%	$7.07	$169.66
Police (5%)	$101.29	5.00%	$5.06	$96.23
Park (7 1/2%)	$842.80	7.50%	$63.21	$779.59
	$2,427.82		*$101.48*	*$2,326.34*
78				
Total Waivers				***$181,454.23***