ELECTION OF RIGHTS

Application Number: 2004-078C Development Name: Fountainview Apartments

1. [ ] I do not desire a proceeding.

2. [X] I elect an informal proceeding to be conducted in accordance with Sections 120.569 and 120.57(2), Florida Statutes. In this regard I desire to (Choose one):

   [ ] submit a written statement and documentary evidence; or

   [ ] attend an informal hearing to be held in Tallahassee.

   Note: Rule 28-106.301, Florida Administrative Code, requires Applicant to submit a petition in a prescribed format. (attached)

3. [ ] I elect a formal proceeding at the Division of Administrative Hearings. This option is available only if there are disputed issues of material fact.

   Note: Applicant must submit an appropriate petition in accordance with Rule 28-106.201, Florida Administrative Code. (attached)

Following are my top eight preferences, in order from 1-8 (with 1 being my first choice, etc.) for scheduling my informal hearing. All formal hearings will be scheduled by the Division of Administrative Hearings.

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

Hearing Dates:	A.M.	P.M.
August 25, 2004	8	7
August 26, 2004	6	5
August 27, 2004	4	3
August 31, 2004	2	1

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

Please fax a Hearing Schedule to me at this number: 850/222-0398
(include Area Code)

DATE: 7-30-04

Signature of Petitioner

Name: Michael P. Donaldson
Carlton Fields, P.A.
P.O. Drawer 190
Address: 215 S. Monroe St., Suite 500
Tallahassee, FL 32302

Phone: 850/224-1585
(include Area Code)

TO PRESERVE YOUR RIGHT TO A PROCEEDING, YOU MUST RETURN THIS FORM WITHIN TWENTY-ONE (21) DAYS OF RECEIPT OF THIS NOTICE TO THE FLORIDA HOUSING FINANCE CORPORATION AT THE ADDRESS INDICATED IN THE NOTICE OF RIGHTS. TO FACILITATE THE SCHEDULING OF HEARINGS, THIS FORM MAY BE SUBMITTED PRIOR TO FILING A PETITION.

BEFORE THE STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

CREATIVE CHOICE HOMES
XXX, LTD.,

Petitioner,

vs.

FHFC No._____
Application No. 2004-078C

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.
_____/

PETITION FOR REVIEW

Pursuant to Section 120.569 and .57(2), Florida Statutes (F.S.) and Rule 67-48.005, Florida Administrative Code (F.A.C.), Petitioner, Creative Choice Homes XXX, Ltd. ("Creative Choice") requests an administrative hearing to challenge FLORIDA HOUSING FINANCE CORPORATION's ("FHFC") scoring of Creative Choice's 2004 Universal Application ("Application"). In support of this Petition, Creative Choice provides as follows:

1. Creative Choice is a Florida for-profit limited partnership with its address at 4243 Northlake Blvd., Suite D, Palm Beach Gardens, FL 33410. Creative Choice is in the business of providing affordable rental housing units.

2. FHFC is the state agency delegated the authority and responsibility for administering and awarding the Housing Credit ("HC") program in the State of Florida pursuant to Chapter 420, F.S., and Rule 67-48, F.A.C.

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

4. The award of HC funds is made through a competitive process in which project owners apply using the Universal Application.

5. The 2004 Universal application requests information of each applicant regarding the proposed project. FHFC has adopted the Application by reference in Rule 67-48.002, F.A.C.

6. On March 31, 2004, all applicants, including Creative Choice, submitted applications to FHFC for review. Creative Choice submitted its application in an attempt to obtain funding to assist in the construction of a 132-unit affordable housing apartment complex in Tampa, Hillsborough County, Florida, named Fountainview Apartments.

7. On April 29, 2004, FHFC completed its preliminary review and scoring of Creative Choice's application. At that time Creative Choice was awarded a preliminary score of 66 points out of a possible 66 points and 7½ out of 7½ proximity points. However, as discussed more fully below, FHFC concluded that Creative Choice failed to meet threshold based on a lack of demonstrating the required site control.

8. Subsequent to the release of FHFC's preliminary scores, each applicant, pursuant to Rule 67-48-004(4), F.A.C. was allowed to submit to FHFC Notices of Possible Scoring Errors ("NOPSE"). The purpose was to point out errors in FHFC's scoring of

applications. Several NOPSE's were filed which challenged the scoring of Creative Choice's application.

9. In response to the NOPSE's and FHFC's preliminary review, applicants were allowed 15 days to submit revised documentation to correct any errors in their applications pursuant to Rule 67-48-004(6), F.A.C ("cure"). All revised documentation was due to FHFC by June 10, 2004. Creative Choice submitted "cures" in an attempt to gain maximum points possible. Specifically, Creative Choice submitted additional information to demonstrate its control over the proposed development site.

10. Subsequent to the submittal of additional cure information pursuant to Rule 67-48.004(7), F.A.C., each applicant was allowed the opportunity to provide a Notice of Alleged Deficiency in Scoring ("NOAD") with respect to the revised documentation submitted by other applicants. No NOAD's were filed challenging Creative Choice's cures.

11. On July 9, 2004, FHFC finalized its review of the additional documentation and issued final scores. The Notice of Final Scores was received by Creative Choice on July 12, 2004. Creative Choice's final score was 66 out of a possible 66 points. Creative Choice was also awarded 7½ out of a possible 7½ proximity tie breaker points. However, FHFC continued to conclude that Creative Choice failed to meet threshold. Based on the alleged failure to meet threshold, Creative Choice will not receive HC funds.

12. Creative Choice's position in the ranking and its ability to be awarded funding is dependant on not only its own score, but that of the other applicants' scores as well. The ability to finance the proposed project will be jeopardized if funding is not obtained, accordingly Creative Choice's substantial interests are affected by this

proceeding. In the instant proceeding Creative Choice challenges FHFC's threshold determination regarding site control.

13. The Universal Application at Part III, beginning at page 6 of 35, requests information concerning the proposed development. At Part III, subsection C(2), page 19 of 35, the Universal Application requires the applicant to provide information which demonstrates that the applicant has control of the proposed development site.

14. The Universal Application, at page 20 of 35, specifically identifies the ways in which an applicant can demonstrate site control, as follows:

> (a) Provide a fully executed, qualified contract for purchase and sale for the subject property behind a tab labeled "Exhibit 27,"
>
> or
>
> (b) Provide a recorded deed or recorded certificate of title behind a tab labeled "Exhibit 27."
>
> or
>
> (c) Provide a copy of the fully executed long-term lease behind a tab labeled "Exhibit 27."

15. The Universal Application Instructions, at page 24 of 102, provide additional explanation and requires that a legal description must also be provided for the site. The Universal Application instructions go on to define a qualified contract as follows:

> Provide a Qualified Contract – A qualified contract is one that has a term that does not expire before the last expected closing date of December 31, 2004, or that contains extension options exercisable by the purchaser and conditioned solely upon payment of additional monies which, if exercised, would extend the term to a date not earlier than December 31, 2004; provides that the buyer's remedy for default on the part of the seller includes or is specific performance; and the buyer MUST be the Applicant unless a fully executed assignment of the qualified contract which assigns all of

> the buyer's rights, title and interests in the qualified contract to the Applicant is provided.

16. In response to this requirement, Creative Choice in its initial application submitted, at Exhibit 27, multiple qualified contracts for the purchase and sale of designated parcels of property. The submittal of multiple contracts was necessary because the site upon which the Fountainview Apartments are proposed to be built is owned by multiple parties. One of the owners is Associated Out-Door Clubs, Inc. Accordingly, a Contract For Sale and Purchase executed by representatives of Creative Choice as the buyer and Out-Door Clubs, Inc., as the seller, was provided at Exhibit 27 (see Contract at Attachment A). The Contract For Sale and Purchase form was approved by the Florida Association of Realtors and the Florida Bar.

17. After conducting its preliminary review, FHFC concluded in its initial scoring summary that Creative Choice failed to meet the site control threshold based on the following explanation:

> The Applicant provided several contracts to demonstrate site control for the proposed Development site. Section 9 of Addendum No. 1, dated 12/10/03, to the Contract for Sale and Purchase dated 12/10/03 has a contingency that requires the approval of the Seller's Board of Directors for the conveyance of the property. The Applicant has not shown that this sale has been approved.

(See Scoring Summary at Attachment B.)

18. In response to FHFC's initial review and the specific comments found in the scoring summary, Creative Choice submitted as a cure a letter from the General Counsel for Associated Out-Door Clubs, Inc., which made clear that the Board of Directors had indeed approved the subject contract and the contingency set forth in Section 9 of Addendum No. 1 had been satisfied (see Attachment C).

19. On July 9, 2004, FHFC issued its Final Scoring Summary which once again concluded that Creative Choice had failed to meet threshold. In its scoring summary, FHFC provided the following additional application comments.

> The Applicant attempted to cure Item 1T by providing a letter from the seller's attorney stating that the Board of Directors had approved the transaction. The cure is deficient because no consents to action, resolution, or other official action of the Out-Door Clubs, Inc.'s Board of Directors demonstrating the Board's consent was provided.

(See Attachment D).

20. Apparently, FHFC has concluded that the contract submitted by Creative Choice is either not a qualified contract or has a contingency which has not been met. FHFC's threshold determination is erroneous for several reasons. Initially, both the Universal Application itself and the Universal Application Instructions define what a qualified contract is for purposes of the Universal Application process. A qualified contract must be executed by all parties, have a term that does not expire before December 31, 2004, provide that the buyers remedy for default includes or is specific performance, and the buyer must be the Applicant or, if not, a fully executed assignment to the Applicant must be provided.

21. In the instant case, Creative Choice, in its initial application, submitted a contract for sale and purchase which, consistent with the requirements of the Universal Application and Universal Application Instructions, at page 1 of 4, provides for a closing date of December 31, 2004. Additionally, Addendum 1 at page 2 of the contract provides the necessary remedy of specific performance. Further, the contract has been assigned to Creative Choice as the applicant. For purposes of the Universal Application process, there

are no other defined criteria for a qualified contract. Accordingly, Creative Choice has met threshold.

22. Apparently, FHFC opines that a qualified contract for sale is one in which all contingencies or conditions in the contract must be satisfied by the application deadline or during the cure period or by the end of the application review and scoring period. Unfortunately, the Universal Application does not so require. Indeed, in order for the sale to be completed, every contingency must be satisfied by the closing date, not the application submittal deadline or the end of the cure period. Moreover, to the extent Creative Choice fails to maintain control of the site subsequent to the application deadline, Creative Choice will be unable to successfully pass underwriting and the verification process called for at Rule 67-48.026, F.A.C.

23. Even if additional information was required as indicated by FHFC's scoring summary to show that a contingency has been met, Creative Choice clearly provided evidence from the Board's General Counsel that the contract was approved and the contingency satisfied. While FHFC's scoring summary indicates that the cure was deficient because no consents to action, resolution, or other official activity was submitted by Creative Choice, FHFC failed to recognize that the obligation to obtain approval of the Board was that of the seller, not Creative Choice as the buyer. Accordingly, the seller had the documents requested by FHFC, not Creative Choice. When Creative Choice requested evidence required by the FHFC scoring summary from the seller, the letter submitted as a cure was provided by the seller. The actual consents have been included as Attachment E.

24. Moreover, FHFC, in its initial scoring summary, does not specifically ask for consents to action, resolution or official activity of the Board. Rather, FHFC simply asked for proof that the sale had been approved. That information was provided by Creative Choice. In essence, FHFC, in its final scoring summary placed a requirement on Creative Choice to provide documentation that was not found in the Application nor requested in the initial scoring summary. Had FHFC wanted the actual consents or other official Board action, it could have simply said so. It is clear that Creative Choice could have provided the consents had they been requested by FHFC to do so. In essence, FHFC has created in its final scoring summary a scoring issue, in fact a threshold issue, which can now not be cured. FHFC should not be allowed to reject Creative Choice's application for failure to meet threshold for an issue not identified prior to the ability to cure. (See *Camellia Point, Ltd. v. FHFC,* FHFC Case No. 2002-0051, Final Order entered October 10, 2002, included as Attachment F.)

25. The issue in the instant proceeding is whether Creative Choice has met the threshold requirement for site control.

WHEREFORE, based on the foregoing, Creative Choice respectfully requests, to the extent the facts are undisputed, the entry of a recommended order which concludes that threshold has been met.

Respectfully submitted,

Michael P. Donaldson
FL Bar No. 0802761
CARLTON FIELDS, P.A.
P.O. Drawer 190
215 S. Monroe St., Suite 500
Tallahassee, FL 32302

Telephone: (850) 224-1585
Facsimile: (850) 223-7000

Counsel for Applicant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing has been filed by Hand Delivery with the Agency Clerk, Florida Housing Finance Corporation, 227 N. Bronough Street, Suite 5000, Tallahassee, FL 32301; and copies furnished by Hand Delivery to Kerey Carpenter, Deputy Development Officer, and Wellington H. Meffert, II, Esq., Florida Housing Finance Corporation, 227 N. Bronough St., Suite 5000, Tallahassee, FL 32301, this 30th day of July, 2004.

MICHAEL P. DONALDSON

Exhibit 27

ATTACHMENT A

THIS FORM HAS BEEN APPROVED BY THE FLORIDA ASSOCIATION OF REALTORS® AND THE FLORIDA BAR.

Contract for Sale and Purchase

FLORIDA ASSOCIATION OF REALTORS® AND THE FLORIDA BAR

PARTIES: Associated Out-Door Clubs, Inc. ("Seller"), and CCH Acquisitions, Inc. ("Buyer"), hereby agree that Seller shall sell and Buyer shall buy the following described Real Property and Personal Property (collectively "Property") pursuant to the terms and conditions of this Contract for Sale and Purchase and any riders and addenda ("Contract"):

I. DESCRIPTION:

(a) Legal description of the Real Property located in Hillsborough County, Florida: See Exhibit A

(b) Street address, city, zip, of the Property:

(c) ~~Personal Property includes existing range, refrigerator, dishwasher, ceiling fans, light fixtures, and window treatments unless specifically excluded below.~~

Other items included are: None

Items of Personal Property (and leased items, if any) excluded are:

II. PURCHASE PRICE (U.S. currency): $ 255,000.00

PAYMENT:

(a) Deposit held in escrow by Clyatt & Richardson, P.A. (Escrow Agent) in the amount of $ 5,000.00

(b) Additional escrow deposit to be made to Escrow Agent within 2 days after ~~Effective Date~~ Inspection Period (~~see Paragraph III~~) (See Addendum) in the amount of $ 5,000.00

(c) Assumption of existing mortgage in good standing (see Paragraph IV(c)) having an approximate present principal balance of $

(d) New mortgage financing with a Lender (see Paragraph IV(b)) in the amount of $

(e) Purchase money mortgage and note to Seller (See Paragraph IV(d)) in the amount of $

(f) Other: $

(g) Balance to close by cash or LOCALLY DRAWN cashier's or official bank check(s), subject to adjustments or prorations $ 245,000.00

III. TIME FOR ACCEPTANCE OF OFFER AND COUNTEROFFERS; EFFECTIVE DATE:

(a) If this offer is not executed by and delivered to all parties OR FACT OF EXECUTION communicated in writing between the parties on or before October 31, 2003, the deposit(s) will, at Buyer's option, be returned and this offer withdrawn. UNLESS OTHERWISE STATED, THE TIME FOR ACCEPTANCE OF ANY COUNTEROFFERS SHALL BE 2 DAYS FROM THE DATE THE COUNTEROFFER IS DELIVERED.

(b) The date of Contract ("Effective Date") will be the date when the last one of the Buyer and Seller has signed or initialed this offer or the final counteroffer. If such date is not otherwise set forth in this Contract, then the "Effective Date" shall be the date determined above for acceptance of this offer or, if applicable, the final counteroffer.

IV. FINANCING:

☒ (a) This is a cash transaction with no contingencies for financing; except as stated in Addendum 1

☐ (b) This Contract is contingent on Buyer obtaining approval of a loan ("Loan Approval") within _____ days after Effective Date for (CHECK ONLY ONE): ☐ a fixed; ☐ an adjustable; or ☐ a fixed or adjustable rate loan, in the principal amount of $_____, at an initial interest rate not to exceed _____%, discount and origination fees not to exceed _____% of principal amount, and for a term of _____ years. Buyer will make application within _____ days (if blank, then 5 days) after Effective Date and use reasonable diligence to obtain Loan Approval and, thereafter, to satisfy terms and conditions of the Loan Approval and close the loan. Buyer shall pay all loan expenses. If Buyer fails to obtain a Loan Approval or fails to waive Buyer's rights under this subparagraph within the time for obtaining Loan Approval or, after diligent, good faith effort, fails to meet the terms and conditions of the Loan Approval by Closing, then either party thereafter, by written notice to the other, may cancel this Contract and Buyer shall be refunded the deposit(s);

☐ (c) Assumption of existing mortgage (see rider for terms); or

☐ (d) Seller financing (see Standard B and riders; addenda; or special clauses for terms).

V. TITLE EVIDENCE: At least _____ days (if blank, then 5 days) before Closing:

☒ (a) Title insurance commitment with legible copies of instruments listed as exceptions attached thereto ("Title Commitment)" and, after Closing, an owner's policy of title insurance (see Standard A for terms); or ☐ (b) Abstract of title or other evidence of title (see rider for terms), shall be obtained by (CHECK ONLY ONE): ☐ (1) Seller, at Seller's expense and delivered to Buyer or Buyer's attorney; or ☒ (2) Buyer, at Buyer's expense.

VI. CLOSING DATE: This transaction shall be closed and the closing documents delivered on December 31, 2004 ("Closing"), unless modified by other provisions of this Contract. If Buyer is unable to obtain Hazard, Wind, Flood, or Homeowners' insurance at a reasonable rate due to extreme weather conditions, Buyer may delay Closing for up to 5 days after such coverage becomes available.

VII. RESTRICTIONS; EASEMENTS; LIMITATIONS: Seller shall convey marketable title subject to: comprehensive land use plans, zoning, restrictions, prohibitions and other requirements imposed by governmental authority; restrictions and matters appearing on the plat or otherwise common to the subdivision; outstanding oil, gas and mineral rights of record without right of entry; unplatted public utility easements of record located contiguous to real property lines and not more than 10 feet in width as to the rear or front lines and 7 1/2 feet in width as to the side

lines); taxes for year of Closing and subsequent years; and assumed mortgages and purchase money mortgages, if any (if additional items, see addendum); provided, that there exists at Closing no violation of the foregoing and none prevent use of the Property for _____ purpose(s).

VIII. OCCUPANCY: Seller shall deliver occupancy of Property to Buyer at time of Closing unless otherwise stated herein. If Property is intended to be rented or occupied beyond Closing, the fact and terms thereof and the tenant(s) or occupants shall be disclosed pursuant to Standard F. If occupancy is to be delivered before Closing, Buyer assumes all risks of loss to Property from date of occupancy, shall be responsible and liable for maintenance from that date, and shall be deemed to have accepted Property in its existing condition as of time of taking occupancy.

IX. TYPEWRITTEN OR HANDWRITTEN PROVISIONS: Typewritten or handwritten provisions, riders and addenda shall control all printed provisions of this Contract in conflict with them.

X. ASSIGNABILITY: (CHECK ONLY ONE): Buyer ☒ may assign and thereby be released from any further liability under this Contract; ☐ may assign but not be released from liability under this Contract; or ☐ may not assign this Contract.

XI. DISCLOSURES:

(a) ☐ CHECK HERE if the Property is subject to a special assessment lien imposed by a public body payable in installments which continue beyond Closing and, if so, specify who shall pay amounts due after Closing: ☐ Seller ☐ Buyer ☐ Other (see addendum).

(b) Radon is a naturally occurring radioactive gas that when 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 or radon testing may be obtained from your County Public Health unit.

(c) Buyer acknowledges receipt of the Florida Building Energy-Efficiency Rating System Brochure.

(d) If the real property includes pre-1978 residential housing then a lead-based paint rider is mandatory.

(e) If Seller is a "foreign person" as defined by the Foreign Investment in Real Property Tax Act, the parties shall comply with that Act.

(f) If Buyer will be obligated to be a member of a homeowners' association, BUYER SHOULD NOT EXECUTE THIS CONTRACT UNTIL BUYER HAS RECEIVED AND READ THE HOMEOWNERS' ASSOCIATION DISCLOSURE.

XII. MAXIMUM REPAIR COSTS: Seller shall not be responsible for payments in excess of: None

(a) $_____ for treatment and repair under Standard D (if blank, then 2% of the Purchase Price).

(b) $_____ for repair and replacement under Standard N not caused by Wood Destroying Organisms (if blank, then 3% of the Purchase Price).

XIII. RIDERS; ADDENDA; SPECIAL CLAUSES:

CHECK those riders which are applicable AND are attached to this Contract:

☐ CONDOMINIUM ☐ VA/FHA ☐ HOMEOWNERS' ASSN. ☐ LEAD-BASED PAINT

☐ COASTAL CONSTRUCTION CONTROL LINE ☐ INSULATION ☐ "AS IS" ☐ Other Comprehensive Rider Provisions

☒ Addenda Addendum 1

Special Clauses(s):

Escrow Agent Notice: Kevin Richardson
Clyatt & Richardson, P.A.
1651 Forum Place, Suite 300-F
West Palm Beach, FL 33401
(561) 471-9600

XIV. STANDARDS FOR REAL ESTATE TRANSACTIONS ("Standards"): Buyer and Seller acknowledge receipt of a copy of Standards A through W on the reverse side or attached, which are incorporated as part of this Contract.

THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, SEEK THE ADVICE OF AN ATTORNEY PRIOR TO SIGNING.

THIS FORM HAS BEEN APPROVED BY THE FLORIDA ASSOCIATION OF REALTORS® AND THE FLORIDA BAR.

Approval does not constitute an opinion that any of the terms and conditions in this Contract should be accepted by the parties in a particular transaction. Terms and conditions should be negotiated based upon the respective interests, objectives and bargaining positions of all interested persons.

AN ASTERISK(*) FOLLOWING A LINE NUMBER IN THE THE MARGIN INDICATES THE LINE CONTAINS A BLANK TO BE COMPLETED.

CCH Acquisitions, Inc.		Associated Out-Door Clubs, Inc.		
John Ron, SVP	12/9/03	John M Hater	12/10/03	
(BUYER)	(DATE)	(SELLER)	(DATE)	
N/A				
(BUYER)	(DATE)	(SELLER)	(DATE)	

Buyers' address for purposes of notice: Ron Roan
4243 Northlake Boulevard, Suite D
Palm Beach Gardens, FL 33410 Phone (561) 627-7988

Sellers' address for purposes of notice: John M. Hater
8300 N. Nebraska Ave
Tampa, FL 33604 Phone

Deposit under Paragraph II (a) received (Checks are subject to clearance.): Clyatt & Richardson, P.A. (Escrow Agent)

BROKERS: The brokers named below, including listing and cooperating brokers, are the only brokers entitled to compensation in connection with this Contract:

Name: Absolute Investment Services	Century 21 Shaw Realty Group
Cooperating Brokers, if any	Listing Broker

A. TITLE INSURANCE: The Title Commitment shall be issued by a Florida licensed title insurer agreeing to issue Buyer, upon recording of the deed to Buyer, an owner's policy of title insurance in the amount of the purchase price, insuring Buyer's marketable title to the Real Property, subject only to matters contained in Paragraph VII and those to be discharged by Seller at or before Closing. Marketable title shall be determined according to applicable Title Standards adopted by authority of The Florida Bar and in accordance with law. Buyer shall have 5 days from date of receiving the Title Commitment to examine it, and if title is found defective, notify Seller in writing specifying defect(s) which render title unmarketable. Seller shall have 30 days from receipt of notice to remove the defects, failing which Buyer shall, within 5 days after expiration of the 30 day period, deliver written notice to Seller either: (1) extending the time for a reasonable period not to exceed 120 days within which Seller shall use diligent effort to remove the defects; or (2) requesting a refund of deposit(s) paid which shall be returned to Buyer. If Buyer fails to so notify Seller, Buyer shall be deemed to have accepted the title as it then is. Seller shall, if title is found unmarketable, use diligent effort to correct defect(s) within the time provided. If Seller is unable to timely correct the defects, Buyer shall either waive the defects, or receive a refund of deposit(s), thereby releasing Buyer and Seller from all further obligations under this Contract. If Seller is to provide the Title Commitment and it is delivered to Buyer less than 5 days prior to Closing, Buyer may extend Closing so that Buyer shall have up to 5 days from date of receipt to examine same in accordance with this Standard.

B. PURCHASE MONEY MORTGAGE; SECURITY AGREEMENT TO SELLER: ~~A purchase money mortgage and mortgage note to Seller shall provide for a~~ 30 day grace period in the event of default if a first mortgage and a 15 day grace period if a second or lesser mortgage; ~~shall provide for~~ right of prepayment in whole or in part without penalty; shall permit acceleration in event of transfer of the Real Property; ~~shall require~~ all prior liens and encumbrances to be kept in good standing; shall forbid modifications of, or future advances under, prior mortgage(s); ~~shall~~ require Buyer to maintain policies of insurance containing a standard mortgagee clause covering all improvements located on the Real Property against fire and all perils included within the term "extended coverage endorsements" and such other risks and perils as Seller ~~may~~ reasonably require, in an amount equal to their highest insurable value; and the mortgage, note and security agreement shall be otherwise in form and content required by Seller, but Seller may only require clauses and coverage customarily found in mortgages, mortgage notes and security agreements generally utilized by savings and loan institutions or state or national banks located in the county wherein the Real Property is located. All Personal Property and leases being conveyed or assigned will, at Seller's option, be subject to the lien of a security agreement evidenced by ~~recorded or filed financing statements or certificates of title. If a balloon mortgage, the final payment will exceed the periodic payments thereon~~.

C. SURVEY: Buyer, at Buyer's expense, within time allowed to deliver evidence of title and to examine same, may have the Real Property surveyed and certified by a registered Florida surveyor. If the survey discloses encroachments on the Real Property or that improvements located thereon encroach on setback lines, easements, lands of others or violate any restrictions, Contract covenants or applicable governmental regulations, the same shall constitute a title defect.

D. WOOD DESTROYING ORGANISMS: ~~Buyer, at Buyer's expense, may have the Property inspected by a Florida Certified Pest Control Operator ("Operator")~~ at least 10 days prior to Closing to determine if there is any visible active Wood Destroying Organism ~~infestation~~ or visible damage from Wood Destroying Organism infestation, excluding fences. If either or both are found, Buyer may, within 5 days from date of written notice thereof, have cost of treatment of active infestation estimated by the Operator and all damage ~~inspected and~~ estimated by an appropriately licensed contractor. Seller shall pay costs of treatment and repair of all damage up to the amount provided in Paragraph XII(a). If estimated costs exceed that amount, Buyer shall have the option of canceling this Contract within 5 days after ~~receipt of~~ contractor's repair estimate by giving written notice to Seller, or Buyer may elect to proceed with the transaction and receive a credit at Closing on the amount provided in Paragraph XII(a). "Wood Destroying Organisms" shall be deemed to include all wood destroying organisms required ~~to be reported under the Florida Pest Control Act, as amended~~.

E. INGRESS AND EGRESS: Seller warrants and represents that there is ingress and egress to the Real Property sufficient for its intended use as described in Paragraph VII hereof, and title to the Real Property is insurable in accordance with Standard A without exception for lack of legal right of access.

F. LEASES: Seller shall, at least 10 days before Closing, furnish to Buyer copies of all written leases and estoppel letters from each tenant specifying the nature and duration of the tenant's occupancy, rental rates, advanced rent and security deposits paid by tenant. If Seller is unable to obtain such letter from each tenant, the same information shall be furnished by Seller to Buyer within that time period in the form of a Seller's affidavit, and Buyer may thereafter contact tenant to confirm such information. If the terms of the leases differ materially from Seller's representations, Buyer may terminate this Contract by delivering written notice to Seller at least 5 days prior to Closing. Seller shall, at Closing, deliver and assign all original leases to Buyer.

G. LIENS: Seller shall furnish to Buyer at time of Closing an affidavit attesting to the absence, unless otherwise provided for herein, of any financing statement, claims of lien or potential lienors known to Seller and further attesting that there have been no improvements or repairs to the Real Property for 90 days immediately preceding date of Closing. If the Real Property has been improved or repaired within that time, Seller shall deliver releases or waivers of construction liens executed by all general contractors, subcontractors, suppliers and materialmen in addition to Seller's lien affidavit setting forth the names of all such general contractors, subcontractors, suppliers and materialmen, further affirming that all charges for improvements or repairs which could serve as a basis for a construction lien or a claim for damages have been paid or will be paid at the Closing of this Contract.

H. PLACE OF CLOSING: Closing shall be held in the county wherein the Real Property is located at the office of the attorney or other closing agent ("Closing Agent") designated by the party paying for title insurance, or, if no title insurance, designated by Seller.

I. TIME: In computing time periods of less than six (6) days, Saturdays, Sundays and state or national legal holidays shall be excluded. Any time periods provided for herein which shall end on a Saturday, Sunday, or a legal holiday shall extend to 5 p.m. of the next business day. **Time is of the essence in this Contract.**

J. CLOSING DOCUMENTS: Seller shall furnish the deed, bill of sale, certificate of title, construction lien affidavit, owner's possession affidavit, assignments of leases, tenant and mortgagee estoppel letters and corrective instruments. Buyer shall furnish mortgage, mortgage note, security agreement and financing statements.

K. EXPENSES: Documentary stamps on the deed and recording of corrective instruments shall be paid by Seller. Documentary stamps and intangible tax on the purchase money mortgage and any mortgage assumed, mortgagee title insurance commitment with related fees, and recording of purchase money mortgage to Seller, deed and financing statements shall be paid by Buyer. Unless otherwise provided by law or rider to this Contract, charges for the following related title services, namely title evidence, title examination, and closing fee (including preparation of closing statement), shall be paid by the party responsible for furnishing the title evidence in accordance with Paragraph V.

L. PRORATIONS; CREDITS: Taxes, assessments, rent, interest, insurance and other expenses of the Property shall be prorated through the day before Closing. Buyer shall have the option of taking over existing policies of insurance, if assumable, in which event premiums shall be prorated. Cash at Closing shall be increased or decreased as may be required by prorations to be made through day prior to Closing, or occupancy, if occupancy occurs before Closing. Advance rent and security deposits will be credited to Buyer. Escrow deposits held by mortgagee will be credited to Seller. Taxes shall be prorated based on the current year's tax with due allowance made for maximum allowable discount, homestead and other exemptions. If Closing occurs at a date when the current year's millage is not fixed and current year's assessment is available, taxes will be prorated based upon such assessment and prior year's millage. If current year's assessment is not available, then taxes will be prorated on prior year's tax. If there are completed improvements on the Real Property by January 1st of year of Closing, which improvements were not in existence on January 1st of prior year, then taxes shall be prorated based upon prior year's millage and at an equitable assessment to be agreed upon between the parties; failing which, request shall be made to the County Property Appraiser for an informal assessment taking into account available exemptions. A tax proration based on an estimate shall, at request of either party, be readjusted upon receipt of tax bill on condition that a statement to that effect is signed at Closing.

M. SPECIAL ASSESSMENT LIENS: Except as set forth in Paragraph XI(a), certified, confirmed and ratified special assessment liens imposed by public bodies as of Closing are to be paid by Seller. Pending liens as of Closing shall be assumed by Buyer. If the improvement has been substantially completed as of

Effective Date, any pending lien shall be considered certified, confirmed or ratified and Seller shall, at Closing, be charged an amount equal to the last estimate or assessment for the improvement by the public body.

N. INSPECTION, REPAIR AND MAINTENANCE: ~~Seller warrants that the ceiling, roof (including the fascia and soffits) and exterior and interior walls, foundation, seawalls (or equivalent) and dockage of the Property do not have any visible evidence of leaks, water damage or structural damage and that the septic tank, pool, all appliances, mechanical items, heating, cooling, electrical, plumbing systems and machinery are in Working Condition.~~ The foregoing warranty shall be limited to the items specified unless otherwise provided in an addendum. Buyer may inspect, or, at Buyer's expense, have a firm or individual specializing in home inspections and holding an occupational license for such purpose (if required) or an appropriately licensed Florida contractor make inspections of, those items within 20 days after the Effective Date. Buyer shall, prior to Buyer's occupancy but not more than 20 days after Effective Date, report in writing to Seller such items that do not meet the above standards as to defects. Unless Buyer timely reports such defects, Buyer shall be deemed to have waived Seller's warranties as to defects not reported. If repairs or replacements are required to comply with this Standard, Seller shall cause them to be made and shall pay up to the amount provided in Paragraph XII (b). Seller is not required to make repairs or replacements of a Cosmetic Condition unless caused by a defect Seller is responsible to repair or replace. If the cost for such repair or replacement exceeds the amount provided in Paragraph XII (b), Buyer or Seller may elect to pay such excess, failing which either party may cancel this Contract. If Seller is unable to correct the defects prior to Closing, the cost thereof shall be paid into escrow at Closing. Seller shall, upon reasonable notice, provide utilities service and access to the Property for inspections, including a walk-through prior to Closing, to confirm that all items of Personal Property are on the Real Property and, subject to the foregoing, that all required repairs and replacements have been made and that the Property, including, but not limited to, lawn, shrubbery and pool, if any, has been maintained in the condition existing as of Effective Date, ordinary wear and tear excepted. For purposes of this Contract: (1) "Working Condition" means operating in the manner in which the item was designed to operate; (2) "Cosmetic Condition" means aesthetic imperfections that do not affect the Working Condition of the item, including, but not limited to: pitted marcite or other pool finishes; missing or torn screens; fogged windows; tears, worn spots, or discoloration of floor coverings, wallpaper, or window treatments; nail holes, scratches, dents, scrapes, chips or caulking in ceilings, walls, flooring, fixtures, or mirrors; and minor cracks in floors, tiles, windows, driveways, sidewalks, or pool decks; and (3) cracked roof tiles, curling or worn shingles, or limited roof life shall not be considered defects Seller must repair ~~or replace, so long as there is no evidence of actual leaks or leakage or structural damage, but missing tiles will be Seller's responsibility to replace or repair.~~

O. RISK OF LOSS: If the Property is damaged by fire or other casualty before Closing and cost of restoration does not exceed 3% of the assessed valuation of the Property so damaged, cost of restoration shall be an obligation of Seller and Closing shall proceed pursuant to the terms of this Contract with restoration costs escrowed at Closing. If the cost of restoration exceeds 3% of the assessed valuation of the Property so damaged, Buyer shall either take the Property as is, together with either the 3% or any insurance proceeds payable by virtue of such loss or damage, or receive a refund of deposit(s), thereby releasing Buyer and Seller from all further obligations under this Contract.

P. CLOSING PROCEDURE: The deed shall be recorded upon clearance of funds. If the title agent insures adverse matters pursuant to Section 627.7841, F.S., as amended, the escrow and closing procedure required by this Standard shall be waived. Unless waived as set forth above the following closing procedures shall apply: (1) all closing proceeds shall be held in escrow by the Closing Agent for a period of not more than 5 days after Closing; (2) if Seller's title is rendered unmarketable, through no fault of Buyer, Buyer shall, within the 5 day period, notify Seller in writing of the defect and Seller shall have 30 days from date of receipt of such notification to cure the defect; (3) if Seller fails to timely cure the defect, all deposits and closing funds shall, upon written demand by Buyer and within 5 days after demand, be returned to Buyer and, simultaneously with such repayment, Buyer shall return the Personal Property, vacate the Real Property and reconvey the Property to Seller by special warranty deed and bill of sale; and (4) if Buyer fails to make timely demand for refund, Buyer shall take title as is, waiving all rights against Seller as to any intervening defect except as may be available to Buyer by virtue of warranties contained in the deed or bill of sale.

Q. ESCROW: Any Closing Agent or escrow agent ("Agent") receiving funds or equivalent is authorized and agrees by acceptance of them to deposit them promptly, hold same in escrow and, subject to clearance, disburse them in accordance with terms and conditions of this Contract. Failure of funds to clear shall not excuse Buyer's performance. If in doubt as to Agent's duties or liabilities under the provisions of this Contract, Agent may, at Agent's option, continue to hold the subject matter of the escrow until the parties hereto agree to its disbursement or until a judgment of a court of competent jurisdiction shall determine the rights of the parties, or Agent may deposit same with the clerk of the circuit court having jurisdiction of the dispute. An attorney who represents a party and also acts as Agent may represent such party in such action. Upon notifying all parties concerned of such action, all liability on the part of Agent shall fully terminate, except to the extent of accounting for any items previously delivered out of escrow. If a licensed real estate broker, Agent will comply with provisions of Chapter 475, F.S., 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 interpleads the subject matter of the escrow, Agent shall recover reasonable attorney's fees and costs incurred with these amounts to be paid from and out of the escrowed funds or equivalent and charged and awarded as court costs in favor of the prevailing party. The Agent shall not be liable to any party or person for misdelivery to Buyer or Seller of items subject to the escrow, unless such misdelivery is due to willful breach of the provisions of this Contract or gross negligence of Agent.

R. ATTORNEY'S FEES; COSTS: In any litigation, including breach, enforcement or interpretation, arising out of this Contract, the prevailing party in such litigation, which, for purposes of this Standard, shall include Seller, Buyer and any brokers acting in agency or nonagency relationships authorized by Chapter 475, F.S., as amended, shall be entitled to recover from the non-prevailing party reasonable attorney's fees, costs and expenses.

S. FAILURE OF PERFORMANCE: If Buyer fails to perform this Contract within the time specified, including payment of all deposits, the deposit(s) paid by Buyer and deposit(s) agreed to be paid, may be recovered and retained by and for the account of Seller as agreed upon liquidated damages, consideration for the execution of this Contract and in full settlement of any claims; whereupon, Buyer and Seller shall be relieved 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(s) without thereby waiving any action for damages resulting from Seller's breach.~~

T. CONTRACT NOT RECORDABLE; PERSONS BOUND; NOTICE; FACSIMILE: Neither this Contract nor any notice of it shall be recorded in any public records. This Contract shall bind and inure to the benefit of the parties and their successors in interest. Whenever the context permits, singular shall include plural and one gender shall include all. Notice and delivery given by or to the attorney or broker representing any party shall be as effective as if given by or to that party. All notices must be in writing and may be made by mail, personal delivery or electronic media. A legible facsimile copy of this Contract and any signatures hereon shall be considered for all purposes as an original.

U. CONVEYANCE: Seller shall convey marketable title to the Real Property by statutory warranty, trustee's, personal representative's or guardian's deed, as appropriate to the status of Seller, subject only to matters contained in Paragraph VII and those otherwise accepted by Buyer. Personal Property shall, at the request of Buyer, be transferred by an absolute bill of sale with warranty of title, subject only to such matters as may be otherwise provided for herein.

V. OTHER AGREEMENTS: No prior or present agreements or representations shall be binding upon Buyer or Seller unless included in this Contract. No modification to or change in this Contract shall be valid or binding upon the parties unless in writing and executed by the parties intended to be bound by it.

W. WARRANTY: Seller warrants that there are no facts known to Seller materially affecting the value of the Property which are not readily observable by Buyer or which have not been disclosed to Buyer.

LOT NINETEEN (19) in SCOTT'S LITTLE FARMS SUBDIVISION, according to the map or plat thereof recorded in plat book 26, page 103 of the Public Records of Hillsborough County, Florida.

EXHIBIT A

ADDENDUM NO. 1 TO
CONTRACT FOR SALE AND PURCHASE
BY AND BETWEEN
ASSOCIATED OUT-DOOR CLUBS, INC.
AND
CCH ACQUISITIONS, INC.

1. **Inspection**. Buyer may, at Buyer's sole cost and expense, conduct an inspection and due diligence review of the Property to ascertain that the Property is in a condition acceptable to Buyer and to investigate the overall feasibility of the proposed use and financing of the Property (the "Project"). In the event that such investigations are unsatisfactory to Buyer, in Buyer's sole and absolute discretion, Buyer shall have the right at Buyer's election to terminate this Contract on or before July 31, 2004 (the "Inspection Period") and receive a full refund of its Deposit.

2. **Additional Deposit**. In the event that Buyer does not give notice of termination of the Contract in accordance with Item 1 above, Buyer shall deposit the additional escrow deposit within two (2) days after the Inspection Period.

3. **Buyer's Contingencies**. The Buyer's obligation to close is subject to the following additional contingencies:

(1) Obtaining a zoning change from Hillsborough County to RMC-20 or PD that will allow a density of twenty (20) units per acre.

(2) Final Site Plan and concurrency approval from Hillsborough County and all other regulatory agencies having jurisdiction in the approval process. Said Site Plan and approval requirements must be considered physically and financially feasible within the Buyer's sole and absolute discretion.

(3) Obtaining a final, unappealable and irrevocable award of Low Income Housing Tax Credits during the year 2004 allocation cycle from the Florida Housing Finance Authority in an amount and on terms satisfactory to Buyer for the Project, and all other necessary financing (including subordinate financing and/or credit enhancement) sufficient to ensure the Project is finally feasible within the Buyer's sole and absolute discretion.

(4) Buyer shall diligently and in good faith attempt to satisfy all of the contingencies as soon as reasonably possible.

(5) The Parties shall cooperate with each other and furnish each other with any information necessary to apply for and obtain any financing and approvals, including any zoning applications and Site Plan approvals.

(6) In the event of the failure of any of the above contingencies, Buyer shall give notice to Seller of such failure and provide a description of Buyer's diligent and good faith attempt to satisfy the contingency. Ten days after Seller's

receipt of said notice, Buyer shall be entitled to a refund of all deposits, whereupon Buyer and Seller shall be released of all further obligations under the Contract.

4. **Remedies**. In the event of default by Buyer under this Agreement, Seller may retain any deposits as liquidated damages and this shall be Seller's sole and exclusive remedy hereunder. In the event of default hereunder by Seller, Buyer shall have the remedy of specific performance. It is specifically understood and agreed that Buyer's liquidated damages for breach by Seller of its obligations hereunder shall be limited to $10.00, which Buyer agrees shall be in consideration for the execution of this Contract and in full settlement of any and all claims; whereupon Buyer and Seller shall be released of all obligations under this Contract.

5. **Waiver of Jury Trial**. BUYER AND SELLER HEREBY MUTUALLY, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS CONTRACT.

6. **WARRANTIES AND REPRESENTATIONS**. The Seller makes the following warranties and representations as of the date hereof and as of the Closing Date which warranties and representations shall survive the Closing:

A. There are no contracts, leases, agreements or licenses, written or oral, relating to the Property that will survive the Closing, other than those disclosed to Buyer as required by this Contract.

B. To the best of Seller's knowledge, no work has been done on the Property which could give rise to any mechanics or other liens during the term of this Contract.

C. Seller has not received any notice claiming or asserting that the Property is in violation of any law, code, ordinance, rule, regulation or requirement including, without limitation, those pertaining to building, health, safety or environmental matters, of the municipal, county, state or federal government having jurisdiction over the Property. In any event, Seller is obligated to give Buyer written notice of any violation of which Seller is made aware of prior to the Closing Date.

D. To the best of Seller's knowledge and opinion, there is no threatened or pending litigation or claim involving the Property or any adjoining property that would have a material adverse effect on the value of the Property, and, to the best of Seller's knowledge and opinion, there are no facts or circumstances which could give rise to such claim or litigation.

E. Seller has received no notice of eminent domain taking or condemnation, actual or proposed, with respect to the Property, none has occurred, and Seller has no reason to believe that any such eminent domain taking or condemnation, has been proposed or is under consideration.

F. Seller and the person executing this agreement on behalf of Seller have full power and authority to do so.

G. To the best of Seller's knowledge, there is no oil or hazardous waste, hazardous materials or substances hazardous to human health on the Property, except as otherwise noted in this Contract.

H. To the best of Seller's knowledge, there has been no storage, treatment, generation, discharge, transportation or disposal of industrial, toxic or hazardous substances or solid or hazardous waste at, on or beneath the Property by Seller, other than those allowable under applicable federal, state and/or local environmental laws and regulations (collectively, "Environmental Laws") or allowable under applicable Environmental Laws permits which have been disclosed to Buyer.

I. Seller represents and warrants that no violation of any City or County standards, rules, guidelines or requirements exist to the best of Seller's knowledge.

It shall be a condition of Buyer's obligation herein that all of the warranties and representations of Seller herein contained shall be true at the time the same are made and on the Closing Date. If the representations and warranties of Seller are found to not be accurate as of the Closing Date, then Buyer shall have the option to terminate the Contract and receive a full refund of all Buyer Deposits. In the event of any such inaccuracies, Seller agrees to cooperate in good faith with Buyer to eliminate or cure the inaccuracies. However, Seller shall have no obligation to incur any expense or financial obligation in effecting such cure. Seller agrees to indemnify Buyer against and hold Buyer harmless from any loss, damage, cost (including, without limitation, attorneys' fees) or liability which Buyer may incur as a consequence of Seller's breach of any of the foregoing warranties and representations. This indemnification obligation shall survive the Closing, provided Buyer promptly notifies Seller and gives Seller the option to defend in such cases; provided, however, if Buyer is aware of the breach or inaccuracy of any of Seller's warranties and representations prior to the Closing Date and Buyer goes forward with the Closing, then there shall be no entitlement to indemnification. This indemnification obligation is limited to a breach of the warranties and representations in this section 6 and does not apply to the actual condition of the Property, which Buyer is purchasing "AS IS WITH ALL FAULTS".

7. **AS IS WITH ALL FAULTS**. Other than the warranty of title, and the Warranties and Representations in Section 6, Seller is selling, and Buyer is purchasing this Property "AS IS WITH ALL FAULTS" with no other warranties or responsibilities whatsoever. Buyer is entitled to make all determinations regarding the condition of the Property during the Inspection Period.

8. **Closing documents**. At the Closing, Seller shall deliver to Buyer the following duly executed: (a) warranty deed to the Property, (b) bill of sale transferring any personal property to the Buyer (as applicable), (c) an absolute assignment of all development rights and impact fee credits pertaining to the Property, (d) an affidavit in the form customarily required by Seller's title insurer for the purposes of deleting from

the owner's and lender's title policies the standard exceptions for parties in possession and mechanics liens, (e) a no-lien, gap and exclusive possession affidavit relating to any activity of the Seller at the Property within the period that a mechanic's lien can be filed based on such activity prior to the Closing Date in form and content satisfactory to Buyer, (f) an affidavit establishing that Seller is not a foreign person as defined in I.R.S. code Section 1445 (and the regulations promulgated thereunder) in the form recommended by the Internal Revenue Service for the purpose of establishing that the withholding requirements of said Section 1445 do not apply to this transaction, (g) any forms required to comply with Internal Revenue Service reporting requirements, (h) originals of all plans, permits, licenses, appraisals and surveys pertaining to the Property, to the extent the same are within Seller's possession or control, (i) all other instruments, which may be necessary to establish Buyer as the record owner of title to the Property, (j) a certificate from the Seller that all representations and warranties contained herein are true and accurate as of the Closing Date, and (k) any other documents required to be delivered at Closing pursuant to this Contract. Buyer shall pay its closing costs including its attorney's fees, title insurance premiums, financing costs documentary stamps and for the recording of the deed. Seller shall pay its associated closing costs including its attorney's fees.

9. **Approval**. This Contract is contingent on the approval of the Seller's Board of Directors. Seller shall initiate contact with the Board of Directors within five days of the Effective Date of this Contract for the purpose of seeking approval for this transaction. Seller, shall diligently and in good faith attempt to achieve the Board of Directors approval as soon as reasonably possible.

10. **Brokers**. Buyer and Seller each represent to the other that the only brokers involved in this transaction and entitled to a commission are Century 21 Shaw Realty Group and Absolute Investment Services. Seller shall be responsible for the payment of any commission due to these two brokers.

IN WITNESS WHEREOF the parties hereto have executed this Addendum on the dates indicated.

CCH ACQUISITIONS, INC.

By: John F. Weis, SVP

Dated: 12/9/03

ASSOCIATED OUT-DOOR CLUBS, INC.

By: John M. Hatch

Dated: 12/10/03

2004 MMRB, SAIL & HC Scoring Summary

As of: 04/27/2004

File # 2004-078C **Development Name:** Fountainview Apartments

As Of:	Total Points	Met Threshold?	Proximity Tie-Breaker Points	Corporation Funding per Set- Aside Unit	SAIL Request Amount as Percentage of Development Cost	Is SAIL Request Amount Equal to or Greater than 10% of Total Development Cost?
04 - 27 - 2004	66	N	7.5	$47,987.59	%	N
Preliminary	66	N	7.5	$47,987.59	%	N
NOPSE	0	N	0		0	
Final	0	N	0		0	
Final-Ranking	0	N	0		0	

Scores:

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

ATTACHMENT B

2004 MMRB, SAIL & HC Scoring Summary

As of: 04/27/2004

File # 2004-078C **Development Name:** Fountainview Apartments

Threshold(s) Failed:

Item #	Part	Section	Subsection	Description	Reason(s)	Created As Result of	Rescinded as Result of
1T	III	C	2	Site Control	The Applicant provided several contracts to demonstrate site control for the proposed Development site. Section 9 of Addendum No. 1, dated 12/10/03, to the Contract for Sale and Purchase dated 12/10/03 has a contingency that requires the approval of the Seller's Board of Directors for the conveyance of the property. The Applicant has not shown that this sale has been approved.	Preliminary	

Proximity Tie-Breaker Points:

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

Additional Application Comments:

Item #	Part	Section	Subsection	Description	Reason(s)	Created As Result	Rescinded as Result
1C	IV		a.	Local Government Contributions	The fee waiver was not included as part of the Local Government contributions because the form provided does not state whether it is based on a per set-aside unit computation and no computations were included. However, the Applicant did provide an alternative contribution that met or exceeded the amount required to achieve the 5 points for this section.	Preliminary	
2C	IV		a.	Hillsborough County Loan	The present value of the loan from Hillsborough County was calculated to be $206,327.72 instead of the $210,571.07 calculated by the Applicant. This amount is still sufficient for the Application to score maximum points.	Preliminary	

COPY

2004 Universal Cycle Application
Cure Period Submittal

Fountainview Apartments
2004-078C

Submitted To:
Mr. Stephen Auger, Deputy Development Officer
Florida Housing Finance Corporation
227 North Bronough Street
Suite 5000
Tallahassee, Florida 32301

Submitted By:
Creative Choice Homes XXX, Ltd.
4243-D Northlake Boulevard
Palm Beach Gardens, Florida 33410

June 10, 2004

ATTACHMENT C

TRACKING NO:

204

2004 CURE SUMMARY FORM

This Cure Summary Form is submitted with regard to **Application No. 2004-078C** and pertains to the Application parts, sections, subsections, and exhibits listed below (please list the parts, sections, subsections, and exhibits in the order they appear on the most recent Scoring Summary Report):

				Submitted in Response to:			Created by:	
Part (I, II, III, IV, or V)	**Section** (A, B, C, D, etc.)	**Subsection** (1, 2, 3, etc. or 1.a., 2.a., etc.	**Exhibit** (1, 2, 3, etc.)	**Reason Score Not Maxed** (Provide Item No. from Application Scoring Summary)	**Reason Failed Threshold** (Provide Item No. from Application Scoring Summary)	**Proximity Scoring Item No.** (Provide Item No. from Application Scoring Summary)	**Mark this Column if Item No. indicated in "Submitted in Response to" column(s) resulted from Preliminary Scoring**	**Mark this Column if Item No. indicated in "Submitted in Response to" column(s) resulted from NOPSE Scoring and state NOPSE Tracking No., if known.**
III	C	2	27	S	1T	P	X	
				S	T	P		
				S	T	P		
				S	T	P		
				S	T	P		
				S	T	P		
				S	T	P		
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				S	T	P		
				S	T	P		

2004 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. 2004-078C** and pertains to:

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

The attached information is submitted in response to the 2004 Universal Scoring Summary Report because:

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

	2004 Universal Scoring Summary Report	Created by:	
		Preliminary Scoring	NOPSE Scoring
☐ Reason Score Not Maxed	Item No. _____S	☐	☐
☒ Reason Failed Threshold	Item No. ____1T	☒	☐
☐ Reason Proximity Points Not Maxed	Item No. _____P	☐	☐

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

This revision or additional documentation is submitted to address an issue resulting from a cure to Part ___ Section ___ Subsection ___ Exhibit ____ (if applicable).

Brief Explanation of Submitted Cure
File #2004-078C
Fountainview Apartments

The above mentioned application failed threshold because there was no evidence provided that the Board of Directors of Associated Out-Door Club approved this transaction.

In order to Cure this Threshold item, we are attaching a letter from the Seller's attorney stating that the Board of Directors have approved the transaction and paragraph 9 in Addendum No. 1 of the Purchase Contract has been satisfied.

MICHAEL N. BROWN
PATRICIA E. DAVENPORT
JAMES S. EGGERT
DAVID FORZIANO
MATTHEW J. FOSTER
J. BERT GRANDOFF II
RICHARD A. HARRISON •
JOSEPH G. HEYCK, JR.
TABATHA A. LIEBERT
MARIAN P. McCULLOCH †
ROBERT A. MORA
BENJAMIN G. MORRIS
ELIANE I. PRODASCO
AMY D. SINGER
DONALD W. STANLEY, JR. ††

† BOARD CERTIFIED, MARITAL & FAMILY LAW
• BOARD CERTIFIED, CITY, COUNTY & LOCAL GOVERNMENT LAW
†† CERTIFIED STATE & FEDERAL MEDIATOR

ALLEN DELL
ATTORNEYS AT LAW

202 S. ROME AVENUE
SUITE 100
TAMPA, FLORIDA 33606

Telephone (813) 223-5351
Fax (813) 229-6682

ESTABLISHED 1925

A PROFESSIONAL ASSOCIATION

Of Counsel
RALPH C. DELL
STEWART G. EGGERT
NATHAN B. SIMPSON

WRITER'S EMAIL
rmora@allendell.com

June 7, 2004

VIA FAX (561) 627-3218

Ron Roan
CCH Acquisition, Inc.
4243 Suite D North Lake Boulevard
Palm Beach Gardens, FL 33410

Re: Associated Out-Door Clubs, Inc. and CCH Acquisition, Inc.
Contract for Sale and Purchase

Dear Ron:

This is to confirm that our firm has served as general counsel for Associated Out-Door Clubs, Inc. ("AOC") for over 40 years. I personally prepared the Consents to Action which were executed by all of the Directors of AOC and I attended the Board Meeting on January 30, 2004 at which the subject Contract was discussed in some detail.

This is to confirm that the Board of Directors of AOC has approved the subject Contract and the contingency set forth in provision 9 of the Contract has been satisfied.

If you need anything further or if I can be of further assistance please advise.

Very truly yours,

Robert A. Mora

/em

cc: Mike Hater

2004 MMRB, SAIL & HC Scoring Summary

As of: 07/06/2004

File # 2004-078C **Development Name:** Fountainview Apartments

As Of:	Total Points	Met Threshold?	Proximity Tie-Breaker Points	Corporation Funding per Set- Aside Unit	SAIL Request Amount as Percentage of Development Cost	Is SAIL Request Amount Equal to or Greater than 10% of Total Development Cost?
07 - 06 - 2004	66	N	7.5	$47,987.59	%	N
Preliminary	66	N	7.5	$47,987.59	%	N
NOPSE	66	N	7.5	$47,987.59	%	N
Final	66	N	7.5	$47,987.59	%	N
Final-Ranking	0	N	0		0	

Scores:

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

ATTACHMENT D

2004 MMRB, SAIL & HC Scoring Summary

As of: 07/06/2004

File # 2004-078C **Development Name:** Fountainview Apartments

Threshold(s) Failed:

Item #	Part	Section	Subsection	Description	Reason(s)	Created As Result of	Rescinded as Result of
1T	III	C	2	Site Control	The Applicant provided several contracts to demonstrate site control for the proposed Development site. Section 9 of Addendum No. 1, dated 12/10/03, to the Contract for Sale and Purchase dated 12/10/03 has a contingency that requires the approval of the Seller's Board of Directors for the conveyance of the property. The Applicant has not shown that this sale has been approved.	Preliminary	

Proximity Tie-Breaker Points:

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

Additional Application Comments:

Item #	Part	Section	Subsection	Description	Reason(s)	Created As Result	Rescinded as Result
1C	IV		a.	Local Government Contributions	The fee waiver was not included as part of the Local Government contributions because the form provided does not state whether it is based on a per set-aside unit computation and no computations were included. However, the Applicant did provide an alternative contribution that met or exceeded the amount required to achieve the 5 points for this section.	Preliminary	
2C	IV		a.	Hillsborough County Loan	The present value of the loan from Hillsborough County was calculated to be $206,327.72 instead of the $210,571.07 calculated by the Applicant. This amount is still sufficient for the Application to score maximum points.	Preliminary	
3C	III	C	2	Site Control	The Applicant attempted to cure Item 1T by providing a letter from the seller's attorney stating that the Board of Directors had approved the transaction. The cure is deficient because no consents to action, resolution, or other official action of the Out-Door Clubs, Inc. Board of Directors demonstrating the Board's consent was provided.	Final	

ASSOCIATED OUT-DOOR CLUBS, INC.
BOARD OF DIRECTORS
CONSENT TO ACTION

Pursuant to F.S. 607.0821, the undersigned, being all of the members of the Board of Directors of Associated Out-Door Clubs, Inc. ("AOC"), hereby consent to and approve the following actions:

> That certain Contract for Sale and Purchase, by and between AOC and CCH Acquisitions, Inc., in substantially the form presented to the Board, is hereby authorized and approved.

IN WITNESS WHEREOF, the undersigned, constituting all of the members of the Board of Directors of AOC have executed this written consent to action on the dates indicated. This consent to action may be executed in multiple counterparts and will become effective when all Directors have executed.

Directors:

Charles W. Bidwill, Jr.
Steven W. Hater
John M. Hater
Robert E. Hater, II
John D. Heile
William H. Johnston, Jr.
Mary Patton

Mary Ann Patton
Mary Patton

Dated: 20 December 2003

H:\74.0000 Associated Outdoor\2003 Real Est\Consents\Patton.doc

ATTACHMENT E

ASSOCIATED OUT-DOOR CLUBS, INC.
BOARD OF DIRECTORS
CONSENT TO ACTION

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Steven W. Hater
John M. Hater
Robert E. Hater, II
John D. Heile
William H. Johnston, Jr.
Mary Patton

Robert E. Hater, II

Dated: 12/13/03

ASSOCIATED OUT-DOOR CLUBS, INC.
BOARD OF DIRECTORS
CONSENT TO ACTION

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Steven W. Hater
John M. Hater
Robert E. Hater, II
John D. Heile
William H. Johnston, Jr.
Mary Patton

William H. Johnston, Jr.

Dated: 12/30/03

ASSOCIATED OUT-DOOR CLUBS, INC.
BOARD OF DIRECTORS
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Steven W. Hater
John M. Hater
Robert E. Hater, II
John D. Heile
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Mary Patton

Steven W. Hater

Dated: DECEMBER 11, 2003

ASSOCIATED OUT-DOOR CLUBS, INC.
BOARD OF DIRECTORS
CONSENT TO ACTION

Pursuant to F.S. 607.0821, the undersigned, being all of the members of the Board of Directors of Associated Out-Door Clubs, Inc. ("AOC"), hereby consent to and approve the following actions:

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Steven W. Hater
John M. Hater
Robert E. Hater, II
John D. Heile
William H. Johnston, Jr.
Mary Patton

John M. Hater

Dated: 12/11/03

ASSOCIATED OUT-DOOR CLUBS, INC.
BOARD OF DIRECTORS
CONSENT TO ACTION

Pursuant to F.S. 607.0821, the undersigned, being all of the members of the Board of Directors of Associated Out-Door Clubs, Inc. ("AOC"), hereby consent to and approve the following actions:

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Directors:

Charles W. Bidwill, Jr.
Steven W. Hater
John M. Hater
Robert E. Hater, II
John D. Heile
William H. Johnston, Jr.
Mary Patton

John D. Heile

Dated: December 11, 2003

ASSOCIATED OUT-DOOR CLUBS, INC.
BOARD OF DIRECTORS
CONSENT TO ACTION

Pursuant to F.S. 607.0821, the undersigned, being all of the members of the Board of Directors of Associated Out-Door Clubs, Inc. ("AOC"), hereby consent to and approve the following actions:

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Directors:

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John M. Hater
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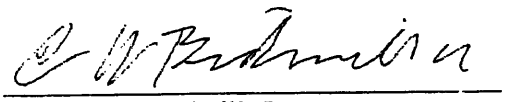

Charles W. Bidwill, Jr.

Dated: 12/12/03

CERTIFICATE

John M. Hater, as President of Associated Out-Door Clubs, Inc. ("AOC") does hereby certify that the Board of Directors of AOC has unanimously approved that certain Contract for Sale and Purchase, dated December 10, 2003, by and between AOC and CCH Acquisitions, Inc., a copy of which is attached hereto. True and correct copies of the Board of Directors Consents to Action are attached hereto.

Associated Out-Door Clubs, Inc.

By: John M. Hater
John M. Hater, President

Dated: 5/18/04

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

CAMELLIA POINTE, LTD.,

Petitioner,

v.

FHFC CASE NO.: 2002-0051

FLORIDA HOUSING FINANCE CORPORATION,

APPLICATION NO.: 2002-118C

Respondent.
_____/

FINAL ORDER

This cause came before the Board of Directors of the Florida Housing Finance Corporation ("Board") for consideration and final agency action on October 10, 2002. On or before April 15, 2002, Petitioner submitted its Application to Florida Housing Finance Corporation ("Florida Housing") to compete for an allocation of housing tax credits. Petitioner timely filed a Petition for Review, pursuant to Sections 120.569 and 120.57(1), Florida Statutes, (the "Petition") challenging Florida Housing's scoring on parts of the Application. Florida Housing reviewed the Petition pursuant to Section 120.569(c), Florida Statutes, and determined that there were no disputed issues of material fact. An informal hearing was held in this case on September 19, 2002, in Tallahassee, Florida, before Florida Housing appointed Hearing Officer, Diane D. Tremor. Petitioner and Respondent timely filed Proposed Recommended Orders.

After consideration of the evidence, arguments, testimony presented at hearing, and the Proposed Recommended Orders, the Hearing Officer issued a Recommended Order. A true and correct copy of the Recommended Order is attached hereto as "Exhibit A." The Hearing Officer recommended Florida Housing enter a Final Order allowing Petitioner's application to receive

7.5 tie-breaker proximity points and not be rejected for failure to meet threshold requirements regarding its ability to proceed with its proposed development.

The findings and conclusions of the Recommended Order are supported by competent substantial evidence.

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

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

2. The conclusions of law of the Recommended Order are adopted in full as Florida Housing's conclusions of law and incorporated by reference as though fully set forth in this Final Order.

3. The Hearing Officer's recommendation that a Final Order be entered allowing Petitioner's application to receive 7.5 tie-breaker proximity points and not be rejected for failure to meet threshold requirements regarding its ability to proceed with its proposed development is approved and accepted as the appropriate disposition of this case. Accordingly, Petitioner's Application receives 7.5 tie-breaker proximity points and is not rejected for failure to meet threshold requirements regarding its ability to proceed with its proposed development

DONE and ORDERED this 10th day of October, 2002.

FLORIDA HOUSING FINANCE CORPORATION

By: _____
Chairperson

NOTICE OF RIGHT TO JUDICIAL REVIEW

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

Copies to:

Wellington H. Meffert II
General Counsel
Florida Housing Finance Corporation
337 North Bronough Street, Suite 5000
Tallahassee, FL 32301

Michael Donaldson, Esq.
Carlton Fields, *et al*,
215 South Monroe Street
Tallahassee, Florida 32301

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

CAMELLIA POINTE, LTD.,

Petitioner,

v.

FHFC CASE NO. 2002-0051
Application No. 2002-118C

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

RECOMMENDED ORDER

Pursuant to notice and Sections 120.569 and 120.57(2) of the Florida Statutes, the Florida Housing Finance Corporation, by its duly designated Hearing Officer, Diane D. Tremor, held an informal hearing in Tallahassee, Florida, in the above styled case on September 19, 2002.

APPEARANCES

For Petitioner, Camellia Pointe, Ltd.:	Michael P. Donaldson, Esq. Carlton Fields P. O. Drawer 190 Tallahassee, FL 32302-0190
For Respondent, Florida Housing Finance Corporation:	Wellington H. Meffert II General Counsel Florida Housing Finance Corporation 227 North Bronough Street, Suite 5000 Tallahassee, FL 32301-1329

EXHIBIT
A

STATEMENT OF THE ISSUE

There are no disputed issues of material fact. The sole issues are whether Petitioner is entitled to receive proximity tie-breaker points and whether Petitioner met the threshold requirements regarding its ability to proceed, as evidence by site plan approval (Exhibit 22) and evidence of appropriate zoning (Exhibit 28).

PRELIMINARY STATEMENT

At the informal hearing, the parties stipulated to the admission into evidence of Exhibits 1 through 7, 13 through 16 and 18. Objections to proffered Exhibits 8 through 12, comprised of excerpts from applications submitted by other competing applicants, were sustained. The undersigned reserved ruling on Exhibit 17. Having considered that document and the parties' arguments with respect thereto, Exhibit 17 is received for the reasons stated below.

Subsequent to the hearing, the parties timely submitted their Proposed Recommended Orders.

FINDINGS OF FACT

Based upon the undisputed facts and documents received into evidence at the hearing, the following relevant facts are found:

1. Petitioner timely submitted an application to the Respondent for an

allocation of Federal Low Income Housing Tax Credits in the 2002 Universal Cycle program. The award of housing tax credits is made through a competitive process in which applicants apply using a Universal Application Package, which includes instructions and application forms. The Universal Application Package is adopted as a rule and is incorporated by reference in the Respondent's existing Rule 67-48.002(116), Florida Administrative Code.

2. The Universal Application allows applicants to earn up to 7.5 tie-breaker points based upon the proximity of the proposed development to specified services, including grocery stores, public schools, medical facilities, bus or metro rail stops and other affordable housing developments. The application instructions, which are rules, provide that the applicant "must first identify a Tie-Breaker Measurement Point on the proposed Development site," provide a Surveyor Certification Form and a land survey map which "must clearly show the boundaries of the proposed Development site." The term "development site" is not defined in the application instructions or forms, nor is it defined in Chapter 67-48 of the Respondent's rules. The only other qualification regarding the location of an applicant's chosen tie-breaker measurement point appears in Rule 67-48.002(113), Florida Administrative Code, and on the Surveyor Certification Form, both of which define the tie-breaker measurement point as "a single point selected by the Applicant on the proposed Development site that is located within 100 feet of a residential building existing or to be constructed as part of the proposed Development." The instructions further proceed to state how

proximities between the tie-breaker measurement point and other services are to be determined.

3. Petitioner's chosen tie-breaker measurement point is located within its property boundaries at the southeastern corner of its property on a narrow strip of land which constitutes a road providing access to and from the site. In its preliminary scoring, Respondent awarded Petitioner maximum tie-breaker points for its proximity to services.

4. Thereafter, after its review of Notices of Potential Scoring Errors ("NOPSE"), although a NOPSE was not filed with respect to those portions of Petitioner's application involving the tie-breaker points, Respondent reduced Petitioner's tie-breaker scores to zero (0) points. The reason provided by Respondent was, as follows:

> Tie-Breaker Measurement Point cannot be located within 100 feet of a residential building and therefore it is not a valid Tie-Breaker Measurement Point. The Tie-Breaker Measurement Point is not located on the true Development site; it is located at the end of a long, narrow stretch of land designed for the apparent purpose of gaining points that the Applicant would not otherwise be entitled to.

5. In response to Respondent's revisions to preliminary scoring regarding tie-breaker points, Petitioner submitted "cure" documentation stating that the tie-breaker measurement point is located within 100 feet of a planned unit. No Notice of Alleged Deficiency ("NOAD") was filed regarding this "cure." In its final scoring, Respondent stated:

After reviewing the cure, FHFC determined that it correctly decided that the Tie-Breaker Measurement Point is not located on the true Development site and that the Applicant is not entitled to any Proximity Tie-Breaker Points.

6. As a threshold item, Applicants are required to demonstrate that they have the ability to proceed with their proposed project by providing, among other documentation, the applicable local government verification form as to site plan approval (Exhibit 22) and evidence that the proposed development site is appropriately zoned and consistent with local land use regulations (Exhibit 28). With regard to Exhibit 22 (evidence of site plan approval), the application instructions provide that "site plan approval or plat approval may be verified by Florida Housing Staff during the scoring process." No such language appears with regard to Exhibit 28.

7. In its initial application, Petitioner submitted Exhibit 22 (Local Government Verification of Status of Site Plan Approval for Multifamily Developments)and Exhibit 28 (Local Government Verification that Development is Consistent with Zoning and Land Use Regulations). These documents were signed by John Smogor, Orange County's Assistant Planning Manager, who certified that he had the authority to verify the status of site plan approval and to verify consistency with local land use regulations and zoning, and further certified that the information stated in the Verifications were true and correct.

8. In its preliminary scoring of Petitioner's application, Respondent concluded that Petitioner's application met all threshold requirements. No NOPSEs were filed with respect to Petitioner's ability to proceed with its proposed project or with respect to Petitioner's Exhibits 22 or 28. In its "final" scoring released on July 22, 2002, Respondent again concluded that Petitioner met all threshold requirements.

9. At some point in time, Respondent's staff came into possession of a FAX cover sheet with two attached documents. The FAX cover sheet is dated July 11, 2002, on the letterhead of Housing and Community Development Division in Orlando. The two attached documents are both dated prior to the time set by Respondent for notification of NOPSE's and any additional items identified by Respondent to be addressed by the applicant during the "cure" period. The FAX cover sheet indicates that it is from Lisa Chiblow and to four persons, including two members of Respondent's staff. A "post-it Fax Note" is attached to the cover sheet which bears the date of July 24, 2002. The Faxed documents include an Interoffice Memorandum dated May 17, 2002, to Lisa Chiblow, Sr. Housing Assistant, Housing and Community Development Division, from John Smogar, Assistant Manager, Planning Division, referencing the Camellia Pointe Apartments. This Interoffice Memorandum officially retracted the earlier signatures on Petitioners' Exhibit 22 and 28 for the following reason:

> This Future Land Use Designation on the subject property is Low-Density Residential. Although the zoning district is R-3 (Multi-Family

Residential), the underlying future land use designation takes precedence, rendering the project inconsistent.

The other document attached was correspondence dated June 7, 2002, to Lou Frey, LCA Development II, Inc., from Lisa Chiblow. This letter advised Mr. Frey that the Camellia Pointe Apartments property is not currently entitled to be developed as a multi-family development, and quoted Mr. Smogor's reason cited above. The letter further advised that "the Planning Division is retracting the signatures on the tax credit forms that were signed." Other than the information recited above from the FAX cover sheet, no evidence was adduced and no factual stipulations were reached regarding the date upon which Respondent actually received this information. Likewise, there was no evidence or stipulation as to whether Petitioner ever received the letter dated June 7, 2002.

10. Respondent rendered its "final" scores with respect to all Universal Cycle applicants on July 22, 2002. This was consistent with its tentative dates setting forth time lines posted on its website.

11. On July 26, 2002, Respondent issued "revised final scores" with respect to Petitioner, and perhaps one other applicant. Respondent's July 26, 2002, revised scoring summary reflects that Petitioner did not meet threshold with regard to site plan (Exhibit 22) and zoning (Exhibit 28) because:

> FHFC received notice from the Orange County Planning Division stating that it had retracted its signature on the Local Government Verification of Status of Site Plan Approval form and the Local

Government Verification that Development is Consistent with Zoning and Land Use Regulations form.

CONCLUSIONS OF LAW

Pursuant to Sections 120.569 and 120.57(2), Florida Statutes, and Chapter 67-48, Florida Administrative Code, the Hearing Officer has jurisdiction of the parties and the subject matter of this proceeding. The Petitioner's substantial interests are affected by the proposed action of the Respondent Corporation. Therefore, Petitioner has standing to bring this proceeding.

There are two issues in this proceeding. The first issue is whether Petitioner was properly denied proximity tie-breaker points on the ground that its selected tie-breaker measurement point is not located on "the true Development site." The second issue is whether Petitioner's application should be rejected for failure to meet threshold requirements regarding site plan approval and consistency with zoning and land use regulations.

With regard to proximity points, the rules which govern the application process and this proceeding contain only three requirements with regard to the selection of a tie-breaker measurement point: (1) the measurement point is to be selected by the applicant, (2) the measurement point is to be located "on the development site," and (3) the measurement point must be located within 100 feet of a residential building existing or to be constructed as part of the proposed development. The tie-breaker

measurement point selected by the Petitioner herein meets each of these requirements, and, accordingly, Petitioner should be awarded the maximum tie-breaker points (7.5).

There is no requirement in Respondent's Rule 67-48.002(113) or in the application instructions and/or forms, which are rules, that the tie-breaker measurement point be located upon the "true" or the "prime" development site. Indeed, the term "development site" is not defined in Respondent's rules. The rules and instructions require only that the measurement point be "on" the development site, and that a land survey map be provided showing the boundaries of the proposed development site, as well the location of the latitude/longitude coordinates for the tie-breaker measurement point on the proposed development site. These are rules adopted by the Respondent, and applicants are entitled to rely upon those rules. Had Respondent intended that the tie-breaker measurement point be located in the "true," the "prime" or within a certain distance from the majority of the residential units within the development, it could easily have so provided.

Petitioner urges that Respondent was prohibited from reducing the tie-breaker points it received in Respondent's preliminary scoring of its application because no NOPSEs and no NOADs were filed with regard to Petitioner's application in that regard. The undersigned does not agree with this argument in this instance because Rule 67-48.004(5) permits the Respondent to notice applicants, not only of its decisions regarding a NOPSE, but also of "any other items identified by the Corporation to be addressed by the Applicant," thus allowing the applicant to "cure"

any issues raised in preliminary scoring, NOPSEs or any other items identified by the Respondent. Petitioner was timely notified and, in fact, cured that portion of Respondent's concern regarding the location of the tie-breaker measurement point within 100 feet of a residential building. In any event, a resolution of this issue is not necessary in light of the above conclusion that Petitioner's selection of its tie-breaker measurement point was in compliance with Respondent's rules, and Petitioner was entitled to receive tie-breaker points for its proximity to the designated services.

The issues raised with respect to Petitioner's threshold Exhibits 22 and 28 are somewhat more complicated. Generally speaking, Respondent's scoring of an application is to based upon the four corners of the application submitted and cured by the applicant. Indeed, Respondent's staff is not permitted to assist any applicant by adding documents to an application, and applicants and/or their representatives are not permitted to verbally contact Respondent's staff concerning their own application or any other applicant's development. See Rules 67-48.004(1) and (18), Fla. Admin. Code. Rule 67-48.004 seems to suggest that the only information which Respondent is to consider when scoring an application is the information received in the initial application, NOPSEs, additional matters raised by the Respondent during the cure period, information submitted by the applicant in its cure documentation and NOADs. However, complicating this seemingly clear direction, the application instructions permit the Respondent to verify certain items, including site plan

approval "during the scoring process." Such authority to verify is not repeated in the instructions regarding Exhibit 28 relating to evidence of appropriate zoning.

Here, there is insufficient evidence to conclude that Respondent was in the process of verifying Petitioner's site plan approval documentation (Exhibit 22) when it learned (on July 11 or July 24, 2002) that the person who signed Exhibit 22 was retracting his signature on the basis of an alleged future land use designation (low-density residential), even though the property was zoned for multi-family residential. Even assuming that Respondent's staff were verifying Exhibit 22, the issue is whether this was being done "during the scoring process." A resolution of that issue must be considered with respect to the scoring process mandated by Rule 67-48.004,with which both Respondent and all applicants must comply. Except with respect to the mandatory requirements set forth in Rule 67-48.004(14), the rules clearly contemplate that applicants be given the opportunity to cure any deficiencies or inconsistencies contained within their initial application. In addition to Rule 67-48.004(6), the Application instructions provide, at page 2, that

> notwithstanding anything in this Application and all instructions in this Application Package to the contrary, . . . Applicants shall be provided with an opportunity to submit additional documentation and revised pages, as well as other information in accordance with the applicable rules.

In addition, subsection (9) of Rule 67-48.004 clearly provides that while deficiencies in the mandatory elements set forth in subsection (14) may be identified at any time prior to sending the final scores to applicants and will result in rejection of the

application, Respondent may not reject an application or reduce points as a result of any issues not identified in the notices of preliminary scoring, NOPSEs, additional items identified by Respondent prior to the cure opportunity or inconsistencies created by the applicant in its cure documentation. Here, as noted above, problems with Exhibits 22 and/or 28 were not indicated in preliminary scoring, NOPSEs, or additional issues raised by Respondent after the receipt of NOPSEs . Petitioner submitted no revised documentation related to Exhibits 22 and 28 as a part of its cure. Construing the provisions of Rule 67-48.004(9) *in pari materia* with the instructions which allow Respondent to verify site plan approval documentation (which is not one of the mandatory items incapable of cure documentation) leads to the conclusion that such verification efforts must be concluded prior to the date upon which an applicant is permitted to submit its cure documentation. In this cycle, cure documentation was required to be submitted on or before June 26, 2002. Petitioner was not notified that its application had been rejected due to failure to meet threshold because of the "retraction" of signatures on Exhibits 22 and 28 until the Respondent's "revised" final scoring on July 26, 2002.

Petitioner urges that the "revised" final scoring by Respondent is not permissible. In support of this argument, Petitioner points to Rule 67-48.004(9) which provides that even the mandatory elements of an application must be identified "prior to sending the final scores to Applicants." While the Petitioner's argument on the issue of whether Respondent is permitted to revise its scoring subsequent to the

time that it issues its "final" scores, absent the result of the hearing processes permitted in Rule 67-48.005, is persuasive, that issue need not be resolved in this proceeding. The undersigned concludes that Respondent may not, in this case, reject Petitioner's application for failure to meet threshold concerning its "ability to proceed" since it had not previously identified that issue prior to Petitioner's ability to "cure" any apparent defect in Exhibits 22 and 28.

Two additional points raised by Petitioner merit discussion. If, indeed, Petitioner lacks the ability to proceed with its proposed development due to lack of site plan approval, lack of zoning or lack of compliance with local government land use restrictions or plan compliance, this will be discovered during the housing credit underwriting procedures. Rule 67-48.026, Florida Administrative Code, permits the Credit Underwriter to "verify all information in the Application," and issue a detailed report of the development's "credit worthiness, feasibility, **ability to proceed** and viability to the Corporation." The Credit Underwriter's report and recommendation, if accepted by the Executive Director, may result in no housing credits being allocated to the development for the current cycle, regardless of an applicant's ranking as a result of the application scoring process. See Rule 67-48.026 (6), (7), (9 and (10), Florida Administrative Code.

Finally, at the informal hearing, Petitioner offered Exhibit 17 into evidence. Respondent objected on both substantive grounds and the procedural ground that said document was not a part of the application scored by the Respondent. The

undersigned reserved ruling on the admissibility of that Exhibit. Having considered the parties' arguments, the undersigned overrules Respondent's objections to Exhibit 17.

Exhibit 17 is a letter dated September 18, 2002 (one day prior to the informal hearing in this case) from the Planning Manager of Orange County certifying that Petitioner's property is entitled to a Vested Rights Certificate, and is vested for multi-family uses. The letter states that the Certificate entitles the owner to undertake or continue to development of the property, despite the inconsistency of the development with the Comprehensive Plan and that the Certificate supercedes all previous certifications or verifications relating to the use of this property that may have been issued by the Planning Division.

As noted above, documents which are not part of the application typically will not be admitted into evidence in an informal hearing contesting the scoring or rejection of an application. However, where the Respondent itself relies upon documentation or information which is not a part of the application, as it did here, it would be grossly unfair not to allow the applicant to produce counter-evidence directly related to the evidence relied upon by the Respondent. This is particularly true where the applicant, as here, had no opportunity during **any** portion of the scoring process, to cure any perceived deficiencies.

As to the substance of Exhibit 17, Respondent argues that it does address the issue of site plan approval raised by the retraction by Mr. Smogor's of his signature

and verification on Exhibit 22 concerning site plan approval. A careful review of the retraction documentation (Exhibit 16) and Exhibit 17 leads to a rejection of this argument. Exhibit 22 certifies and verifies that the zoning designation of the Petitioner's property is "R-3." The September 18, 2002, correspondence reaffirms that the property is zoned R-3. The retraction documents clearly state that the reason for the retraction of Mr. Smogar's signature on Exhibit 22 is because, although the property was zoned R-3 (multi-family residential), said zoning is inconsistent with the future land use designation, which takes precedence. Thus, the only concern expressed in Mr. Smogar's retraction memorandum was comprehensive plan consistency. Exhibit 17, the September 18th correspondence, clearly cures Mr. Smogar's stated concern and is thus directly related to Exhibit 22, as well as to Exhibit 28.

RECOMMENDATION

Based upon the Findings of Fact and Conclusions of Law recited herein, it is RECOMMENDED that Petitioner's application receive 7.5 tie-breaker proximity points and not be rejected for failure to meet threshold requirements regarding its ability to proceed with its proposed development.

Respectfully submitted and entered this 26th day of September, 2002.

Diane D. Tremor

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NOTICE OF RIGHT TO SUBMIT WRITTEN ARGUMENT

All parties have the right to submit written arguments in response to a Recommended Order for consideration by the Board. Any written argument should be typed, double-spaced with margins no less than one (1) inch, in either Times New Roman 14-point or Courier New 12-point font, and may not exceed five (5) pages. Written arguments must be filed with Florida Housing's Finance Corporation's Clerk at 227 North Bronough Street, Suite 5000, Tallahassee, Florida, 32301-1329, no later than 5:00 p.m. on Monday, October 7, 2002. Submission by facsimile will not be accepted. Failure to timely file a written argument shall constitute a waiver of the right to have a written argument considered by the Board. Parties will not be permitted to make oral presentations to the Board in response to Recommended Orders.